The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
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ICI COMMENT LETTER ON FINCEN'S AML COMPLIANCE PROGRAM RULE

[14772] May 30, 2002 TO: BROKER/DEALER ADVISORY COMMITTEE No. 14-02 COMPLIANCE ADVISORY COMMITTEE No. 42-02 INTERNATIONAL COMMITTEE No. 40-02 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 21-02 MONEY LAUNDERING RULES WORKING GROUP No. 27-02 SEC RULES COMMITTEE No. 43-02 TRANSFER AGENT ADVISORY COMMITTEE No. 43-02 RE: ICI COMMENT LETTER ON FINCEN'S AML COMPLIANCE PROGRAM RULE The Institute filed a comment letter yesterday on an interim final rule (the "Interim Rule") recently proposed by the Treasury Department's Financial Crimes Enforcement Network (FinCEN).1 The Interim Rule would prescribe minimum standards for anti-money laundering compliance programs to be established by mutual funds. The letter is attached and summarized below. In general, the letter supports the Interim Rule as drafted. However, the letter points out several statements in the Release that raise issues, including statements regarding omnibus accounts, AML compliance officers, delegation of compliance functions, reports on Form 8300, and the delegation of compliance examination authority to the Securities and Exchange Commission. Omnibus and Similar Accounts. The letter supports the distinction drawn in the Release between omnibus and individual accounts, but expresses concern about an assertion in the Release that mutual funds will need to "analyze the money laundering risks posed by particular omnibus accounts based upon a risk-based evaluation of relevant factors regarding the entity holding the omnibus account, including such factors as the type of entity, its location, type of regulation, and of course, the viability of its anti-money laundering program." The letter calls the highlighted language "extremely problematic, particularly insofar as it might suggest that a mutual fund would have to assess the viability of the AML programs of each of the intermediaries that sell its shares," and argues that such an obligation is unnecessary and would present very serious practical issues. 1 Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds, 67 Fed. Reg. 21117 (Apr. 29, 2002) (the "Release"). 2 The letter also notes that there are arrangements similar to omnibus accounts that the Institute believes warrant similar treatment under fund AML programs. These arrangements, which the letter refers to as "intermediated accounts," include all accounts for which an intermediary required to have an AML program under Section 352 of the Act is involved in opening the account and maintains an ongoing client relationship with the shareholder. The letter takes the position that mutual funds should be able to take a risk-based approach to intermediated accounts that is similar to the approach for omnibus accounts, and requests FinCEN's concurrence that such an approach would be appropriate. The letter further suggests that FinCEN confirm that a variety of factors could impact the money laundering risk that a particular mutual fund account presents, and that it is consistent with Treasury's risk-based approach to AML compliance for mutual fund AML programs to take all of these factors into account. This would allow a fund, for example,

reasonably to conclude that an account for a Fortune 500 company’s retirement plan would not have to be scrutinized to the same extent as an individual account, since that retirement plan account presents little, if any, money laundering risk. AML Compliance Officers. The letter requests clarification regarding the application of the Form 8300 reporting requirements in the mutual fund context. In addition, it recommends that FinCEN clarify that the AML compliance officer designated by a mutual fund is not required to be a fund officer, as long as that person is “competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures throughout the fund complex.” Delegation of AML Compliance Functions. The letter recommends that FinCEN clarify that, when a fund delegates AML compliance functions, it is not necessary to obtain written consent to allow federal authorities to examine the delegate’s books and records and inspect it for AML compliance purposes if the delegate will already be required by law or regulation to allow such inspection and examinations to occur. Reporting on Form 8300. The letter requests that Treasury clarify the application of the Form 8300 reporting requirements in the mutual fund context. In addition, it recommends that to the extent that Treasury adopts suspicious activity reporting requirements for funds, it may make sense also to subject funds (and/or their transfer agents) to the cash transaction reporting requirements for financial institutions under the BSA regulations, instead of the reporting requirements for nonfinancial trades or businesses under the regulations implementing Section 6050I of the Internal Revenue Code and BSA Section 5331. This would completely obviate the need to file Form 8300 to report transactions in fund shares. Alternatively, the letter recommends that Treasury should take action to provide that, if and when any fund SAR requirement is implemented, there will no longer be a need to file Form 8300 to report fund share transactions involving cash equivalents. Compliance Enforcement. The letter expresses the Institute’s view that a limited exemption for fund principal underwriters from the NASD AML program rule for broker- dealers would avoid unnecessary regulatory duplication and eliminate the illogical, bifurcated AML compliance examination regime that the NASD rule otherwise creates for fund complexes. The letter urges FinCEN to consider whether such a limited exemption could be provided by 3 amending the Interim Rule to cover a broker-dealer’s mutual fund underwriting activities or through some other means. The letter encourages Treasury, at a minimum, to address this and other issues related to fund principal underwriters in its report to Congress later this year under Section 356 of the USA PATRIOT Act. Robert C. Grohowski Associate Counsel Attachment Attachment (in .pdf format)
