

MEMO# 14853

July 2, 2002

TREASURY ADOPTS BROKER-DEALER SUSPICIOUS ACTIVITY REPORTING RULE

[14853] July 2, 2002 TO: BROKER/DEALER ADVISORY COMMITTEE No. 16-02
BROKER/DEALER ASSOCIATE MEMBERS No. 7-02 COMPLIANCE ADVISORY COMMITTEE No.
46-02 INTERNATIONAL MEMBERS No. 16-02 INTERNATIONAL OPERATIONS ADVISORY
COMMITTEE No. 26-02 MONEY LAUNDERING RULES WORKING GROUP No. 33-02 SEC RULES
MEMBERS No. 46-02 TRANSFER AGENT ADVISORY COMMITTEE No. 48-02 UNIT INVESTMENT
TRUST COMMITTEE No. 17-02 RE: TREASURY ADOPTS BROKER-DEALER SUSPICIOUS
ACTIVITY REPORTING RULE The Department of the Treasury has adopted a rule that will
require broker-dealers to file suspicious activity reports (SARs) with Treasury's Financial
Crimes Enforcement Network (FinCEN).¹ A copy of the Release is attached. The rule is
briefly summarized below. The new rule requires every broker or dealer in securities,
including mutual fund principal underwriters, to file with FinCEN a report of any suspicious
transaction relevant to a possible violation of law or regulation. The rule applies to
transactions occurring after December 30, 2002. A transaction is reportable as suspicious if:

1. It is conducted or attempted by, at, or through a broker-dealer;
2. It involves or aggregates funds or other assets of at least \$5,000; and

¹ Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations – Requirement that Brokers or
Dealers in Securities Report Suspicious Transactions, 67 Fed. Reg. 44048 (July 1, 2002) (the
"Release"). The rule was proposed late last year. See 66 Fed. Reg. 67670 (December 31,
2001).

² In its comments on the proposed rule, the Institute requested clarification as to the
application of the proposed rule to mutual fund principal underwriters, noting that it is not
always clear whether purchases, redemptions and exchanges of fund shares are
"conducted by, at, or through" the underwriter. The Release does not address this point.

3. The broker-dealer knows, suspects, or has reason to suspect that the transaction (or a
pattern of transactions of which the transaction is a part):
 - a. Involves funds derived from
illegal activity or intended or conducted in order to hide or disguise funds or assets derived
from illegal activity as part of a plan to violate or evade any federal law or regulation or to
avoid any transaction reporting requirement under federal law or regulation;
 - b. Is designed,
whether through structuring or other means, to evade the requirements of the Bank
Secrecy Act;
 - c. Has no business or apparent lawful purpose or is not the sort in which the
particular customer would normally be expected to engage, and the broker-dealer knows
of no reasonable explanation for the transaction after examining the available facts,
including the background and possible purpose of the transaction; or
 - d. Involves use of the
broker-dealer to facilitate criminal activity.In its comments on the proposed rule, the
Institute raised concerns over the breadth of the standards for determining what
constitutes a reportable transaction and recommended certain specific changes to the rule.
Although Treasury did not make the specific changes recommended by the Institute, the
Release includes the following clarification that responds to some of the concerns the

Institute raised: In addition, it should be noted that the final rule does not require a broker-dealer to alter its relationship with its customers in a way that is inconsistent with industry practice. For example, commenters expressed concern that certain entities covered by the rule (e.g., clearing brokers), which may not have the same level of knowledge with respect to their customers as other entities covered by the rule would normally be expected to have, would be expected to re-structure their relationships with customers in order to comply with the rule. FinCEN recognizes that, based on the nature of the services they provide to their customers, certain types of broker-dealers will have more information available to them in making such determinations than other types of broker-dealers. [Footnote omitted] The rule is intended to adjust to the different operating realities found in different types of financial institutions.³ The Institute also had recommended that the filing of a single form be permitted to satisfy the filing obligations of multiple financial institutions that may be involved in a particular transaction or set of transactions. The final rule accommodates this request by providing that: The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers ³ Release, 67 Fed. Reg. at 44054. ³ involved in a particular transaction (so long as the report filed contains all relevant facts).⁴ The rule requires SARs to be filed on a new form, Form SAR-BD. The instructions on the form will indicate where and how to file the form. SAR-BDs must be filed within 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute the basis for filing an SAR-BD. If no suspect is identified on that initial date, the filing may be delayed for an additional 30 days. There are two exceptions in the rule. A broker-dealer is not required to report robberies or burglaries reported to the appropriate law enforcement agencies or lost, missing, counterfeit or stolen securities reported pursuant to Rule 17f-1 under the Securities Exchange Act of 1934. A broker-dealers also does not need to report a violation otherwise required to be reported under most federal securities laws, so long as the violation is appropriately reported to the SEC or an SRO. Broker-dealers will be required under the rule to retain a copy of any BD-SAR filed and the original or business record equivalent of any supporting documentation for five years from the date of filing. The final rule also contains provisions on the confidentiality of reports, the limitation of the broker-dealer's liability for filing reports, and examination for compliance and enforcement. Robert C. Grohowski Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 14853, or call the ICI Library at (202) 326-8304 and request the attachment for memo 14853. Attachment (in .pdf format) 4 103.19(a)(3).