

MEMO# 23516

June 9, 2009

ICI Comment Letter on FinCEN's Proposed Rules and Guidance on Suspicious Activity Reporting

[23516]

June 9, 2009

TO: AML COMPLIANCE WORKING GROUP No. 5-09
TRANSFER AGENT ADVISORY COMMITTEE No. 41-09 RE: ICI COMMENT LETTER ON
FINCEN'S PROPOSED RULES AND GUIDANCE ON SUSPICIOUS ACTIVITY REPORTING

On March 3, 2009, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued for comment proposed rules clarifying the scope of suspicious activity report ("SAR") confidentiality (the "Proposed Rule") and issued proposed interpretive guidance regarding the sharing of SARs by broker-dealers, mutual funds, futures commission merchants, and introducing brokers in commodities with certain affiliates (the "Proposed Guidance," and together with the Proposed Rule, the "Proposals"). [\[1\]](#) The Institute submitted the attached comment letter to FinCEN suggesting certain changes to the Proposals.

The Institute made the following comments on the Proposals:

- The rules of construction in Section 103.15 (reports by mutual funds of suspicious transactions) should be revised to explicitly permit a mutual fund to share a SAR, or any information that would reveal the existence of a SAR ("SAR information"), with a transfer agent or other service provider to whom the mutual fund has contractually delegated SAR responsibility.
- The definition of "affiliate" in the Proposed Guidance should incorporate the guidance issued by FinCEN in 2006.
- A covered entity should be permitted to share SAR information with an affiliate, either

within the United States or outside of the United States, regardless of whether or not the affiliate is subject to SAR reporting.

- A mutual fund's transfer agent or other service provider to whom the mutual fund has contractually delegated SAR responsibility should be permitted to share SAR information with the service provider's affiliates that are subject to SAR reporting to the extent permitted by the mutual fund.

Eva M. Mykolenko
Assistant Counsel - International Affairs

[Attachment](#)

endnotes

[1] The Proposed Rule is available at http://www.fincen.gov/statutes_regs/frn/pdf/frnSAR_Confidentiality.pdf and the Proposed Guidance is available at http://www.fincen.gov/statutes_regs/frn/pdf/frnSF_SAR_Sharing.pdf. See Memorandum to AML Compliance Working Group No. 2-09, dated March 11, 2009 [23311].

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.