

MEMO# 20455

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FinCEN Publishes FAQs on the Mutual Fund SAR Rule

©2006 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. [20455] October 5, 2006 TO: AML COMPLIANCE WORKING GROUP No. 21-06 TRANSFER AGENT ADVISORY COMMITTEE No. 67-06 RE: FINCEN PUBLISHES FAQs ON THE MUTUAL FUND SAR RULE The Financial Crimes Enforcement Network (FinCEN) issued a set of frequently asked questions yesterday relating to the new mutual fund suspicious activity reporting (SAR) rule.¹ As you know, the new rule takes effect on November 1, 2006.² There are 27 FAQs in the release, several of which provide important amplifications or clarifications on aspects of the SAR rule. These include:

- A statement that FinCEN expects that a mutual fund should be able to meet the standard for filing SARs “based on information available to the mutual fund that was obtained through the account opening process and in the course of processing transactions” (i.e., without having to obtain additional information);³
- An unambiguous statement that mutual funds are required to report suspicious transactions in fund shares by an intermediary using the Fund/SERV system operated by the National Securities Clearing Corporation, but only “if the fund determines that the transaction meets the [SAR filing standard] based on the information available to the fund in the course of establishing a shareholder relationship or processing transactions”;⁴
- 1 Financial Crimes Enforcement Network Guidance FIN-2006-G013, Frequently Asked Questions: Suspicious Activity Reporting Requirements for Mutual Funds (Oct. 4, 2006). The FAQs are attached. They are also available on FinCEN’s web site at http://www.fincen.gov/guidance_faqs_sar_10042006.pdf.
- 2 See Memorandum No. 20009, dated May 4, 2006.
- 3 Question 2, page 2.
- 4 Question 3, page 3.
- 2 • A list of potential “red flags” that may indicate a need to file an SAR;⁵
- A clear statement that mutual funds can contract with a service provider to perform the reporting obligation as the fund’s agent;⁶
- A series of questions on the joint filings of SARs by multiple financial institutions;⁷ and
- A determination that a mutual fund may share SARs with its investment adviser, whether domestic or foreign, subject to a written confidentiality agreement with the adviser.⁸

The release also contains a reminder that mutual funds must file SARs with regard to transactions occurring after October 31, 2006 (i.e., beginning on November 1, 2006). Robert C. Grohowski Senior Counsel - International Affairs Attachment (in .pdf format) 5 Question 7, pages 3-4. 6 Question 8, page 4. FinCEN notes that in such a case, “the mutual fund remains responsible for assuring compliance with the regulation and must monitor performance by the service provider” and that the fund “should take steps to assure itself that the service provider has implemented effective compliance policies and procedures administered by competent personnel, and also maintain an active working relationship

with the service provider's compliance personnel." 7 Questions 1-4, pages 4-6. 8 Question 2, page 8. FinCEN notes that it "considered this issue carefully, balancing the need to protect SAR confidentiality with the legitimate need for investment advisers to be able to implement enterprise-wide risk management and compliance functions over all of the mutual funds" that they advise.

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