The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 14455

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ICI DRAFT COMMENT LETTER ON PROPOSED BROKER-DEALER SUSPICIOUS ACTIVITY REPORTING RULE

URGENT/ACTION REQUESTED [14455] February 12, 2002 TO: MONEY LAUNDERING RULES WORKING GROUP No. 7-02 RE: ICI DRAFT COMMENT LETTER ON PROPOSED BROKER-DEALER SUSPICIOUS ACTIVITY REPORTING RULE As you know, the Department of the Treasury has proposed rules to require broker- dealers to file suspicious activity reports (SARs).1 The Institute has prepared the attached draft comment letter, which is summarized below. Comments are due to Treasury by March 1, 2002. We are requesting comments from members on the Institute's draft letter by Thursday, February 21st. Comments should be made to Frances Stadler by e-mail (frances@ici.org), phone (202-326-5822) or fax (202-326- 5827). The Institute's draft letter first provides background information describing funds, fund underwriters and fund transfer agents. It then focuses on four areas: (1) the application of the proposed rule to transactions involving fund shares; (2) the standard for identifying reportable transactions; (3) the filing of suspicious activity reports by funds, fund underwriters, and/or fund transfer agents; and (4) the delegation of Treasury's authority to examine fund underwriters for compliance with the rule. A. The Application of the Proposed Rule to Transactions Involving Fund Shares The letter generally supports the application of SAR rules to transactions involving fund shares, but notes that the application of the proposed broker-dealer rule to such transactions is not clear in all cases. To address this uncertainty, the letter recommends that Treasury clarify its intent regarding the application of the proposed rule to transactions involving fund shares. The letter further recommends that if Treasury decides to cover fund transactions through an SAR rule specifically applicable to funds, rather than the broker-dealer SAR rule, then it may be appropriate to exclude fund underwriters from the broker-dealer SAR rule. If fund underwriters are not excluded from the broker-dealer rule, then any fund SAR rule should provide that an SAR filed by a fund (or its agent) would satisfy any reporting obligation of the fund's underwriter with respect to the same transaction. 1 See Memorandum to Money Laundering Rules Working Group No. 1-02, dated January 9, 2002. 2 B. The Standard for Identifying Reportable Transactions The letter notes some of the main differences between funds, broker-dealers, and banks, and the difficulties that funds would have in complying with the rule as proposed. The letter then recommends that Treasury amend the proposed rule to provide (or provide in a fund SAR rule) that fund underwriters (or funds) will be required to make determinations of what is "suspicious" based on information obtained by the fund, its underwriter, or its transfer agent in the normal course of business. At a minimum, the letter urges Treasury to clarify in the adopting release that a fund's or fund underwriter's SAR procedures should be based on such information. The letter also recommends that Treasury clarify in the adopting release that when fund shares are held in

an omnibus account in the name of a registered broker-dealer, fund underwriters are not required to “look through” the retail broker-dealer to report individual shareholder transactions. C. The Filing of Suspicious Activity Reports by Fund, Underwriters, and/or Transfer Agents The letter recommends that the SAR rule(s) applicable to transactions in fund shares should allow a single report to satisfy the SAR obligations of the fund and its agents with respect to that transaction, provided that the report actually filed contains all of the necessary information. The letter also recommends that Treasury amend the proposed rule to expand the scope of the limitation on liability for reporting suspicious activity (proposed section 103.19(f)) to include any investment company or its agent that files a report relating to purchases, redemptions or exchanges involving that investment company’s shares. As proposed, the safe harbor would extend to a transfer agent acting as agent for the fund’s principal underwriter, but not to a transfer agent acting as agent for the fund itself. D. Compliance Examinations The proposed rule seems to contemplate that Treasury’s examination authority might ultimately be delegated to NASD Regulation, Inc. The letter notes that the SEC’s Office of Compliance, Inspections and Examinations is in a far better position to conduct examinations of fund underwriters. * * * * * * Please submit comments on this draft letter by Thursday, February 21st to Frances Stadler by e-mail (frances@ici.org), phone (202-326-5822) or fax (202-326-5827). Robert C. Grohowski Associate Counsel Attachment (in .pdf format)
