THE MONEY MANAGEMENT INSTITUTE
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September 4, 2003

Judith R. Starr, Chief Counsel
Office of the Chief Counsel
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, Virginia 22183

Re: Section 352 Investment Adviser Rule Comments

Dear Ms. Starr:

The Money Management Institute (MMI)[1] would like to take this opportunity to provide its comments on the Department of Treasury Financial Crimes Enforcement Network's (FinCEN) proposal[2] to require investment advisers to establish an anti-money laundering (AML) program pursuant to Section 352 of the USA Patriot Act.[3] MMI recognizes that the official comment period has ended, but hopes that FinCEN will consider the following in finalizing the Proposal.

MMI believes preventing and detecting international money laundering and the financing of terrorism to be of the utmost importance and strongly supports FinCEN's efforts to implement effective regulations to detect and prevent the use of financial institutions' facilities, products, and services by money launderers. MMI agrees with the risk based approach to AML compliance for investment advisers and is encouraged by the recognition in the proposal for the potential for "overlap and redundancy" caused by obligations of different entities that may be involved in serving an investor.[4]

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[1] The Money Management Institute is a national not-for-profit organization for the managed account industry created in 1997 to aid portfolio manager firms and sponsors of investment consulting programs in better serving the needs of investors. MMI currently has more than 100 members representing approximately 90 percent of the managed account industry with approximately $500 billion in assets under management. For more information about MMI, please see our Web site at www.moneyinstitute.com.

[2] Financial Crimes Enforcement Network (FinCEN); Anti-Money Laundering Programs for Investment Advisers, 68 Fed. Reg. 86 (May 5, 2003) (the "Proposal").

[3] Pub. L. No. 107-56, 115 Stat. 272 (2001) ("USA Patriot Act").

[4] In discussing the duties of an investment adviser who is serving as investment adviser to a pooled investment product that is itself subject to an anti-money laundering program requirement the Proposal notes that the proposed rule would permit such investment advisers to exclude such investment vehicles from their AML program to avoid overlap and redundancy. Proposal at 23648.

MMI believes that a risk based approach best enables investment advisers to tailor their AML program to fit the nature and scope of their business. After providing some background information regarding the managed account industry, this letter discusses why, consistent with the risk based approach of the proposed rule and the desire to avoid overlap and redundancy, investment advisers should not be required to verify the identity of managed account clients that are sent to them through sponsor firms who are themselves subject to the USA Patriot Act.

The managed account industry provides investors with an investment option whereby the investors are able to retain the services of professional investment advisers who select a portfolio of individual securities on behalf of a client. Unlike pooled investment products (e.g. mutual funds), the client owns each of the underlying securities in their account. The client gains access to the investment adviser through a sponsor firm. The sponsor firm is responsible for screening each of the managers it makes available to clients and for meeting with clients to determine each client's investment objectives, risk profile and investment restrictions. Based on the client's goals and investment profile, the sponsor will recommend individual investment advisers to clients. Typically, a sponsor will do an asset allocation for the client and allocate the client's assets among several investment advisers.

Sponsors are typically registered broker dealers or are otherwise subject to regulation for anti-money laundering under the USA Patriot Act (e.g. banks). Sponsors design their programs to comply with the requirements of Rule 3a-4 under the Investment Company Act of 1940 which provides a nonexclusive safe harbor from the definition of investment company for these programs. Under these programs, sponsors typically charge clients one all -inclusive fee that covers all services rendered (e.g., investment advisory services, custody, client reporting, brokerage commissions etc.). The sponsors, in turn, pay the investment advisers selected by the client pursuant to separately negotiated contracts between the sponsor and the investment adviser. Thus, in most cases, there is no contractual relationship between the investment adviser and the client, and often no opportunity for the investment adviser to know how a client's account is funded or where withdrawals are sent. [5]

As is evident from the discussion above, in a managed account relationship, it is the sponsor of the program that has the primary relationship with the client. Sponsors generally limit the personal contact investment advisers have with managed account clients resulting in the investment adviser receiving only limited information about the client and having no or little personal contact with the managed account client. Rather, the investment advisers make investment decisions for the client based on the suitability analysis conducted by the sponsor and consistent with the style the investment adviser has been retained to implement.

Because sponsors have their own obligations pursuant to the USA Patriot Act, each client will have to be subject to the sponsor's AML program. If each investment adviser was required to subject a client to its own AML program, the same client would be the subject of multiple independent AML programs causing a great deal of overlap and redundancy.[6] Due to sponsor's AML obligations with regard to clients and the redundancy that would result if investment advisers were to include managed account clients in their AML programs, we strongly believe

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[5] There are certain circumstances where a client will have a contract directly with each investment adviser in addition to the contract that the client has with the sponsor.

[6] It is not uncommon for a sponsor to allocate a given client's assets among three or more separate investment advisers, which would result in the same customer being subject to four or more independent AML programs (e.g., the sponsor and three separate investment advisers).

that the investment adviser should not be required to subject individual managed account clients to their AML program. Rather, we would propose that the investment adviser should treat each sponsor firm as its customer for AML purposes and verify that the sponsor is subject to the USA Patriot Act. We believe this approach is consistent with the Proposal's treatment of pooled vehicles that are themselves subject to AML regulations and the risk based approach mandated by the proposed rule. We believe this approach is also consistent with other similar situations where two parties may each have AML obligations under the USA Patriot Act, but one party is in a better position to perform the function and having both parties perform the function would be duplicative (e.g., omnibus accounts in mutual funds where the mutual fund is permitted to view the broker-dealer as its customer).

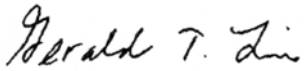
Consistent with the risk based approach of the proposed rule and the desire to avoid overlap and redundancy, we strongly encourage FinCEN to clarify in the final rule that investment advisers providing services to managed account clients coming to the investment adviser through a sponsor who itself is subject to the requirements of the USA Patriot Act be permitted to treat sponsors as customers and not be required to subject individual clients to the adviser's AML program. Of course, where a client is introduced to the investment adviser by a sponsor that is not subject to the USA Patriot Act, the investment adviser would be required to subject such clients to its AML program.

Accordingly, we recommend that the second sentence of proposed § 103.150 (b) (1) should be revised to read as follows:

> "The investment adviser may exclude from its anti-money laundering program any client or account it advises that is subject to an anti-money laundering program requirement under another provision of this Subpart."

We appreciate your consideration of our comments on this important Proposal. Please contact me if you have any questions or would like any additional information.

Sincerely,



Gerald Lins
Chairman, MMI Legal and Regulatory Affairs Committee

cc: Paul F. Roye
Director, Division of Investment Management
Securities and Exchange Commission