

MEMO# 19806

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ICI Comments on Proposed AML Rule on "Enhanced Due Diligence" for Certain Types of Foreign Banks

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19806] March 7, 2006 TO: AML COMPLIANCE WORKING GROUP No. 7-06 TRANSFER AGENT ADVISORY COMMITTEE No. 17-06 RE: ICI COMMENTS ON PROPOSED AML RULE ON "ENHANCED DUE DILIGENCE" FOR CERTAIN TYPES OF FOREIGN BANKS As you know, the Financial Crimes Enforcement Network ("FinCEN") has proposed a rule that would require certain financial institutions, including mutual funds, to conduct "enhanced due diligence" to guard against money laundering in accounts established for certain categories of high-risk foreign banks.¹ The proposed rule is a companion to the rule on correspondent accounts adopted in January.² A group of eleven financial trade associations, including the ICI, submitted a joint comment letter on the proposal. The letter generally supports the risk-based approach taken in the proposed rule, but offers two recommendations for ways to achieve the overall objective of the rule without imposing unduly burdensome or unproductive obligations on covered financial institutions: • A recommendation that FinCEN allow covered financial institutions to assess a foreign bank's anti-money laundering program based on the foreign bank's responses to a questionnaire designed to identify whether the program incorporates key aspects deemed to be essential to an effective program. The proposed rule requires covered financial institutions to review the foreign banks' anti-money laundering programs. The associations submitting the letter offered to work with FinCEN to develop an appropriate questionnaire that could be used in this context as an alternative to the specific requirement to review AML program documentation. • A recommendation that FinCEN relieve covered financial institutions of the obligation to obtain lists of and other information about the foreign bank's customers in certain 1 71 Fed. Reg. 516 (Jan. 4, 2006). See Memorandum No. 19634, dated January 26, 2006. 2 See memoranda nos. 19496, dated December 19, 2005, and 19580, dated January 6, 2006. 2 circumstances, such as with accounts that by their nature do not raise a meaningful possibility of nested bank activity. The letter also suggests that FinCEN's estimate that the average annual recordkeeping burden on each covered financial institution will be one hour is unrealistically low. Robert C. Grohowski Senior Counsel - International Affairs Attachment (in .pdf format)

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