

guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this part.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Effective date.* A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

Dated: April 23, 2002.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 02-10453 Filed 4-24-02; 4:09 pm]

**BILLING CODE 4810-02-P**

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA28

#### Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** FinCEN is issuing this interim final rule to prescribe minimum standards applicable to mutual funds pursuant to the revised provision in the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs.

**DATES:** This interim final rule is effective April 24, 2002. Written comments may be submitted to FinCEN on or before May 29, 2002.

**ADDRESSES:** Submit comments (preferably an original and four copies)

to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 352 Mutual Fund Regulations. Comments may also be submitted by electronic mail to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption in the body of the text, "Attention: Section 352 Mutual Fund Regulations." Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622-0480; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622-1927; or Office of Chief Counsel (FinCEN), (703) 905-3590 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107-56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which becomes effective on April 24, 2002, amends section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 5318(h)(2) authorizes the Secretary, after consulting with the appropriate Federal functional regulator,<sup>1</sup> to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not otherwise subject to BSA regulation.

Although the BSA includes "an \* \* \*

<sup>1</sup> The Federal functional regulator for mutual funds is the Securities and Exchange Commission (Commission).

<sup>2</sup> 31 U.S.C. 5312(a)(2)(I).

entities defined as financial institutions, FinCEN has not previously defined the term for purposes of the BSA. The Investment Company Act of 1940 (codified at 15 U.S.C. 80a-1 et seq.) (the 1940 Act) defines investment company broadly<sup>3</sup> and subjects those entities to comprehensive regulation by the Commission. However, entities commonly known as hedge funds, private equity funds and venture capital funds are specifically excluded from the 1940 Act definition of investment company.<sup>4</sup> For purposes of the section 352 requirement that financial institutions establish anti-money laundering programs effective April 24, 2002, Treasury is limiting the application of this interim rule to those investment companies falling within the category of "open-end company" contained in section 5(a)(1) of the 1940 Act, which are commonly referred to as "mutual funds."<sup>5</sup>

Mutual funds are by far the predominant type of investment company. Other types of investment companies regulated by the Commission include closed-end companies and unit investment trusts. Closed-end companies typically sell a fixed number of shares in traditional underwritten offerings. Holders of closed-end company shares then trade their shares in secondary market transactions, usually on a securities exchange or in the over-the-counter market. Unit

<sup>3</sup> Section 3(a)(1) defines "investment company" as any issuer which (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

<sup>4</sup> Section 356 of the Act requires that the Secretary, the Federal Reserve and the Commission jointly submit a report to Congress, not later than October 26, 2002, on recommendations for effective regulations to apply the requirements of the BSA to investment companies as defined in section 3 of the 1940 Act, including persons that, but for the provisions that exclude entities commonly known as hedge funds, private equity funds, and venture capital funds, would be investment companies.

<sup>5</sup> By interim rule published elsewhere in this separate part of this issue of the **Federal Register**, Treasury is temporarily exempting investment companies other than mutual funds from the requirement that they establish anti-money laundering programs. Treasury is also temporarily deferring determining the definition of "investment company" for purposes of the BSA. However, it is likely that those entities excluded from the definition of "investment company" in the 1940 Act will be required to establish anti-money laundering programs pursuant to section 352.

investment trusts are pooled investment entities without a board of directors or investment adviser that offer investors redeemable units in an unmanaged, fixed portfolio of securities. Treasury will continue to consider the type of anti-money laundering program that would be appropriate for the issuers of these products, including the extent to which they pose a money laundering risk that is not more effectively covered by the anti-money laundering program of another financial institution involved in their distribution (e.g., a broker-dealer).

