

MEMO# 28441

October 9, 2014

ICI Comment Letter on FinCEN Customer Due Diligence Proposal

[28441]

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TO: AML COMPLIANCE WORKING GROUP No. 5-14
BROKER/DEALER ADVISORY COMMITTEE No. 50-14
SEC RULES COMMITTEE No. 36-14
TRANSFER AGENT ADVISORY COMMITTEE No. 66-14 RE: ICI COMMENT LETTER ON FINCEN CUSTOMER DUE DILIGENCE PROPOSAL

On October 2, 2014, the Institute filed the attached comment letter on the Financial Crimes Enforcement Network's ("FinCEN") proposed rules to strengthen and clarify customer due diligence ("CDD") requirements under the Bank Secrecy Act ("BSA") for banks, broker-dealers, mutual funds, futures commission merchants and introducing brokers in commodities ("Proposal"). [\[1\]](#)

The Proposal sets forth the following four elements of CDD:

1. Identifying and verifying the identity of customers – occurs and is satisfied by existing CIP requirements;
2. Identifying and verifying the identity of beneficial owners of certain legal entity customers;
3. Understanding the nature and purpose of customer relationships; and
4. Conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions.

The proposed rules address elements 2, 3 and 4. The proposed requirements are intended to be consistent with, and not supersede, any regulations, guidance or authority of any federal financial regulator relating to customer identification. The effective date of any final CDD rule and other rule amendments is proposed to be one year from issuance of a final rule.

The Institute's comment letter addressed the following concerns with the Proposal:

- The proposed requirement to understand the nature and purpose of customer relationships is impractical and reflects a misunderstanding of the mutual fund industry. In particular, neither the mutual fund SAR rule, nor any other regulatory

obligations, require funds to understand the nature and purpose of customer relationships.

- Although the proposed beneficial ownership rule is much more manageable and practically workable than that considered in the advance notice of proposed rulemaking, certain aspects of the Proposal require clarification. Among other things, FinCEN should clarify that FIs are entitled to rely on the beneficial owner information provided by a customer in the standard certification form.
- The Proposal does not define the term “account.” The definition of “account” for purposes of the proposed CDD requirements should be the same as the definition of “account” under the relevant CIP rules.
- FinCEN should clarify its statement in the Proposal that FIs should keep CDD information “as current as possible” in light of the requirements of the CIP rules. Specifically, the preamble to the final rule should acknowledge that neither the CIP rule nor the beneficial ownership rule specifically require an FI to update CDD information, but that an FI may update CDD information after account opening, consistent with a risk-based approach.
- FinCEN should more clearly specify which entities are intended to be included under the “legal entity customer” definition, as inclusion of the phrase “or other similar business entities” may cause confusion.
- We recommend an implementation period of 24 months rather than 12 months.
- We request that FinCEN formally rescind the March 2010 customer due diligence guidance in connection with the issuance of the final rule and rule amendments.

Eva M. Mykolenko
Associate Counsel - International Affairs

[Attachment](#)

endnotes

[1] See ICI [Memorandum](#) 28307 for a more detailed summary of the Proposal.