DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA26

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Unregistered Investment Companies

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: FinCEN is proposing to amend the Bank Secrecy Act ("BSA") regulations to prescribe minimum standards applicable to certain unregistered investment companies, such as hedge funds, commodity pools, and similar investment vehicles, pursuant to the revised provision in the BSA that requires financial institutions to establish anti-money laundering programs.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only. Comments (preferably an original and four copies) may be mailed to: FinCEN, P.O. Box 39, Vienna, Virginia 22183-1618, *Attention:* NPRM - Section 352 Unregistered Investment Company Regulations. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* again with a caption, in the body of the text, "*Attention:* NPRM – Section 352 Unregistered Investment Company Regulations." Comments may be inspected, 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 Act of 2001 (Public Law 107-56) ("USA Patriot Act" or "Act"). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the BSA, which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 352(a) of the Act, which became effective on April 24, 2002, amended 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 the program. Section 5318(h)(2) authorizes the Secretary, after consulting with the appropriate Federal functional regulator, 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.

Under the BSA, the definition of "financial institution" includes an "investment company,"[1] a term that is not defined by the BSA or any rule yet adopted by FinCEN. The Investment Company

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[1] 31 U.S.C. 5312(a)(2)(I).

Act of 1940 (codified at 15 U.S.C. 80a) ("1940 Act") defines the term, and subjects registered investment companies to a comprehensive scheme of regulation administered by the Securities and Exchange Commission ("SEC").[2] In April 2002, FinCEN issued an interim final rule requiring investment companies that are "mutual funds" (*i.e.*, registered open-end management investment companies as described in the 1940 Act) to develop and implement anti-money laundering programs reasonably designed to prevent them from being used to launder money or finance terrorist activities.[3] By separate interim rule, Treasury temporarily exempted investment companies other than mutual funds from the requirement of section 5318(h)(1) of the BSA that they establish anti-money laundering programs.[4]

In the interim rule on anti-money laundering programs for mutual funds, Treasury observed that there are a number of entities excluded from the 1940 Act definition of "investment company,"[5]

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[2] Section 3(a)(1) of the 1940 Act defines "investment company" as any issuer that (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. 15 U.S.C. 80a-3(a)(1).

[3] FinCEN; Anti-Money Laundering Programs for Mutual Funds, 67 FR 21117 (Apr. 29, 2002). Under the rule, the anti-money laundering program must include achieving and monitoring compliance with the applicable requirements of the BSA and Treasury's implementing regulations.

[4] *See* 67 FR 21110 (Apr. 29, 2002).

[5] 67 FR 21117, *supra* note 3. Treasury also observed that, while mutual funds are the predominant type of registered investment company, other types of investment companies are regulated by the SEC, such as closed-end companies and unit investment trusts. A closed-end company typically sells a fixed number of shares in an underwritten offering. 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. A unit investment trust is a pooled investment entity without a board of directors or investment adviser, and offers investors redeemable units in an unmanaged, fixed portfolio of securities. Treasury stated its intention to continue to consider the type of anti-money laundering program that would be appropriate for these companies, 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. *Id.* at 21117-21118. That process is continuing.

and that those entities in the future would likely be required to establish anti-money laundering programs under section 352 of the Act.[6] Today, FinCEN is proposing a new rule that would define an investment company to include certain investment vehicles not subject to regulation under the 1940 Act, and require these entities to establish anti-money laundering programs in accordance with guidelines included in the rule. These guidelines are substantially the same as those FinCEN has established for mutual funds.

II. Unregistered Investment Companies—General Issues

While Treasury believes it is incumbent upon all United States businesses to be on guard against their use by terrorists or other criminals for money laundering, the BSA imposes legal obligations only on certain "financial institutions" to develop and implement anti-money laundering programs. The "financial institutions" covered by the BSA are listed in section 5312 of that Act, and generally include businesses that deal in cash, securities, or other types of assets that can be readily converted to cash. The term "unregistered investment company," which is a subset of the term "investment company," could include a large range of entities from small investment clubs to large corporate holding companies, and, in between, a vast array of financing vehicles that are unlikely to be used for money laundering purposes. An overly expansive definition of "unregistered investment company" would unnecessarily burden businesses not likely to be used to launder money. Moreover, it would bring within the scope of the BSA's anti-money laundering requirements so many entities as to tax resources of the federal regulatory agencies charged with oversight of the financial institutions, diminishing the effectiveness of that oversight. To avoid these results, the

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[6] *Id.* at n.5. Section 356(c) of the USA Patriot Act requires that the Secretary, the Board of Governors of the Federal Reserve System ("Federal Reserve") and the SEC jointly submit a report to Congress by October 26, 2002 recommending effective regulations to apply the requirements of the BSA to investment companies as defined in section 3 of the 1940 Act, as well as to persons that would be investment companies but for the exceptions provided in sections 3(c)(1) or 3(c)(7) [15 U.S.C. 80a-3(c)(1), 3(c)(7)].

Treasury staff has worked closely with staffs of the SEC and the Commodity Futures Trading Commission ("CFTC") to fashion a definition designed to balance the need for a comprehensive national program to prevent money laundering against the burdens imposed by the BSA on businesses, including small businesses.

