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Investment Advisers, Meet AML/CFT: FinCEN Extends Anti-Money Laundering and Countering The Financing of Terrorism Obligations to RIAs and ERAs

Executive Summary

On August 28, 2024, in a significant move to strengthen the U.S. financial system's safeguards against money laundering and terrorist financing, the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) issued a final rule (the "Final Rule"[i]) that expands Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) requirements to investment advisers (IAs). This rule, which becomes effective on January 1, 2026, underscores the need for all financial institutions, including IAs, to develop comprehensive, risk-based compliance programs to identify and mitigate illicit finance risks. This article provides an in-depth analysis of the key elements of the Final Rule and its implications for registered investment advisers (RIAs[ii]) and exempt reporting advisers (ERAs[iii]).

Background of FinCEN's Final Rule

The need for AML/CFT regulations specific to IAs has been a point of discussion for years, as IAs increasingly manage significant assets and are involved in a broad array of financial transactions that could potentially be exploited for illicit purposes.

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As stated in the Fact Sheet[iv] accompanying Final Rule, the U.S. Department of the Treasury documented "numerous cases in which sanctioned persons, corrupt officials, fraudsters, and other criminals have exploited the investment adviser industry to access the U.S. financial system and launder funds." It also found that "foreign states, most notably the People's Republic of China and the Russian Federation, leverage investment advisers and their advised funds through investment in early-stage companies to access certain technologies and services with national security implications."

Seeking to mitigate these risks, and close a regulatory gap in the existing AML/CFT framework, the Final Rule subjects IAs to the broader U.S. regulatory programs governed by the Bank Secrecy Act (BSA).[v] This shift brings the vast majority of IAs under the BSA's purview, necessitating considerable reforms for IAs that historically were not required to adopt or implement AML/CFT compliance programs.

Which Investment Advisers Are Covered Under the Final Rule?

The Final Rule expands the definition of "financial institutions" under the BSA to now cover "investment advisers," including all RIAs and ERAs, except RIAs that:

- Report zero assets under management (AUM) on their Form ADV (that is, an RIA that does not directly manage client assets)
- Are solely registered as mid-sized advisers[vi]
- Are solely registered as pension consultants[vii]
- Are solely registered as multi-state advisers[viii]
- Are registered with the Securities and Exchange Commission (SEC) on one or more of the above bases and have no other basis for registration

ERAs were specifically included under the Final Rule because, according to FinCEN: (i) exempting ERAs could "create a loophole through which illicit actors would be able to access a range of private funds without being directly subject to AML/CFT requirements"[ix]; (ii) "within the investment adviser sector, ERAs bear the highest risks as they solely advise either private funds or venture capital funds, both of which were found in the Risk Assessment[x] to be involved in illicit finance and other criminal investigations carried out by US law enforcement"[xi]; and (iii) private funds are more likely to be domiciled in jurisdictions with weaker and less effective AML/CFT controls, "making it more difficult for the ERA to assess the risk posed by the relationship or prevent abuse."[xii]

For covered RIAs or ERAs whose principal office and place of business are outside the U.S. ("foreign-located investment advisers", or FLIAs), the Final Rule only applies to the following activities:

- **Advisory Activities within the U.S.**: If the FLIA conducts advisory services within the U.S., including through a U.S. office, branch, or personnel of the adviser. (Note: FLIAs must comply with the Final Rule's requirements if they provide advisory services to a foreign private fund

that includes even a single U.S. investor. This compliance obligation extends to the entire private fund, not just the portions related to the U.S. investor. Additionally, the Final Rule imposes look-through obligations on entities formed specifically to invest in these non-U.S. domiciled private funds, ensuring a regulatory framework for effectively capturing and addressing potential illicit finance risks.)

- **Advisory Services to U.S. Persons**: If the FLIA provides advisory services to a U.S. person or a foreign-located private fund[xiii] with a U.S. investor.

Notably, certain entities are excluded from the Final Rule's expanded definition of "financial institutions," including State-registered investment advisers, foreign private advisers[xiv], and family offices. However, FinCEN cautioned that it "will continue to monitor activity involving [these entities] for indicia of the risks of money laundering, terrorist financing, or other illicit finance activities and may take regulatory action if appropriate."[xv]

Key Requirements of the Final Rule

The Final Rule requires covered RIAs and ERAs to:

