FORMER CHAIRMEN, COMMISSIONERS, AND SENIOR STAFF OF THE U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

February 20, 2013

The Honorable Neal Wolin, Chairman
The Honorable Ben Bernanke
The Honorable Thomas Curry
The Honorable Richard Cordray
The Honorable Elisse Walter
The Honorable Martin Gruenberg
The Honorable Gary Gensler
The Honorable Edward DeMarco
The Honorable Debbie Matz
The Honorable Roy Woodall

Financial Stability Oversight Council
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Jurisdiction of Independent Financial Services Regulatory Agencies

To the Members of the Financial Stability Oversight Council:

The undersigned are former Chairmen, Commissioners, and Senior Staff of the U.S. Securities and Exchange Commission (SEC or the Agency), spanning five decades of SEC service in both Democratic and Republican Administrations.[1] We write to urge you—individually and collectively as members of the Financial Stability Oversight Council (FSOC or the Council)—to respect the jurisdiction, independence, subject-matter expertise, and regulatory processes of independent agencies such as the SEC. Although the *timing* of this letter is triggered by the Council's proposed recommendations to the SEC regarding regulation of money market mutual funds, this letter is not intended to, and does not, express a position on the substance of the specific proposals recommended by FSOC, or on any action taken, or refrained from being taken, by the SEC. The undersigned have varying views on certain substantive aspects of the regulation of money market mutual funds, but are of a single, adverse view of the process that FSOC has employed with respect to the SEC's regulation of money market mutual funds.

[1] The undersigned submit this letter in their individual capacities, and not on behalf of any organization with which they may be associated, or any persons affiliated with, or clients of, those organizations.

Although the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Act) was enacted with the intention of responding to the financial crisis, certain aspects of the powers and operation of the Council can compromise the independence of financial services regulatory agencies in which Congress historically has vested authority over particular markets, related market participants, and specific products and services. It is incumbent upon FSOC to respect that independence—a function of our financial services regulatory system that has served the Nation well for more than seventy years.

Section 120 of the Act gives the Council, which is chaired by a senior Administration official—the Secretary of the Treasury—the power to recommend regulatory action under a narrowly circumscribed circumstance—a clear threat to U.S. financial stability—to independent regulatory agencies on issues that have been, and remain, within the exclusive jurisdiction of those agencies. Section 120 is clear that the narrow authority it grants to FSOC does not limit or cabin the existing authority (and therefore the independence of) any financial regulatory agency to which FSOC may make a recommendation; nor does it require any agency to adopt rules suggested to it by FSOC. It also makes manifest that FSOC's ability to employ its authority under section 120 is narrow, and does not constitute a broad grant to supplant the judgments of independent financial regulatory agencies. Nonetheless, if the Council complies with the conditions precedent of section 120, an agency that does not agree with the Council's recommendations must submit in writing the reasons the agency has determined not to implement the Council's recommendations. Thus, traditionally independent regulatory agencies, such as the SEC, Commodity Futures Trading Commission, and Board of Governors of the Federal Reserve System, are now subject to potentially more direct influence by the Administration and other financial services regulators.

To the best of our knowledge, FSOC's current action is the first effort by the Council to exercise its limited authority under section 120. The Council has not developed procedures to govern the exercise of this authority, nor is its compliance with the statutorily delineated preconditions to such an exercise a matter of public record or transparency. In particular, FSOC is obligated to consult with the *agency* having jurisdiction over any matter on which the Council wishes to make a recommendation, *prior* to making any formal recommendation.[2] If FSOC has complied with these requirements, there is no public record of its having done so, no indication of the discussions that were had, and with whom, or the ways in which those discussions—if they occurred—caused the Council to modify its requests. While FSOC has solicited public

---

[2] By statute, consultation is to be had with the "*agency*," not solely its Chairman, or specific members thereof.

comment on its request to the SEC, the absence of any disclosure of the fundamental steps taken to assure that FSOC's narrow powers are not exceeded or abused makes any public comments ill-informed.

We believe strongly that there are compelling reasons the Council should forbear from intervening in the SEC's rulemaking process. This conclusion is based upon the superiority of the SEC to the Council as an expert, *bipartisan* regulator, and the long-term corrosive effect on the SEC of disregarding determinations by a majority of the Commission's members and attempting to impose on the Commission the views of individual Commission members or members of the Administration, rather than allowing the bipartisan regulatory process to work toward a considered result.

There are several reasons that the five-member Commission is infinitely better equipped than the Council is to consider and address complex securities-related regulatory problems. Among these reasons is the fact that the Commission is, by statute, bipartisan (no more than three members can be affiliated with the same political party). In contrast, the Council is composed of presidential appointees, all (or a substantial majority) of whom will always be members of the same political party. Moreover, the SEC has superior expertise in securities regulation, whereas Council membership is heavily weighted toward banking regulation, which entails very different regulatory strategies and perspectives. And, the SEC has a well-established and highly transparent process for its formulation of regulatory policy. The Council, as a new body with a complex and ambiguous mission, has not yet clearly established a framework within which it will propose and adopt new regulatory pronouncements.