Definition of Unregistered Investment Company

The proposed rule would define "unregistered investment company" as (i) an issuer that, but for the exclusions provided in sections 3(c)(1)[7] and 3(c)(7)[8] of the 1940 Act, would be an investment company under the 1940 Act,[9] (ii) a commodity pool, and (iii) a company that invests primarily in real estate and/or interests therein. This definition generally would include entities consisting of pools of various asset classes: securities, commodity interests, and real estate. Several types of investment companies that are not registered under the 1940 Act would be covered by this definition,

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[7] Section 3(c)(1) of the 1940 Act generally excludes from the definition of "investment company" any issuer that is not engaged in or proposing to engage in a public offering and whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons. 15 U.S.C. 80a-3(c)(1).

[8] Section 3(c)(7) of the 1940 Act excludes from the definition of "investment company" an issuer in which all the investors are "qualified purchasers," as defined in the 1940 Act, and that has not engaged in a public offering (as defined in 15 U.S.C. 77d and 17 CFR 230.501-230.508 (Regulation D)). 15 U.S.C. 80a-3(c)(7). The 1940 Act and SEC rules define a "qualified purchaser" as a natural person who possesses at least $5 million in investments; a non-natural person that possesses at least $25 million in investments or is owned exclusively by qualified purchasers; and a qualified institutional buyer. *See* 15 U.S.C. 80a-2(a)(51); 17 CFR 270.2a51-1 to 270.2a51-3. As a practical matter, section 3(c)(7) funds also may tend to limit the number of record holders of their securities to less than 500 persons in order to avoid being subject to the public reporting requirements of the Securities Exchange Act of 1934 [15 U.S.C.78l(g)]. *See* Report of the President's Working Group on Financial Markets, "Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management," app.B at B-3 (1999) (www.treas.gov/press/releases/reports/hedgefund.pdf.) ("Working Group Report").

[9] The proposed rule therefore would use the definition of "investment company" in the 1940 Act as a reference point. *See also* section 356(c) of the Act (requiring Treasury, the Federal Reserve, and the SEC to submit a report to Congress recommending effective regulations to apply BSA requirements to investment companies *as defined in section 3 of the 1940 Act*, as well as persons that would be investment companies but for certain exceptions from that definition). Treasury anticipates that the CFTC will participate in the development of this report because many persons that will be considered in the report are affiliated with CFTC-registered and regulated entities.

including hedge funds,[10] private equity funds,[11] venture capital funds,[12] commodity pools[13] and real estate investment trusts (REITs),[14] in order to protect against their use for possible money laundering.

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[10] The term "hedge fund" refers generally to a privately offered investment vehicle in which the contributions of the participants are pooled and invested in a portfolio of securities, commodity futures contracts, or other assets. In 1999, the President's Working Group on Financial Markets described a hedge fund as: "any pooled investment vehicle that is privately organized, administered by professional investment managers, and not widely available to the public." Working Group Report, *supra* note 8, at 1. Hedge funds are not registered under the 1940 Act because they are offered in a manner that makes them eligible for exceptions to the definition of "investment company" in sections 3(c)(1) or 3(c)(7) of the 1940 Act. *See supra* notes 7-8. These funds are generally only offered to persons who qualify as "accredited investors" or "qualified purchasers" under the federal securities laws. *See* 17 CFR 230.501(a) (definition of "accredited investor"); 15 U.S.C. 80a-1(a)(51) (definition of "qualified purchaser"). Hedge funds may be operated by CPOs. Some hedge funds also may be advised by investment advisers registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b] or commodity trading advisors registered under the CEA. *See* 7 U.S.C. 1a(5)-(6). Investors in a hedge fund are typically able to redeem their investments on a quarterly, semi-annual, or annual basis.

[11] Private equity funds are privately offered investment vehicles in which the contributions of institutions and wealthy individuals are pooled and invested in a portfolio of unregistered equity securities (of public or private companies) managed by a professional investment adviser. Private equity funds usually have a limited lifespan of 8 to 12 years, and investors are only able to redeem their investments when the funds liquidate. These funds also do not register under the 1940 Act in reliance on the same exemptions relied on by hedge funds. *See supra* note 11.

[12] Venture capital funds are privately offered investment vehicles in which the contributions of the participants are pooled to invest in start-up companies. The advisers to these funds provide substantial managerial assistance to the start-up companies in which they invest. Venture capital funds typically have a fixed life (usually 10 years). Once the fund has reached its target size, it is closed to further investment so that the fund has a fixed capital pool from which to make its investments. Investors typically are not able to redeem their investments before the fund matures or expires. These funds do not register under the 1940 Act in reliance on the exemptions relied on by hedge funds. *Id*

[13] A "pool" is defined in Rule 4.10(d) under the Commodity Exchange Act ("CEA") as "any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests." 17 CFR 4.10(d).

