INVESTMENT COMPANY INSTITUTE

Craig S. Tyle
General COUNSEL

June 24, 2003

Mr. Paul F. Roye
Director, Division of Investment Management
U.S. Securities and Exchange Commission
450 5th Street, NW
Room 5004
Washington, D.C. 20549

Mr. Charles D. Klingman
Senior Financial Economist
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Annex Room 3176
Washington, D.C. 20220-0002

Dear Messrs. Roye and Klingman:

The Investment Company Institute[1] is writing to follow up on our June 12, 2003 meeting with staff members from Treasury, FinCEN, and the Securities and Exchange Commission regarding the recently adopted customer identification program (CIP) rule for mutual funds.[2] This rule requires all mutual funds to implement written CIPs no later than October 1, 2003.

As you know, the mutual fund industry has consistently supported the adoption of strong anti-money laundering regulations for mutual funds and, as an important part of those regulations, the adoption of appropriate CIP requirements. Indeed, we supported many aspects of the CIP rule as proposed.[3]

Two issues remain under the final CIP rule, however, that have broad significance for the mutual fund industry. The issues involve a fundamental aspect of the rule – the definition of "customer" – in the following contexts: (1) purchases of fund shares by an investor that owns

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[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,688 open-end investment companies ("mutual funds"), 556 closed-end investment companies, 110 exchange-traded funds and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about $6.475 trillion, accounting for approximately 95% of total industry assets, and 90.2 million individual shareholders.

[2] 68 Fed. Reg. 25131 (May 9, 2003) (the "Adopting Release"). The rules implement Section 326 of the USA PATRIOT Act.

[3] *See* Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Judith R. Starr, General Counsel, U.S. Department of the Treasury, and Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated September 6, 2002. We appreciate Treasury's and the SEC's efforts to address in the final CIP rule many of the issues that we raised in that letter.

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shares of another fund in the same fund family ("follow-on purchases"), particularly by exchange; and (2) purchases of fund shares that are cleared and settled through the National Securities Clearing Corporation's Fund/SERV system.

For the reasons set forth below, we respectfully request that Treasury and the SEC address these issues in the following manner:

- Follow-on purchases and exchanges. We request no-action relief or interpretive guidance that effectively allows fund families to treat fund investors as customers of the entire fund family rather than as customers of individual mutual funds. This result could be achieved either (1) by interpreting the definition of "account" to include an investor's relationship with a fund family or (2) by extending the rule's exception for existing customers to any person that has an existing account with the mutual fund or with another mutual fund in the same fund family, if either fund has a reasonable belief that it knows the true identity of that person.

- Fund/SERV transactions. We request concurrence with our view that, for purposes of the CIP rule, where NSCC member firms initiate purchases of fund shares on behalf of investors (the firm's customers) that are cleared and settled through Fund/SERV, those firms are the fund's "customers" and the investors are not.

Our analysis of these issues is set forth below. Given the October 1st implementation deadline, the fundamental nature of these issues and their importance to the fund industry, we strongly urge Treasury and the SEC to respond as quickly as possible.

Follow-on Purchases and Exchanges

A. Background

Most mutual fund organizations offer anywhere from several to hundreds of different mutual funds to investors, each with different investment objectives and strategies. For example, the same fund organization may offer domestic and international stock funds, bond funds, index funds, sector funds, asset allocation funds and money market funds. These groups of funds offered by a common sponsor are often referred to as "families of funds."[4]

Almost all fund families provide exchange privileges to their investors. An "exchange" is a transaction that allows an investor to simultaneously request that all or a portion of the shares of one fund be redeemed and shares of another fund (or funds) be purchased using the redemption proceeds as payment.[5] This allows investors to easily and efficiently convert their holdings from one fund to another in the same fund family as their investment goals or tolerance for risk change or to react to fast-moving or volatile markets. For example, an investor

[4] The SEC has described a "family of funds" as a group of mutual funds that share administrative and distribution systems. *See* http://www.sec.gov/investor/pubs/inwsmf.htm#how. We propose a regulatory definition of that term below.

[5] Both the redemption and the purchase typically occur on the same day at each fund's respective net asset value.

that owns shares of a growth fund might exchange those shares for shares of a bond fund offered by the same fund family in order to achieve a more conservative asset allocation. Investors generally may request an exchange in writing (by mail or fax), by telephone, Internet or automated voice response unit (VRU), all without completing a new application form.

