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May 11, 2017

Secretariat of the Financial Stability Board
c/o Bank for International Settlements
CH-4002
Basel, Switzerland

Re: Consultation Document; Proposed Framework for Post-Implementation
Evaluation of the Effects of the G20 Financial Regulatory Reforms

Dear Sir or Madam:

The Investment Company Institute, on behalf of its entire fund membership,¹ appreciates the opportunity to comment on the Financial Stability Board’s consultation regarding the development of a structured framework for the post-implementation evaluation of the effects of the G20 financial regulatory reforms.² ICI and its members have a long history of engaging with regulators and policymakers on global financial regulatory policy initiatives that may have significant implications for investment funds that are comprehensively regulated and eligible for public sale (“regulated funds”),³ their investors, and the broader financial markets. To this end, we have provided extensive commentary, including data and analysis, to help inform the FSB’s consideration of substantive issues that are relevant to regulated funds. As a related matter, we have a deep and abiding interest in the processes by which the FSB conducts its work—and that is what impels us to comment on the current consultation.

¹ The Investment Company Institute (ICI) is a leading global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$19.4 trillion in the United States, serving more than 95 million US shareholders, and US\$1.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

² Consultation Document, *Proposed Framework for Post-Implementation Evaluation of the Effects of the G20 Financial Regulatory Reforms* (11 April 2017) (“consultation”), available at <http://www.fsb.org/wp-content/uploads/Framework-for-the-post-implementation-evaluation-of-the-G20-financial-regulatory-reforms.pdf>.

³ The term “regulated funds” includes (1) US mutual funds, ETFs, and other funds that are comprehensively regulated under the Investment Company Act of 1940 (“regulated US funds”), and (2) funds organized or formed outside the US and substantively regulated to make them eligible for sale to retail investors (e.g., funds domiciled in the European Union and qualified under the UCITS Directive).

As a general matter, ICI agrees that following a methodical (but flexible) process to assess the effects of reforms that have been implemented and consider whether changes may be warranted is “good regulatory practice.”⁴ Indeed, on past occasions, ICI has been a strong proponent of a similar concept: retrospective reviews of existing regulations. In a 2011 letter to the U.S. Securities and Exchange Commission (“SEC”), for example, we explained why having a robust plan for reviewing existing rules is critically important for regulated funds and other market participants, investors, the capital markets, and the SEC itself.⁵ As the SEC astutely observed at the time, “[b]ecause today’s financial markets are dynamic and fast-moving, the regulations affecting those markets and participants in these markets must be reviewed over time and revised as necessary so that the regulations continue to fulfill the [SEC’s] mission.”⁶ The dynamism of the financial markets likewise stands as an important reason for conducting post-implementation evaluation of the effects of the G20 financial regulatory reforms under an appropriate process.

ICI’s primary interest is in post-implementation evaluations of the effects of any asset management reforms and, especially, reforms that apply to regulated funds. Our comments below focus in that area. First, we review the FSB’s asset management work to date. We then explain why the International Organization of Securities Commissions (IOSCO) should have full responsibility for conducting evaluations of reforms in the asset management space.

The FSB’s Work on Asset Management

For more than three years, the FSB has focused considerable attention on the asset management sector.⁷ Initially, the FSB proposed methodologies for identifying individual investment funds and asset managers for possible designation as non-bank, non-insurer global systemically important financial institutions (NBNI G-SIFIs).⁸ As discussed below, this work was fraught with problems from the start. More recently, as ICI and other stakeholders had urged, the FSB shifted its focus to a review of asset management activities and related policy recommendations.

NBNI G-SIFI Work

The FSB’s first consultation in January 2014 proposed a methodology for identifying global systemically important investment funds. On the basis of their size alone, the

⁴ See Consultation at 3.

⁵ See Letter to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, from Karrie McMillan, General Counsel, ICI, dated October 6, 2011, available at <https://www.ici.org/pdf/25545.pdf> (commenting on SEC proposal to conduct retrospective reviews of existing regulations).