[14] REITs, in general, are investment vehicles in which the contributions of the participants are pooled to invest in real estate, and sometimes in real estate-related securities. In order to yield certain federal tax benefits REITs must satisfy a range of ownership, income, asset, distribution and organizational requirements under the Internal Revenue Code. *See* 26 U.S.C. 856. REITs are organized as business trusts, corporations, or unincorporated associations that are specifically designated as REITs for federal income tax purposes. REITs typically have a lifespan of 10 to 15 years. Interests in REITs may be publicly or privately offered and some are traded on securities exchanges. An investor may request redemption of its interest in some of those REITs that are not publicly traded. Some REITs

As noted above, the proposed rule would apply to commodity pools, which are operated by commodity pool operators ("CPOs").[15] CPOs that are not exempted under CFTC regulations are registered with, and subject to regulation by, the CFTC and the National Futures Association ("NFA"), the futures industry self-regulatory organization. The USA Patriot Act added CPOs to the BSA definition of "financial institution."

FinCEN requests comment whether there are other entities, not covered by other rules requiring anti-money laundering programs, that pool assets and provide a similar opportunity for money laundering or terrorist financing, and whether such entities should be required by the final rule to establish anti-money laundering programs.

Because of the broad scope of the type and nature of businesses that may rely on the exceptions to the 1940 Act, may be commodity pools, or that may invest in real estate, we propose to narrow the definition of unregistered investment company through three limitations and three exceptions described below.

(i) *Limitations*

(A) Redemption Rights. Under the proposed definition, an "unregistered investment company" would include only those companies that give an investor a right to redeem any portion of his or her ownership interest within two years after that interest was purchased.[16] Because these

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are not registered under the 1940 Act because they qualify for the exceptions provided by section 3(c)(5)(C) of the 1940 Act or rule 3a-7 thereunder [15 U.S.C. 80a-3(c)(5)(C); 17 CFR 270.3a-7].

[15] A CPO is defined in the CEA to mean "any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, except that the term does not include such persons not within the intent of the definition of the term as the Commission [CFTC] may specify by rule, regulation, or order." 7 U.S.C. 1a(5).

[16] As a result, a fund would be excepted from the definition only if it precluded an investor from redeeming each and every investment (*i.e.*, imposed a "lock-up" period) for two years from the day

investment vehicles rarely receive from or disburse to investors significant amounts of currency, they are not as likely as other types of financial institutions (*e.g.,* banks) to be used during the initial or "placement" stage of the money laundering process.[17] Money laundering is more likely to occur through these entities at the "layering" stage of the money laundering process,[18] which generally requires the money launderer to be able to redeem his or her interests in the company. Moreover, companies that offer interests that are not redeemable or that are redeemable only after a lengthy holding or "lock-up" period lack the liquidity that makes certain financial institutions attractive to

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the investment was made. Most hedge funds have one-year lock-up periods and, thus, would likely be covered by the definition (assuming they meet the other terms of the definition and the other requirements of the proposed rule) and would be required to have anti-money laundering programs under the rule. Furthermore, any unregistered investment company that "permits an owner to redeem" (and meets the other requirements of the proposed rule) would be covered, regardless of whether its investors have the opportunity to (or do) sell the fund's securities in secondary market transactions. The existence of an informal or formal secondary market for the fund's securities would not affect the applicability of the definition.

Some unregistered investment companies may offer dividend reinvestment plans. For the purposes of this rule, we would not consider an investor to "purchase" an interest in an unregistered investment company if the investor acquires such interest pursuant to a dividend reinvestment plan offered by the company. *Cf.* Securities Act Release No. 929 (July 29, 1936) (describing conditions under which the issuance of securities pursuant to a dividend reinvestment plan is not a sale for value subject to section 5 of the Securities Act of 1933 [15 U.S.C. 77e]). The two-year lock-up provision does not apply to interests acquired with reinvested dividends. Thus, an unregistered investment company that does not permit redemptions within two years of investment would not become subject to the proposed rule solely because it permits investors to redeem interests acquired through the company's dividend reinvestment plan that have been held for less than two years, so long as such redemption is not permitted within two years of the investment that produced the reinvested dividends.

[17] There is some risk that money launderers will use unregistered investment companies during the "placement" stage of the money laundering process. Suspicious activity observed in the purchase of investment company interests includes the use of money orders and travelers checks in structured amounts to avoid currency reporting by the issuing financial institution. Similarly, a money launderer could pay for the initial purchase of an interest with several wire transfers, each in an amount under $10,000, from different banks or brokerage firms to evade currency reporting.

[18] "Layering" involves the distancing of illegal proceeds from their criminal source through the creation of complex layers of financial transactions. Money launderers could, for example, use hedge fund accounts to layer their funds by sending and receiving money and wiring it quickly through several accounts and multiple institutions, or by redeeming an interest in a company originally purchased with illegal proceeds and then reinvesting the proceeds received in another unregistered investment company. Layering could also involve purchasing funds in the name of a fictitious corporation or an entity designed to conceal the true owners.

money launderers in the first place.[19] This "redeemablilty" requirement is likely to exclude publicly traded REITs, and entities that require lengthy investment periods without the ability to redeem assets, including private REITs, a large number of special purpose financing vehicles, and many private equity and venture capital funds.[20] These types of illiquid companies are not likely to be used by money launderers.

