



Mutual Funds

Assessing the Impact of Amendments to the Regulations
Defining Mutual Funds as Financial Institutions
Effective May 14, 2010



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Purpose

On April 14, 2010, the Financial Crimes Enforcement Network (FinCEN) published a final rule that became effective on May 14, 2010, the Amendment to the Bank Secrecy Act Regulations – Defining Mutual Funds as Financial Institutions.¹ The amendment was intended to streamline certain requirements for mutual funds by subjecting mutual funds to rules on the filing of FinCEN Form 104, Currency Transaction Report (CTR) and on the creation, retention, and transmittal of records or information for transmittals of funds.² FinCEN is committed to reviewing the impact of new regulations, or significant changes to existing regulations, and providing affected institutions with written feedback as part of its efforts to efficiently and effectively implement provisions of the Bank Secrecy Act (BSA).³

The primary purpose of this report is to assess the effectiveness of FinCEN's rulemaking in bringing the mutual fund industry into greater conformity with other parts of the financial industry that currently file CTRs. To make this assessment, this report highlights key findings from analyses based upon trends in industry reporting.

As FinCEN provides this and other feedback to the industry on changes to its regulations and/or trends it finds in overall regulatory reporting, FinCEN encourages financial institutions to respond with reactions and comments to this report and other feedback products. FinCEN provides this information so that financial institutions can improve the effectiveness and efficiency of their AML compliance and general anti-fraud programs. Accordingly, FinCEN wants to make these products as beneficial to industry as possible. Please provide FinCEN with any feedback regarding the contents of this report by contacting Webmaster@fincen.gov.

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1. http://www.fincen.gov/statutes_regs/frn/pdf/MutualFund.pdf. Mutual funds had until January 10, 2011, to comply with the Recordkeeping and Travel Rule requirements imposed under 31 CFR 1010.410.
 2. The amendment also harmonized the definition of mutual fund in the anti-money laundering (AML) program rule with the definitions found in the other FinCEN rules to which mutual funds are subject.
 3. The BSA is codified in part at 31 U.S.C. § 5311 et seq. FinCEN's rules implementing the BSA appear at 31 CFR Chapter X Parts 1000-1099 (formerly 31 CFR Part 103).

Background

In April of 2010, FinCEN published a rule that replaced a mutual fund's requirement to file IRS/FinCEN Form 8300 – Report of Cash Payments Over \$10,000 Received in a Trade or Business – with a requirement to file CTRs for any transaction involving a transfer of more than \$10,000 in currency by, through, or to the mutual fund.⁴ The definition of “currency” for purposes of the CTR rule is different from and less inclusive than the definition of “currency” in the Form 8300 rule.⁵ The amendment sought to reduce unnecessary filings for mutual funds, helping FinCEN and mutual funds focus attention on the information most needed to fight money laundering, fraud, and other financial crime. This assessment, undertaken 18 months after the rule went into effect, confirms the effect of the steps that FinCEN has taken to bring the mutual fund industry into greater conformity with other financial institutions that file CTRs.

4. 31 CFR 1010.311.

5. For purposes of CTR filing currency is defined as the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used as a medium of exchange in a foreign country. See 31 CFR 1010.100(m). For purposes of Form 8300 filing, currency is defined as coin and currency of the United States or of any other country that is designated as legal tender and that circulates and is customarily used as a medium of exchange in a foreign country, and includes cashier's checks, bank drafts, traveler's checks, and money orders. See 31 CFR 1010.330(c)(1).

Findings

Based on FinCEN's analysis of Form 8300 filing trends, FinCEN believes that the mutual fund industry has largely understood the intent of the rule, and that most mutual funds made the transition to filing CTRs instead of Form 8300s. Specifically, FinCEN findings show that the number of Form 8300s filed by mutual funds has declined considerably over the course of the year.⁶ FinCEN anticipates that these Form 8300 filing numbers will continue to decline and cease altogether as the mutual fund industry fully implements its amended filing obligations.⁷ Notwithstanding this positive trend, FinCEN wants to reiterate that the final rule completely replaced a mutual fund's requirement to file a Form 8300 with a requirement to file a CTR under 31 CFR 1010.311. Further, mutual funds should continue to report suspicious activity on the SAR, since mutual funds are subject to SAR reporting requirements that make the reporting of suspicious transactions on a Form 8300 redundant. Since the rule became effective, mutual funds have filed no CTRs. This finding is not unusual because mutual funds rarely receive or disburse significant amounts of currency in transactions with their shareholders.⁸

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6. In September 2011, for example, mutual funds filed only two Form 8300s in comparison to March 2011, where mutual funds filed 26 Form 8300s.
 7. Overall, FinCEN found that Form 8300 filings in 2011 (90 reports) fell almost 70 percent from 2010 (296 reports). In 96 percent of the 2011 Form 8300 filings, mutual funds reported on transactions with cashier's checks. Mutual fund filers have only indicated suspicious activity on Form 8300 by checking box 1b in 10 filings since the effective date of the rule. In 90 percent of those instances, the filer also submitted one or more related SAR-SFs on the same subject. FinCEN found that when suspicious activity was indicated on the Form 8300 filing, the payment method was most likely to be a money order.
 8. Mutual funds have reported only about a dozen actual currency transactions on Form 8300 since 2002, the last in 2009.



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