

**MEMO# 14609**

April 3, 2002

## **ICI COMMENT LETTER ON PROPOSED INFORMATION SHARING RULE**

[14609] April 3, 2002 TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 12-02  
RE: ICI COMMENT LETTER ON PROPOSED INFORMATION SHARING RULE The Institute filed a comment letter today on rules recently proposed by the Treasury Department's Financial Crimes Enforcement Network (FinCEN) regarding the sharing of information relating to money laundering and terrorist activity.<sup>1</sup> These rules would implement Section 314 of the USA PATRIOT Act.<sup>2</sup> The letter is attached and summarized below. The proposed rule has two distinct sections. Section 103.100 governs information requests by federal law enforcement agencies regarding individuals, entities, and organizations engaged in or reasonably suspected of engaging in terrorist acts or money laundering activities. With respect to this Section, the letter expresses concern that the proposed rule lacks appropriate constraints on the government's authority to request information, and notes that compliance with information requests pursuant to the proposed rule could become unduly costly and burdensome in the absence of such constraints. The letter therefore generally recommends that this Section be amended to include reasonable parameters on the information requests by federal law enforcement agencies, and specifically recommends that: (1) with respect to investment companies and their principal underwriters, the rule expressly limit information requests to records less than two years old (with reference to Rule 31a-2 under the Investment Company Act); (2) the adopting release clarify FinCEN's intentions with respect to the monitoring required by financial institutions following an information request;<sup>3</sup> and (3) the rule expressly limit the time period for any such prospective monitoring. The second main part of the proposed rule is Section 103.110, which governs exchanges of information between or among financial institutions and would permit financial institutions, upon providing notice to Treasury, to share information with one another in order to better 1 See Financial Crimes Enforcement Network: Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 Fed. Reg. 9879 (March 4, 2002) (the "Proposing Release"). 2 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. Law No. 107-56 (October 26, 2001). 3 There is a statement in the Proposing Release that "Treasury and FinCEN expect that financial institutions will use the information provided by FinCEN to report to FinCEN concerning any named individual, entity, or organization that subsequently establishes an account or engages in a transaction." This statement is not reflected in the text of the proposed rule. 2 identify and report to the federal government concerning activities that may involve money laundering or terrorist activities. With regard to this Section, the letter strongly recommends that the definition of "financial institution" be broadened at least to include investment companies and their agents. The letter also recommends that the certification process required by this Section be modified slightly to allow for affiliated financial institutions to become certified

through a single filing with FinCEN. Robert C. Grohowski Associate Counsel Attachment Attachment (in .pdf format)

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