

August 19, 2009

Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Electronically: <http://www.regulations.gov/search/index.jsp>
Attention: Comment Request; Defining Mutual Funds as Financial Institutions

**Re: Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act
Regulations; Comment Request; Defining Mutual Funds as Financial Institutions
(31 CFR Part 103)**

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned proposed rule.

The NYSSCPA's Anti Money Laundering and Counter Terrorist Financing Committee deliberated the proposed rule and prepared the attached comments. If you would like additional discussion with us, please contact Robert L. Goecks, Chair of the Anti Money Laundering and Counter Terrorist Financing Committee at (646) 705-3075, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



David J. Moynihan
President

Attachment



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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**FINANCIAL CRIMES ENFORCEMENT NETWORK; AMENDMENT TO THE
BANK SECRECY ACT REGULATIONS; COMMENT REQUEST; DEFINING
MUTUAL FUNDS AS FINANCIAL INSTITUTIONS
(31 CFR PART 103)**

August 19, 2009

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New York State Society of Certified Public Accountants

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations; Comment Request; Defining Mutual Funds as Financial Institutions

General Comments

We concur with the Financial Crimes Enforcement Network's ("FinCEN") proposal to include mutual funds (as defined in the proposal) under the definition of "Financial Institutions" and include such companies under the Travel Rule. We agree that a mutual fund provides investment accounts that are functionally similar to those other entities already specifically identified as financial institutions. Amending the rules and regulations that have been honed to protect the American population from the threats and risks of money laundering and other financial irregularities to apply to all "financial institutions" would enhance the effectiveness of the regulations and reduce the opportunity to thwart the system.

We recognize that since April 29, 2002, when FinCEN first required mutual funds to establish anti-money laundering programs, FinCEN has systematically moved in the direction of aligning mutual funds with banks and other financial institutions. On May 9, 2003, FinCEN released a final rule requiring mutual funds to have Customer Identification Programs ("CIPs"). On May 4, 2006, mutual funds were required to file Suspicious Activity Reports ("SARs"), reporting suspicious activity. Prior to issuance of this regulation, mutual funds could voluntarily check box 1 (b) on Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business. On January 4, 2006, FinCEN published a final rule requiring mutual funds with accounts for foreign financial institutions to implement due diligence programs and to assess the foreign financial institutions for money laundering risks. We agree that the present proposal is one more step in bringing the mutual fund industry into greater conformity with the rest of the financial industry.

Specific Comments

- A. Replacing the requirement of filing Form 8300 with a requirement to file Currency Transaction Reports ("CTRs").

By establishing compliance requirements more uniform across all members of the financial institution community, the following desired goals would be achieved:

1. It will allow more consolidation of compliance functions. Firms that encompass entities already included as financial institutions can increase productivity by using their current skills and systems.
2. It will allow more flexibility in staffing financial regulatory positions by enabling the entities to recruit or outsource to experienced personnel already performing these exact functions outside of the mutual fund industry with the skills and abilities to fulfill these requirements within the mutual fund industry.
3. It will make the systems and personnel who are receiving the CTRs more efficient in that the quantity of data being received and the databases where

they are being processed and stored will, by definition, be more uniform as they will all be starting with the same filing (the CTR only).

4. It will reduce redundancy. As of May 2006, mutual funds are required to file SARs. Form 8300 includes a section for reporting suspicious activity which is no longer applicable for mutual funds.
- B. The anticipated time and monetary savings that result from replacing the requirement to file Form 8300 with the requirement to file CTR's.
1. As discussed above, there will be greater efficiency in larger organizations that currently have staff and systems in place to produce CTR filings.
 2. As the detail of the CTR might change (as might the Form 8300), it allows for less future development and maintenance of two systems as opposed to putting the resources into enhancing the single CTR system.
 3. As discussed above, FinCEN and related parties will be assisted in the utilization of the information being reported by these systems/forms.
- C. The anticipated impact of subjecting mutual funds to rules under the Bank Secrecy Act ("BSA") that require the creation, retention, and transmittal of records or information for transmittals of funds and other specified transactions.
1. We agree that based on the functional similarities of a mutual fund to other financial institutions, mutual funds should have the same requirements to minimize the opportunity to take advantage of regulatory weaknesses.
 2. We are concerned about the assumption included in the proposal as to the economic impact on the smaller firms, as discussed in the Regulatory Flexibility Analysis. Most of the larger firms that already have affiliations with other financial institutions that have these systems in place will likely achieve economies with the implementation of this enhancement to the BSA. The requirement of the Travel Rules on small mutual funds, however, might cause a significant economic impact. FinCEN may want to consider a phased-in requirement and allow the smaller firms additional time for implementation.
- D. Whether mutual funds are less likely to be used during the initial placement stage of money laundering than a depository institution and therefore present a lower risk for money laundering.
1. The terms and conditions of the mutual fund account, rather than the type of financial institution offering such product, is more likely to determine whether an account would be used during the initial placement stage of money laundering and the degree of risk for money laundering. Many mutual funds offer accounts (such as dollar per share money market accounts) with terms, conditions and on-line and other access for deposits and payments that are substantially similar to accounts offered by depository institutions. A mutual fund account that is functionally equivalent to an account offered by a depository institution will result in the mutual fund having an equivalent risk

profile for money laundering as the depository institution with respect to such accounts.

2. We note that the mutual fund industry has diverse financial products and that certain Federal government legislative initiatives such as “The Hedge Fund Transparency Act of 2009” introduced by U.S. Senators Grassley and Levin in January 2009, may expand the definition of “mutual funds” used by the proposed regulations to include private hedge funds and other pooled investment vehicles. We note that additional financial product offerings and enactment of legislation that expands the registration requirements for financial institutions may make reconsideration of the scope of financial products subject to the reporting requirements under the Travel Rule and other BSA provisions by FinCEN appropriate.

E. Proposed Location in Chapter X

As with our prior comment letter of March 3, 2009, we fully support the adoption and implementation of the codification as proposed with Chapter X. In the desire for simplicity, please refer to our prior comments for the installation of mutual funds into Chapter X.