- **Implement a Risk-Based and Reasonably Designed AML/CFT Program**: IAs must adopt and implement written AML/CFT programs tailored to their risk profiles. These programs must be approved by the board of directors or similar governing body, and, at a minimum, must:
    - Include internal policies, procedures, and controls reasonably designed to prevent the IA from being used for money laundering, terrorist financing, or other illicit finance activities and to achieve compliance with the applicable provisions of the BSA.
    - Implement appropriate risk-based procedures for conducting ongoing customer due diligence, to include (i) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile, and (ii) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.
    - Designate one or more AML/CFT compliance officer responsible for program implementation and monitoring.
    - Provide for independent testing of the program's effectiveness on a periodic basis, either by internal personnel (who must be independent of the program) or a qualified external party.
    - Provide ongoing training for appropriate personnel.
- **File Suspicious Activity Reports (SARs)**: IAs must file SARs with FinCEN for any transaction or attempted transaction involving or aggregating at least $5,000 that is known or suspected to

involve illegal activity, including transactions designed to evade BSA reporting requirements or facilitate money laundering or terrorism financing. SARs must be maintained for five years, along with supporting documentation.

- **File Currency Transaction Reports (CTRs)**: IAs must file CTRs with FinCEN for transactions exceeding $10,000 in a single business day. This CTR filing replaces the prior Form 8300 reporting requirement and aligns with broader BSA standards.

- **Maintain Records and Follow Special Information-Sharing Procedures**: IAs are subject to strict recordkeeping requirements, particularly for extensions of credit and cross-border transfers exceeding $3,000. These records must be maintained in compliance with the BSA's Recordkeeping and Travel Rules[xvi]. Furthermore, IAs must also comply with the information-sharing obligations under Sections 314(a) and 314(b) of the USA PATRIOT Act to collaborate with law enforcement and other financial institutions in tracking and disrupting illicit financial flows. (IA's may deem the information sharing requirements satisfied for any: (i) mutual fund, (ii) bank- and trust company-sponsored collective investment fund, or (iii) any other IA, provided that such mutual fund, collective investment fund, or any other covered IA they advise is already subject to AML/CFT program requirements.)

Although Customer Identification Program (CIP) requirements are not yet mandatory for IAs, FinCEN and the SEC are expected to finalize a joint rulemaking[xvii] that will impose CIP obligations on IAs, aligning them with other financial institutions.

Implications for Private Fund Advisers

FinCEN raised concerns regarding how the compensation structures of private fund advisers—typically comprising management fees based on total AUM and performance-based compensation—could "lead an investment adviser to unwittingly assist in illicit finance activity."[xviii] According to FinCEN, these compensation models may create an incentive for advisers to refrain "from voluntarily conducting a robust review of illicit finance risk,"[xix] since such reviews could deter potential investors, and thus ultimately reduce the adviser's compensation.

To mitigate this risk, the Final Rule requires covered private fund advisers "to adopt a risk-based approach pursuant to which they must ask questions and analyze potential money laundering, terrorist financing, and other illicit finance risks—steps that will make it more likely that an investment adviser will detect illicit finance activity."[xx]

FinCEN emphasized the necessity for covered private fund advisers to gather relevant information about investors and the nature of the investor-related data advisers receive. If an adviser is unable to obtain sufficient identifying information about the investors in a private fund, it may conclude that the fund poses a heightened risk for illicit finance activities. In such instance, the adviser must take "reasonable steps to address these higher risks"[xxi] to prevent the fund from being misused for money laundering or terrorist financing and to ensure compliance with the BSA.

Of particular concern to FinCEN are venture capital funds, which have been flagged as potential vehicles for illicit technology transfers. FinCEN notes that some foreign governments conceal their ownership or control of investment funds to disguise efforts to misappropriate technology or knowledge. This underscores the need for such fund advisers to strengthen their due diligence processes.

Although the Final Rule does not require private fund advisers to seek additional information specifically about the activities of portfolio companies, advisers are still obligated to consider the information obtained during the due diligence process when deciding whether to invest in a portfolio company. If an adviser "knows, suspects, or has reason to suspect" that suspicious activity is occurring at a portfolio company, they must file a Suspicious Activity Report (SAR). As a result, private fund advisers should carefully evaluate how the Final Rule influences their approach to conducting due diligence on portfolio companies.

Preparing for Compliance

To meet the compliance deadline, covered RIAs and ERAs should:

- **Conduct a Risk Assessment**: Conduct a thorough risk assessment to identify vulnerabilities in their operations, business models, client bases, geographic exposures, and advisory services.

- **Update/Develop an AML/CFT Program**: Design, or update as necessary, AML/CFT programs that include policies, procedures, and internal controls that comply with the Final Rule and are adaptable to evolving risks and regulatory developments. In this regard, advisers may focus aspects of their AML/CFT programs on activities or customers that they consider higher risk, while still complying with the Final Rule by applying more limited measures to those customers or activities that they identify as lower risk.

- **Provide Employee Training**: Ensure all personnel are trained on their AML/CFT obligations and are equipped to identify and report suspicious activities.