The exchange feature is regarded as an important incident of fund ownership and is widely utilized. Exchanges are regulated by Rule 11a-3 under the Investment Company Act, fully disclosed to investors in fund prospectuses and often explained in other fund literature, such as information posted on the fund family's web site. As a result, mutual fund investors, for all practical purposes, typically view their investment as representing a business relationship with an entire fund family rather than with the particular mutual fund or funds that they have initially chosen.

B. <u>The Issue</u>

The final CIP rule defines "customer" as "a person that opens a new account." Whenever an investor purchases shares of a fund that he or she did not previously own, either through an exchange or otherwise, the fund's transfer agent typically will open a "new" account on the fund's records to reflect that purchase.[6] To the extent that a new purchase or exchange involves the opening of a "new account," it appears that the transaction would trigger identification and verification requirements under the final CIP rule, at least with respect to investors that first purchased shares of a fund prior to the implementation of the fund family's CIP on or before October 1, 2003 ("pre-existing investors").[7]

The Institute strongly believes that subjecting these pre-existing shareholders to coverage under the CIP rule does not serve legitimate anti-money laundering policy goals,

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[6] The fund's transfer agent is in fact merely registering the issuance of the purchased securities, generally by bookkeeping entry, under a record keeping system that assigns a unique registration number to each holder of securities issued by the fund issuer. This record keeping entry does not constitute a "securities account" (as defined in Article 8 of the Uniform Commercial Code) or an "account" (as defined in Section 103.122(a)(1) of the broker-dealer CIP rule) that an investor would establish with a broker-dealer. The definition of an "account" in Section 103.131(a)(1) of the mutual fund CIP rule seeks to characterize this record keeping entry as a "contractual or other business relationship . . . established to effect transactions in securities issued by the mutual fund." This characterization of the relationship of a fund security holder and fund security issuer as a "contractual or other business relationship" has, unfortunately, contributed to the problem addressed in this letter related to applying the CIP rules at the fund issuer level rather than at the "fund family" level. As noted above, the business reality is that the investor, when purchasing shares of one or more funds sponsored by a fund family, believes that he or she has entered into a "contractual or other business relationship . . . established to effect transactions in securities" with the fund family rather than with a specific fund. The fund family would also consider this broader fund family relationship to be the business reality when providing administrative services to the investor.

[7] Once all of the funds in a family have adopted and implemented a CIP (as required by October 1, 2003), new purchases and exchanges by investors that have been identified and verified pursuant to one fund's CIP will not have to be identified and verified again by other funds in the family. Tens of millions of pre-existing investors, however, would still remain.

would create uneven playing fields, and would have very serious practical implications, particularly with respect to exchanges.[8]

C. Analysis

If pre-existing investors are subject to the CIP when they exchange into or purchase another fund in the same family after October 1st, two things must happen under the new rule before that exchange or purchase can be processed:

1. Notice must be provided that their information is being collected and steps will be taken to verify it; and

2. Four pieces of information (name, address, date of birth, and taxpayer identification number) must be collected.

Depending on the method of exchange or purchase, funds may not have given the requisite notice to these pre-existing investors. This would be the case, for instance, where exchange requests are made in writing. Similarly, funds often will not have all of the minimum required pieces of information, nor will they have an opportunity to collect missing information in a timely manner.[9] The problem of missing information is exacerbated for corporate accounts, where additional documentation, such as a corporate resolution or charter, may be required to perform verification.[10]

As a consequence, the CIP rule will prohibit a fund from opening the account – effectively preventing or, at a minimum, delaying the processing of the exchange or purchase request. This will lead directly to at least three adverse consequences that we believe are unintended:

1. Investors could be subject to unnecessary market risk, since their transactions may be processed at some later time than they had intended, if at all.

2. With respect to exchanges, any delays (and the associated market risk) may cause investors simply to redeem rather than exchange into another fund, particularly in volatile markets. This result is undesirable both from the fund family's perspective, since redemptions represent an outflow of assets, and, more importantly, from the investors', since it could result in additional sales charges being imposed upon redemption and/or as they re-invest the proceeds from the

[8] The volume of affected transactions is very large. We conservatively estimate that exchanges cause 8.4 million "new accounts" to be opened annually.

[9] For example, it will be impossible to collect the required information using a VRU.