FinCEN requests comment on whether a two-year limit is appropriate, given the purpose of the rule. Should the limitation be for a longer or shorter period? FinCEN assumes that most hedge funds would be required to adopt anti-money laundering programs under the rule because they have only a one-year "lock-up" period. Is this assumption correct? Would the limit result in some companies being excluded that may nonetheless be susceptible to use by money launderers? What is the likelihood that hedge funds or other entities will adopt two-year lock-up periods to avoid being subject to the rule?

(B) Minimum Assets. The proposed rule would be limited to companies that, as of the most recently completed calendar quarter, have total assets of $1,000,000 or more. This threshold is designed to exclude investment pools such as investment clubs and other small entities that are unlikely to be used for money laundering.[21] FinCEN requests comment on whether this minimum threshold is appropriate.

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[19] Unregistered investment companies may also play a role in the integration stage of money laundering, *i.e*., the stage at which illegal proceeds are assimilated into the legitimate economy or invested into legitimate businesses. For example, layering could occur through multiple transactions in a brokerage account, the proceeds of which eventually are invested in the unregistered investment company.

[20] The "redeemability" requirement would exclude all types of entities whose interests are sold only on a secondary market, e.g., a securities exchange. These entities generally do not have an account relationship or otherwise deal directly with investors and therefore are not in a position to monitor for money laundering. With respect to such entities, FinCEN relies upon intermediaries in secondary markets, such as broker-dealers, to monitor for money laundering.

[21] FinCEN believes that entities with less than $1,000,000 in assets pose significantly lower money laundering risks than larger entities because they lack the capacity to absorb significant amounts of

(C) Offshore Funds. Because many of these unregistered investment companies operate "offshore" and offer interests in their companies to both U.S. and foreign investors, the proposed rule contains a jurisdictional limitation. The definition of "unregistered investment company" includes only an entity that is organized in the United States, sells ownership interests to a "U.S. person" (as defined in 17 CFR 230.902(k))[22], or is organized, operated, or sponsored by a U.S. person. FinCEN believes this jurisdictional nexus is appropriate, and that it is reasonable to require such issuers benefiting from the financial and legal systems of the United States (assuming they meet the other requirements of the rule) to establish anti-money laundering programs to prevent, detect, and facilitate the prosecution of international money laundering and terrorist financing. FinCEN requests comment on whether this jurisdictional limitation is appropriate.

Exceptions

The proposed rule excepts companies that are owned by one family ("family companies")[23] from the definition of unregistered investment company. The rule also excepts employees' securities

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illegal proceeds. *See also* Section 312 (a)(4)(b) of the USA Patriot Act (defining "private banking account" to include accounts of not less than $1,000,000).

[22] 17 CFR 230.902(k) defines "U.S. person" to mean (i) any natural person resident in the United States; (ii) any partnership or corporation organized or incorporated under the laws of the United States; (iii) any estate of which any executor or administrator is a U.S. person; (iv) any trust of which any trustee is a U.S. person; (v) any agency or branch of a foreign entity located in the United States; (vi) any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and (vii) any partnership or corporation if (A) organized or incorporated under the laws of any foreign jurisdiction; and (B) formed by a U.S. person principally for the purpose of investing in securities not registered under the [Securities Act of 1933], unless it is organized or incorporated, and owned, by accredited investors, (as defined in § 230.501(a)) who are not natural persons, estates or trusts. The rule also excepts certain accounts and persons from the definition of "U.S. person."

[23] *See* section 2(a)(51)(A)(ii) of the 1940 Act [15 U.S.C. 80a-2(a)(51)(A)(ii)] ("any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons"). The exception for family companies would be available without regard to the amount of assets owned by the company.

companies,[24] which are investment companies established by employers for the benefit of employees. The rule further excepts employee benefit plans that are not construed to be pools in CFTC Rule 4.5(a)(4).[25] None of these types of companies is likely to be used for money laundering purposes by third parties given their size, structure and purpose. Finally, the rule would except companies that are also another type of "financial institution" under the BSA (such as a broker-dealer) to prevent duplicative application of the BSA anti-money laundering rules to the same financial institution.

FinCEN requests comment on whether these exceptions from the definition are appropriate and whether there are other entities that should be specifically included in or specifically excluded (through additional limitations or exceptions) from the definition of "unregistered investment company."

III. The Anti-Money Laundering Program

The proposed rule follows recent regulatory actions concerning the establishment of anti-money laundering programs by financial institutions. The proposed rule sets forth minimum requirements for an anti-money laundering program for unregistered investment companies that implement the standards outlined in BSA section 5318(h)(1). The proposed rule would require that, by 90 days following publication of a final rule, unregistered investment companies develop and implement anti-money laundering programs reasonably designed to prevent them from being used to

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[24] *See* section 2(a)(13) of the 1940 Act [15 U.S.C. 80a-2(a)(13)]. An employees' securities company is "any investment company or similar issuer all of the outstanding securities of which (other than short term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons." *Id.*

[25] 17 CFR 4.5(a)(4).

launder money or finance terrorist activities and achieve and monitor compliance with the applicable requirements of the BSA and Treasury's implementing regulations.

