

MEMO# 23763

September 4, 2009

ICI Comment Letter to FinCEN on the Proposal to Define Mutual Funds as Financial Institutions, Subjecting Mutual Funds to CTR Filings and the Travel Rule

[23763]

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TO: AML COMPLIANCE WORKING GROUP No. 8-09
TRANSFER AGENT ADVISORY COMMITTEE No. 66-09 RE: ICI COMMENT LETTER TO FINCEN
ON THE PROPOSAL TO DEFINE MUTUAL FUNDS AS FINANCIAL INSTITUTIONS, SUBJECTING
MUTUAL FUNDS TO CTR FILINGS AND THE TRAVEL RULE

As we previously informed you, [\[1\]](#) FinCEN issued a proposed rulemaking (the "Proposal") [\[2\]](#) that would include mutual funds within the general definition of "financial institution" in the rules implementing the Bank Secrecy Act (the "BSA"). Mutual funds thus would be subject to rules under the BSA on the filing of Currency Transaction Reports ("CTRs") and on the creation, retention, and transmittal of records or information for transmittals of funds (commonly referred to as the "Travel Rule"). The ICI submitted the attached comment letter expressing our views on, and concerns with, the Proposal.

Currency Transaction Reports

The ICI's letter welcomes subjecting mutual funds to the CTR requirements for financial institutions under the BSA regulations, instead of the reporting requirements relating to currency payments received in a trade or business reported on Form 8300. In support of this position, the letter states that, because most mutual funds do not accept cash for the

purchase of fund shares, mutual funds generally are not as likely to be used during the initial placement stage of the money laundering process. The letter further argues that requiring mutual funds to file reports regarding transactions involving certain non-cash instruments on Form 8300 and also on Form SAR-SF subjects mutual funds to reporting requirements that are duplicative and conflicting, and that the Proposal will result in time and cost savings for mutual funds.

Travel Rule and Related Recordkeeping Requirements

The letter expresses ICI's understanding of FinCEN's desire to extend the provisions of the Travel Rule and related recordkeeping requirements to mutual funds, but disagrees with FinCEN's assertion that these requirements would have a de minimus impact on mutual funds and their transfer agents. To accommodate those mutual funds and transfer agents that may need to make substantial changes to their transaction processing and recordkeeping systems, the letter urges FinCEN to provide for an implementation period of at least 18 months after the adoption of the Proposal with respect to compliance with the Travel Rule. The letter further notes that, since mutual funds may encounter unique issues or challenges when implementing the requirements of the Travel Rule, the ICI may seek additional guidance or clarification during the implementation stage.

Eva M. Mykolenko
Assistant Counsel - International Affairs

[Attachment](#)

endnotes

[1] See [Memorandum](#) to AML Compliance Working Group No. 6-09 and Memorandum to Transfer Agent Advisory Committee No. 42-09, dated June 9, 2009 [23518]; and [Memorandum](#) to AML Compliance Working Group No. 7-09 and Memorandum to Transfer Agent Advisory Committee No. 54-09, dated August 11, 2009 [23698].

[2] Notice of Proposed Rulemaking, Amendment to the Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions, 74 Fed. Reg. 26996 (June 5, 2009), available at <http://edocket.access.gpo.gov/2009/pdf/E9-13136.pdf>.