

## FinCEN Issues New Proposed Rule for Registered Investment Advisers to Implement AML Program and Report Suspicious Activities

Today, the Financial Crimes Enforcement Network ("**FinCEN**") issued a notice of proposed rulemaking (the "**Proposed Rule**"). The Proposed Rule (available at [http://www.fincen.gov/statutes\\_regs/frn/pdf/1506-AB10\\_FinCEN\\_IA\\_NPRM.pdf](http://www.fincen.gov/statutes_regs/frn/pdf/1506-AB10_FinCEN_IA_NPRM.pdf)), would require investment advisers that are registered (or required to be registered) with the Securities Exchange Commission ("**SEC**") (i.e., registered investment advisers) to:

1. establish an anti-money laundering ("**AML**") program; and
2. file suspicious activity reports ("**SARs**").

In addition, the Proposed Rule would include registered investment advisers within the definition of "financial institution" under the Bank Secrecy Act. This would require investment advisers to, among other things, file Currency Transaction Reports ("**CTRs**") and maintain certain records regarding the transmittal of funds. FinCEN intends to delegate examination authority for ensuring compliance with the Proposed Rule's requirements to the SEC.

### Who would the Proposed Rule Apply to?

The Proposed Rule would apply only to investment advisers that are registered (or required to be registered) with the SEC. The Proposed Rule includes the following non-exhaustive list of investment advisers who would be covered by the rule: (i) dually-registered investment advisers, and advisers that are affiliated with or subsidiaries of entities required to establish AML programs, (ii) certain foreign investment advisers, (iii) investment advisers to registered investment companies, (iii) financial planners, (iv) pension consultants, and (iv) entities that provide only securities and/or research reports. Certain advisers to public or private real estate funds would also be covered. The Proposed Rule does not apply to state-registered advisers or exempt reporting advisers. FinCEN requests comments on these exemptions, however, and it reserves the right to extend the Proposed Rule's requirements to state-registered advisers and exempt reporting advisers.

## What would an investment advisers' AML program be required to cover under the Proposed Rule?

The Proposed Rule notes that the investment advisers' AML program would need to cover all of its advisory activity, regardless of whether as the primary adviser or subadviser. Significantly, the Proposed Rule specifically is not limited to activity that involves the management of client assets and thus includes, for example, pension consulting, securities news letters, research reports, or financial planning.

## What's next?

Comments to the proposed rule are due within 60 days. We will be providing a more detailed analysis of the Proposed Rule in the coming days.

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