

Mutual Funds Get Congressional Help Against FSOC

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Some members of Congress have come to the aid of the investment management industry in its battle to avoid determinations by the Financial Stability Oversight Council (FSOC) that any mutual funds or investment advisers present risks to the financial system that warrant additional regulation pursuant to the Dodd-Frank Act. The controversy ignited last fall with the release of a study by the Treasury Department's Office of Financial Research, as part of the groundwork for such systemic risk determinations by the FSOC. **Although the study suggests numerous risks that may justify additional regulation, criticism of the study's methodology, thoroughness, and reasoning has flowed from many directions**, including from representatives of the investment management industry, some academics, and SEC commissioners from both political parties. The flames were fanned by reports earlier this year that the FSOC was already focusing specifically on Fidelity and Blackrock as potential candidates for additional regulation, which many regarded as precipitous. Members of Congress have expressed a variety of concerns, including in recent letters to Treasury Secretary Jacob Lew (who chairs the FSOC) emphasizing that the systemic risk evaluation and regulatory process must be thorough, transparent, and otherwise conducive to producing sound results. The signatories to such letters mainly have been Republicans, although one letter included some Democrats, as well. Some of the letters also requested that Congress be provided with extensive additional information about the FSOC's process in making systemic risk determinations. Although the FSOC at its May 7, 2014 meeting adopted some enhancements to the transparency of its decision-making, those changes probably are not sufficient to quell much of the criticism. Legislation also has been introduced to address some of the remaining concerns with the process for identifying systemically risky firms. There is no prospect, however, for enactment of such legislation in the near future.

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