

Fact Sheet: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers Notice of Proposed Rulemaking (NPRM)

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The U.S. investment adviser industry provides an important service to investors in the United States and across the world in driving investment opportunities and supporting innovation, growth, and prosperity in the United States. But investment advisers, in their role as gatekeepers to the U.S. financial system, are at risk of abuse by money launderers, corrupt officials, and other bad actors. Thousands of investment advisers overseeing the investment of tens of trillions of dollars into the U.S. economy are generally not subject to comprehensive anti-money laundering and countering the financing of terrorism (AML/CFT) measures.

The proposed rule would require certain investment advisers to apply AML/CFT requirements pursuant to the Bank Secrecy Act (BSA), including implementing risk-based AML/CFT programs, reporting suspicious activity to FinCEN, and fulfilling recordkeeping requirements.

Building on the 2021 U.S. Strategy on Countering Corruption (<https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>), Treasury conducted a risk assessment (<https://home.treasury.gov/system/files/136/US-Sectoral-Illicit-Finance-Risk-Assessment-Investment-Advisers.pdf>) of the investment advisers sector that identified several illicit finance and national security risks. The risk assessment found several cases in which sanctioned individuals, corrupt officials, tax evaders, and other criminal actors have used investment advisers as an entry point to invest in U.S. securities, real estate, and other assets. Treasury's risk assessment also identified cases of foreign adversaries, including China and Russia, investing in early-stage companies through investment advisers to access sensitive information and emerging technology.

While certain investment advisers may be subject to AML/CFT requirements, or perform some AML/CFT requirements voluntarily or via contract, Treasury's risk assessment found that the lack of comprehensive AML/CFT requirements across the sector contributed to its vulnerability to illicit finance activity. Further, Treasury has found that the investment adviser sector has nearly doubled in assets under management (AUM) since Treasury's issuance of a prior NPRM in 2015 proposing to apply AML/CFT measures to certain investment advisers. The size and rapid growth of this sector underscore the importance of recalibrating the regulatory environment.

FinCEN has issued an NPRM ([hyperlink](#)) detailing a proposed rule that would apply comprehensive AML/CFT measures to certain investment advisers. The NPRM will give the public the opportunity to review and comment on the proposed rule. FinCEN is also withdrawing the 2015 NPRM.

Investment Advisers

Investment advisers are entities that provide advice to investors about securities for compensation as part of a regular business. Investment advisers provide their expertise to a wide range of clients, including retail investors, high-net-worth individuals, private institutions, and governmental entities (including local, state, and foreign government funds). Advisers typically provide ongoing advice about buying, selling and/or holding investments and will monitor the performance of clients' investments and their alignment with clients' overall investment objectives. Many clients grant the adviser the power to manage assets on a discretionary basis, meaning the adviser has the authority to decide which securities to purchase and sell for the client.

Investment Advisers Covered by the Proposed Rule

The proposed rule would include certain investment advisers in the definition of "financial institution" under the BSA:

- investment advisers registered with the Securities and Exchange Commission (SEC), also known as registered investment advisers (RIAs), and
- investment advisers that report to the SEC as exempt reporting advisers (ERAs).

Investment advisers generally must register with the SEC if they have over \$110 million in AUM. ERAs are investment advisers that (1) advise only private funds and have less than \$150 million in AUM in the United States or (2) advise only venture capital funds. ERAs are exempt from SEC registration but still must file certain information with the SEC.

Requirements of the Proposed Rule

The proposed rule would require RIAs and ERAs to:

- implement an AML/CFT program;
- file certain reports, such as Suspicious Activity Reports (SARs), with FinCEN;
- keep records such as those relating to the transmittal of funds (i.e., comply with the Recordkeeping and Travel Rule); and
- fulfill other obligations applicable to financial institutions subject to the BSA and FinCEN's implementing regulations.

The proposed rule would also apply information-sharing provisions between and among FinCEN, law enforcement government agencies, and certain financial institutions to investment advisers, along with subjecting investment advisers to the "special measures" imposed by FinCEN pursuant to Section 311 of the USA PATRIOT Act.

At this time, FinCEN is not proposing a customer identification program requirement for investment advisers. FinCEN anticipates addressing customer identification program requirements for investment advisers in a future joint rulemaking with the SEC. FinCEN is also not proposing an obligation for investment advisers to collect beneficial ownership information for legal entity customers. FinCEN anticipates addressing this requirement for investment advisers in a subsequent rulemaking.

FinCEN has tailored the requirements of the proposed rule to minimize potential business burden as much as possible while still pursuing transparency initiatives to safeguard our financial system and protect American innovation. FinCEN has been careful not to pile on additional or redundant requirements for investment advisers. Because investment advisers provide services to open-end investment companies such as mutual funds, which are already defined as “financial institutions” under the BSA, and because of the regulatory and practical relationship between mutual funds and their investment advisers, the proposed rule would not require investment advisers to apply AML/CFT program or SAR filing requirements to mutual funds they advise.

Finally, FinCEN is proposing to delegate its examination authority to the SEC, the federal functional regulator responsible for the oversight and regulation of investment advisers. The proposed delegation would be consistent with FinCEN’s existing delegation to the SEC of the authority to examine brokers and dealers in securities and mutual funds for compliance with the BSA and FinCEN’s implementing regulations.

Benefits of the Proposed Rule

The proposed rule would significantly improve efforts to protect the U.S. financial system, provide highly useful information to law enforcement authorities and national security agencies, and safeguard the investment adviser sector against illicit activity. Furthermore, the proposed rule would make it easier for U.S. investment advisers and the U.S. government to identify attempts by foreign adversaries to invest in early-stage companies with ties to important and sensitive technologies with national security implications.

The proposed rule would also bring the U.S. in line with international counterparts and address a deficiency identified by the Financial Action Task Force (FATF) in its 2016 Mutual Evaluation of the United States.

The proposed rule is designed to improve outcomes for U.S. investors and to help safeguard investments in the United States. It would improve the detection and reporting of suspicious activity to assist regulators and law enforcement in combating illicit finance, including fraud, in the investment adviser industry. The proposed rule would also help level the regulatory playing field and mitigate illicit finance risks arising from potential regulatory arbitrage by illicit actors who might choose between investment advisers applying varying AML/CFT measures.

Timing

Under the proposed rule, covered investment advisers would be required to comply with the rule on or before 12 months from the final rule’s effective date.

Next Steps

The comment period for the NPRM is open until April 15, 2024.



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