⁶ SEC, *Retrospective Review of Existing Regulations*, 76 Fed. Reg. 56128 (Sept. 12, 2011), at 56129.

⁷ Some of the FSB’s earlier work to address “shadow banking” also had implications for regulated funds including, most notably, money market funds. As the FSB has recognized, money market funds in the United States and other jurisdictions have undergone significant reforms since the global financial crisis.

⁸ In so doing, the FSB attempted to use a mold it had created for identifying global systemically important banks (and, subsequently, insurance companies) as part of an effort to address a key priority on its financial stability agenda: “Ending ‘Too Big to Fail’ (TBTF).”

methodology singled out 14 highly regulated US funds as the only funds that automatically would be subject to further review for possible G-SIFI designation. As we indicated at the time, this was a curious and very troubling result, especially given that these funds belong to the part of the financial system that proved most stable during the global financial crisis.

The FSB issued a second consultation in March 2015 that included a revised methodology for investment funds and a new proposed methodology for asset managers. The second consultation discounted key aspects of the public comment record on the first consultation. And the proposed methodologies again placed undue emphasis on size, thus continuing to single out large, highly regulated US funds (and mostly US asset managers) as candidates for potential G-SIFI designation.

In responding to each of the FSB's consultations on NBNI G-SIFI methodologies, ICI pointed out serious deficiencies with the FSB's approach to asset management.⁹ We also provided extensive data, analysis, and commentary demonstrating that neither regulated funds nor their managers pose risks to global financial stability. As we emphasized in our comment letters, we were particularly troubled because the consequences of designating regulated US funds or their managers would be highly adverse to investors and the capital markets.¹⁰

ICI strongly urged the FSB to pursue an activity-based approach as a better way to address any identified risks to global financial stability posed by the asset management sector, given the agency nature of the business and the high degree of substitutability of investment funds and asset managers. We welcomed, therefore, the FSB's July 2015 announcement that it had set aside the NBNI G-SIFI project while conducting a review of asset management activities.

In our view, the FSB made the right judgment when it suspended its NBNI G-SIFI work. Certainly as concerns regulated funds and their managers, there is simply no justification for returning to the project.¹¹

⁹ Our concerns have included, for example: (1) a tendency on the part of the FSB to view all issues through a banking lens; (2) an inadequate role for subject matter experts in the FSB's work; and (3) the discounting of empirical data and analysis that does not comport with theories the FSB espouses.

¹⁰ In particular, application of the bank-oriented "remedies" prescribed by the Dodd-Frank Wall Street Reform and Consumer Protection Act would increase costs and reduce returns for fund investors, distort the fund marketplace, introduce a conflicted model of regulation, and compromise the important role that funds play as a source of financing in the economy.

¹¹ Nevertheless, the FSB repeatedly has expressed an intention to do so. As recently as January of this year, the FSB indicated that "[t]he focus, in the case of asset management, will be on any residual entity-based sources of systemic risk from distress or disorderly failure that cannot be effectively addressed by market-wide activities-based policies." FSB, *Policy Recommendations to Address Structural Vulnerabilities in Asset Management Activities* (12 January 2017) ("FSB Asset Management Policy Recommendations"), available at <http://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf>, at 3. We reiterate our view that there is no basis for considering regulated funds and their managers for possible G-SIFI designation.

Notably, recent developments in the United States demonstrate a growing desire at the highest levels of government to tackle issues posed by US non-bank SIFI designations. For example, on April 21, US President Donald Trump directed the US Treasury Secretary to block any designations of non-bank financial institutions, pending a thorough review of the US Financial Stability Oversight Council’s designation process. And just last week, the US House of Representatives Committee on Financial Services approved legislation that would revoke the FSOC’s authority to designate non-bank SIFIs—including regulated US funds and their managers.¹² ICI supports action by the US Congress to address the concerns that SIFI designation raises for the regulated US fund industry and the investors we serve.

