The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

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TREASURY ADOPTS THREE AML RULES AND PROPOSES TWO OTHERS

[15203] September 26, 2002 TO: BROKER/DEALER ADVISORY COMMITTEE No. 41-02 BROKER/DEALER ASSOCIATE MEMBERS No. 11-02 COMPLIANCE ADVISORY COMMITTEE No. 79-02 INTERNATIONAL MEMBERS No. 26-02 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 42-02 MONEY LAUNDERING RULES WORKING GROUP No. 55-02 SEC RULES MEMBERS No. 81-02 SMALL FUNDS MEMBERS No. 38-02 TRANSFER AGENT ADVISORY COMMITTEE No. 85-02 RE: TREASURY ADOPTS THREE AML RULES AND PROPOSES TWO OTHERS Last week, the Department of the Treasury adopted three anti-money laundering rules and proposed two other AML rules pursuant to the USA PATRIOT Act (the "Act"). The rules, which were published in the Federal Register today, are briefly summarized below. Correspondent Accounts and Foreign Shell Banks (Sections 313 and 319(b) of the Act) Treasury adopted a final rule implementing sections 313 and 319(b) of the Act, which addresses correspondent accounts maintained by U.S. banks and broker-dealers (for purposes of this rule, "covered financial institutions") on behalf of foreign banks and prohibits accounts with foreign shell banks.1 A copy of the rule is attached. Consistent with the statute, the rule prohibits covered financial institutions from maintaining accounts for foreign shell banks. The rule also requires covered financial institutions to take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the U.S. for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank. These provisions apply to all covered financial institutions, including mutual fund transfer agents that are banks or broker-dealers.2 1 Financial Crimes Enforcement Network; Anti-Money Laundering Requirements – Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks, 67 Fed. Reg. 60562 (Sept. 26, 2002). 2 The Institute's principal comment on this rule was a request for clarification that the rule does not apply to investment company transfer agents that are US banks or broker-dealers with respect to their investment company transfer agency activities. The status of bank or broker-dealer transfer agents was not addressed in the release or the final rule. 2 As part of these steps, the rule requires every covered financial institution to obtain a certification from every foreign bank for which it opens or maintains an account. The final rule includes a certification form that may be used to comply with both the shell bank prohibition as well as the recordkeeping requirements of section 319(b). The form is not required, but its use provides a safe harbor from liability for failing to comply with the rule.3 As the Institute recommended, the final rule takes a bifurcated approach to new and existing accounts. Certifications are required of all existing accounts on or before December 26, 2002 (90 days after publication of the rule in the Federal Register); for accounts opened after October 28, 2002, certifications are required within 30 calendar days after the date the account is established. Banks and broker-dealers must

recertify every foreign bank for which they maintain an account at least once every three years.4 Information Sharing (Section 314 of the Act) Treasury adopted a final rule implementing section 314 of the Act, which addresses information sharing between governmental authorities and financial institutions (Section 314(a)) and among financial institutions themselves (Section 314(b)).5 A copy of the rule is attached. We are pleased to report that the final rule reflects a number of changes that are consistent with the comments made by the Institute on this rule proposal. The first part of the rule establishes a mechanism for law enforcement to communicate names of suspected terrorists and money launderers to financial institutions in return for securing the ability to locate promptly accounts and transactions involving those suspects. Financial institutions receiving the names of those suspects must search their account and transaction records for potential matches. As recommended by the Institute, the rule imposes a number of parameters on requests by federal law enforcement agencies pursuant to the rule.6 3 As recommended by the Institute, banks and broker-dealers are required to verify the accuracy or completeness of the information on the certification form only if the covered financial institution has a reason to know or suspect that the information is inaccurate or incomplete. 4 The rule as proposed would have required recertification every two years. The Institute had recommended a three- year recertification period. 5 Financial Crimes Enforcement Network; Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 Fed. Reg. 60579 (Sept. 26, 2002). 6 However, these parameters are not absolute. The adopting release states: Except as otherwise provided in the information request, a financial institution is only required under the final rule to search its records for: (1) Any current account maintained for a named suspect; (2) any account maintained for a named suspect during the preceding twelve months; and (3) any transaction conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which a named suspect was either the transmittor or the recipient, during the preceding six months that is required under law or regulation to be recorded by the financial institution or is recorded and maintained electronically by the institution. . . . FinCEN reserves the right to require a more comprehensive search as circumstances warrant; in such cases, the information request will clearly delineate those broader terms. 3 The second part of the rule governs exchanges of information between or among financial institutions and permits financial institutions, upon providing notice to Treasury, to share information with one another in order to better identify and report to the federal government concerning activities that may involve money laundering or terrorist activities. There is a statutory safe harbor from liability as long as information is shared pursuant to the rule. The proposed rule would have applied only to banks and broker-dealers (i.e., those financial institutions currently required to file suspicious activity reports), and the Institute strongly recommended that the definition of “financial institution” be broadened to include investment companies and their agents. We are very pleased that the final rule reflects this change, and allows all financial institutions that are required to have AML programs, including investment companies, to take advantage of the safe harbor. AML Programs (Section 352 of the Act) Treasury proposed two rules pursuant to Section 352 of the Act, which requires financial institutions to adopt written AML programs. The two proposed rules relate to (1) insurance companies and (2) investment companies not registered with the Securities and Exchange Commission (e.g., hedge funds).7 These rules largely follow the rules adopted earlier with respect to registered investment companies, broker-dealers, and banks.8 Suspicious Activity Reporting for Casinos Treasury adopted a final rule requiring all casinos and card clubs located in the U.S. to file suspicious activity reports (SARs) with Treasury’s Financial Crimes Enforcement Network.9 Robert C. Grohowski Associate Counsel Attachments Note: Not all recipients receive the attachments. To obtain copies of the attachments, please visit our members website (http://members.ici.org) and search for

memo 15203, or call the ICI Library at (202) 326-8304 and request the attachments for memo 15203. Attachment no. 1 (in .pdf format) 67 Fed. Reg. at 60581. 7 Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Insurance Companies, 67 Fed. Reg. 60625 (Sept. 26, 2002); and Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Unregistered Investment Companies, 67 Fed. Reg. 60617 (Sept. 26, 2002). 8 For the AML program rule relating to mutual funds, see Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds, 67 Fed. Reg. 21117 (Apr. 29, 2002). 9 Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations – Requirement That Casinos and Card Clubs Report Suspicious Transactions, 67 Fed. Reg. 60621 (Sept. 26, 2002).
