

## FinCEN Proposed AML Rule For Investment Advisers

Written by Jeffrey D. Collins, Robert G. Sawyer, Jennifer M. Macarchuk

September 11, 2015

The Financial Crimes Enforcement Network (“FinCEN”), a bureau of the Department of Treasury, issued a proposed anti-money laundering rule applicable to investment advisers registered with the U.S. Securities and Exchange Commission (the “SEC”). In summary, the proposed rule as drafted would require SEC-registered investment advisers to (i) establish anti-money laundering (“AML”) programs, (ii) report suspicious activity to FinCEN pursuant to the Bank Secrecy Act (“BSA”), and (iii) adhere to certain recordkeeping requirements. In addition, the proposed rule would delegate FinCEN’s authority to examine investment advisers’ compliance with these rules to the SEC.

We further note that while the rule, as currently proposed, would only apply to those investment advisers registered or required to be registered with the SEC, FinCEN has requested comment on whether other investment advisers should be subject as well.

### AML Program Requirements

As proposed, investment advisers would be required to establish an AML program and accomplish the following:

- Develop an AML program that is approved in writing by its board of directors or trustees, or other persons with similar functions (e.g., general partner);
- Pursuant to the approved AML program, establish and implement policies, procedures and internal controls based upon the investment adviser’s assessment of the money laundering or terrorist financing risks associated with its business;
- Designate a person or persons to be responsible for implementing and monitoring the AML program;
- Conduct periodic independent testing of the AML program; and
- Provide ongoing AML training for appropriate persons.

### Reporting and Recordkeeping Requirements

The proposed rule would include investment advisers within the definition of “financial institution” for purposes of FinCEN’s rules implementing the BSA. As a result, investment advisers would become subject to the following reporting and recordkeeping requirements:

- **Suspicious Activity Reports.** An investment adviser would be required to file a suspicious activity report (a “SAR”) regarding transactions that involve or aggregate at least \$5,000 in funds or other assets when the investment adviser knows, suspects or has reason to suspect that the transaction (i) involves funds derived from illegal activity, (ii) is designed to evade reporting requirements, (iii) has no business or apparent lawful purpose or (iv) involves the use of the investment adviser to facilitate criminal activity.
- **Currency Transaction Reports.** An investment adviser would be required to file a currency transaction report (a “CTR”) with respect to any transaction involving a payment or transfer of more than \$10,000 in currency by, through or to the investment adviser. As a result of this new CTR filing requirement, investment advisers would no longer be required to file reports on Form 8300 for the receipt of more than \$10,000 in cash and negotiable instruments.
- **Recordkeeping and Travel Rules.** An investment adviser would be required to create and retain records related to the transmittal of funds and ensure that certain information pertaining to the transmittal of funds “travel” with the transmittal to the next financial

## Customer Identification Programs

Although the proposed rule would not require investment advisers to implement a customer identification program (a “CIP”) or require investment advisers to identify beneficial owners of legal entity customers, FinCEN indicated that these requirements will be addressed in separate rulemaking and has requested comments regarding potential CIP requirements for investment advisers.

## Submitting Comments

Comments will be due 60 days after the proposed rule notice is published in the Federal Register, and may be submitted by mail or through the Federal E-rulemaking Portal, with a reference to Docket Number FINCEN-2014-0003.

### RELATED INDUSTRIES

- [Investment Advisers & Private Funds](#)
- [Professional Services](#)

### RELATED PRACTICES

- [Fund Formation](#)
- [Business Counseling](#)
- [International Business](#)

---

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.