Currently, almost 3000 active mutual funds are registered with the Commission. At the end of fiscal year 2001, these companies managed or sponsored 8,313 mutual fund portfolios. During the last few years, mutual fund assets have dramatically increased. Since 1980, the number of mutual fund portfolios has increased 1370 percent and their assets have increased 4,659 percent. During fiscal year 2000 alone, assets managed by mutual funds increased by more than \$1.3 trillion. At the end of fiscal year 2001, mutual funds held \$6.4 trillion—more than double the \$3 trillion of insured deposits at commercial banks, and more than 95 per cent of the assets held by all investment companies regulated by the Commission. Approximately one-third of the assets managed by mutual funds are held in retirement accounts—both employer-sponsored plans and Individual Retirement Accounts (“IRAs”).<sup>6</sup>

A mutual fund offers its shares continuously and is required to provide its shareholders the right to redeem shares at net asset value on a daily basis. Virtually all mutual funds are externally managed. Their operations are conducted by affiliated organizations and third party service providers. An investment adviser is primarily responsible for selecting portfolio investments consistent with the objectives and policies stated in the mutual fund’s prospectus.<sup>7</sup> Administrative services are usually conducted by an investment adviser or an unaffiliated third party.

Mutual funds usually offer their shares to the public through a principal underwriter. Principal underwriters are regulated as broker-dealers and are subject to National Association of

Securities Dealers, Inc. rules.<sup>8</sup> Mutual funds employ transfer agents to conduct recordkeeping and related functions. Transfer agents maintain records of shareholder accounts, calculate and disburse dividends, and prepare and mail shareholder account statements, federal income tax information, and other shareholder notices. Some transfer agents prepare and mail statements confirming shareholder transactions and account balances, and maintain customer service departments to respond to shareholder inquiries.

A mutual fund is governed by a board of directors or trustees, which is responsible for overseeing the management of the fund’s business affairs. In order to avail themselves of certain Commission exemptive rules, most funds’ boards have a majority of directors who are independent of the fund’s investment adviser or principal underwriter.

In addition to purchasing shares directly from some mutual funds (“direct-sold funds”), investors may purchase mutual fund shares through a variety of distribution channels including broker-dealers (including sponsors of fund “supermarkets” where investors can purchase shares of several different mutual funds), insurance agents, financial planners, and banks. These alternative distribution channels usually maintain omnibus accounts with the mutual funds that they distribute. In these cases, the funds and their transfer agents do not know the identities of the individual investors. Only the distributor (e.g., a broker-dealer) will have contact with the individual investors, will receive and process individual investment and redemption requests, and will have access to individuals’ trading activity.

Because mutual funds do not usually receive from or disburse to shareholders significant amounts of currency, they are not as likely as banks to be used during the initial placement stage of the money laundering process. However, some structuring schemes used in the placement stage involve monetary instruments such as money orders, and money launderers could attempt to use mutual funds that accept these forms of payment. Money launderers would more likely attempt to use mutual fund accounts in the layering and integration stages of money laundering, rather than the placement stage. “Layering”

involves the distancing of illegal proceeds from their criminal source through the creation of complex layers of financial transactions. Money launderers could use mutual fund accounts to layer their funds by, for example, sending and receiving money and wiring it quickly through several accounts and multiple institutions, or by redeeming fund shares purchased with illegal proceeds and then reinvesting the proceeds received in another fund. Layering could also involve purchasing funds in the name of a fictitious corporation or an entity designed to conceal the true owner. Mutual funds could also be used for integrating illicit income into legitimate assets. “Integration” occurs when illegal proceeds appear to have been derived from a legitimate source. For example, if an individual were to redeem fund shares that were purchased with illegal proceeds and direct that the proceeds be wired to a bank account in the person’s own name, the transfer would appear legitimate to the receiving bank.

A recent survey conducted by the General Accounting Office of 310 direct-sold fund groups found that approximately 40 percent of those groups currently have some type of voluntary measures designed to prevent money laundering.<sup>9</sup> However, those measures rarely go beyond restrictions on accepting currency, and thus do not address possible use by money launderers during the layering and integration phases.<sup>10</sup> In light of this vulnerability, and after consultation with the Commission, Treasury has determined not to exercise its authority to exempt temporarily mutual funds from the section 352 requirement to implement anti-money laundering programs. Accordingly, the interim rule sets forth the minimum requirements applicable to such programs.

## II. The Anti-Money Laundering Program

The interim final rule requires that, by July 24, 2002, mutual funds develop and implement an anti-money laundering program reasonably designed to prevent them from being used to launder money or finance terrorist activities, which includes achieving and monitoring

<sup>9</sup> Before passage of the Act, the Investment Company Institute, a national association of the investment company industry, recommended procedures for funds to adopt to avoid being used by money launderers. See Money Laundering Compliance for Mutual Funds, Investment Company Institute, May 1999.

