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New FinCEN Rule Expands AML/CFT Responsibilities for Investment Advisers: What Investment Advisers Need to Know

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As of January 1, 2026, most investment advisers registered with the Securities and Exchange Commission (SEC) and SEC exempt reporting advisers (ERAs) will face new regulatory obligations under the Financial Crimes Enforcement Network's (FinCEN) final rule on anti-money laundering (AML) and countering the financing of terrorism (CFT).[1] This landmark rule brings many investment advisers under the Bank Secrecy Act's (BSA) definition of "financial institution," imposing direct requirements for establishing AML/CFT programs, conducting customer due diligence, and filing suspicious activity reports (SARs) for potentially illicit transactions.

This rule (the Final Rule), long in development, is intended to mitigate the risks posed by money laundering, terrorist financing, and other illicit activities in the investment advisory industry, even though investment advisers rarely maintain custody of client funds (unless an adviser is also a bank or broker-dealer, and thus subject to existing AML obligations). With increasing regulatory scrutiny on the financial services industry and concerns over money laundering vulnerabilities, this rule will affect how investment advisers engage with clients, manage risks, and uphold compliance.

This article covers the essential aspects of the new rule, what it means for investment advisers, and how to prepare for the current January 2026 compliance deadline.

> *Note*: On January 20, 2025, President Trump signed an executive order pausing the issuances of new rules/regulatory actions pending review by the new administration. For rules already published in the *Federal Registrar* (such as the new AML rule), the executive order encourages agencies to postpone any rules set to be implemented before March 21, 2025 (60 days from the issuance of the executive order).[2] Because the effective date of the new AML rule falls outside this window, it is not subject to the implementation delays imposed by the executive order, but the implementation timeline is still subject to possible change at the behest of the new administration.

Background

In 2001, the USA PATRIOT ACT (the Act) amended the BSA, introducing a range of anti-money laundering and counter-terrorism financing

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requirements for financial institutions, including broker-dealers, banks, and mutual funds (collectively, AML/CFT requirements). However, the Act did not explicitly cover investment advisers. The rationale for excluding investment advisers from the AML/CFT regime at that time was that most advisory clients maintain their assets with bank custodians or broker-dealers, who are already subject to AML/CFT obligations. Accordingly, investment advisers were seen as having a low risk of facilitating money laundering or terrorist financing.

Despite a Congressional decision not to impose AML/CFT compliance requirements on investment advisers through the Act, the Financial Crimes Enforcement Network (FinCEN), the agency tasked with implementing the BSA and oversight over the country's AML/CFT regime, moved quickly to do so through regulation. In 2003, FinCEN issued a Notice of Proposed Rulemaking (NPRM) to its BSA implementing regulations to require certain investment advisers to establish AML/CFT compliance programs.[3] The proposal was never finalized and ultimately withdrawn in 2008.[4] FinCEN made a second attempt in a September 2015 proposal, but again never finalized the regulation.[5]

Then in February 2024, FinCEN issued its third NPRM, this time proposing to require all RIAs and ERAs to establish and implement AML/CFT programs, file suspicious activity reports (SARs), and comply with certain recordkeeping and reporting requirements. According to FinCEN, since 2015 investment advisers have grown in size, scope, and complexity, and may have access to sensitive client information, conduct transactions on behalf of clients, or have relationships with foreign entities or persons. FinCEN believes that these factors may expose investment advisers to money laundering or terrorist financing risks, and create potential vulnerabilities in the US financial system. Moreover, FinCEN believes that the lack of AML/CFT requirements for investment advisers has created an uneven playing field among different types of financial institutions, and hindered the ability of law enforcement and regulators to detect and deter illicit activity.[6]

Notwithstanding the absence of a legal requirement, in the years after the Act was adopted, some investment advisers voluntarily adopted AML/CFT policies and procedures (for example, due to commercial pressures, or because they were affiliated with banks or broker-dealers that implemented enterprise-wide AML/CFT procedures), or were obligated by contractual arrangements with other financial institutions, such as broker-dealers, to fulfill certain AML/CFT functions. For example, since 2004, and most recently renewed in December 2022, the SEC's Division of Trading and Markets has permitted broker-dealers to rely on RIAs to fulfill certain AML/CFT obligations, even though RIAs are not subject to an independent AML/CFT compliance obligation. This relief allows broker-dealers to rely on RIAs for customer identification program (CIP) requirements, so long as the RIA implements its own AML program, conducts due diligence aligned with the broker-dealer's CIP, and promptly reports suspicious activity. Broker-dealers are, in turn, responsible for ensuring that any RIA they rely on for AML/CFT compliance has policies in place to meet these requirements, and is registered with the SEC. This reliance model places the primary compliance responsibility on broker-dealers, with RIAs acting as supporting agents rather than direct subjects of AML/CFT regulations.[7]

But with the adoption of the Final Rule (together with the forthcoming expected finalization of the CIP rule for investment advisers, discussed below), this Staff guidance will sunset automatically, and certain RIAs and ERAs will be directly subject to AML requirements, as outlined below.

