

COMMENT LETTER

December 14, 2010

ICI Comment Letter on BSA-SAR Database Proposed Data Fields (pdf)

December 14, 2010 By email (to regcomments@fincen.treas.gov) James H. Freis, Jr. Director, Financial Crimes Enforcement Network U.S. Department of the Treasury P.O. Box 39 Vienna, VA 22183 Re: BSA-SAR Database Dear Mr. Freis: The Investment Company Institute¹ ("ICI") appreciates the opportunity to provide Financial Crimes Enforcement Network ("FinCEN") with our comments on the suspicious activity report database ("Database") proposed data fields (the "Proposal").² The ICI and its members have long supported the government's efforts to combat money laundering activity in the financial services industry.³ We do, however, have concerns with the breadth of the systems changes the Proposal may entail. We lay these out below to assist FinCEN in its further consideration of the design and implementation of the Database.

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.33 trillion and serve over 90 million shareholders. ² See Financial Crimes Enforcement Network, Proposed Collection; Comment Request; Bank Secrecy Act Suspicious Activity Report Database Proposed Data Fields, 75 FR 63545 (Oct. 15, 2010) available at <http://edocket.access.gpo.gov/2010/pdf/2010-26038.pdf>. ³ See, e.g., Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Judith R. Starr, Chief Counsel, Financial Crimes Enforcement Network, dated May 29, 2002. Mr. James H. Freis, Jr. December 14, 2010 Page 2 of 5 Implementing the Proposal Will Require Significant Financial and Personnel Resources The Proposal will have a significant impact on systems and personnel involved in suspicious activity reporting for mutual funds and their agents (collectively, mutual funds). We believe that FinCEN's statement that the Proposal "does not propose any new regulatory requirements nor changes to the requirements related to suspicious activity reporting" fails to recognize that mutual funds will need to make changes to collect and prepare the requested information and file through the Database. The Proposal includes a significant number of new data fields which, while not all mandatory, will necessitate changes to the information collection process to ensure that responsive information is collected and reported when available. This will entail revisions to a broad range of policies, procedures and systems that have been developed to support current suspicious activity reporting. It will impact not just electronic systems used to collect and manage this process but also the internal policies and procedures designed to ensure compliance with the regulatory responsibilities of mutual funds to file suspicious activity reports ("SARs"). For example, some mutual funds use proprietary case

management systems that have been tailored to the needs of that institution and these systems will require changes or, in some cases, a complete overhaul in order to support the filing of SARs through the Database.⁴ Further, because the proposed Database requests responses to very specific questions in a check the box format, and mutual funds may not currently collect information that is responsive to particular questions, or store information in the categories listed in the proposed data fields, the new filing system will fundamentally change how a mutual fund collects and processes information regarding suspicious activity. Although it is clear that filing through the Database will require mutual funds to expend financial and personnel resources (e.g., training) to alter their systems and processes, we understand from our members that it is challenging to fully evaluate the cost and resource burden, on both an initial and continuing basis, of complying with the Proposal. For example, assessing the implications of the Proposal requires evaluating technical aspects of the proposed changes (e.g., how dynamic forms will function, how a mutual fund's customized or proprietary SAR filing system may need to be changed), the substance of the data fields (e.g., do the fields capture the appropriate information, how staff training and oversight will be impacted, how this differs from what has been previously provided in

