

**MEMO# 29884**

May 3, 2016

## **Letter to FINCEN on FBAR Reporting Changes for Your Review**

[29884]

May 3, 2016

TO: TAX COMMITTEE No. 9-16 RE: LETTER TO FINCEN ON FBAR REPORTING CHANGES FOR YOUR REVIEW

Attached for your review is a draft letter from ICI to the Financial Crimes Enforcement Network (FinCEN). The letter urges FinCEN to modify the proposed rules regarding the filing of Reports of Foreign Bank and Financial Accounts (FBAR) to accommodate the business structures applicable to the fund industry. The letter makes three specific recommendations.

First, the ICI recommends that FinCEN adopt signature authority reporting exceptions that address all of the fund industry's concerns. Specifically, we request that FinCEN retain the five existing reporting exceptions and clarify that the new exception is intended to be broad enough to address our fact patterns. Under our proposal, the new "broader" reporting exception would be clarified to specifically protect both affiliates of firms that are registered with and regulated by the SEC and accounts of investment products that are not registered under the 1940 Act.

Second, we urge FinCEN to retain the existing reporting exemptions for persons with financial interests in or signature authority over 25 or more foreign accounts. We note that if FinCEN is concerned that unregulated individuals or entities are able to access these exceptions by creating a significant number of foreign accounts, then the 25 or more account exemption should be repealed only with respect to such unregulated entities and individuals.

Third, we request that existing guidance regarding reporting by global custodians should be clarified and expanded to ensure that foreign accounts held by a fund's U.S. global custodian are reportable only by such U.S. global custodian and not by the fund or the other service providers to such fund. Existing guidance clarifies that an omnibus account held at a subcustodian that is in the name of the U.S. global custodian is not reportable by the U.S. global custodian's U.S. customers. We propose that this guidance be expanded to cover both omnibus accounts and segregated accounts held by a fund's U.S. global custodian.

Please provide any comments on the draft letter to Ryan Lovin ([ryan.lovin@ici.org](mailto:ryan.lovin@ici.org) or 202-326-5826) and Keith Lawson ([Lawson@ici.org](mailto:Lawson@ici.org) or 202-326-5832) by noon on Monday, May 9, 2016.

Ryan Lovin  
Assistant General Counsel

[Attachment](#)

---

**Source URL:** <https://icinew-stage.ici.org/memo-29884>

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.