

**MEMO# 19338**

November 4, 2005

## **TREASURY ADOPTS NEW AML RULES FOR INSURANCE COMPANIES**

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19338] November 4, 2005 TO: AML COMPLIANCE WORKING GROUP COMMITTEE No. 10-05 SEC RULES COMMITTEE No. 60-05 TRANSFER AGENT ADVISORY COMMITTEE No. 56-05 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 12-05 RE: TREASURY ADOPTS NEW AML RULES FOR INSURANCE COMPANIES The Financial Crimes Enforcement Network (FinCEN) has adopted final rules requiring insurance companies to establish anti-money laundering (AML) compliance programs and file suspicious activity reports (SARs). The new rules take effect on December 5, 2005, with a compliance deadline of May 2, 2006. FinCEN also published for comment a new form for insurance companies to use to file SARs. The deadline for comments on the new form is January 3, 2006. There are four documents relating to the new rules for insurance companies: • A set of frequently asked questions, available at <http://www.fincen.gov/nrfaq10312005.pdf>; • The final AML program rule for insurance companies, available at <http://www.fincen.gov/amlforinsurancecompany.pdf>; • The final SAR rule for insurance companies, available at <http://www.fincen.gov/sarforinsurancecompany.pdf>; and • The notice and request for comments on the new form for insurance companies to use when filing SARs, available at <http://www.fincen.gov/sarcomments10312005.pdf>. The new rules apply to any person engaged within the United States as a business in the issuing or underwriting of “covered products.” The term “Covered products” is defined to include, among other things, variable annuity contracts and other insurance products with investment features. 2 The new rules substantively track existing and proposed requirements for bank, broker- dealers, and mutual funds. Institute members may wish to note, however, the portion of the SAR release and the FAQ that discusses the interplay between the new insurance rules and the existing and proposed AML rules for mutual funds. Specifically, FAQ 13 states: 13. How should suspicious activity involving variable insurance products funded by separate accounts that meet definition of a “mutual fund” be reported? Some insurance companies issue variable insurance products funded by separate accounts, some of which meet the definition of a mutual fund [footnote omitted]. We are in the process of finalizing a rule that would require mutual funds to themselves file suspicious activity reports. When that final rule becomes effective, we will amend the insurance company suspicious activity reporting rule to ensure that such suspicious activity is reported under the mutual fund rule. Until such time as a final rule requiring suspicious activity reporting by mutual funds is adopted, however, insurance companies that issue variable insurance products funded by separate accounts that meet the definition of a mutual fund may report suspicious activity on FinCEN Form 101 – Suspicious Activity Report by Securities and Futures Industries. The Institute does not

anticipate commenting on the new SAR form for insurance companies. If you have particular concerns about the form that you would like the Institute to consider raising with FinCEN, please let me know as soon as possible. Robert C. Grohowski Senior Counsel - International Affairs

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