[10] Given the practical difficulties of collecting this documentation after an account is opened, it is likely that fund families will require this documentation before opening an account.

redemption.[11]

3. Fund families likely would modify some of the basic parameters of their exchange privileges by, for example, restricting the use of VRUs and denying exchange privileges altogether to investors such as partnerships or corporations that pose particular administrative challenges. This would unnecessarily limit choices and reduce convenience to investors – effectively taking a valuable service that they may have come to rely upon away from them.[12]

None of these consequences or their costs – not to mention the actual cost of identification and verification – seem to have been contemplated in the final rulemaking.[13]

These adverse consequences cannot be justified on policy grounds. Exchanges in particular pose very little, if any, money laundering risk. They do not involve money entering or leaving the fund family, and do not involve layering or integration. They are simply a reallocation of the investor's assets. With respect to both exchanges and new purchases, the transactions are (or soon will be) subject to monitoring and suspicious activity reporting and are conducted by investors that already have a relationship with the fund family – often a long-standing one. The rule expressly recognizes that existing customers pose less risk than new customers.

Moreover, subjecting exchanges and these new purchases to CIP would create uneven playing fields between mutual funds and other financial intermediaries, since similar types of transactions through other financial intermediaries would not trigger the application of the new CIP requirements. For example, after October 1st, the sale of an equity mutual fund followed by the investment of the proceeds from that sale in a bond mutual fund in an account maintained by a broker-dealer for its customer would not trigger the broker-dealer's CIP, since the broker-dealer would not open a new brokerage account for that customer to effect that transaction. The same transaction – the exchange of equity fund shares for bond fund shares after October 1st – effected directly with a fund family would trigger its CIP procedures. Similarly, the opening of a line of credit after October 1st by a bank customer with a pre-existing checking account likely would not trigger the bank's new CIP, as long as the bank had a reasonable belief that it knew the true identity of that customer. Even though the bank would be opening a new account in that context, it could rely on the existing customer exception in Section

[11] Fund families typically do not charge sales loads on exchanges. However, a redemption followed by a subsequent purchase would trigger any applicable sales loads, possibly both upon redemption and upon the subsequent purchase.

[12] In addition, these changes would require amending prospectus disclosure and also may require advance notice to investors.

[13] The recordkeeping estimate in the Adopting Release seems to be based on 16 million new accounts being opened annually. This estimate is static. If Treasury and the SEC intended for pre-existing investors to be subjected to CIP upon their first exchange after October 1st, this estimate should have reflected a higher initial burden, which would have declined to a near-static figure over time. In addition, the 16 million new account figure is significantly lower than the figure cited in an SEC staff memorandum to the CIP rule file, which suggests that exchanges that cause new accounts to be opened may have been excluded from the final estimate.

103.121(a)(2)(ii)(C) of the CIP rule applicable to banks. That exception is unavailable to mutual funds in this context, since each individual mutual fund is treated as a separate financial institution under the rule and the new fund (the bond fund in the above example) would not itself have an existing customer relationship with the investor.

D. Request for Interpretive Guidance or No-Action Relief

For all of these reasons, we respectfully request that Treasury and the SEC issue no-action relief or interpretive guidance that effectively allows fund families to treat their fund investors as customers of the entire fund family rather than as customers of individual mutual funds. There are two ways that we believe this could be accomplished. Treasury and the SEC could provide no-action relief or interpretive guidance that the use of the term "mutual fund" in the definition of "account" in Section 103.131(a)(1)(i) will be interpreted to mean "fund family." Alternatively, the rule's exception for existing customers – Section 103.131(a)(2)(ii)(C) – could be extended to any person that has an existing account with the mutual fund or with another mutual fund in the same fund family, if either fund has a reasonable belief that it knows the true identity of that person. In either case, we would recommend the following definition of "fund family":

> *A "fund family" means any two or more mutual funds that hold themselves out to investors as related companies for purposes of investment and investor services, and (A) that have a common investment adviser or principal underwriter, or (B) the investment adviser or principal underwriter of one of the mutual funds is an affiliated person as defined in section 2(a)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(3)] of the investment adviser or principal underwriter of each of the other mutual funds.*[14]

We note that one suggestion for relief in this context mentioned at our June 12th meeting was to allow those tasks that the rule currently requires funds to complete *prior* to the opening of an account – namely, notice and the collection of certain information – to be done within a reasonable time *after* the account is opened. We urge Treasury and the SEC to reject this approach because it does not provide a satisfactory solution. Although it would allow exchange transactions to be processed, and thus would avoid the imposition of unnecessary market risk on the investors, it would be very difficult to implement in practice since there would be no incentive for investors to provide information after the transaction has been completed. This would be particularly problematic for investors that are not natural persons, such as partnerships or corporations, and may lead funds to eliminate exchange privileges for these investors. In addition, it does nothing to alleviate the costs of identification and verification and therefore does not level the playing field vis-à-vis other financial institutions subject to CIP rules.

