MEMO# 24177

March 9, 2010

Member Call and FinCEN Guidance on AML Programs and Beneficial Ownership Information

[24177]

March 9, 2010

TO: AML COMPLIANCE WORKING GROUP No. 3-10
OPERATIONS COMMITTEE No. 5-10
TRANSFER AGENT ADVISORY COMMITTEE No. 15-10   RE: MEMBER CALL AND FINCEN
GUIDANCE ON AML PROGRAMS AND BENEFICIAL OWNERSHIP INFORMATION

On March 5th, the Financial Crimes Enforcement Network ("FinCEN"), along with the
Securities and Exchange Commission and other federal agencies, issued Guidance on
Obtaining and Retaining Beneficial Ownership Information (the "Guidance"), in order "to
clarify and consolidate existing regulatory expectations for obtaining beneficial ownership
information for certain accounts and customer relationships." [1]

The Guidance states that, as part of its Bank Secrecy Act/Anti-Money Laundering
("BSA/AML") compliance program, a financial institution should establish and maintain
customer due diligence ("CDD") procedures that are reasonably designed to identify and
verify the identity of beneficial owners of an account, as appropriate, based on the financial
institution's evaluation of risk pertaining to an account. A "beneficial owner" is considered
to be the individual(s) who has a level of control over, or entitlement to, the funds or assts
in the account that, as a practical matter, enables the individual(s), directly or indirectly, to
control, manage, or direct the account.

According to the Guidance, CDD procedures may include:

- Determining whether the customer is acting as an agent for or on behalf of another, and if so, obtaining information regarding the capacity in which and on whose behalf the customer is acting.
- Where the customer is a legal entity that is not publicly traded in the United States, such as an unincorporated association, a private investment company, trust or foundation, obtaining information about the structure or ownership of the entity so as to allow the institution to determine whether the account poses heightened risk.
- Where the customer is a trustee, obtaining information about the trust structure to allow the institution to establish a reasonable understanding of the trust structure and to determine the provider of funds and any persons or entities that have control over the funds or have the power to remove the trustees.

The Guidance further states that accounts identified by a financial institution's CDD procedures as posing a heightened risk should be subjected to enhanced due diligence ("EDD") that is reasonably designed to enable compliance with the requirements of the BSA. Certain trusts, corporate entities, shell entities and private investment companies are examples of customers that, according to the Guidance, may pose heightened risk. The Guidance also discusses a financial institution's due diligence obligations with respect to private banking and foreign correspondent accounts.

We have scheduled a call for Monday, March 22nd at 2 p.m. (EST) to discuss the Guidance. Tom Bogle, of Dechert LLP, will provide outside counsel's perspective on this Guidance and its impact on mutual funds. We welcome input from conference call participants.

To participate in the call, dial 1-888-790-3350, and enter passcode 20004. If you intend to participate in the call, please RSVP to Ruth Tadesse at rtadesse@ici.org before the call.

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endnotes

[1] The Guidance is available at http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2010-g001.pdf, and a press release on the Guidance is available at http://www.fincen.gov/news_room/nr/html/20100305.html. See also, Policy Statement on Obtaining and Retaining Beneficial Ownership Information for Anti-Money Laundering Purposes, SEC Rel. No. 34-61651 (Mar. 5, 2010), available at http://www.sec.gov/rules/other/2010/34-61651.pdf.

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