

COMMENT LETTER

June 16, 2009

ICI Letter on Foreign Bank and Financial Account Reporting

June 16, 2009 By Electronic Delivery Douglas H. Shulman Stuart A. Levey Commissioner Under Secretary for Terrorism and Financial Internal Revenue Service Intelligence 1111 Constitution Avenue, N.W. U.S. Department of the Treasury Washington, DC 20224 1500 Pennsylvania Avenue, N.W. Washington, DC 20220 RE: Clarify FBAR Rules' Application to Funds Registered Under 1940 Act Dear Commissioner Shulman and Under Secretary Levey: The Investment Company Institute¹ ("ICI") would appreciate your attention to our repeated requests, on behalf of the U.S. investment company industry, for guidance regarding the industry's reporting obligations pursuant to Form TD F 90-22.1 -- Report of Foreign Bank and Financial Accounts (the "FBAR"). For over a year, ICI has been seeking clarification that persons who are employees of firms that provide services to investment companies ("funds") that are registered under the Investment Company Act of 1940 ("the 1940 Act"),² and who have signature or other authority (hereafter "signature authority") over a fund's foreign accounts, ³ may utilize the so-called "employee exception"⁴ to the FBAR filing requirement. In January 2009, following months of discussions 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 \$10.10 trillion and serve almost 90 million shareholders. ² 15 U.S.C. sections 80a-1 et seq. ³ The FBAR instructions generally require that each U.S. person who has a financial interest in or signature authority over foreign accounts report that relationship if the aggregate value of the accounts exceeds \$10,000 at any time during the calendar year. Such persons must file the FBAR on or before June 30 of the succeeding year. These persons also must disclose this authority on Part III of Schedule B to Form 1040. ⁴ The FBAR's instructions except from the reporting requirements the officers and employees of certain domestic corporations. Under one part of the exception, the corporation must either (1) list its equity securities on a national securities exchange or (2) have assets exceeding \$10 million and 500 or more shareholders. Under the second part of the exception, (1) the officer or employee must have no personal financial interest in the account and (2) the chief financial ICI Request for Clarification of FBAR Rules' Application to Funds Registered Under 1940 Act June 16, 2009 Page 2 of 2 between the ICI's outside counsel and senior Treasury Department officials, the ICI submitted the attached letter, which explains in detail the strong policy rationale for our request. We are writing today only because we now understand that the requested guidance - which we sought well in advance of the June 30 FBAR filing deadline - will not be issued by that date. Our repeated requests over the past twelve months to meet with IRS and FinCEN personnel

to discuss the industry's FBAR concerns were denied because, we were told, our request was clear and the need for the requested guidance was understood. Late last week, however, we were informed that no such guidance will be forthcoming until next year at the soonest – long after the filing date. As a result, thousands of employees of companies that manage funds over the next two weeks will file duplicative FBARs – all of which will replicate the detailed filings being made by the funds themselves. In addition, these employees most likely will be required to file amnesty requests for prior-year filings that were not made. It is hard to understand how this shower of unnecessary paperwork will support the U.S. government's mission to thwart abusive tax schemes, to combat money laundering and terrorist financing, and to achieve the other objectives contemplated by the FBAR. By contrast, the relief requested in our January letter is fully consistent with the FBAR's goals and would relieve the IRS from receiving hundreds of thousands of useless pieces of paper and wasting far too many hours processing that paper. Any assistance that you can provide in ensuring prompt issuance of the requested guidance would be appreciated greatly. Sincerely, /s/ Keith Lawson Keith Lawson Senior Counsel – Tax Law Attachment cc: Jamal El-Hindi Clarissa C. Potter Beth M. Elfrey Samuel Berman Mark E. Plotkin, Covington & Burling LLP officer ("CFO") of the corporation must advise the officer or employee in writing that the company has filed a current FBAR that includes the account.

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