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Financial Crimes Enforcement Network (FinCEN)
Department of the Treasury
P. O. Box 39
Vienna, VA 22183
Attention: Comment Request; Defining Mutual Funds as Financial
Institutions

Defining Mutual Funds as Financial Institutions

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the proposal of the Financial Crimes Enforcement Network (FinCEN) to re-classify mutual funds as “financial institutions” under the Bank Secrecy Act (BSA) rules. According to FinCEN, the proposed change would only have two major impacts for mutual funds. First, instead of using a Form 8300 to report currency transactions over \$10,000, mutual funds would use the currency transaction report (CTR). Second, mutual funds would maintain and retain records on funds transmittals (e.g., wires) under the Travel Rule.²

Generally, ABA agrees with the premise underlying the proposal. Actually, this proposed change is likely to facilitate compliance by mutual funds by applying the same requirements already in effect for other financial institutions. This is especially true for those managed by large financial holding companies where other entities within the enterprise are already subject to these requirements. The ability to comply with one set of rules should facilitate enterprise-wide risk management, something that is increasingly important in today’s economy; earlier this year, ABA strongly supported steps to facilitate the ability of affiliates to share

¹ ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation’s banking industry and strengthen America’s economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry’s \$14 trillion in assets and employ over 2 million men and women.

² 31 CFR 103.33. The Travel Rule requirements generally apply to payment orders of \$3,000 or more. The rule requires financial institutions to obtain and retain information on the name and address of the originator of the payment order; the amount of the order; the execution date of the order; any payment instructions received from the originator with the order; the identity of the beneficiary’s bank; and as many of the following items that are received with the order: name and address of the beneficiary; account number of the beneficiary; any other specific identifier of the beneficiary.

suspicious activity reports (SAR) and SAR information as another means to promote enterprise-wide risk management.³

Background

The BSA statutory definition of a financial institution includes “investment companies.”⁴ Existing BSA rules define investment companies as open-end companies, more commonly known as mutual funds. Beyond separate Securities and Exchange Commission (SEC) requirements, existing BSA rules already require mutual funds to meet mandates that apply to other financial institutions. For example, mutual funds must develop anti-money laundering programs; implement customer identification programs (CIP); identify and report suspicious transactions; and maintain appropriate due diligence programs for correspondent and private banking accounts.

If adopted, the proposal would redefine mutual funds for purposes of the BSA as “financial institutions.” As proposed, the definition would cover only those entities registered or required to register with the SEC.⁵ However, according to FinCEN, since mutual funds are already subject to many BSA mandates, the proposal would only effect two major changes to current BSA compliance requirements for mutual funds. The first change would require mutual funds to use the currency transaction report (CTR) form to report large currency transactions. The other major adjustment would be that mutual funds would comply with Travel Rule requirements for information obtained and retained in connection with wire transfers and similar payment orders.

Currency Transactions. Under current rules, mutual funds report cash transactions over \$10,000 using IRS Form 8300. If the rule is adopted and mutual funds are classified as financial institutions for BSA rules, mutual funds would transition from the IRS Form 8300 to the CTR. ABA believes this change would be beneficial for mutual funds and would streamline and simplify compliance.

Since the application of the CTR is narrower than the Form 8300, the change would actually ease burden since certain transactions involving non-cash negotiable instruments would no longer have to be reported. Mutual funds rarely receive significant amounts of currency, and so FinCEN believes they are less likely than depository institutions to be used during the initial placement phase of money laundering.

ABA agrees that the nature of mutual funds minimizes the likelihood or risk that they would be used as vehicles for placing funds to be laundered.

³ Joint ABA/ABASA letter to FinCEN on the confidentiality of SARs, June 5, 2009,

<http://www.aba.com/aba/documents/Compliance/2009/SARLtr5June2009.pdf>

⁴ 31 U.S. Code 5312(2)(I).

⁵ 74 *Federal Register* 26997.

Moreover, since mutual funds are already required to report suspicious transactions and since a large infusion of cash would most likely be reported as suspicious, whether the company uses the Form 8300 or the CTR to report the incoming cash is immaterial for BSA purposes. However, since the focus of the CTR is tailored to large cash transactions and since other financial institutions already use the CTR for reporting, ABA finds this change logical.

Wire Transfers and the Travel Rule. The second major change that will take place if FinCEN reclassifies mutual funds as “financial institutions” is that mutual funds would also be required to comply with the provisions of the Travel Rule. Again, the intent is to apply the same rules to mutual funds that apply to other financial institutions, such as depository institutions, brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities. Since mutual funds are already subject to recordkeeping requirements under the Investment Company Act of 1940 and the Securities Exchange Act of 1934, FinCEN believes this change will have minimal impact on mutual funds or their transfer agents.

ABA agrees that this change is appropriate. However, it is not clear that it will only have a minimal impact on mutual funds or their compliance mandates. While it is true that mutual funds are already subject to a number of requirements to track and report information to comply with separate SEC rules, the changes mutual funds must undertake to comply with FinCEN regulations may be complicated. These changes will require software and data-processing changes at a time when the industry is already facing other data processing revisions. Therefore, ABA strongly encourages FinCEN to allow ample time for companies to transition to these new requirements. While some may be able to adapt to the Travel Rule relatively simply, other mutual funds – especially smaller companies – are likely to need additional time to adjust and update their systems. ABA believes that in the current environment, including the need to address questions once implementation begins, FinCEN should allow 18 to 24 months for the transition.

Conclusion. ABA agrees with FinCEN’s logic for classifying mutual funds, or open-end investment companies, as financial institutions for BSA purposes. Since mutual funds are already subject to many of the same BSA requirements as other financial institutions, taking this last step is appropriate. By treating mutual funds the same as other financial companies for BSA purposes, especially those subject to SEC requirements, the change should streamline and reduce the overall compliance burdens. In fact, ABA believes that the proposal may help facilitate enterprise-wide risk management programs.

While there will be burdens during the transition, ABA believes the change will be beneficial once the transition is completed. However, ABA also strongly encourages FinCEN to work with mutual funds to address unanticipated or unexpected challenges that may arise during the transition.

Thank you for the opportunity to comment. If you have any questions or would like additional information, please contact the undersigned by telephone at 202-663-5029 or by e-mail at rowe@aba.com.

Sincerely,

A handwritten signature in black ink, reading "Robert G. Rowe, III". The signature is written in a cursive style with a horizontal flourish at the end.

Robert G. Rowe, III
Vice President & Senior Counsel