

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA37

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Transactions**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains an amendment to the regulations implementing the statute generally known as the Bank Secrecy Act. The amendment would require mutual funds to report suspicious transactions to the Department of the Treasury. The amendment constitutes a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Written comments on all aspects of the notice of proposed rulemaking are welcome and must be received on or before March 24, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC, area may be delayed. Comments submitted by electronic mail may be sent to regcomments@fincen.treas.gov, with the caption, in the body of the text, “ATTN: NPRM—Suspicious Transaction Reporting—Mutual Funds.” Comments also may be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, Virginia 22183–0039, ATTN: NPRM—Suspicious Transaction Reporting—Mutual Funds. Comments should be sent by one method only. For additional instructions on the submission of comments, see

SUPPLEMENTARY INFORMATION under the heading “Submission of Comments.”

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs, FinCEN, (202) 354–6400; and Office of Chief Counsel, FinCEN, at (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**I. Background****A. Statutory Provisions**

The Bank Secrecy Act¹ authorizes the Secretary of the Treasury, *inter alia*, to

issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.² Regulations implementing title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

With the enactment of 31 U.S.C. 5318(g) in 1992,³ Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA Patriot Act, subsection (g)(1) states generally:

The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further:

If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—

(i) The financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

(ii) No officer or employee of the Federal government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any

director, officer, employee, or agent of any financial institution—

That makes a voluntary disclosure of any possible violation of law or regulation to a government agency or a makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, “to the extent practicable and appropriate,” to designate “a single officer or agency of the United States to whom such reports shall be made.”⁴ The designated agency is in turn responsible for referring any report of a suspicious transaction to “any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”⁵

B. Overview of Mutual Funds

The application of the proposed rule would be limited to investment companies that are “mutual funds,” which are open-end management investment companies as described in the Investment Company Act. Mutual funds are by far the predominant type of investment company. In 2001, approximately \$7 trillion was invested in U.S. mutual funds, representing more than 95 percent of the assets held by investment companies regulated by the Securities and Exchange Commission (“SEC”).⁶ Currently, more than 3000 active mutual funds are registered with the SEC.⁷

⁴ This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency “pursuant to any applicable provision of law.” 31 U.S.C. 5318(g)(4)(C).

⁵ 31 U.S.C. 5318(g)(4)(B).

⁶ The staff of the SEC estimates, based on filings with the SEC, that as of December 2001, approximately \$6.97 trillion was invested in U.S. mutual funds (including \$741 billion invested in open-end management companies that fund variable life insurance and variable annuity contracts, and \$23 billion invested in open-end management companies that are exchange-traded funds).

⁷ Approximately 1400 of these funds are “series companies” with an aggregate 7200 portfolios. A “series company” is a registered investment company that issues two or more classes or series of preferred or special stock, each of which is

¹ Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5331.

² Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the “USA Patriot Act”), Public Law 107–56.

³ 31 U.S.C. 5318(g) was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the “Annunzio-Wylie Anti-Money Laundering Act”), title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.