The legislative history of the BSA 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's 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 smallest firms, have in place policies and procedures that are both effective and appropriate to guard against money laundering.[26] To assure that this requirement receives the highest level of attention throughout these diverse industries, the proposed rule requires that each unregistered investment company's program be approved in writing by the board of directors or trustees, the general partner or, if the foregoing do not exist, senior management.[27] 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 Unregistered Investment Companies From Being Used To Launder Money or Finance Terrorist Activities, Including But Not Limited to Achieving Compliance With the Applicable Provisions of the BSA 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 unregistered investment companies operate through a variety of different business models, one generic anti-money laundering program for this industry is not

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[26] *See* USA Patriot Act of 2001: Consideration of H.R. 3162 Before the Senate (October 25, 2001) (statement of Sen. Sarbanes), 147 Cong. Rec. S10990-02; 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), 147 Cong. Rec. H6924-01.

[27] The approval could be given at the company's first regularly scheduled meeting after the program is adopted.

possible; rather, each unregistered investment company must develop a program based upon its own business structure. This provision requires that each unregistered investment company 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 questionable checks and unusual wire activity. For example, an investment in an unregistered investment company by check drawn on the account of a third party, or by one or more wire transfers from an account of a third party, 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 investor difficulty in describing the reasons for frequent wire transfers to unfamiliar bank accounts or jurisdictions other than the investor's home country; frequent purchases of interests in unregistered investment companies followed by redemptions, particularly if the resulting proceeds are wired to unrelated third parties or bank accounts in foreign countries; non-economic transfers, such as the purchase of an interest for a large dollar amount followed by redemption with indifference as to penalty amounts charged by the company for engaging in such a transaction; transfers to accounts in countries where drug trafficking is known to occur or other high-risk countries; and the transfer of a monetary instrument or an investment interest from a foreign government to a private person. An unregistered investment company that identifies suspicious activity should take reasonable steps to determine if its suspicions are justified and respond

accordingly, including refusing to enter into a transaction that appears designed to further illegal activity.[28]

Policies, procedures, and internal controls should also be reasonably designed to assure compliance with BSA requirements. The only BSA requirement currently applicable to unregistered investment companies 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.[29]

We also note that unregistered investment companies may become subject to additional BSA requirements, including customer and investor identification and verification under section 326 of the Act and filing suspicious activity reports. If unregistered investment companies become subject to additional requirements, their compliance programs will need to be updated to include appropriate policies, procedures, training, and testing functions.

Unregistered investment companies typically conduct their operations, as do mutual funds, through separate entities such as fund administrators, investment advisers, CPOs, commodity trading advisors, broker-dealers (including prime brokers), and futures commission merchants. Some elements of the compliance program will best be performed by personnel of these separate entities,

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[28] 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 "specified 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. Unregistered investment companies with offshore operations in or with investors from jurisdictions on lists maintained by the Office of Foreign Asset Control (sanctioned countries), FinCEN (country advisories), or the Financial Action Task Force on Money Laundering (non-cooperative countries and territories) should be particularly sensitive to these requirements. For current versions of these country lists, refer to http://www.treas.gov/offices/enforcement/ofac/sanctions/index.html, http://www.ustreas.gov/fincen/pub_main.html, and http://www1.oecd.org/fatf/NCCT_en.htm, respectively.

[29] *See* 31 CFR 103.30. If an unregistered investment company includes a registered broker-dealer (as principal underwriter or distributor) or a bank (as transfer agent), then those separately registered and

in which case it is permissible for an unregistered investment company to contractually delegate the implementation and operation of those aspects of its anti-money laundering program to such an entity. Any unregistered investment company that delegates responsibility for aspects of its anti-money laundering program to a third party, however, remains fully responsible for the effectiveness of the program, as well as ensuring that federal examiners are able to obtain information and records relating to the anti-money laundering program and to inspect the third party for purposes of the program. In addition, an unregistered investment company would remain responsible for assuring compliance with this regulation. The unregistered investment company is still responsible for taking reasonable steps to identify the aspects of its operations that may give rise to BSA regulatory requirements or that are vulnerable to money laundering or terrorist financing activity; developing and implementing a program reasonably designed to achieve compliance with such regulatory requirements and to prevent such activity; monitoring the operation of its program; and assessing its effectiveness. For example, it would not be sufficient for an unregistered investment company simply to obtain a certification from its delegate that the company "has a satisfactory anti-money laundering program."

Investors in unregistered investment companies may include individuals and institutional investors (such as pension funds and corporations), as well as other registered and unregistered investment companies (*i.e.*, "funds of hedge funds").[30] The diversity and complexity of unregistered investment company structures, particularly those with offshore operations, may result in a lack of

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regulated financial institutions would also be subject to additional BSA requirements administered by their Federal functional regulator, such as suspicious activity reporting.

30 A "fund of hedge funds," for example, is a registered or unregistered investment company that invests in hedge funds. These entities can be attractive to investors who seek access to multiple hedge fund investments by investing in only one investment company. *See* Clow, Robert, "Fund of Hedge Funds Boost Market Share," Financial Times (London), June 3, 2002, p.5.

transparency regarding the entities that invest in the unregistered investment company.[31] An unregistered investment company would need to analyze the money laundering risks posed by any entity that invests in it, by using a risk-based evaluation of relevant factors regarding the investing entity. Those factors include the type of entity, its operator or sponsor, its location, the type of regulation to which that entity or its operator is subject, whether the entity has an anti-money laundering program, and the terms of any such program. Unregistered investment companies should account for any risks posed by any offshore operations and affiliates in developing their policies, procedures, and internal controls.

