

MEMO# 23311

March 11, 2009

FinCEN Issues Proposed Rules and Guidance on Suspicious Activity Reports

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TO: AML COMPLIANCE WORKING GROUP No. 2-09 RE: FINCEN ISSUES PROPOSED RULES AND GUIDANCE ON SUSPICIOUS ACTIVITY REPORTS

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 U.S. affiliates (the "Proposed Guidance"). [\[1\]](#)

The Proposed Rule would:

- prohibit covered financial institutions from disclosing a SAR or the existence of a SAR to any person, not just persons involved in the transaction;
- extend confidential treatment to "any information that would reveal the existence of a SAR," rather than "any information that would disclose that a SAR has been prepared or filed;"
- specify that the prohibition against disclosure extends to directors, officers, employees and agents of a mutual fund; and
- clarify that the prohibition on disclosure does not prohibit sharing within the institution's corporate organizational structure for purposes consistent with the Bank Secrecy Act as

determined by regulation or in guidance, provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported.

The Proposed Guidance interprets the provision in the Proposed Rule that would permit sharing within an institution's organizational structure to permit a securities broker-dealer, mutual fund, futures commission merchant, or introducing broker in commodities to share a SAR with its affiliates that are also subject to SAR rules. The Proposed Guidance specifies that FinCEN has declined to permit sharing with affiliates that are not subject to a SAR rule, whether domestic or foreign. In addition, the Proposed Guidance states that SAR guidance previously issued by FinCEN in January 2006 [2] and October 2006 [3] continues to be applicable.

Comments on the proposals are due by June 8, 2009. We will hold a conference call on Thursday, April 2nd at 2:00 p.m. Eastern time to discuss the proposals. The dial-in number is 888-282-9646 and the passcode is 52342. 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 Eva Mykolenko at emykolenko@ici.org or 202/326 5837.

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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/frnSAR_Confidentiality.pdf.

[2] "Guidance on Sharing of Suspicious Activity Reports by Securities Broker-Dealers, Futures Commission Merchants, and Introducing Brokers in Commodities" (January 20, 2006).

[3] "Frequently Asked Questions: Suspicious Activity Reporting Requirements for Mutual Funds" (October 2006).