4 The Proposal states that, although batch and computer-to-computer filing processes will remain the same, the file format will change to match the Database, and that the file specifications will be finalized after reviewing public comments received in response to the Proposal. Mr. James H. Freis, Jr. December 14, 2010 Page 3 of 5 narrative form), and any potential regulatory or legal risks associated with the Proposal. This evaluation requires coordination among various areas within an organization, as well as in some cases with third party vendors that assist in the development and administration of a mutual fund's anti-money laundering systems and program. In addition, more detail concerning the IT specifications is needed to fully assess the impacts and costs of needed changes. The impact of filing SARs through the new Database on a particular mutual fund will vary significantly depending on various factors, including for example, whether the fund family currently uses a customized or proprietary system for filing SARs and how such system collects information. To accommodate the mutual funds that will need to make substantial changes to their SAR filing systems and processes, we urge FinCEN to maintain an open dialogue with the financial services industry regarding the proposed Database and its challenges and, if FinCEN determines to proceed with the adoption of the proposed Database, to allow for an extended implementation period. We request that FinCEN allow financial institutions 18 months to comply with the changes after their adoption, recognizing that some financial institutions may be able to accommodate the changes more quickly while others may need the full period. We appreciate FinCEN's recognition of the resource challenges that mutual funds are dealing with as a result of other regulatory changes that are significantly impacting operations, such as the new cost basis reporting requirements and the new requirements regarding the creation, retention, and transmittal of records or information for transmittals of funds (commonly referred to as the "Travel Rule").⁵ An implementation period reflecting the fact that some financial institutions and mutual funds will need more time to implement the changes will permit firms better to manage their financial and personnel resources to meet the requirements of the Proposal. In addition, we believe that this time is likely to be needed in order for mutual funds and other financial institutions to fully work through the data field questions and possible responses and raise any questions or concerns with FinCEN. As financial institutions begin to implement the changes, it is likely that firms will seek guidance or clarification on particular data fields or other aspects of filing through the Database. A sufficiently long implementation period will be important to responding and resolving such issues.

5 See Final Rule, Extension of Compliance Date, Amendment to the Bank Secrecy Act Regulations; Defining Mutual Funds as Financial

Institutions, 75 Fed. Reg. 63382 (Oct. 15, 2010), available at <http://edocket.access.gpo.gov/2010/pdf/2010-25886.pdf>. Mr. James H. Freis, Jr. December 14, 2010 Page 4 of 5 Completion of Data Fields Requires Subjective Determinations Adding Complexity and Time A mutual fund submitting a SAR through the proposed Database will be required to select responses from specific options that are presented (i.e., check the box). Analyzing suspicious behavior and completing the proposed data fields will not be an objective process; rather, for certain questions, those completing a filing will need to use their discretion and reasonable people may determine to check different boxes on the basis of similar information. There may be, therefore, differences or inconsistencies in the usage of certain data fields among reporting institutions, and potentially within an institution. In addition, certain data fields are potentially confusing and would benefit from further clarification regarding FinCEN's expectations with respect to that item. For example, items 36-44 (specific types of suspicious activity, particularly structuring and identification), item 29 (instruments/product types), and item 49 (type of securities and futures institution) require subjective determinations and, in some cases, contain terms that are unclear. The subjectivity of the responses and lack of clarity regarding certain items raises for us certain concerns. First, in seeking consistency in responses to data fields that require subjective determinations, filers may take noticeably longer to complete a SAR filing through the new filing system. In addition, in an effort to avoid improperly identifying an item, filers may frequently select the "other" option rather than attempting to categorize the activity. Second, we believe that law enforcement must carefully use this data and not place undue emphasis on the particular boxes that are checked. We believe that it is critical for FinCEN and law enforcement to recognize the limitations of the data, e.g., that inconsistencies may limit law enforcement's ability to gain meaningful information related to trends. Third, given the discretion that will be used at data entry in checking certain boxes, we are concerned that government examiners may second guess how particular filings were completed, including citing inconsistencies among a financial institution's filings, exposing filers to regulatory criticism or unnecessary scrutiny during examinations. To help address these concerns and maximize the quality and usefulness of the data provided to FinCEN, we recommend that FinCEN consider (1) defining or clarifying certain data fields (e.g., include a glossary of terms) and (2) reducing the number of data fields or options in some cases. * * *

* * Mr. James H. Freis, Jr. December 14, 2010 Page 5 of 5 We appreciate the opportunity to express our concerns regarding the Proposal. If you have any questions, or need additional information, please contact Susan Olson (solson@ici.org or 202-326-5813) or Eva Mykolenko (emykolenko@ici.org or 202-326-5837). Sincerely, /s/ Susan M. Olson Susan M. Olson Senior Counsel – International Affairs