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

It is necessary that unregistered investment companies conduct periodic testing of their programs to assure that the programs are functioning as designed. Such testing should be accomplished by personnel knowledgeable about the business' money laundering risks as well as BSA requirements. Such testing may be accomplished by employees of the unregistered investment company, 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 unregistered investment company's operations and the extent to which its business model may make it more vulnerable 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

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[31] A substantial portion of unregistered investment companies are domiciled offshore, in jurisdictions that may not regulate their activities. *See* Working Group Report, *supra* note 8, at 41 (noting that a significant number of hedge funds are established in offshore financial centers that are tax havens and may be engaged in illegal tax avoidance and similar unlawful activities).

submitted to the general partner, board of directors or trustees, or, if the foregoing do not exist at the unregistered investment company, senior management for consideration.

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

The unregistered investment company 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 company. Whether the compliance officer is dedicated full time to BSA compliance would depend upon the size and complexity of the company. Although in some cases the implementation and operation of the compliance program will be conducted by entities (and their employees) other than the unregistered investment company, the person responsible for the supervision of the overall program should be an unregistered investment company's officer, trustee, general partner, organizer, operator, or sponsor, as appropriate.

(4) Provide Ongoing Training for Appropriate Persons.

Employee training is an integral part of any anti-money laundering program. In order to carry out their responsibilities effectively, employees of an unregistered investment company (and of any affiliated and third-party service providers) must be trained regarding the BSA requirements that are relevant to their functions and the signs of money laundering that could arise in the course of their duties. 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 the particular employee's role and function in the anti-money laundering program.[32] For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

(5) Notice Requirement.

Unlike many other financial institutions subject to the anti-money laundering regime in the BSA, such as banks, savings associations, and mutual funds, unregistered investment companies are not necessarily registered with or identifiable by Treasury or another Federal functional regulator. Without a methodology for identifying or locating these unregistered entities, there would be virtually no way for Treasury or the appropriate Federal functional regulators to assure, with any degree of certainty, through examination or enforcement, that covered unregistered investment companies are in compliance with the rule. Furthermore, while certain companies, particularly larger hedge funds, REITS, private equity funds and venture capital funds, may be identified through trade associations or other relatively simple search methods, other, smaller, less public or offshore entities could escape scrutiny. For the rule to operate and be enforced effectively there must be a practical means of identifying and locating companies subject to the rule.

The BSA authorizes the Secretary of the Treasury to prescribe (after consultation with the appropriate Federal functional regulator) minimum standards for anti-money laundering programs established under the BSA[33] and to require a class of financial institutions to maintain appropriate

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[32] 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 the Office of Foreign Assets Control and other government agency lists.

[33] *See* 31 U.S.C. 5318(h)(2).

procedures ensure compliance with the BSA.[34] Notice of the identity of the members of a regulated class is a key procedure in the effective monitoring and enforcement of compliance with the BSA. Therefore, the proposed rule requires that each unregistered investment company file a short notice ("Notice") identifying itself and providing some very basic information about the company.

The notice filing requirement is implicitly authorized by the BSA as a "legitimate, reasonable, and direct adjunct" to the Secretary's explicit statutory authority to require financial institutions to adopt compliance programs to detect and prevent money laundering in 31 U.S.C. 5318(a)(2), as well as the Secretary's broad powers under the BSA to require reports and records useful to criminal tax and regulatory uses.[35] Because many unregistered investment companies lack a federal functional regulator, without a notice requirement of some kind, Treasury (or its designee) would lack the means to examine for and enforce compliance with the rule. The notice requirement is therefore a direct adjunct to the Secretary's enforcement authority.[36] Indeed, there are a number of agency regulations requiring notice filings and other types of filings that Congress did not explicitly authorize. For example, the Office of the Comptroller of the Currency, under its general authority regulatory authority in 12 U.S.C. 93a, has promulgated regulations governing the issuance of investment securities of national banks that are expressly exempt from certain registration requirements of the federal securities laws.[37] Similarly, the CFTC has issued rules that require CPOs that are exempt from registration to file a notice claiming eligibility for the exemption.[38]

The Notice would be required to include –

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34 31 U.S.C. 5318(a)(2).

35 *See United States v. Chesapeake & Ohio Railway Co*., 426 U.S. 500 (1976); *see also Touche Ross & Co. v. SEC*, 609 F. 2d 570, 582 (D.C. Cir. 1979).

36 *See Outdoor Systems, Inc. v. City of Atlanta*, 885 F. Supp. 1572, 1582. (N.D. Ga. 1995).

37 *See* 12 CFR Part 16.

38 *See* 17 CFR 4.5.

