

**MEMO# 32927**

November 20, 2020

# **ICI Files Comment Letter with FinCEN on Its Advanced Notice of Proposed Rulemaking Regarding Anti-Money Laundering Program Effectiveness**

[32927]

November 20, 2020 TO: AML Compliance Working Group  
Transfer Agent Advisory Committee SUBJECTS: Anti-Money Laundering Compliance  
Transfer Agency RE: ICI Files Comment Letter with FinCEN on Its Advanced Notice of Proposed Rulemaking Regarding Anti-Money Laundering Program Effectiveness

On Monday, November 16, 2020, ICI filed a comment letter with the Financial Crimes Enforcement Network (FinCEN) on its Advanced Notice of Proposed Rulemaking Regarding Anti-Money Laundering Program Effectiveness.[\[1\]](#) ICI's letter is attached and summarized below.

ICI's comment letter reiterates our position that FinCEN should take into consideration the low-risk profile of mutual funds in adopting any rule that changes mutual funds' current AML obligations. The letter explains that due to the intermediated nature of mutual funds, and that mutual funds are a financial product and not a traditional financial institution, the risk of mutual funds being used as a tool for money laundering is low.

The letter explains that publication by FinCEN of Strategic Anti-Money Laundering (AML) priorities would be helpful guidance. However, the letter explains that any requirement to consider Strategic AML Priorities should make clear that: (i) financial institutions ultimately have the discretion to determine whether and to what extent any such Priorities are relevant to the particular financial institution, and how (if at all) to address any Priority in its AML program, and (ii) FinCEN and other regulators will defer to the financial institution's judgement in making such determinations.

The letter suggests updating the term "mutual fund" as currently defined in 31 C.F.R. § 1010.100(gg) to exclude [exchange traded funds registered under the Investment Company Act of 1940 ("ETFs").] and that ETFs should not be treated the same as mutual funds because ETF shares are available to the general public only on exchanges.

The letter also explains that due to the low-risk nature of the mutual fund industry, current

requirements and guidance with respect to negative news screenings, customer risk-profiles, and screening for politically exposed persons are not as relevant for mutual funds since, as a financial product, funds ordinarily do not have direct interface with the owners of fund shares.

Lastly, the letter explains that participation among financial institutions in information sharing programs pursuant to the safe harbor under Section 314 (b) (the “314(b) Safe Harbor”) of the USA PATRIOT Act is extremely valuable in preventing and detecting terrorist financing and money laundering activities and should be encouraged. To encourage participation, FinCEN should clarify the circumstances under which a financial institution may avail itself of the 314(b) Safe Harbor.

Joanne Kane  
Senior Director, Operations & Transfer Agency

#### [Attachment](#)

#### **endnotes**

[1]

<https://www.federalregister.gov/documents/2020/09/17/2020-20527/anti-money-laundering-program-effectiveness>

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