- **Invest in Appropriate Technology Solutions**: Implement technology platforms for investor due diligence, transaction monitoring, and regulatory reporting.

- **Engage with Legal and Compliance Experts**: Consider engaging external legal and compliance experts to ensure that their AML/CFT programs meet regulatory requirements.

Conclusion

The Final Rule represents a major step forward in the U.S. government's efforts to combat money laundering and terrorist financing within the financial services industry. By subjecting IAs to the same rigorous AML/CFT requirements as other financial institutions, FinCEN is closing a critical gap in the regulatory framework.

While the Final Rule's effective date of January 2026 provides a longer-than-expected implementation period, covered RIAs and ERAs must act swiftly to design and implement comprehensive AML/CFT

programs. The breadth of the Final Rule's requirements—particularly with respect to ongoing customer due diligence, independent testing, and SAR filings—may demand significant time, attention, and operational adjustments to ensure full compliance by the deadline. However, as there is no one-size fits-all AML/CFT model, the Final Rule's risk-based approach affords IAs the flexibility to develop programs that are calibrated to their specific business characteristics and risk profiles.

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[i] FinCEN, "Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers," 89 Fed. Reg. 72156 (Sept. 4, 2024) (Adopting Release) (available here).

[ii] A "registered investment adviser" (RIA) is any IA registered, or required to be registered, with the SEC under the Investment Advisers Act of 1940.

[iii] An "exempt reporting adviser" (ERA) is an investment adviser that would be required to register with the SEC but is statutorily exempt from that requirement because: (1) it is an adviser solely to one or more venture capital funds; or (2) it is an adviser solely to one or more private funds and has less than $150 million AUM in the United States. *See* Sections 203(l) and (m) of the Investment Advisers Act of 1940 (as amended).

[iv] A copy of the Fact Sheet is available here.

[v] The BSA comprises the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. 107–56 (Oct. 26, 2001), and other statutes, including the AML Act. It is codified at 12 U.S.C. §§ 1829b, 1951–1960, and 31 U.S.C. §§ 5311–5314, 5316–5336, with implementing regulations found in 31 CFR chapter X.

[vi] A "mid-sized adviser" refers to an RIA with AUM between $25 million and $100 million, who either (1) is not required to be registered as an adviser with the state securities authority in the state where it maintains its principal office and place of business, or (2) is not subject to examination as an adviser by the state in which it maintains its principal offices and places of business. *See* 15 U.S.C. § 80b-3a(a)(2).

[vii] A "pension consultant" qualifies as an investment adviser if it provides investment advice to (i) any employee benefit plan described in section 3(3) of ERISA, (ii) any governmental plan described in section 3(32) of ERISA, or (iii) any church plan described in section 3(33) of ERISA (29 U.S.C. § 1002(33)). *See* 17 CFR § 275.203A-2(a)(2).

[viii] A "multi-state adviser" is an RIA who would otherwise be required to register in more than 15 states, but has less than $100 million in AUM and has opted to register with the SEC. *See* 17 CFR § 275-203A-2(d).

[ix] Adopting Release at 72170.

[x] U.S. Department of Treasury, "2024 Investment Adviser Risk Assessment," (February 2024) (available here).

[xi] Adopting Release at 72170.

[xii] *Id*.

[xiii] A "foreign-located private fund" is defined as any foreign-located issuer that qualified as a private fund under 15 U.S.C. § 80b-2(a)(29), which defines a private fund as "an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. § 80a-3), but for section 3(c)(1) or 3(c)(7) of that Act."

[xiv] The "foreign private adviser" exemption applies to advisers that (i) have no place of business in the U.S.; (ii) have fewer than 15 U.S. clients or U.S. investors in private funds advised by the adviser; (iii) have less than $25 million in aggregate AUM attributable to such clients and investors; and (iv) do not hold themselves out generally to the public in the U.S. as investment advisers. *See* 15 U.S.C. §§ 80b-2(a)(30), 80b-3(b)(3).

[xv] Adopting Release at 72178.

[xvi] Under the Recordkeeping and Travel Rules (31 CFR §§ 1010.410(e) and (f)), financial institutions must create and retain records for fund transmittals and ensure that certain information "travels" with the transmittal throughout the fund transfer chain. The transmittor's financial institution must collect and retain the transmittor's name, address, account number, and other transaction details. The recipient's financial institution must similarly collect and retain identifying information on the recipient. These rules apply to transmittals equal to or exceeding $3,000.

[xvii] FinCEN, SEC, "Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers," 89 Fed. Reg. 44571, 44575 (proposed May 13, 2024) (to be codified at 17 C.F.R. pt. 275) (available here).

[xviii] Adopting Release at 72163.

[xix] *Id*.

[xx] *Id*.

[xxi] Adopting Release at 72191.