

MEMO# 23698

August 11, 2009

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

[23698]

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TO: AML COMPLIANCE WORKING GROUP No. 7-09
TRANSFER AGENT ADVISORY COMMITTEE No. 54-09 RE: DRAFT COMMENT LETTER TO
FINCEN ON PROPOSAL TO DEFINE MUTUAL FUNDS AS FINANCIAL INSTITUTIONS, THEREBY
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" and thereby subject mutual funds to rules under the Bank Secrecy Act (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 has prepared the attached comment letter expressing our views on and concerns with the Proposal.

Currency Transaction Reports

In the draft letter, the ICI welcomes subjecting mutual funds to the CTR requirements for financial institutions under the BSA regulations, instead of the reporting requirements for nonfinancial trades or businesses reported on Form 8300. In the Proposal, FinCEN specifically requests comment on whether mutual funds are less likely to be used during

the initial placement stage of money laundering than depository institutions and therefore present a lower risk for money laundering. In the draft letter, we state 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. We welcome your thoughts on this statement and any additional reasons why mutual funds are less likely to be used during the placement stage of the money laundering process.

Travel Rule and Related Recordkeeping Requirements

In the draft letter, we state our understanding of FinCEN's desire to extend the provisions of the Travel Rule and related recordkeeping requirements to mutual funds, but express our disagreement 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 and processes, we urge FinCEN to provide for an implementation period of at least one year after the adoption of the Proposal. We welcome your thoughts on whether the implementation period we propose is reasonable, too short, or too long.

Based on discussions with The Depository Trust & Clearing Corporation ("DTCC"), ICI personnel, and members, we believe that the Travel Rule requirements do not apply to mutual fund orders that are processed and settled through the National Securities Clearing Corporation's ("NSCC's) Fund/SERV system. This service provides centralized processing for NSCC participants with single daily net settlement.

Conference Call to Discuss Draft Letter

We will have a conference call on Tuesday, August 18th at 2:00 p.m. EST to discuss the draft letter. The dial-in number for callers located in the United States is 1-888-995-9855 and the dial-in number for callers located outside of the United States is 1-415-228-5022. The passcode is 47303.

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 (emykolenko@ici.org or 202-326-5837).

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].

[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>.

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