

**MEMO# 15134**

September 6, 2002

# **ICI COMMENTS ON PROPOSED CUSTOMER IDENTIFICATION PROGRAM RULE**

[15134] September 6, 2002 TO: BROKER/DEALER ADVISORY COMMITTEE No. 38-02 COMPLIANCE ADVISORY COMMITTEE No. 74-02 INTERNATIONAL COMMITTEE No. 66-02 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 40-02 MONEY LAUNDERING RULES WORKING GROUP No. 53-02 OPERATIONS COMMITTEE No. 15-02 SEC RULES COMMITTEE No. 72-02 TRANSFER AGENT ADVISORY COMMITTEE No. 81-02 RE: ICI COMMENTS ON PROPOSED CUSTOMER IDENTIFICATION PROGRAM RULE In July, the Department of the Treasury and the Securities and Exchange Commission jointly proposed a rule on customer identification programs (CIPs) for mutual funds.<sup>1</sup> This rule would implement Section 326 of the USA PATRIOT Act. The Institute submitted a comment letter on this proposal today, a copy of which is attached. The letter makes a number of specific comments and recommendations on the proposed rule. These comments are summarized below. The letter also urges Treasury and the SEC to (1) set a compliance date at least six months after the rule is adopted in its final form<sup>2</sup> and (2) provide an additional six-month transition period during which the identification of new customers using old application forms can be completed as soon as practicable after an account is opened. The letter makes the following specific comments and recommendations:

- **Definition of Customer.** As proposed, the definition of "customer" would include any shareholder of record and any person granted authority to effect transactions in a shareholder of record's account. The letter strongly recommends that the definition of customer be limited to shareholders of record and individuals who open new accounts on behalf of or for the benefit of shareholders of record. It 1 See Financial Crimes Enforcement Network; Securities and Exchange Commission, Joint Notice of Proposed Rulemaking, "Customer Identification Programs for Mutual Funds," 67 Fed. Reg. 48318 (July 23, 2002) (the "Release"). 2 The letter notes that the Institute views six months as the absolute minimum amount of time needed to come into compliance with the rule, and it strongly encourages Treasury and the SEC to consider a nine-month grace period to allow larger mutual fund complexes and transfer agents to make the necessary systems changes. 2 describes a number of situations in which the extension of the definition of customer to persons with transaction authority would be problematic, including: (1) broker- dealer representatives; (2) defined contribution retirement plan participants; (3) court-appointed guardians and trustees; (4) individuals granted trading authority as a result of the death of a shareholder; and (5) individuals acting on behalf of entities.
- **Exchanges.** The letter requests that Treasury and the SEC clarify in the release adopting the final rule that exchanges of fund shares would not cause an existing fund shareholder to become a customer for purposes of the rule. A statement in the Release suggests that exchanges that involve establishing additional accounts would

cause an existing shareholder to become a customer if the rule were adopted as proposed.

- **Intermediated Accounts.** The letter requests that Treasury and the SEC confirm that in instances where another entity, such as a broker-dealer, has the obligation to perform identification and verification, funds are not required to perform duplicative identification and verification on those customers.<sup>3</sup>
- **Recordkeeping Requirements.** The letter urges Treasury and the SEC to revise Section 103.131(h)(2) of the proposed rule to provide that verification records must be retained for five years from the date the verification is performed, rather than five years from the closing of the accounts to which those records relate. It also recommends that the final rule incorporate a materiality standard into Section 103.131(h)(3), such that the records retained pursuant to the rule need only reflect the resolution of material discrepancies in the information obtained pursuant to a CIP.
- **Role of Fund Boards.** The letter recommends that the release accompanying the final CIP rule for mutual funds clarify that the rule does not impose specific, ongoing review and/or monitoring responsibilities on fund boards.
- **Government Lists of Terrorists.** The letter encourages either Treasury or the SEC to act as a clearinghouse for government-issued lists of terrorists and terrorist organizations by formally (e.g., by rule or order) or informally (e.g., by posting on its web site) providing a catalog of the specific lists that mutual funds and other financial institutions are required to check, at least with respect to compliance with the CIP rule. Section 326 of the USA PATRIOT Act requires Treasury and the SEC to adopt the CIP rule in final form by October 25, 2002.

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Attachment (in .pdf format) 3 The letter suggests that this could be accomplished either through an amendment to the Proposed Rule or a statement in the release accompanying the final rule.