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FinCEN Rule Proposes AML Regulations for Registered Investment Advisers

On August 25, the Financial Crimes Enforcement Network (“FinCEN”) proposed an anti-money laundering rule applicable to investment advisers registered with the U.S. Securities and Exchange Commission (the “SEC”). The issuance of the proposed rule was not unexpected, as it has been in process by the U.S. Treasury Department since the original 2003 proposal was withdrawn in October of 2008.

Very generally, the rule proposes three regulatory changes that would impact registered investment advisers:

- First, the proposed rule would require registered investment advisers to establish and maintain an anti-money laundering (“AML”) program. More specifically, registered investment advisers would be required (among other things) to (1) adopt internal policies, procedures and controls designed to address AML issues that comply with minimum standards set forth in the proposed rule, (2) conduct independent testing of its AML program, (3) designate an AML compliance officer, and (4) provide ongoing AML training for firm personnel. Furthermore, the proposed rule would require a registered investment adviser to apply its AML policies, procedures and controls to investors in investment funds managed by the adviser and make a risk-based assessment of the money laundering and terrorist financing risks provided by such investors.¹ FinCEN noted that it expects many registered investment advisers could adapt existing AML policies, procedures and internal controls to comply with the requirements set forth in the proposed rule.
- Second, the proposed rule would require registered investment advisers to report suspicious activity to FinCEN pursuant to the Bank Secrecy Act of 1970 (the “BSA”) in accordance with specified filing and notification procedures.
- Finally, the proposed rule would expand the general definition of “financial institution” to include registered investment advisers, thus subjecting such investment advisers to the requirements of the BSA. These requirements include the filing of currency transaction reports and retention of records relating to funds transmittals.

The SEC would be delegated authority to examine registered investment advisers to ensure compliance with the requirements contained in the proposed rule.

The proposed rule will be out for a 60-day comment period. A copy of the proposed rule is available [here](#) and a copy of the press release from FinCEN is available [here](#).

¹ FinCEN noted that advisory services provided to registered fund clients (including mutual funds) may present lower money laundering and terrorist financing risk than private funds and other unregistered investment vehicles, because registered funds (or the intermediaries through which fund shares are purchased and sold) are already subject to the full scope of the rules implementing the Bank Secrecy Act of 1970.