

MEMO# 16236

June 25, 2003

ICI REQUEST FOR GUIDANCE ON CUSTOMER IDENTIFICATION PROGRAM RULE

[16236] June 25, 2003 TO: BROKER/DEALER ADVISORY COMMITTEE No. 19-03 COMPLIANCE ADVISORY COMMITTEE No. 49-03 MONEY LAUNDERING RULES WORKING GROUP No. 40-03 SEC RULES COMMITTEE No. 59-03 SMALL FUNDS COMMITTEE No. 22-03 TRANSFER AGENT ADVISORY COMMITTEE No. 62-03 RE: ICI REQUEST FOR GUIDANCE ON CUSTOMER IDENTIFICATION PROGRAM RULE Last month, the Treasury Department and the Securities and Exchange Commission adopted a final customer identification program (CIP) rule for mutual funds.¹ In the course of discussion with members following the rule's adoption, two significant open issues were identified that have broad significance for the mutual fund industry: 1. The treatment of exchanges and similar transactions under the rule; and 2. The application of the rule's definition of "customer" to transactions processed through the National Securities Clearing Corporation's Fund/SERV system. As instructed on a conference call with the money laundering rules working group and other Institute members, the Institute raised these issues with staff members of the SEC and Treasury at a meeting on June 12th. At the staff's request, the Institute submitted a letter to the SEC and Treasury yesterday that follows up on that meeting with a more formal request for guidance or relief. The letter is attached and briefly summarized below. With regard to exchanges and similar transactions, the letter requests no-action relief or interpretive guidance that would effectively allow fund families to treat fund investors as customers of the entire fund family rather than as customers of individual mutual funds. The letter suggests that this result could be achieved either (1) by interpreting the definition of "account" in the CIP rule to include an investor's relationship with a fund family or (2) by extending the rule's exception for existing customers to any person that has an existing account with the mutual fund or with another mutual fund in the same fund family, if either fund has a reasonable belief that it knows the true identity of that person. Under either alternative, funds would not be required to perform CIP procedures on an investor that purchases fund shares 1 68 Fed. Reg. 25131 (May 9, 2003). The rules implement Section 326 of the USA PATRIOT Act. 2 (either with new money or by exchange) if that investor owns shares of another fund in the same fund family.² With regard to purchases of fund shares that are cleared and settled through Fund/SERV, the letter requests concurrence with the Institute's view that, for purposes of the CIP rule, mutual funds should treat the NSCC member firms initiating those purchases as the fund's customers and should not treat the investors on whose behalf those firms are acting as customers. The view set forth in the letter extends to all Fund/SERV accounts, regardless of whether they are subject to a Networking arrangement. Given the October 1st implementation deadline for CIPs, the fundamental nature of these issues and their importance to the fund industry, the letter strongly urges Treasury and the

SEC to respond as quickly as possible. We will keep you informed of further developments. Robert C. Grohowski Associate Counsel Attachment (in .pdf format) 2 As noted above, under the second alternative, at least one of the funds in the fund family would have to have a reasonable belief that it knows the true identity of that investor.

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