

FinCEN Rulemaking Update Anti-Money Laundering and Suspicious Activity Reporting Requirements Proposed Rulemaking

In February 2024, the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (**FinCEN**) proposed rulemaking that would require both registered investment advisers (**RIAs**) and exempt reporting advisers (**ERAs**) to apply anti-money laundering and countering the financing of terrorism (**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.

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.

That proposal cites a Treasury risk assessment that identified that the investment adviser industry has served as an entry point into the U.S. market for illicit proceeds associated with foreign corruption, fraud, tax evasion, and other criminal activities. Treasury has found that the investment adviser sector has nearly doubled in assets under management (**AUM**) since Treasury’s issuance of prior rulemaking proposed (but ultimately not adopted) in 2015 that would have applied AML/CFT measures to certain investment advisers. The size and rapid growth of this sector underscore the importance of recalibrating the regulatory environment.

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.

The comment period for the proposed rulemaking ends on April 15, 2024. RIAs and ERAs would be required to comply with the rule on or before 12 months from the final rule's effective date.

See FinCEN Press Release - <https://www.fincen.gov/news/news-releases/fincen-proposes-rule-combat-illicit-finance-and-national-security-threats>