<sup>10</sup> Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Anti-Money Laundering Efforts in the Securities Industry, GAO-02-111, October 2001.

<sup>6</sup> See The 1990s: A Decade of Expansion and Change in the U.S. Mutual Fund Industry, Perspective, Investment Company Institute (Vol. 6, No. 3, July 2000).

<sup>7</sup> Advisers to mutual funds must register with the Commission and comply with the requirements of the Investment Advisers Act of 1940 (codified at 15 U.S.C. 80b-1 et seq.).

<sup>8</sup> On April 22, 2002, the Commission approved NASD Regulation Rule 3011, which requires its member firms to develop, and a member of the firm’s senior management to approve, programs designed to achieve and monitor compliance with the BSA and related regulations. See Securities Exchange Act Release No. 45798 (April 22, 2002).

compliance with the applicable requirements of the BSA and Treasury's implementing regulations.

The legislative history of the Act explains that the requirement to have an anti-money laundering program is not a one-size-fits-all requirement. The general nature of the requirement reflects Congress' intent that each financial institution should have the flexibility to tailor its program to fit its business, taking into account factors such as size, location, activities, and risks or vulnerabilities to money laundering. This flexibility is designed to ensure that all firms subject to the statute, from the largest to the very small firms, have in place policies and procedures appropriate to monitor for anti-money laundering compliance.<sup>11</sup>

In order to assure that this requirement receives the highest level of attention throughout the industry, the proposed rule requires that each company's program be approved in writing by its board of directors or trustees.<sup>12</sup> The four required elements of the anti-money laundering program are discussed below.

*(1) Establish and Implement Policies, Procedures, and Internal Controls Reasonably Designed To Prevent the Mutual Fund From Being Used To Launder Money or Finance Terrorist Activities, Including But Not Limited to Achieving Compliance With the Applicable Provisions of the Bank Secrecy Act and the Implementing Regulations Thereunder*

Written policies and procedures, which form the basis of any compliance program, should set forth clearly the details of the program, including the responsibilities of the individuals and departments involved. Because mutual funds operate through a variety of different business models, one generic anti-money laundering program for this industry is not possible; rather, each mutual fund must develop a program based upon its own business structure. This requires that each mutual fund complex identify its vulnerabilities to money laundering and terrorist financing activity, understand the BSA requirements applicable to it, identify the risk factors relating to these

requirements, design the procedures and controls that will be required to reasonably assure compliance with these requirements, and periodically assess the effectiveness of the procedures and controls.

Policies, procedures, and internal controls should be reasonably designed to detect activities indicative of money laundering. Transactions that could indicate potential money laundering include the use of fraudulent checks and unusual wire activity. For example, an investment in a fund by check or checks drawn on the account of a third party or parties, or by one or more wire transfers from an account of a third party or parties, in each case unrelated to the investor, could be indicative of attempted money laundering. Other examples of "red flags" that may indicate potential illegal activity include frequent wire transfer activity to and from a cash reserve account, coming from or sent to the same bank; large deposits with relatively small fund investments; frequent purchases of fund shares followed by large redemptions, particularly if the resulting proceeds are wired to unrelated third parties or bank accounts in foreign countries; and transfers to accounts in countries where drugs are known to be produced or other high-risk countries.<sup>13</sup>

Policies, procedures, and internal controls should also be reasonably designed to assure compliance with BSA requirements. The only BSA regulatory requirement currently applicable to mutual funds is the obligation to report on Form 8300 the receipt of cash or certain noncash instruments totaling more than \$10,000 in one transaction or two or more related transactions.<sup>14</sup> In order to develop a compliant anti-money laundering program, the program should be reasonably designed to detect and report not only transactions required to be reported on Form 8300, but also to detect activity designed to evade such requirements. Such activity, commonly known as "structuring," may involve the purchase of more than \$10,000 in fund shares with multiple money

orders, travelers' checks, or cashiers' checks or other bank checks, each with a face amount of less than \$10,000. Such methods of payment may be indicative of money laundering, particularly when the payment instruments were obtained from different sources or the payments were made at different times on the same day or on consecutive days or close in time.