Who Is Subject to the New Rule?

While the proposed rule originally broadly categorized all RIAs and ERAs as "investment advisers" under the Bank Secrecy Act's definition of "financial institution," FinCEN narrowed the Final Rule's definition of "investment adviser" from that of the

proposed rule in response to comments, which raised concerns regarding the effect of the proposed rule's regulatory burden on smaller RIAs.[8] Advisers that will be exempt from the Final Rule include RIAs that register with the SEC solely because they are mid-sized advisers, multi-state advisers, or pension consultants, as well as RIAs that do not report any assets under management (AUM) on Form ADV.

Furthermore, non-US located RIAs (RIAs whose principal office and place of business is located outside the United States) will only be subject to the rule with regards to their activities with a US nexus. The Final Rule defines activities with a US nexus as (1) any provision of services that include the involvement of US personnel[9] of the investment adviser,[10] (2) the provision of services to a US person,[11] and (3) the provision of services to a foreign-located private fund[12] with at least one investor that is a US person.[13] All other RIAs will be covered by the Final Rule.

Additionally, all ERAs will be subject to the Final Rule, with the exception that non-US ERAs (ERAs whose principal office and place of business is located outside the United States) will only be subject to the rule with respect to their activities with a US nexus.[14] RIAs and ERAs covered by the Final Rule, in whole or in part, are referred to herein as "Covered Advisers."[15]

Covered Advisers will be subject to these new requirements with regard to each of their advisory client relationships, as the Final Rule defines "customers" as those natural and legal persons who enter into an advisory relationship with a Covered Adviser, either directly or through an intermediary.[16]

It is important to note that, while these compliance requirements will be new to many Covered Advisers, investment advisers that have held themselves out as complying with AML requirements are already indirectly obligated to adhere to such requirements via Section 206(4) of the Advisers Act. In a 2025 enforcement action, the SEC censured and fined Navy Capital, then an RIA, for violating these sections by falsely holding itself out to investors as complying with AML regulations that were not applicable to investment advisers, but that the firm had voluntarily adopted as an assurance to investors.

The SEC found that Navy Capital failed to comply with its own AML policies, and that these failures and misrepresentations regarding compliance therewith were willfully negligent and deceptive. Navy Capital's actions led to censure by the SEC and the imposition of a $150,000 civil penalty.[17]

Implications of Being Designated a "Financial Institution" under the BSA

The reclassification of Covered Advisers as "financial institutions" under the BSA will subject them to direct AML compliance obligations, and Covered Advisers will become directly responsible for any failures to meet applicable BSA standards.[18] Key requirements for Covered Advisers under the Final Rule, which substantively mirror the requirements in place for other financial institutions, include:

- Implementing a comprehensive AML/CFT program, tailored to the Covered Adviser's specific risk profile, that covers advisory client due diligence and the identification of high-risk clients. This AML program must include policies and procedures for identifying and mitigating potential money laundering risks associated with each advisory client relationship, particularly for high-net-worth individuals and complex investment structures.[19]
- Filing SARs directly with FinCEN for any transaction involving $5,000 or more that raises suspicions of illegal activity, such as money laundering, tax evasion, or other forms of financial crime.[20]
- Enhanced recordkeeping obligations, which will require Covered Advisers to create and maintain (i) records of customer identities and findings from customer due diligence efforts, (ii) identifying information regarding the

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transmittal of funds,[21] and (iii) copies of filed SARs and the related underlying documents. Respectively, such records must be maintained for a minimum of five years following (a) the end of the client relationship, (b) the date of the transmittal of funds, and (c) the date of the filing of the SAR. Covered Advisers must make such records available to regulators upon request.[22]

These requirements, which are discussed in more detail below, aim to standardize AML/CFT practices across the financial services sector, enhancing accountability and aligning most investment advisers' compliance standards with those of other financial institutions already subject to the BSA. This shift could demand significant operational adjustments for certain Covered Advisers, as they must establish compliance frameworks that not only detect and report suspicious activity, but also protect client information and demonstrate to the SEC that they meet the new regulatory requirements.

Minimum Requirements for AML/CFT Programs

The BSA's standards for Covered Adviser AML/CFT programs require that the programs include, at a minimum:

- the development of internal policies, procedures, and controls reasonably designed to identify and mitigate potential money laundering risks associated with each advisory client relationship;
- the designation of at least one compliance officer;
- ongoing employee training; and
- an independent audit function to test the efficacy of the programs.[23]

Policies and Procedures

FinCEN recommends that Covered Advisers develop policies and procedures that align with BSA AML/CFT standards and integrate with any existing compliance frameworks, such as voluntary customer due diligence programs, in order to meet regulatory requirements and maintain operational consistency.[24] According to FinCEN, effective policies start with a comprehensive risk assessment that evaluates the Covered Adviser's client base, geographic footprint, and nature/type of advisory services.[25] FinCEN states that Covered Advisers must design their programs based on their specific risk profiles and conduct ongoing monitoring to identify and report suspicious transactions.[26] Although not required by FinCEN, as a practical matter, automated transaction monitoring tools can help identify unusual client behavior by setting thresholds for review, while escalation protocols can be set to ensure SARs are filed promptly with FinCEN when required.[27]