[14] This definition is substantively identical to the definition of "group of investment companies" in Rule 11a-3 under the Investment Company Act of 1940. We believe this definition would be appropriate because Rule 11a-3 deals with offers of exchange by mutual funds.

Fund/SERV

The second issue that we highlighted in our June 12th meeting involves the definition of "customer" in the context of accounts opened by NSCC member firms for the purpose of effecting purchases of fund shares that are cleared and settled through the NSCC Fund/SERV system. It is the Institute's view that, because these accounts in all cases are opened by an NSCC member firm for its customers, that firm (almost always a broker-dealer) should be treated as the fund's customer for purposes of the CIP rule and the investors that are the firm's customers should not.[15] For the reasons expressed below, we believe that this interpretation is both clearly supported by the rule text and fully consistent with the policies underlying the USA PATRIOT Act. Given the significance of these transactions to the fund industry and the dire implications of a contrary interpretation, we respectfully request your concurrence with our view.

A. Background on Fund/SERV

The NSCC introduced Fund/SERV in 1986 to electronically connect brokerage firms and other financial institutions with fund families. Its automated process enables thousands of firms to deal with hundreds of fund families offering thousands of funds via a single, standardized clearance and settlement system.[16] More than 60 million mutual fund accounts reside on fund transfer agency systems through the use of the Fund/SERV system, and Fund/SERV processes more than 320,000 transactions daily with a daily value of over six billion dollars.

Every purchase of fund shares that is cleared and settled through Fund/SERV is essentially processed in the same way. In each case, the firm transmits trade information on its customers' behalf to the NSCC via Fund/SERV. NSCC then sorts that trade information (along with all other trade information received from all other NSCC members that day) and forwards it to the appropriate fund transfer agent for processing, which causes accounts to be opened on the transfer agent's books.[17] Trades over Fund/SERV typically are executed on a same-day basis, confirmed on a next-day basis, and settle no later than three days following the trade. Confirmations are automatically generated and sent back through Fund/SERV to the firms. These timelines reflect operational conventions in the fund business that fund investors and regulators have come to expect and that, in part, reflect SEC regulatory requirements.

NSCC member firms typically regard the identity of their customers as proprietary information and accordingly seek to limit or control the distribution of customer information to mutual funds and other financial institutions. The firms nonetheless may rely upon the funds

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[15] For simplicity, we are using the terms "firm" to refer to the NSCC member firm, typically a broker-dealer, transacting via Fund/SERV on behalf of its customers and "fund" to refer to each mutual fund in which the firm invests on behalf of its customers.

[16] There are approximately 450 fund families with approximately 28,000 separate CUSIPs in the Fund/SERV system. Each CUSIP represents a separate fund or fund class for routing purposes.

[17] Accounts are not opened until the firms provide sufficient registration information to the funds' transfer agents. This may not occur for several days following the transaction.

in certain circumstances to perform specified recordkeeping tasks pursuant to a Networking agreement.[18] Importantly, these Networking Levels and associated recordkeeping arrangements do not change the account opening process described above and, as we stressed at the June 12th meeting, therefore have no impact on the application of the CIP rule.

Regardless of whether any Networking is involved, there are several characteristics that apply to all mutual fund accounts established through Fund/SERV:

- The firm – the broker-dealer or other institution that is an NSCC member – is the only party that may establish accounts with mutual funds through Fund/SERV. No individual may do so.[19]

- The investor's relationship with the NSCC member is such that, to the extent that the NSCC member is a financial institution subject to CIP rules, the investor would be a customer subject to the NSCC member's CIP.

- The clearance and settlement process through Fund/SERV is completely separate and distinct from the investor's funding of his or her transactions.[20]

B. Application of the CIP Rule to These Accounts

As noted above, the term "customer" is defined as a "person that opens a new account." An "account" is "any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities."[21] Significantly, the final rule's definition of "customer" is markedly different from the one originally proposed. The proposed rule would have covered "any mutual fund shareholder of record" that opens an account with a fund, as well as "any person authorized to effect transactions in the shareholder of record's account."

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[18] Networking was developed separately from the Fund/SERV account opening and settlement process as a way to exchange and update non-transaction related fund data. It provides various "Levels" of recordkeeping and reporting conventions between firms and funds. Through Networking, firms can arrange for funds (or, more precisely, their transfer agents) to assume a range of tasks from preparing tax reporting forms (Network Levels One and Two) to also preparing trade confirmations and distributing account statements (Network Level Four). Under the most common Networking arrangement, Level Three (also known as "firm controlled" accounts), the firm performs all recordkeeping tasks associated with the fund transactions.