Throughout its history, the SEC frequently has been confronted with difficult regulatory questions, for which there is no single, clear, or correct answer. In fact, effective regulation of complex capital markets frequently entails making choices between several reasonable, but imperfect, alternatives. Because the alternatives are frequently imperfect, and their consequences often cannot fully be foreseen, choosing from among these alternatives is best left to a collegial, bipartisan body of experts, each of whom frequently applies different philosophical, experiential, and pragmatic perspectives. Because the SEC's Chairman has only one vote (out of five), final action proposed by the Chairman must also command the support of at least two other commissioners.[3] Throughout its history, there have been innumerable occasions when the three-vote majority included Commissioners from both political parties. There have also been numerous instances where action was delayed or not pursued because a consensus—even one supported by the Commission's Chairman—

[3] The requirement for at least three votes in favor of any proposed Agency action presupposes that the Commission consists of at least four Commissioners at that time. Were there only three Commissioners, the support of two would be sufficient to permit the proposed action to proceed.

could not be reached. This is an inevitable function of the structure of collegial regulatory bodies and, by definition, reflects a sound result. If a majority of Commission Members cannot agree on an approach, the best result is for the Commission to defer action until more is known or until differing perspectives can find common ground.

The Council's authority under section 120, if exercised precipitously or with insufficient deference to the subject-matter expertise of the Commission, could disrupt the long-standing collaborative nature of the Commission's deliberative processes. Knowledge that the Council stands ready to circumvent Commission deliberations by asserting jurisdiction over a matter clearly confided to the SEC's jurisdiction ineluctably would undermine the incentives exhibited by Commission Members to labor diligently in search of sound, middle-ground policy outcomes.

The SEC is charged with protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Based on our many years of experience with the Commission, we believe the SEC's demonstrated effectiveness comes from vigorous internal debate among and between its Commissioners and Staff, followed by public notice and the receipt (and assessment of) comments from affected industry members and the investing public. The SEC has had exclusive jurisdiction over securities regulation since 1934, and we can attest to the fact that significant decisions by the Commission receive thoughtful, objective consideration, and that the SEC possesses the specific expertise and historical perspective necessary to resolve the complex issues that arise relating to the securities markets.

The SEC's oversight of money market mutual funds is no exception. In August 2012, a *bipartisan* majority of the Commission determined there was insufficient data at that time on which to base approval of further changes to the Agency's long-standing regulatory regime of money market mutual funds, a regime that was strengthened by additional SEC rules recently, in 2010. The statements of individual Commissioners—that they were not ready to act without further data—demonstrated thoughtful consideration of a serious issue, and a desire to obtain additional data to support ultimate conclusions, something the SEC is required to do by statute. In response to their requests for data, the SEC's Division of Risk, Strategy, and Financial Innovation published in November a 93-page report addressing the questions posed by certain Commissioners. Subsequent public statements by Commissioners and Staff indicate that the Commission is currently working to shape a reform proposal based on the SEC Staff's analysis.

The Council released its proposed recommendations prior to completion of the SEC Staff's money market mutual funds report. Since the SEC is still

considering the appropriate regulatory treatment of money market mutual funds, it would be confusing at best, and potentially counterproductive, if rule proposals were issued simultaneously for the same investment product by two different government bodies. Congress intentionally designed the SEC as an independent, collegial body, not an executive department headed by a sole administrator, and it is important for the Council to defer to this congressionally established and historically proven bipartisan process.

We urge the Council to defer to the SEC, which is fully equipped with the expertise and data necessary to exercise its role as the primary regulator of money market mutual funds.[4] Thank you for your consideration of this letter.

Respectfully submitted,

Former SEC Chairmen

Roderick M. Hills, Chairman, 1975-1977
David S. Ruder, Chairman, 1987-1989
Richard C. Breeden, Chairman, 1989-1993
Harvey L. Pitt, Chairman, 2001-2003

Former Commissioners

Charles C. Cox, Commissioner, 1983-1989
Richard Y. Roberts, Commissioner, 1990-1995
Isaac C. Hunt, Jr., Commissioner, 1996-2002
Paul S. Atkins, Commissioner, 2002-2008
Roel C. Campos, Commissioner, 2002-2007

Former Senior Staff

Ralph C. Ferrara, General Counsel, 1978-1981
Jonathan G. Katz, Secretary, 1986-2006
Erik R. Sirri, Director, Division of Trading and Markets, 2006-2009
Chester S. Spatt, Chief Economist, 2004-2007
Brian G. Cartwright, General Counsel, 2006-2009
James A. Overdahl, Chief Economist, 2007-2010

[4] The Council is always free to encourage the SEC or any financial regulator to take appropriate action, and its expression of views can serve a constructive purpose. And, once the Commission has completed its review of the regulation of money market mutual funds, and perhaps has proposed formal regulatory action, the Council would be free, of course, to articulate its views, concerns, or other comments. The Commission can only benefit from its receipt of such input, and it has traditionally accorded appropriate deference to the views of other government entities that comment on its proposed regulatory actions.