

MEMO# 15796

March 24, 2003

ICI COMMENT LETTER ON PROPOSED MUTUAL FUND SAR RULE

[15796] March 24, 2003 TO: BROKER/DEALER ADVISORY COMMITTEE No. 13-03 MONEY LAUNDERING RULES WORKING GROUP No. 23-03 SEC RULES MEMBERS No. 36-03 TAX COMMITTEE No. 17-03 TRANSFER AGENT ADVISORY COMMITTEE No. 35-03 RE: ICI COMMENT LETTER ON PROPOSED MUTUAL FUND SAR RULE On Friday, the Institute filed a comment letter on a recently proposed rule that would require all mutual funds to file suspicious activity reports (SARs) with Treasury.¹ A copy of the letter is attached. The Institute's principal comments are summarized below. The Institute generally supported the concept of an SAR rule for mutual funds, but commented on several specific aspects of the proposed rule: the standard for determining what constitutes a suspicious transaction; the joint filing of SARs by mutual funds and other persons obligated to report the transaction; and the interplay between the SAR regime and the reporting of transactions involving cash equivalents to the Internal Revenue Service on Form 8300. Reportable Transactions – The Standard for Identifying “Suspicious” Transactions. The letter expresses the belief that any mutual fund SAR rule should adopt standards that take into account the nature of the fund business and the characteristics that distinguish it from traditional banking and brokerage businesses. Accordingly, the letter urges Treasury to acknowledge that mutual funds have less information available to them in making SAR determinations than other types of financial institutions and to expressly state in the commentary accompanying the final rule that mutual funds are expected to file SARs based on the information obtained by the fund, its underwriter, or its transfer agent in the normal course of establishing a shareholder relationship or processing transactions. The Joint Filing of SARs. The letter makes a number of recommendations with respect to the concept that multiple financial institutions should be able to rely on a single SAR filing to satisfy their respective reporting obligations with regard to the same transaction or series of transactions. First, the letter strongly supports section 103.15(a)(3) of the proposed rule and recommends that it be adopted as proposed. That section would provide that no more than one 1 See Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations – Requirement that Mutual Funds Report Suspicious Transactions, 68 Fed. Reg. 2716 (January 21, 2003). 2 SAR would be required to be filed by the mutual funds involved in a particular transaction or any other person obligated to report the transaction, so long as the report filed contains all relevant facts. The letter sought clarification, however, with respect to an example accompanying that section that was limited to “a broker-dealer that is a service provider to the fund.” The letter expressed concern over the use of “service provider” in that example, and requested that Treasury clarify that its references to broker-dealers include all types of broker-dealers, whether they act as principal underwriters or in any other capacity, such as selling fund shares to the public. The letter also commented on section 103.15(d) of the proposed rule. The proposed rule generally would prohibit disclosure of information filed in, or the

fact of filing, an SAR. However, section 103.15(d) would provide an exception from that general prohibition on disclosure “to the extent permitted by” section 103.15(a)(3) (the joint reporting section mentioned above). The letter strongly supported the concept embodied in this exception, but recommended that Treasury clarify its scope and expressly provide, preferably in the rule text, that the sharing of information among financial institutions in order to facilitate the filing of SARs on behalf of more than one entity would not violate the non-disclosure provisions in the rule. SARs and Form 8300. The letter points out that following the adoption of an SAR rule for mutual funds, some funds will be required to report the receipt of certain cash equivalents (i.e., money orders, traveler’s checks, cashier’s checks, and bank drafts with a face amount of \$10,000 or less) on two separate forms – the SAR and IRS Form 8300. The letter expresses the belief that this outcome serves no valid law enforcement or public policy purpose, and recommends that mutual funds and/or their transfer agents not be required to report transactions involving cash equivalents on Form 8300. The letter provides Treasury with two alternative approaches that would achieve that result by effectively obviating the need for mutual funds to file reports on Form 8300. Robert C. Grohowski Associate Counsel 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 15796, or call the ICI Library at (202) 326-8304 and request the attachment for memo 15796. Attachment (in .pdf format)