[19] Access to the Fund/SERV system is restricted to NSCC member firms. NSCC membership is limited to certain financial institutions listed in NSCC Rule 2-1 – typically registered broker-dealers, banks or trust companies, insurance companies and investment companies. Individuals are not eligible for membership in NSCC, and can never directly access the Fund/SERV system to open accounts with mutual funds.

[20] Fund/SERV streamlines the settlement process between firms and funds by calculating a net settlement figure for each participant every day, which is settled with a single wire transfer. For example, a broker-dealer may have thousands of customers who buy and sell shares of various mutual funds each day. Fund/SERV will calculate a single net amount that the broker-dealer must either wire (if its customers are net purchasers) or that NSCC will wire to the broker-dealer (if its customers are net sellers). This process is completely separate from the customer's funding of the individual transactions, which is entirely a function of the customer's relationship with the broker-dealer. Indeed, the fund has no knowledge of the source of the investor's funds.

[21] 31C.F.R. § 103.131(a)(1)(i).

Although there remains some ambiguity about who is a mutual fund's "customer" in some contexts, several points are clear in broad measure:

- Under Section 326 of the USA PATRIOT Act and the implementing regulations, the duty to verify customer identity is triggered only when an account is *opened*.[22] Although a mutual fund may have other *continuing* anti-money laundering obligations with respect to fund accounts (*e.g.*, to monitor accounts for suspicious activity), the obligation to verify customer identity arises only once – at the time when the account is opened.

- In adopting the final definition of "customer," the Treasury Department and the SEC confirmed that the CIP generally should apply only to those "persons" that open a fund account – not to other parties that may have authority to effect transactions in the account once opened.[23]

Thus, in the Fund/SERV context, it is clear that the NSCC member firm "opens" the account with the fund and, under the plain language of the rule, is the fund's "customer." It is equally clear that the investors who ultimately own the fund shares do not open the account with the fund and are not the fund's "customers" for purposes of the CIP rule.

In addition to being supported by the literal language of the rule, this interpretation – that the NSCC member firm is the mutual fund's "customer"– also is perfectly consistent with the policies underlying the CIP rule for at least three reasons. First, the investors in this context clearly are customers of the NSCC member firm, since they must open an account with that firm in order to purchase fund shares. To the extent that the firm is a broker-dealer or other financial institution subject to CIP obligations (which is almost always the case), it will provide the investors with notice about its verification responsibilities, collect the required identifying information, and verify each investor's identity in accordance with its CIP. Thus, after October 1st, the vast majority of investors will not have access to mutual funds through Fund/SERV without undergoing verification of identity. To the extent that the firm is not a financial institution with CIP obligations, the mutual fund will perform CIP on that firm as its customer under the mutual fund CIP rule.[24]

Second, each mutual fund still would have anti-money laundering obligations with respect to accounts opened through Fund/SERV. For example, the fund would still be

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[22] Section 326 of the USA PATRIOT Act directs the Treasury Department and the appropriate "federal functional regulators" to jointly issue rules "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution." 31 U.S.C. § 5318(l).

[23] While the final CIP rules did not adopt the requirement to verify the identity of any person authorized to effect transactions, the final rule requires a mutual fund's CIP to address circumstances where it will obtain information about such individuals in connection with verifying the identity of customers that are not natural persons.

[24] We also note that Treasury has the authority under the Bank Secrecy Act to extend CIP obligations to any NSCC member firm not currently subject to those requirements.

responsible for monitoring for and reporting suspicious activity in these accounts (under the expected SAR rule for mutual funds) and would still be responsible for complying with any Section 314(a) requests for information on those accounts.

Third, and perhaps most importantly, under our interpretation, the NSCC Fund/SERV system will not have to be dramatically revamped and the processing of mutual fund orders will not be delayed. Both of these problems would result from an interpretation that the firm's customer is also the fund's customer. These problems, along with other practical implementation issues, are described more fully below.

1. Multiplication of CIP Responsibilities With Respect to Fund Investors

Investment Company Institute data show that, outside of retirement plans, mutual fund investors typically hold shares of numerous funds sponsored by more than one fund family. Indeed, fully three-quarters of all retail fund investors hold funds sponsored by two different fund families, and almost half own shares of funds sponsored by three or more fund families.

