

**MEMO# 15705**

February 28, 2003

# **DRAFT INSTITUTE LETTER ON MUTUAL FUND SUSPICIOUS ACTIVITY REPORTING RULE**

ACTION REQUESTED [15705] February 28, 2003 TO: BROKER/DEALER ADVISORY COMMITTEE No. 9-03 MONEY LAUNDERING RULES WORKING GROUP No. 16-03 TAX COMMITTEE No. 10-03 TRANSFER AGENT ADVISORY COMMITTEE No. 24-03 RE: DRAFT INSTITUTE LETTER ON MUTUAL FUND SUSPICIOUS ACTIVITY REPORTING RULE

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has proposed a rule relating to the filing of suspicious activity reports (SARs) by mutual funds anti- money laundering programs for unregistered investment companies.<sup>1</sup> Attached for your review is a draft of the Institute's comment letter on the proposal. The draft letter makes three principal comments:

- First, the letter addresses the standard for determining what constitutes a suspicious transaction. The draft letter urges Treasury to recognize that mutual funds have less information available to them in making SAR determinations than other types of financial institutions and that the mutual fund SAR rule is intended to take this operating reality into account. The letter then recommends that Treasury clarify that mutual funds are expected to file SARs based on the information obtained by the fund, its underwriter, or its transfer agent in the normal course of establishing a shareholder relationship or processing transactions.
- Second, the letter addresses the joint filing of SARs by mutual funds and their service providers. In this regard, the letter requests that Treasury clarify that its references in the proposal to broker-dealers include all types of broker-dealers, whether they act as principal underwriters or in any other capacity, such as selling fund shares to the public. The letter also strongly recommends that Treasury clarify the scope of an exception from the non-disclosure provisions of the proposed rule and expressly provide, preferably in the final rule text, that the sharing of information among financial institutions in order to facilitate the filing

<sup>1</sup> See Financial Crimes Enforcement Network; "Amendment to the Bank Secrecy Act Regulations – Requirement that Mutual Funds Report Suspicious Transactions," 68 Fed. Reg. 2716 (January 21, 2003).

<sup>2</sup> of SARs on behalf of more than one entity would not violate those non-disclosure provisions.

- Finally, the letter addresses the interplay between the SAR regime and the reporting of cash transactions to the Internal Revenue Service on Form 8300. As explained in the letter, some funds may be required to file two separate reports on transactions involving cash equivalents – one to Treasury and one to the IRS. The draft letter expresses the view that this duplicative reporting would serve no valid law enforcement or public policy purpose, and strongly recommends that mutual funds and/or their transfer agents not be required to report transactions involving cash equivalents on Form 8300. The letter provides two alternative ways to accomplish this goal. The letter must be submitted to FinCEN by March 24th. We have scheduled a conference call to discuss the Institute's draft comment letter

on Tuesday, March 18th at 3:00 p.m. Eastern time. (A subsequent memorandum will provide details on how to join the call.) We also would encourage you to provide any comments on the attached draft prior to the conference call by contacting me by phone at (202) 371- 5430 or by email at [rcg@ici.org](mailto:rcg@ici.org). Robert C. Grohowski Associate Counsel  
Attachment (in .pdf format)

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