Review of Asset Management Activities

Having set aside the NBNI G-SIFI work, the FSB engaged in a review to identify “structural vulnerabilities” in asset management activities raising concerns for global financial stability. In June 2016, the FSB issued a consultation proposing policy recommendations to address perceived vulnerabilities. As we indicated in our comment letter responding to the consultation, ICI generally had few objections to the substance of the FSB’s proposed policy recommendations.¹³

We were very disappointed, however, by the justifications underlying the FSB’s recommendations, which reflected the same sort of conjectures and assumptions that were apparent in the FSB’s NBNI G-SIFI work. Our letter discussed ICI’s strenuous objection to the justifications offered by the FSB, particularly with regard to “liquidity mismatch” in open-end funds. We also suggested that the FSB consider formal adoption of more exacting principles and standards to govern and enhance its processes—front-end measures that, if they had been in place, also might have helped the FSB avoid going as far as it did down the unproductive NBNI G-SIFI path.¹⁴

On a more positive note, we were pleased that the recommendations generally envisioned that IOSCO and authorities in each jurisdiction would review existing regulation and make enhancements where appropriate. This approach—also reflected in the final policy recommendations the FSB issued in January 2017¹⁵—addresses one of ICI’s long-standing concerns by properly directing these responsibilities to the regulators with deep experience in asset management and the capital markets.

Allocation of Responsibility for Post-Implementation Evaluations

¹² See Section 151(a) of H.R. 10, the “Financial CHOICE Act of 2017” (repealing, among other provisions, Section 113 of the Dodd-Frank Act).

¹³ See Letter to Secretariat of the FSB from Paul Schott Stevens, President & CEO, ICI, dated September 21, 2016, available at https://www.ici.org/pdf/16_ici_fsb_ltr.pdf.

¹⁴ See *id.* at 38-40 (recommending, among other things, that the FSB consider adopting requirements addressing the need to: (1) examine all of the relevant evidence; (2) define clearly the problem to be addressed; and (3) provide reasoned explanations, supported by a balanced reading of evidence in the record, for any recommended policy approaches).

¹⁵ See FSB Asset Management Policy Recommendations, *supra* note 11.

The same theme of subject matter expertise is highly relevant in the context of post-implementation evaluations of the effects of the G20 financial regulatory reforms. Consistent with ICI's previous comments on the FSB's work, we feel strongly that any such evaluations must be conducted by subject matter experts. For asset management and other capital markets reforms, this means IOSCO—drawing on the experience and expertise of its national capital markets regulatory authority members.

The consultation gives a nod to this idea—stating, for example, that “evaluation teams should comprise staff with relevant policy experience”—but it does not go far enough.¹⁶ For example, the consultation indicates that “[t]he relevant [standard-setting bodies (“SSBs”)] and the FSB will take primary responsibility for evaluations in reform areas where they have issued the relevant policies or regulatory standards.”¹⁷ This somewhat (and perhaps intentionally) vague statement leaves open to question how responsibilities would be allocated as between the FSB and the SSBs.

In the case of asset management reforms—such as reforms that may be implemented in accordance with the FSB's policy recommendations regarding asset management activities—the FSB should leave no room for doubt. IOSCO has the relevant subject matter expertise and should have full responsibility for any post-implementation evaluations.¹⁸ We recommend that the FSB's framework for such evaluations clarify this point.

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¹⁶ The consultation states: “Because evaluations should seek to be as rigorous as possible, evaluation teams should comprise staff with relevant policy experience, as well as technical skills in economic analysis, research design and quantitative modelling.” *Id.*

¹⁷ *Id.* The consultation further indicates that FSB and SSBs “may elect to delegate the exercise, e.g. to a task force comprising representatives of member jurisdictions, while maintaining primary responsibility for the exercise.” *Id.*

¹⁸ As noted above, the same would be true for other capital markets reforms.

We appreciate the opportunity to comment on this consultation. If you have any questions regarding our comments or would like additional information, please contact me at (202) 326-5901 or paul.stevens@ici.org, or Dan Waters, Managing Director, ICI Global, at (011) 44-203-009-3101 or dan.waters@iciglobal.org.

Sincerely,

/s/ Paul Schott Stevens

Paul Schott Stevens
President & CEO
Investment Company Institute