

MEMO# 29608

January 5, 2016

FinCEN Releases Regulatory Impact Assessment and Initial Regulatory Flexibility Analysis in Connection with Its Customer Due Diligence Proposal

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TO: AML COMPLIANCE WORKING GROUP No. 1-16
INVESTMENT ADVISERS COMMITTEE No. 2-16
OPERATIONS COMMITTEE No. 1-16
SEC RULES COMMITTEE No. 2-16
SMALL FUNDS COMMITTEE No. 2-16
TRANSFER AGENT ADVISORY COMMITTEE No. 1-16 RE: FINCEN RELEASES REGULATORY
IMPACT ASSESSMENT AND INITIAL REGULATORY FLEXIBILITY ANALYSIS IN CONNECTION
WITH ITS CUSTOMER DUE DILIGENCE PROPOSAL

The Financial Crimes Enforcement Network (“FinCEN”) issued proposed rules to strengthen and clarify customer due diligence (“CDD”) requirements under the Bank Secrecy Act for banks, broker-dealers, mutual funds, futures commission merchants and introducing brokers in commodities in July 2014 (“Proposal”). [\[1\]](#) The proposed rules set forth explicit CDD requirements and include a requirement to identify beneficial owners of “legal entity customers,” with certain exemptions (e.g., those entities that are exempt from customer identification program (“CIP”) requirements). The proposed beneficial ownership requirement would apply only with respect to legal entity customers that open new accounts on or after the effective date of a final rule.

ICI submitted a comment letter on the Proposal in October 2014. [\[2\]](#)

In connection with the Proposal, FinCEN issued a Regulatory Impact Assessment (“RIA”) [\[3\]](#) and an Initial Regulatory Flexibility Analysis (“IRFA”) [\[4\]](#) in late December. FinCEN issued each in response to comments on the Proposal, many of which asserted that it lacked sufficient data to support its estimate of costs and substantially underestimated implementation and compliance-related costs. The RIA concludes, “[W]e find that the proposed CDD rule would still only need to exhibit a modest level of effectiveness for its (understated) benefits to justify its (overstated) costs as laid out in the RIA. It is the view of the Treasury Department that these reductions in illicit activity would easily be achieved if

the CDD rule were adopted.” The IRFA concludes, “FinCEN continues to believe that, while the proposed rule would apply to a substantial number of small entities, it would not have a significant economic impact on a substantial number of small entities.”

Written comments on the RIA and IRFA are due by January 25, 2016. ICI does not intend to comment, because the analyses do not impact any of the points raised in our comment letter.

Matthew Thornton
Assistant General Counsel

endnotes

[1] Available at www.gpo.gov/fdsys/pkg/FR-2014-08-04/pdf/2014-18036.pdf. See Institute [Memorandum](#) No. 28307, dated August 11, 2014, for a summary of the Proposal.

[2] See Institute [Memorandum](#) No. 28441, dated October 9, 2014, for the comment letter and a summary.

[3] Available at www.fincen.gov/whatsnew/pdf/CDD_RIA.pdf.

[4] Available at www.fincen.gov/whatsnew/pdf/CDD_IRFA.pdf.

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