



Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2006-G008

Issued: May 3, 2006

Subject: Application of the Regulations regarding Special Due Diligence Programs for Certain Foreign Accounts to NSCC Fund/SERV Accounts

The Financial Crimes Enforcement Network is issuing this guidance to clarify the due diligence obligations of mutual funds under the regulations implementing section 312 of the USA PATRIOT Act (“section 312”).¹ Specifically, this guidance addresses the issue of for whom a mutual fund establishes, maintains, administers, or manages an account when its shares are purchased or redeemed by a U.S. financial institution through the Fund/SERV system of the National Securities Clearing Corporation (“NSCC”) on behalf of a foreign financial institution.

It is our understanding that NSCC’s Fund/SERV system streamlines the clearance and settlement of mutual fund transactions by enabling NSCC members to transact business with hundreds of mutual fund families and thousands of mutual funds through a single, standardized process. Transactions in mutual fund securities cleared and settled through Fund/SERV are recorded by a mutual fund’s transfer agent on the NSCC member’s account, although the member in certain circumstances also may rely upon the fund’s transfer agent to perform discrete recordkeeping tasks pursuant to a networking agreement. In order for a foreign financial institution to effect mutual fund purchases and redemptions through Fund/SERV it must either establish an account with an NSCC member, or become directly a member of NSCC.²

Based on the facts and circumstances presented, we believe that when an NSCC member is a U.S. financial institution subject to the provisions of section 312 a mutual fund establishes, maintains, administers, or manages an account for the NSCC member, rather than for the NSCC member’s customer.³ In the event that a foreign financial institution becomes an NSCC member, the mutual fund *would* be required to treat that foreign financial institution as a correspondent account subject to the appropriate level of due diligence and monitoring.

¹ *Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts; Final Rule and Proposed Rule*, 71 Fed. Reg. 496 (January 4, 2006).

² We have been made to understand that NSCC membership is limited to financial institutions domiciled or regulated in the United States and other firms approved by the NSCC Board of Directors. Currently, no foreign financial institution is an NSCC member firm.

³ This determination is limited to a mutual fund’s obligations under section 312 in the particular situation described above, and should not be interpreted as a limitation upon the mutual fund’s obligations under section 312 in separate circumstances or its obligations pursuant to other Bank Secrecy Act regulations.