We also note that mutual funds will be required to comply with BSA requirements regarding accountholder identification and verification pursuant to section 326 of the Act, as set forth in joint Treasury/Commission regulations required to be issued by October 26, 2002, and are likely to become subject to additional BSA requirements, including filing suspicious activity reports. As mutual funds become subject to additional requirements, their compliance programs will obviously have to be updated to include appropriate policies, procedures, training, and testing functions.

Because mutual funds typically conduct their operations through separate entities, which may or may not be affiliated, some elements of the compliance program will best be performed by personnel of these separate entities. It is permissible for a mutual fund to contractually delegate the implementation and operation of its anti-money laundering program to another affiliated or unaffiliated service provider, such as a transfer agent. Any mutual fund delegating responsibility for aspects of its anti-money laundering program to a third party must obtain written consent from the third party ensuring the ability of federal examiners to obtain information and records relating to the anti-money laundering program and to inspect the third party for purposes of the program. However, the mutual fund remains responsible for assuring compliance with this regulation. That means that it must take reasonable steps to identify the aspects of its operations that may give rise to BSA regulatory requirements or are vulnerable to money laundering or terrorist financing activity, develop and implement a program reasonably designed to achieve compliance with such regulatory requirements and prevent such activity, monitor the operation of its program and assess its effectiveness. For example, it would not be sufficient to simply obtain a certification from its delegate that it "has a satisfactory anti-money laundering program."

With respect to omnibus accounts, a mutual fund's anti-money laundering program could have a more limited scope. Typically, a fund has little or no

<sup>11</sup> See USA PATRIOT Act of 2001: Consideration of H.R. 3162 Before the Senate (October 25, 2001) (statement of Sen. Sarbanes); Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives (October 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the Act).

<sup>12</sup> The board's approval could be given at its first regularly scheduled meeting after the program is adopted.

<sup>13</sup> 18 U.S.C. 1956 and 1957 make it a crime for any person, including an individual or company, to engage knowingly in a financial transaction with the proceeds from any of a long list of crimes or "specific unlawful activity." Although the standard of knowledge required is "actual knowledge," actual knowledge includes "willful blindness." Thus, a person could be deemed to have knowledge that proceeds were derived from illegal activity if he or she ignored "red flags" that indicated illegality.

<sup>14</sup> See 31 CFR 103.30. If a mutual fund complex includes a registered broker-dealer (as principal underwriter) or a bank (as transfer agent), then those financial institutions would also be subject to separate BSA requirements.

information about the identities and transaction activities of the individual customers represented in an omnibus account. For example, when fund shares are sold through a broker-dealer, the broker-dealer has all of the relevant information about the customer. When that customer places an order for fund shares with her broker-dealer, her individual order is combined with all other purchase or redemption orders to the fund (or its transfer agent). That net order is then processed in the omnibus account. This rule does not require that a mutual fund obtain any additional information regarding individual transactions that are processed through another entity's omnibus account. Consequently, given Treasury's risk-based approach to anti-money laundering programs for financial institutions generally, including mutual funds, it is not expected that mutual funds will scrutinize activity in omnibus accounts to the same extent as individual accounts. Nevertheless, mutual funds would need to analyze the money laundering risks posed by particular omnibus accounts based upon a risk-based evaluation of relevant factors regarding the entity holding the omnibus account, including such factors as the type of entity, its location, type of regulation, and of course, the viability of its anti-money laundering program.

*(2) Provide for Independent Testing for Compliance To Be Conducted by Company Personnel or by a Qualified Outside Party*

It is necessary that a mutual fund conduct periodic testing of its program, in order to assure that the program is indeed functioning as designed. Such testing should be accomplished by personnel knowledgeable regarding BSA requirements. Such testing may be accomplished either by employees of the fund, its affiliates, or unaffiliated service providers so long as those same employees are not involved in the operation or oversight of the program. The frequency of such a review would depend upon factors such as the size and complexity of the mutual fund complex and the extent to which its business model may be more subject to money laundering than other institutions. A written assessment or report should be a part of the review, and any recommendations resulting from such review should, of course, be promptly implemented or submitted to the board for consideration.

