
TO: Our Clients and Friends
FROM: Godfrey & Kahn, S.C.
DATE: May 23, 2006
RE: Anti-Money Laundering Update: Mutual Funds to Report Suspicious Activity

Mutual funds will be required to report suspicious activity to the government under a new rule enacted by the Treasury Department's Financial Crimes Enforcement Network ("FinCEN"). The rule applies to transactions occurring after October 31, 2006. The new rule is part of a series of steps undertaken by FinCEN to address the risk of money laundering by mutual funds.

New Requirements

Suspicious Activities. The new rule requires a fund to report any suspicious activity that involves or aggregates at least \$5,000 in funds or other assets. Although not required, a fund may voluntarily report a suspected violation that involves less than \$5,000. The following four categories of activity trigger the reporting requirement:

- a transaction involving funds derived from illegal activity;
- a transaction designed to evade anti-money laundering ("AML") regulation;
- a transaction that appears to serve no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage; and
- a transaction used to facilitate criminal activity.

A fund may contract with a service provider, such as its transfer agent, to perform suspicious activity reporting.

Filing Procedures. A suspicious transaction must be reported by completing FinCEN Form 101 (Suspicious Activity Report by the Securities and Futures Industries) ("Form SAR-SF"), a copy of which is attached. Form SAR-SF must be filed with FinCEN within 30 calendar days after the suspicious activity is first detected, except that if no suspect is identified on the date of initial detection, the filing may be delayed for an additional 30 days to identify a suspect. In addition to filing a report, a fund must notify an appropriate law enforcement authority in situations that require immediate attention, such as ongoing money laundering schemes or suspected terrorist financing. A fund may voluntarily report suspicious transactions that may relate to terrorist activity by calling FinCEN's Financial Institutions Hotline at (866) 556-3974 and may also report such activity to the SEC.

Joint Filing. A single transaction may require suspicious activity reporting by multiple related funds or a fund and other financial institutions involved in the transaction (i.e., a broker-dealer or bank). The rule provides for joint filing on behalf of all funds and financial institutions involved in the transaction.

Recordkeeping. For a five year period after a report is filed, a fund must maintain: (i) copies of the report, whether filed by the fund or filed jointly by another financial institution on behalf of the fund; and (ii) originals and copies of the documentation related to the filing of the report.

Confidentiality of Reports. Persons who file a report are prohibited from disclosing that a report has been filed, except to FinCEN, the SEC or another specified agency. However, a fund and other financial institutions involved in a suspicious transaction may share information in order to determine whether the transaction must be reported and otherwise in connection with preparing a joint report.

Limitation of Liability. A fund and its directors, officers, employees and agents are protected from liability for any disclosure contained in a report or the failure to disclose the fact that a report was filed.

Next Steps

Mutual fund firms should take the following steps prior to October 31, 2006:

Review and revise, if necessary, the AML program, including those policies and procedures of the fund's transfer agent.

Present any material amendments to the AML program to the fund's board of directors for approval.

Provide training to employees with responsibility under the AML program regarding the process of identifying and reporting suspicious activity.

Discuss AML policies and procedures with your affiliates, transfer agent and other service providers to assess compliance with the new rule and to coordinate the potential filing of a joint report.

Review the fund's contract with its transfer agent to confirm that suspicious activity reporting is covered, if the fund expects to delegate the reporting function.

Review and revise, if necessary, the fund's prospectus or SAI disclosure related to the fund's AML policies and procedures.

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Please do not hesitate to contact us if we can be of assistance with respect to your efforts to comply with these requirements.

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