MEMO# 15901

April 16, 2003

TREASURY IMPOSES SPECIAL MEASURES AGAINST THE COUNTRY OF NAURU AND REVOKES DESIGNATION OF UKRAINE AS AN AREA OF SPECIAL MONEY LAUNDERING CONCERN

ACTION REQUESTED [15901] April 16, 2003 TO: INTERNATIONAL COMMITTEE No. 26-03 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 17-03 MONEY LAUNDERING RULES WORKING GROUP No. 25-03 TRANSFER AGENT ADVISORY COMMITTEE No. 40-03 RE: TREASURY IMPOSES SPECIAL MEASURES AGAINST THE COUNTRY OF NAURU AND REVOKES DESIGNATION OF UKRAINE AS AN AREA OF SPECIAL MONEY LAUNDERING CONCERN The Treasury Department issued two notices yesterday pursuant to section 311 of the Patriot Act. The first notice proposes a rule that would impose “special measures” against the country of Nauru, which had been designated as an area of primary money laundering concern in December 2002.1 The second notice revokes the December 2002 designation of the Ukraine as an area of primary money laundering concern.2 Copies of the notices are attached. The proposed rule with respect to Nauru is summarized below. Consistent with the indications of Treasury’s intent in the notice designating Nauru as an area of primary money laundering concern,3 the proposed rule would prohibit all covered financial institutions from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, a Nauru financial institution. Three defined terms delineate the scope of this prohibition: • Covered financial institution. Section 103.184(a)(2) of the proposed rule defines covered financial institution to include those financial institutions included in the definition of covered financial institution under the rules implementing section 313 and 319 of the Act, as well as futures commission merchants, introducing brokers, and mutual funds. Thus, unlike the section 313/319 rules, mutual funds are covered financial institutions 1 The notice, entitled “Imposition of Special Measures Against the Country of Nauru,” should be posted on the Treasury web site (www.treas.gov) and published in the Federal Register shortly. 2 The notice, entitled “Revocation of Designation of Ukraine as Primary Money Laundering Concern,” also should be posted on the Treasury web site and published in the Federal Register shortly. The revocation of this designation will be effective upon publication of the notice in the Federal Register. 3 See Memorandum to International Committee No. 88-02, International Operations Advisory Committee No. 63-02, and Money Laundering Rules Working Group No. 74-02, dated December 20, 2002. 2 for purposes of this proposed rule. • Correspondent account. Section 5138A(e) of the BSA (as added by Section 311 of the Act) defines the term “correspondent account” to mean an account established to receive deposits from, make

payments on behalf of, a foreign financial institution, or handle other financial transactions related to such institution. The commentary accompanying the proposed rule states that, with respect to mutual funds, a correspondent account would include any account that permits the foreign financial institution to engage in trading in securities and futures, funds transfers, or other types of financial transactions. • Nauru financial institution. Section 103.184(a)(3) of the proposed rule defines Nauru financial institution to include all foreign banks licensed by Nauru (other than the Central Bank of Nauru) and any other person organized under the law of Nauru who conducts as a business one or more of the following activities or operations on behalf of customers: trading in (1) money market instruments; (2) exchange, interest rate, and index instruments; (3) transferable securities; and (4) commodity futures. The definition of foreign bank is that contained in 31 CFR 103.11(o). The commentary accompanying the proposed rule notes that inclusion in this definition of financial institutions other than depository institutions was done in recognition that these activities are alternate viable routes for money laundering activity. The commentary accompanying the proposed rule states that the prohibition would require covered financial institutions to review their account records to determine that they have no customers that are Nauru financial institutions. This is similar to the review required under the section 313/319 rules (for the financial institutions covered by those rules). The proposed rule also would require a covered financial institution to terminate immediately any correspondent account which it currently establishes, maintains, administers, or manages for, or on behalf of, a foreign bank, if it obtains actual knowledge that the foreign bank is using this account to provide banking services indirectly to a Nauru financial institution. However, the proposed rule would not require covered financial institutions to review or investigate every account they maintain for foreign banks to ascertain whether such foreign banks are providing services to Nauru financial institutions. Instead, covered financial institutions must terminate such an account only if they become aware that a foreign bank is using its correspondent account to provide banking services indirectly to a Nauru financial institution. Thus, the proposed rule would rely on existing due diligence procedures and not require covered financial institutions to make a separate inquiry of their foreign bank customers concerning Nauru financial institutions. The comment period for this rule proposal is very short, with comments due in 30 days. If you have concerns over the impact of the proposed rule on investment companies, contact me at 202-371-5430 or rcg@ici.org as soon as possible. Robert C. Grohowski Associate Counsel Attachment (in .pdf format)

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