The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

**MEMO# 23150**

December 24, 2008

# Draft Letter On Foreign Bank And Financial Account Reporting

[23150]

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TO: TAX COMMITTEE No. 40-08
ACCOUNTING/TREASURERS COMMITTEE No. 22-08
INTERNATIONAL COMMITTEE No. 29-08
SEC RULES COMMITTEE No. 92-08 RE: DRAFT LETTER ON FOREIGN BANK AND FINANCIAL ACCOUNT REPORTING

The attached draft ICI letter to the Treasury Department's Financial Crimes Enforcement Network ("FINCEN") requests guidance clarifying the reporting obligations for a fund's foreign accounts on Form TD F 90-22.1, the Foreign Bank and Financial Accounts Report ("FBAR"). Specifically, we request clarification that persons who are employees of firms that provide services to funds, and who have signature or other authority (hereafter "signature authority") over a fund's foreign accounts, may utilize the employee exception to the FBAR filing requirement.

The FBAR instructions generally require that each U.S. person who has a financial interest in or signature authority over foreign accounts report that relationship if the aggregate value of the accounts exceeds $10,000 at any time during the calendar year. Such persons must file the FBAR on or before June 30 of the succeeding year. Each such individual also must disclose this authority on Part III of Schedule B of his or her IRS Form 1040 individual income tax return.

The FBAR's instructions except from the reporting requirements the officers and employees of certain domestic corporations. Under one part of the exception, the corporation must either (1) list its equity securities on a national securities exchange or (2) have assets exceeding $10 million and 500 or more shareholders. Under the second part of the exception, (1) the officer or employee must have no personal financial interest in the account and (2) the chief financial officer ("CFO") of the corporation must advise the officer

or employee in writing that the company has filed a current FBAR that includes the account.

The requested guidance is necessary because of confusion within the industry regarding how the FBAR's employee exception applies in the fund context. Because funds do not have employees of their own, the persons with signature authority over a fund's foreign accounts appear not to be eligible for the employee exception unless either they are treated as fund employees for this specific FBAR purpose or the employee exception is applied in this context at the service provider level. The guidance requested would both eliminate this uncertainty and reduce compliance burdens for the government, fund service providers, and their employees.

ICI suggests the following revision to the exceptions section of the FBAR instructions to implement this recommendation:

A United States person who is an employee of an authorized service provider is not required to file such report if (1) the person's signature or other authority relates to an account over which the person has no financial interest (other than as a shareholder in the investment company), and (2) an authorized service provider informs the person in writing that an authorized service provider will file the report.

For purposes of this exception, an "authorized service provider" is an entity that provides services to an investment company registered under the Investment Company Act of 1940 and for which one or more employees of the service provider have signature or other authority for one or more such investment companies.

Please provide any comments on this draft letter to the undersigned, at 202-326-5832 or lawson@ici.org, by Friday, January 9.

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Attachment