- The name, address, e-mail address and telephone number of the unregistered investment company;
- The name, address, e-mail address, telephone number and registration number of any investment adviser, commodity trading advisor, CPO, organizer or sponsor of the unregistered investment company;
- The name, e-mail address and telephone number of the designated anti-money laundering program compliance officer;
- The dollar amount of assets under management held by the unregistered investment company; and
- The number of participants, interest holders or security holders in the unregistered investment company.

Filing Procedures. An unregistered investment company would have to file with FinCEN a Notice described in Appendix C of subpart I of 31 CFR part 103. Completed Notices may be submitted to FinCEN by accessing FinCEN's Internet website, http://www.treas.gov/fincen, and entering the appropriate information as directed, or by mail to: FinCEN, PO Box 39, Mail Stop 100, Vienna, VA 22183.

Filing Date. An unregistered investment company would have to file a Notice within 90 days after it first becomes subject to the provisions of this rule.

Amendments. An unregistered investment company would have to file an amendment to its Notice not later than 30 days after any change to the information in the Notice other than the amount of assets under management or the number of participants, interest holders or security holders.

Withdrawal. An unregistered investment company would have to withdraw its Notice within 90 days after ceasing to be subject to the provisions of this rule.

Finally, unregistered investment companies would be 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).

FinCEN requests comment regarding whether the proposed notice requirement is appropriate. Is there any other means by which FinCEN could readily identify all the unregistered investment companies subject to the proposed rule? Should those commodity pools that are identified in the database of the NFA be exempt from this requirement?[39]

IV. Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The costs associated with the development of anti-money laundering programs are attributable to the mandates of section 352 of the Act. Moreover, because the proposed rule applies only to those unregistered investment companies with assets of $1,000,000 or more and also excludes family companies, employees' securities companies, and certain employee benefit plans that are not construed to be pools, it is unlikely that many small unregulated investment companies will be subject to the rule. In addition, the proposed rule will not impose significant burdens on those small unregistered investment companies covered by the rule because they are already subject to Form 8300 reporting and may build on their existing risk management procedures and prudential business practices to ensure compliance with this rule as well as anti-money laundering risk management. Similarly, the procedures currently in place at mutual funds to comply with existing BSA rules should assist

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[39] CPOs are required to file with the CFTC and NFA a disclosure statement concerning the CPO and each commodity pool operated by that CPO. See 17 CFR 4.21, 4.24, 4.25 and 4.26. The NFA maintains a publicly available database (www.nfa.futures.org/basic) with the names, addresses, NFA identification numbers, regulatory history, and other information provided by the CPOs in their disclosure document.

unregistered investment companies in establishing their anti-money laundering programs. Finally, the unregistered investment companies subject to the rule will not be compelled to obtain more sophisticated legal or accounting advice than that already required by such companies to run their businesses.

V. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

VI. Paperwork Reduction Act

The collections of information contained in this proposed rule are being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to jlackeyj@omb.eop.gov), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

The collections of information in this proposed rule are in 31 CFR 103.132(b) and (d). The information will be used by federal agencies to verify compliance by unregistered investment companies with the provisions of 31 CFR 103.132. The collections of information are mandatory.

Description of Recordkeepers and Responders: Unregistered investment companies as defined in 31 CFR 103.132(a).

Estimated Number of Recordkeepers: 5,000.

Estimated Average Annual Burden Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in this proposed rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 5,000 hours.

Estimated Number of Respondents: 5,000.

Estimated Average Annual Burden Per Respondent: The estimated average burden associated with the notice requirement in this proposed rule is 30 minutes per respondent.

FinCEN specifically invites comments on the following subjects: (a) whether the collections of information are 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 unregistered investment companies, 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.

List of Subjects in 31 CFR Part 103

Banks, Banking, Brokers, Commodities futures, 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 I, add new §103.132 to read as follows:

§103.132 Anti-money laundering programs for unregistered investment companies.

(a) Definitions. For purposes of this section and Appendix C to this subpart I—

(1) The terms c*ompany, director, issuer, person, security,* and *value* have the same meanings as provided in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2).

(2) The term *investment adviser* has the same meaning as provided in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)).

(3) The term *commodity pool* means a pool as defined in 17 CFR 4.10(d).

(4) The term *commodity pool operator* has the same meaning as provided in section 1(a)(5) of the Commodity Exchange Act (7 U.S.C. 1(a)(5)).

(5) The term *commodity trading advisor* has the same meaning as provided in section 1(a)(6) of the Commodity Exchange Act (7 U.S.C. 1(a)(6)).

(6)(i) Except as provided in paragraph (a)(6)(ii) of this section, the term u*nregistered investment company* means an issuer that is a company--

(A) That--:

(1) Would be an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a) but for the exclusions provided for in Sections 3(c)(1) and 3(c)(7) of that Act (17 U.S.C. 80a-3(c)(1) and (7));

(2) Is a commodity pool; or

(3) Invests primarily in real estate and/or interests therein;

(B) That permits an owner to redeem his or her ownership interest within two years of the purchase of that interest;

(C) That has total assets (including received subscriptions to invest) as of the end of the most recently completed calendar quarter the value of which is $1,000,000 or more; and

(D) That is organized under the law of a State or the United States, is organized, operated or sponsored by a U.S. person, or sells ownership interests to a U.S. person. For purposes of this paragraph (a)(6)(i)(D), the term *U.S. Person* has the same meaning as provided in 17 C.F.R. 230.902(k)).

