

Cascade Investment, L.L.C.
2365 Carillon Point
Kirkland, WA 98033

November 25, 2002

#27

VIA E-MAIL

Financial Crimes Enforcement Network
United States Department of Treasury
P.O. Box 39
Vienna, Virginia 22183-1618

e-mail: regcomments@fincen.treas.gov

Re: Comment on Anti-Money Laundering Regulations
Proposed Section 352 Unregistered Investment Company Regulations

Dear Sir/Madam:

On September 26, 2002, the Financial Crimes Enforcement Network of the United States Department of Treasury ("FinCEN") published proposed rules (the "Proposed Rules") regarding the application of Section 352 of the USA PATRIOT Act to unregistered investment companies. For the reasons stated below, I respectfully request that the Proposed Rules be amended either to (i) clarify that, for purposes of the exception available to "family companies," a family company includes a company that is owned directly or indirectly by a single natural person; or (ii) otherwise except from the Proposed Rules a company owned by a single natural person.

I am writing on behalf of Cascade Investment, L.L.C. ("Cascade"), of which I am the General Counsel. Cascade is the personal investment entity of William H. Gates III, the sole member of Cascade. Cascade's most recent Form 13F filed with the SEC showed assets of \$1.8 billion.

Under the Proposed Rules, certain unregistered investment companies that permit redemption within two years of the date of contribution, have more than \$1 million in assets and are located within the U.S. would be required to implement anti-money laundering programs. Cascade satisfies the latter three of these requirements and has on occasion represented that it is an unregistered investment company exempt pursuant to Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, as amended (the "Act").

The Proposed Rules provide an exception from the anti-money laundering programs for family companies that satisfy the requirements of Section 2(a)(51)(A)(ii) of the Act (without regard to the amount of assets owned). That section defines a family company to include only companies that are owned directly or indirectly by two or more directly related natural persons. Thus Cascade, with one member, could be subject to the regulations because it does not satisfy the

requirements of that section.

While it may seem odd that Cascade could be deemed an investment company, a neutral observer might describe Cascade's activities as an issuer that is engaged primarily in the business of investing, reinvesting, or trading in securities, as provided in Section 3(a)(1) of the Act, and the Act has no other exceptions for single member LLCs. While Cascade does not tend to issue securities in the traditional sense, so as to be an issuer under Section 2(a)(22) of the Act, I am concerned that Cascade's investment activities, current or future, could be deemed to involve the issuance of a security.

I recognize that Cascade could amend its charter documents to prohibit redemptions within two years of a contribution and thereby not be subject to the Proposed Rules. However, such a requirement would mean effectively that an individual could not distribute funds to himself. Further, it seems incongruous that a limited liability company should either limit redemption rights or institute anti-money laundering policies to prevent its only member from engaging in money laundering.

I believe that the same policy considerations that led to the family company exception should apply to Cascade and similarly situated companies. While implementing anti-money laundering programs would not be a cost burden on Cascade, it could significantly impact smaller, similarly situated companies, and ultimately have no effect whatsoever on preventing illegal money laundering activities.

I do not believe that the application of the Proposed Rules to companies such as Cascade is consistent with the policy goals of either the Proposed Rules or the USA PATRIOT Act. For these reasons, I respectfully request that the Proposed Rules be amended to clarify that companies that are owned by a single natural person are either family companies or otherwise excepted from the requirement to implement an anti-money laundering program and file notice with FinCEN.

Please call if I can answer any questions at (425) 893-6360.

Very truly yours,

Mark R. Beatty
General Counsel
Cascade Investment, L.L.C.

Cc: Michael Larson

Jonathan Fisher, Esq.