If the CIP rules are interpreted to treat customers of NSCC member firms in this context as each mutual fund's customers too, an average of four different financial institutions (*i.e.*, the firm and each of the different fund families in which the firm's customer chooses to invest over time) would be required to perform customer identification and verification with respect to the same investor. This would obviously create needless redundancy in the collection, review, verification and retention of CIP data or, under the reliance provisions of the rule, would obligate the firm to comply with the "specific requirements" of an average of four different CIPs (*i.e.*, its own as well as those of the various fund families) with respect to the same investor.[25]

2. Inoperability of the Current NSCC System

Currently, the NSCC system provides an efficient, low-cost, rapid and standardized clearance and settlement system between broker-dealers and other financial institutions and the mutual fund industry. If the CIP rules are interpreted to treat customers of NSCC member firms as mutual fund customers, fulfillment by the funds of their compliance responsibilities would render the current system inoperable. Before accepting any new investment: (1) a fund would have to determine whether the investment is being made by a new investor; (2) if so, the fund would be required to obtain, at a minimum, the investor's name, address, date of birth and taxpayer identification number; and (3) the fund (presumably through the firm) would be required to provide the requisite notice to the investor regarding the fund's CIP responsibilities. For entity accounts such as corporations or partnerships, funds also may need access to supporting documentation, such as a charter or partnership agreement, for verification purposes.

[25] As explained more fully below, extending this obligation to all of the firm's customers effectively puts it in the untenable position of having to comply with the CIPs of every fund in which any of its customers may choose to invest.

The NSCC system does not have the current capability to provide all of the necessary information to the fund, although in time and at considerable expense it could be modified to do so. The system also does not have any capability to provide the required fund CIP notice to the firm's customers – and no prospect of being able to do so. The system simply was not built to provide any information directly to investors – it was created solely to facilitate the flow of information between the participating firms and funds.

If our interpretation of the CIP rule is not the correct one, then, absent the required identifying information and without having provided the CIP notice, a fund could not process the transaction. As a result, investments in fund shares via Fund/SERV likely would be subject to substantial delays, placing prospective fund investors at potential market risk and creating significant disincentives to the use of Fund/SERV for transacting efficiently in fund shares – the very purpose for which it was created.

3. Reliance Contracts Do Not Solve These Problems

The rule permits a fund, in lieu of verifying the customer's identity itself, to enter into a reliance contract with the NSCC member firm, provided such institution, among other things, undertakes to perform the "specific requirements" of the fund's CIP and certifies to such effect annually. From an operational perspective, this reliance provision is simply unavailing, given that approximately 5,000 broker-dealers[26] may directly or indirectly use Fund/SERV to gain efficient access to funds offered by approximately 450 different fund families. This potentially would require some 2.25 million reliance contracts and annual certifications, with each broker-dealer implementing the "specific requirements" of each of the 450 different fund families' CIPs.

If reliance contracts and certifications become the only "workable" solution, then the broker-dealer and mutual fund industries inevitably will develop standardized, "one-size-fits-all" customer identification programs to facilitate the certification process. The sheer scale of the clearance and settlement activity associated with Fund/SERV would afford no alternative. This result would be contrary to the stated purpose and intent of the anti-money laundering regulations, which emphasize risk-based, reasonable compliance procedures that are tailored to a particular organization.[27]

C. Request for Concurrence

For all of the reasons expressed above, we urge Treasury and the SEC to concur with our view that the plain language of the rule dictates that in this context, the NSCC member firm is

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[26] There are 420 broker-dealer NSCC members. Many more send trades through Fund/SERV by using the services of clearing firms such as Pershing.

[27] One suggestion that was made at the June 12th meeting was to revise the reliance contract provision so that firms need only certify to compliance with their own CIP and not also the CIP of the party to whom they are certifying. Theoretically, this would make it easier for financial institutions to enter into reliance contracts. In essence, however, it would render the reliance contract provision a meaningless (but still burdensome) paper chase, requiring the execution of millions of agreements that amount to nothing more than entities certifying that they will follow the law.

the fund's customer for purposes of the CIP rule and the investors that are that firm's customers are not.

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Thank you for considering our requests regarding the application of the definition of "customer" under the final CIP rule for mutual funds discussed above. Again, given the October 1st implementation deadline, we respectfully request your earliest possible response. If you have any questions or need additional information, please contact me at (202) 326-5815, Frances Stadler at (202) 326-5822 or Bob Grohowski at (202) 371-5430.

Sincerely,

/s/Craig S. Tyle

Craig S. Tyle
General Counsel