

MEMO# 23484

May 26, 2009

Draft ICI Comment Letter on FinCEN's Proposed Rules and Guidance on Suspicious Activity Reports

[23484]

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TO: AML COMPLIANCE WORKING GROUP No. 3-09
TRANSFER AGENT ADVISORY COMMITTEE No. 37-09 RE: DRAFT ICI COMMENT LETTER ON
FINCEN'S PROPOSED RULES AND GUIDANCE ON SUSPICIOUS ACTIVITY REPORTS

On March 3, 2009, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued for comment proposed rules clarifying the scope of suspicious activity report ("SAR") confidentiality (the "Proposed Rule") and issued proposed interpretive guidance regarding the sharing of SARs by broker-dealers, mutual funds, futures commission merchants, and introducing brokers in commodities with certain affiliates (the "Proposed Guidance," and together with the Proposed Rule, the "Proposals"). [\[1\]](#) Comments on the Proposals are due by June 8, 2009. A draft of the Institute's comment letter is attached.

The Institute has the following comments on the Proposals:

- We recommend revising the rules of construction in Section 103.15 (Reports by mutual funds of suspicious transactions) to explicitly permit a mutual fund to share a SAR, or any information that would reveal the existence of a SAR ("SAR information") with a transfer agent or other service provider to whom the mutual fund has contractually delegated SAR responsibility.
- Since FinCEN permits a covered entity (mutual fund, securities broker-dealer, futures commission merchant, and introducing broker in commodities) to share SAR

information with its controlling entity, the term “affiliate” as defined in the Proposed Guidance should include a covered entity’s controlling entity.

- A covered entity should be permitted to share SAR information with an affiliate, either within the United States or outside of the United States, regardless of whether or not the affiliate is subject to SAR reporting.
- A mutual fund’s transfer agent or other service provider to whom the mutual fund has contractually delegated SAR responsibility should be permitted to share SAR information with the service provider’s affiliates that are subject to SAR reporting to the extent permitted by the mutual fund.

Comments on the Proposals are due by June 8, 2009. We will hold a conference call on Friday, May 29th at 2 p.m. Eastern time to discuss the draft letter. The dial-in number is 800-779-2581 and the passcode is 12592. If you plan to participate on the call, please r.s.v.p. to Ruth Tadesse at rtadesse@ici.org or 202-326-5836. If you are unable to participate on the call, you may provide your comments to Eva Mykolenko at emykolenko@ici.org or 202-326-5837.

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[Attachment](#)

endnotes

[1] The Proposed Rule is available at http://www.fincen.gov/statutes_regs/frn/pdf/frnSAR_Confidentiality.pdf and the Proposed Guidance is available at http://www.fincen.gov/statutes_regs/frn/pdf/frnSF_SAR_Sharing.pdf. See Memorandum to AML Compliance Working Group No. 2-09, dated March 11, 2009 [23311].

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