*(3) Designate a Person or Persons Responsible for Implementing and Monitoring the Operations and Internal Controls of the Program*

The mutual fund must charge an individual (or committee) with the responsibility for overseeing the anti-money laundering program. The person (or group of persons) should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures throughout the fund complex. Whether the compliance officer is dedicated full time to BSA compliance would depend upon the size and complexity of the fund complex. Although in many cases the implementation and operation of the compliance program will be conducted by entities (and their employees) other than the mutual fund, the person responsible for the supervision of the overall program should be a fund officer.

*(4) Provide Ongoing Training for Appropriate Persons*

Employee training is an integral part of any anti-money laundering program. Employees of the fund (and of its affiliated and third-party service providers) must be trained in BSA requirements relevant to their functions and in recognizing possible signs of money laundering that could arise in the course of their duties, so that they can carry out their responsibilities effectively. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The level, frequency, and focus of the training would be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activity. Consequently, the training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employees' roles and functions in the anti-money laundering program.<sup>15</sup> For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur

<sup>15</sup> Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and OFAC and other government lists.

when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

Finally, in addition to complying with the requirements of this interim regulation, mutual funds are encouraged to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1-866-566-3974).

As an administrative matter, this rulemaking includes an amendment to the delegation of examination authority by FinCEN to the Commission, to enable the Commission to examine mutual funds for compliance with this regulation.

### III. Implementation Date

Pursuant to section 103.130(b), a mutual fund is required to comply with the anti-money laundering program requirements of 31 CFR 103.130 by July 24, 2002.

### IV. Administrative Procedure Act

The provisions of 31 U.S.C. 5318(h)(1), requiring all financial institutions to establish anti-money laundering programs with at least four identified elements, become effective April 24, 2002. This interim rule provides guidance to mutual funds on how to comply with the law in effect on that date and does not impose any obligation on any financial institution that is not required by section 352 of the Act. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

### V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

### VI. Executive Order 12866

This interim final rule is not a "significant regulatory action" as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

### VII. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of

information contained in this interim final rule has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1506-0020. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information should be sent to the Office of Management and Budget, Attn: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia, 22183.

FinCEN specifically invites comments on the following subjects: (a) Whether the collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this interim final rule is in 31 CFR 103.130(b). The information will be used by federal agencies to verify compliance by mutual funds with the provisions of 31 CFR 103.130. The collection of information is mandatory. The likely recordkeepers are businesses.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.130(a) is presented to assist those persons wishing to comment on the information collection.

*Description of Recordkeepers:* Mutual funds, as defined in 31 CFR 103.130(a).

*Estimated Number of Recordkeepers:* 3,000.

*Estimated Average Annual Burden Hours Per Recordkeeper:* The estimated average burden associated with the

collection of information in this interim final rule is 1 hour per recordkeeper.

*Estimated Total Annual Recordkeeping Burden:* 3,000 hours.

#### List of Subjects in 31 CFR Part 103

Banks, banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

### PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5331; title III, secs. 314, 352, Pub. L. 107-56, 115 Stat. 307.

2. In Subpart E, revise § 103.56(b)(6) to read as follows:

#### § 103.56 Enforcement.

\* \* \* \* \*

(b) \* \* \*

(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities and investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80-1 et seq.);

\* \* \* \* \*

3. In subpart I, add new § 103.130 to read as follows:

#### § 103.130 Anti-money laundering programs for mutual funds.

(a) For purposes of this section, "mutual fund" means an open-end company as defined in section 5(a)(1) of the Investment Company act of 1940 (15 U.S.C. 80a-5(a)(1)).

(b) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the Commission.

(c) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money

laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

Dated: April 23, 2002.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 02-10454 Filed 4-24-02; 4:09 pm]

BILLING CODE 4810-02-P

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA28

#### Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Operators of a Credit Card System

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** FinCEN is issuing this interim final rule to define and provide guidance to operators of credit card systems concerning the revised provision in the Bank Secrecy Act that requires them to establish anti-money laundering programs.

**DATES:** This interim final rule is effective April 24, 2002. Written comments may be submitted to FinCEN on or before May 29, 2002.

**ADDRESSES:** Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 352 CC Regulations. Comments may also be submitted by electronic mail to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption in the body of the text, Attention: Section 352 CC Regulations." Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Office of the Chief Counsel (FinCEN), (703) 905-3590; Office of the Assistant General Counsel for Enforcement