(ii) The term *unregistered investment company* does not include:—

(A) Any person that is otherwise required to have an anti-money laundering program pursuant to this subpart;

(B) A family company described in section 2(a)(51)(A)(ii) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(51)(A)(ii)), but without regard to the amount of assets owned by such company;

(C) An employees' securities company as described in section 2(a)(13) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(13)); and

(D) An employee benefit plan (as that term is defined in 17 CFR 4.5(a)(4)) that is not construed to be a pool.

(b) *Anti-money laundering program required*. Effective [the date that is 90 days after publication of the final rule], each unregistered investment company shall develop and implement a written anti-money laundering program reasonably designed to prevent the company 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.) (BSA), and this part. The anti-money laundering program must be approved in writing by its board of directors or trustees or, if it does not have one, by its general partner, sponsor, organizer, operator,

or other person who has a similar function with respect to the company. To the extent any definition incorporated into this rule by reference requires action by the unregistered investment company's board of directors, such action may be performed by any of the aforementioned persons if it has no board of directors. The unregistered investment company shall make its anti-money laundering program available for inspection by the Department of the Treasury or its designee upon request.

(c) *Minimum requirements*. The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the investment company from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the BSA and this part;

(2) Provide for independent testing for compliance to be conducted by the investment company'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.

(d) Notice. Each unregistered investment company must provide information to FinCEN as required by this paragraph (d).

(1) Each unregistered investment company must file with FinCEN a Notice described in Appendix C of this subpart. Completed Notices may be submitted to FinCEN by accessing FinCEN's Internet website, http://www.treas.gov/fincen, and entering the appropriate information as directed, or by mail to: FinCEN, PO Box 39, Mail Stop 100, Vienna, VA 22183

(2) The Notice required by paragraph (d)(1) must be filed not later than 90 days after the date an unregistered investment company first becomes subject to this section. If an unregistered

investment company ceases to be subject to this section, it must so advise FinCEN not later than 90 days after ceasing to be subject to this section.

(3) Each unregistered investment company must include the following information in the Notice required by paragraph (d)(1) of this section:

(i) The name of the unregistered investment company, including all family or complex names, trade names and doing-business-as names;

(ii) The complete street address, telephone number and, if applicable, the e-mail address of the unregistered investment company;

(iii) The name, complete street address, telephone number, and if applicable, the e-mail address and registration number of the investment adviser, commodity trading advisor, commodity pool operator, organizer, and/or sponsor of the unregistered investment company;

(iv) The name, telephone number and, if applicable, e-mail address of the person or persons designated pursuant to paragraph (c)(3) of this section;

(v) The total assets under management held by the unregistered investment company as of the end of the unregistered investment company's most recent fiscal year; and

(vi) The total number of participants, interest holders or security holders in the unregistered investment company.

(4) An unregistered investment company must file a revised Notice with FinCEN if there is a change in any of the information required by paragraph (d)(3)(i), (ii), (iii), or (iv) of this section. The revised Notice must be filed in accordance with paragraph (d)(i) of this section not later than 30 days after the date of any such change.

Dated:_____, 2002.

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James F. Sloan,

Director, Financial Crimes Enforcement Network.

APPENDIX C TO SUBPART I OF PART 103

Unregistered Investment Companies
Notice for Purposes of 31 CFR 103.132(d)

Notice is given, on behalf of (insert all names of unregistered investment company)

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that:

(1) The unregistered investment company specified above is an "unregistered investment company" as such term is defined in 31 CFR 103.132(a).

(2) The address, e-mail address (if applicable), and telephone number of the unregistered investment company are as follows:

ADDRESS: _____
_____
_____
E-MAIL ADDRESS (if applicable): _____
TELEPHONE NUMBER: _____.

(3) The name, address, e-mail address (if applicable), telephone number, and registration number of any investment adviser, commodity trading advisor, commodity pool operator, organizer or sponsor of the unregistered investment company are as follows:

TYPE OF ENTITY:_____
NAME: _____
ADDRESS: _____
_____
_____
E-MAIL ADDRESS: _____
TELEPHONE NUMBER: _____.
REGISTRATION NUMBER: _____

TYPE OF ENTITY:_____
NAME: _____
ADDRESS: _____
_____
_____
E-MAIL ADDRESS: _____
TELEPHONE NUMBER: _____.
REGISTRATION NUMBER: _____

TYPE OF ENTITY:_____
NAME: _____
ADDRESS: _____
_____
_____

E-MAIL ADDRESS: _____
TELEPHONE NUMBER: _____.
REGISTRATION NUMBER: _____

(4) The name, e-mail address (if applicable), and telephone number of the designated anti-money laundering program compliance officer of the unregistered investment company are as follows:

NAME: _____
E-MAIL ADDRESS: _____
TELEPHONE NUMBER: _____.

(5) The dollar amount of assets under management held by the unregistered investment company as of the end of its most recent fiscal year is $_____.

(6) The number of participants, interest holders or security holders in the unregistered investment company is _____.

BY: _____
Name

_____
Title

_____
Date