The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 14492

March 4, 2002

ICI COMMENT LETTER ON PROPOSED BROKER-DEALER SUSPICIOUS ACTIVITY REPORTING RULE

[14492] March 4, 2002 TO: BROKER/DEALER ADVISORY COMMITTEE No. 4-02 COMPLIANCE ADVISORY COMMITTEE No. 18-02 INTERNATIONAL COMMITTEE No. 16-02 MONEY LAUNDERING RULES WORKING GROUP No. 10-02 SEC RULES COMMITTEE No. 20-02 TRANSFER AGENT ADVISORY COMMITTEE No. 16-02 RE: ICI COMMENT LETTER ON PROPOSED BROKER-DEALER SUSPICIOUS ACTIVITY REPORTING RULE The Institute has filed a comment letter with the Department of the Treasury on a proposed rule that would require broker-dealers to file suspicious activity reports (SARs) with Treasury's Financial Crimes Enforcement Network.1 A copy of the letter is attached and it is summarized below. As background for the Institute's specific comments, the letter begins with a general description of funds and their underwriters and transfer agents. It then discusses the application of the proposed rule to transactions involving fund shares. The letter states that it is not clear when purchases, redemptions, and exchanges of fund shares would be considered to be conducted "by, at, or through" a fund underwriter and thus subject to the rule's reporting requirements – especially in situations where the fund's transfer agent is responsible for processing shareholder transactions. The letter thus recommends that Treasury clarify its intent regarding the application of the proposed rule to transactions involving fund shares. The letter notes that Treasury may be considering proposing an SAR rule specifically applicable to funds and expresses support for such an approach. It suggests that if Treasury proposes a fund SAR rule, it would be appropriate to exclude fund underwriters from the broker-dealer SAR rule or at least provide that an SAR filed by a fund (or its agent) under the fund SAR rule would satisfy any reporting obligation of the fund underwriter under the broker- dealer SAR rule with respect to the same transaction. The letter comments on the standard for identifying "suspicious" transactions under the proposed rule, pointing out that it fails to recognize the nature of the information that a fund 1 See Memorandum to Broker/Dealer Advisory Committee No. 1-02, Compliance Advisory Committee No. 2-02, International Members No. 2-02, SEC Rules Members No. 4-02 and Transfer Agent Advisory Committee No. 2-02, dated January 8, 2002; Memorandum to Money Laundering Rules Working Group No. 1-02, dated January 9, 2002. 2 underwriter normally would have concerning shareholders and their transactions. The letter recommends that Treasury amend the proposed rule to provide that fund underwriters will be required to make determinations of what is "suspicious" based on information obtained by the fund, its underwriter, or its transfer agent in the normal course of establishing a shareholder relationship or processing transactions. It suggests that, at a minimum, Treasury should clarify in the adopting release its expectation that fund

underwriter (or fund) SAR procedures will be based on such information. The letter also recommends that Treasury clarify that funds or their underwriters are not required to “look through” broker-dealers or other intermediaries who hold shares in their names to report transactions of the customers of those broker-dealers or other intermediaries. The letter notes that the proposed rule would impose on broker-dealers two reporting obligations that are significantly broader than those applicable to banks, in that: (1) the proposed broker-dealer SAR rule does not appear to be limited to the reporting of known or suspected federal crimes; and (2) the proposed broker-dealer rule does not provide a $25,000 threshold for the reporting of known or suspected federal crimes (other than money laundering or BSA violations) involving an unidentified suspect. Given that the proposing release provides no policy or other reasons that might justify this disparate treatment, the letter recommends conforming the broker-dealer rule to the bank requirements in these respects. In order to avoid redundant filings that could result where more than one “financial institution” is involved in a given fund transaction, the letter recommends that the SAR rule(s) allow a single report to satisfy the SAR obligations of the fund and its agents with respect to that transaction. The letter also makes certain recommendations designed to ensure that funds and their agents would be protected from liability for filing SARs. Finally, the letter refers to the possibility that examination authority under the rule might be delegated to NASD Regulation, Inc. It expresses the Institute’s view that the SEC’s Office of Compliance, Inspections and Examinations would be the most appropriate entity to examine fund underwriters’ compliance with suspicious activity reporting requirements because it would be in a position to examine funds and their relevant service providers in a comprehensive and integrated fashion for compliance with applicable anti-money laundering requirements. Frances M. Stadler Deputy Senior Counsel Attachment (in .pdf format)
