

MEMO# 23518

June 9, 2009

FinCEN Proposal to Replace Form 8300 Requirement with Currency Transaction Report Requirement and Conference Call to discuss Proposal

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TO: AML COMPLIANCE WORKING GROUP No. 6-09
TRANSFER AGENT ADVISORY COMMITTEE No. 42-09 RE: FINCEN PROPOSAL TO REPLACE FORM 8300 REQUIREMENT WITH CURRENCY TRANSACTION REPORT REQUIREMENT AND CONFERENCE CALL TO DISCUSS PROPOSAL

On June 5, 2009, the Financial Crimes Enforcement Network ("FinCEN") issued a proposal to replace the current mutual fund requirement to file IRS/FinCEN Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, with a requirement to file FinCEN Form 104, Currency Transaction Report ("CTR"), which is typically filed by financial institutions, including broker-dealers. [\[1\]](#) FinCEN is proposing to implement this change by including mutual funds within the general definition of "financial institution" in rules implementing the Bank Secrecy Act ("BSA"). The proposal would thereby subject mutual funds to the BSA rules on filing CTRs and on the creation, retention and transmittal of records or information for transmittal of funds.

Comments are due Thursday, September 3, 2009. The Institute intends to submit comments.

Defining Mutual Funds as Financial Institutions

Under the proposal, FinCEN would add mutual funds to the regulatory definition of "financial institution" and add a general definition of a "mutual fund." The proposed amendment would require mutual funds to file a CTR rather than a Form 8300. A mutual

fund would file a CTR for a transaction involving a transfer of more than \$10,000 in currency by, through, or to the mutual fund. [\[2\]](#)

The definition of “currency” for purposes of the CTR rule is different from, and less inclusive than, the definition of “currency” in the rule for Form 8300, and therefore, FinCEN states that mutual funds would only be required to file CTRs on cash transactions. The threshold in the CTR rule (31 CFR 103.22) applies to transactions conducted during a single day. Under the CTR rule, a financial institution must treat multiple transactions as a single transaction if the financial institution has knowledge that the transactions are conducted by or on behalf of the same person. Since mutual funds would no longer file Form 8300, mutual funds would be freed from having to report applicable transactions involving negotiable instruments.

The Travel Rule and Related Recordkeeping

FinCEN’s proposal also would subject mutual funds to requirements relating to the creation and retention of records for transmittals of funds and the requirement to transmit information on these transactions to other financial institutions in the payment chain. These requirements are often referred to as the “Travel Rule.” [\[3\]](#)

The Travel Rule applies to transmittals of funds in amounts that equal or exceed \$3,000. A “transmittal of funds” includes funds transfers processed by banks, as well as similar payments where one or more of the financial institutions processing the payment, i.e., the transmitter’s financial institution, an intermediary financial institution, or the recipient’s financial institution, is not a bank. [\[4\]](#) FinCEN states that such a payment processed by a mutual fund would be a “transmittal of funds.” If the mutual fund is processing a payment sent by or to its customer, then the mutual fund would be either the “transmitter’s financial institution” or the “recipient’s financial institution.” The Travel Rule requires the transmitter’s financial institution to obtain and retain name, address, and other information on the transmitter and the transaction. [\[5\]](#) The Travel Rule also requires the recipient’s financial institution and, in certain cases, the transmitter’s financial institution, to obtain or retain identifying information on the recipient. The Travel Rule requires that certain information obtained or retained by the transmitter’s financial institution “travel” with the transmittal order through the payment chain. [\[6\]](#) Importantly, the proposal would include mutual funds within an existing exception designed to exclude from coverage of these requirements funds transfers or transmittals of funds in which certain categories of financial institution are the transmitter, originator, recipient or beneficiary. The proposed inclusion of mutual funds in the exclusion is intended to provide mutual funds with treatment similar to banks and broker-dealers in securities.

Lastly, the proposal also would subject mutual funds to requirements on the creation and retention of records for extensions of credit and cross-border transfers of currency, monetary instruments, checks, investment securities, and credit. [\[7\]](#) These requirements apply to transactions in amounts exceeding \$10,000. FinCEN believes that these requirements would have a de minimus impact on mutual funds and their transfer agents because mutual funds and mutual fund transfer agents are already subject to certain record creation and retention requirements under the Investment Company Act of 1940, the Securities Exchange Act of 1934 and the BSA.

Request for Comment

FinCEN is seeking comment especially on the following issues:

- The anticipated time and monetary savings that could result from replacing the requirement to file reports on Form 8300 with a requirement to file CTRs.
- The nature, volume, content, and value of any potentially lost information to law enforcement, tax, regulatory, and counter-terrorism investigations or activities that could result from the filing of CTRs, rather than Form 8300s, by mutual funds.
- The anticipated impact of subjecting mutual funds to rules under the BSA that require the creation, retention, and transmittal of records or information for transmittals of funds and other specified transactions.

FinCEN is also requesting comment on the following:

- Whether mutual funds are less likely to be used during the initial placement stage of money laundering than a depository institution and therefore present a lower risk of money laundering. [8]
- Whether the filing of CTRs, rather than Form 8300, is more appropriate when considering the anti-money laundering program requirement and the information technology changes that mutual funds may be required to make.

Member Conference Call to Discuss Proposal

We will hold a conference call on Thursday, June 25th at 2:00 p.m. EST to discuss the proposal. The dial-in number is 888-628-9522 and the passcode is 66152.

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 Susan Olson (solson@ici.org; 202-326-5813) or Eva Mykolenko (emykolenko@ici.org; 202/326 5837).

Susan Olson
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endnotes

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

[2] See 31 CFR 103.22(b)(1) and 31 CFR 103.11(h) (currency is defined as the coin and paper of the U.S. or of any other country that is designated as legal tender and that circulates and is customarily used as a medium of exchange in a foreign country).

[3] See 31 CFR 103.33(f) and (g).

[4] See 31 CFR 103.11.

[5] See 31 CFR 103.33(f).

[6] See 31 CFR 103.33(g) (information that must travel); 31 CFR 103.11(kk) (defining transmittal order).

[\[7\]](#) See 31 CFR 103.33 and 31 CFR 103.38.

[\[8\]](#) FinCEN believes that mutual funds are not as likely as depository institutions to be used during the initial placement stage of the money laundering process because mutual funds rarely receive from, or disburse to, shareholders significant amounts of currency. Proposal at 26998.

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