Independent Audit Requirement

Independent audits also must be conducted regularly by a qualified independent third party or an internal team not involved in AML operations in order to identify gaps or areas for improvements.[28] FinCEN has left the frequency of independent audits to each Covered Adviser's individual discretion, to be determined based on the specific Covered Adviser's illicit financing risk profile and overall risk management strategy.[29]

Compliance Officer Requirement

The Final Rule mandates that Covered Advisers designate a person or persons (which could include a committee) responsible for implementing and monitoring the operations and internal controls of the AML/CFT program. This designated compliance officer(s) should be knowledgeable and competent regarding AML/CFT requirements, the Covered Adviser's relevant internal policies, procedures and controls, and the Covered Adviser's specific illicit financing risk profile.[30] The compliance officer(s) must have sufficient authority, independence, and

access to resources to effectively implement the AML/CFT program.[31] Further, FinCEN states that the role of compliance officer must be assigned to an employee of the Covered Adviser, its affiliate, or of an entity within the adviser's organizational structure, and that the role and its responsibilities cannot be delegated to a third party or outside consultant.[32]

Employee Training

The Final Rule requires regular and role-specific employee training, which the regulator expects to encompass the fundamentals of AML/CFT compliance, including recognizing indicators of suspicious activity and understanding the procedures for escalating concerns. FinCEN further expects that training is conducted when employees assume their roles and periodically thereafter to keep staff informed of any changes in regulations or internal policies. FinCEN has stated that the nature, scope and frequency of each Covered Adviser's training program will be left to the individual Covered Adviser's discretion. According to the Final Rule, Covered Advisers should design both general and role-specific trainings for employees, the scopes of which should be determined by the extent to which particular job functions bring employees in contact with AML/CFT requirements.[33]

CIP and Risk-Based Customer (Advisory Client) Due Diligence

FinCEN's existing CIP rule requires all "financial institutions" to implement customer identification and verification and related recordkeeping procedures as a core part of their AML/CFT program (for example, identifying a client's full name, address, date of birth, and government issued identification numbers and verifying such information through collection of government-issued identification cards). Although the Final Rule amends the definition of "financial institution" to include Covered Advisers, it will *not* immediately require them to comply with the CIP Rule. Instead, FinCEN will extend customer CIP requirements through separate rulemaking.

In May 2024, FinCEN issued a proposed joint rulemaking with the SEC to impose CIP requirements on Covered Advisers and is currently reviewing public comments and working to finalize the rule.[34]

Beneficial Ownership of Entity Advisory Clients

Similar to its treatment of the CIP Rule, FinCEN has postponed the collection of beneficial ownership information for legal entity customers that applies to other types of financial institutions with AML/CFT program requirements. FinCEN explained in the Final Rule that it is working toward fulfilling a separate statutory requirement to amend the existing beneficial ownership regulations and has deferred Covered Advisers' obligations until the effective date of the revised beneficial ownership regulations. As part of their overall customer due diligence (CDD) process, FinCEN has advised Covered Advisers to make a risk-based determination as to whether to collect beneficial ownership information based on a customer's risk profile.[35] While many investment advisers to private funds already incorporate beneficial ownership questions into their subscription questionnaires in order to meet their contractual obligations to broker-dealers and bank custodians, if and when this becomes a direct requirement on Covered Advisers, these advisers will need to align their policies and procedures with these questionnaires.[36]

New versus Existing Advisory Clients

Although the Final Rule does not explicitly mandate that CIP procedures be retroactively applied to existing advisory clients, it does require that Covered Advisers conduct ongoing risk-based CDD and monitoring, which may necessitate updating client due diligence information as part of the adviser's risk-based approach.[37] FinCEN's requirement for

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a risk-based approach to CDD necessitates that Covered Advisers evaluate the risk profiles of their advisory clients and periodically monitor and reassess clients to capture any changes that could affect their risk profiles, such as significant shifts in transaction patterns or changes in the beneficial ownership or management structure of entity advisory clients. Clients should also periodically be screened against public sanctions lists such as those provided by OFAC, as well as politically exposed persons (PEP) databases. FinCEN has left determinations regarding the frequency of this monitoring to the discretion of individual Covered Advisers, who should make such determinations based on the specific risk profiles of their clients.[38] Additionally, the Final Rule does not prescribe any required risk profile categories, and Covered Advisers will have discretion to determine and apply risk factors appropriate for their business activities and products when building risk profiles of clients.[39]

Covered Advisers should follow a risk-based CDD approach, as outlined in the Federal Financial Institutions Examination Council (FFIEC) BSA/AML Examination Manual, which incorporates the standards set by the Financial Action Task Force.[40] According to the FFIEC Examination Manual, at the outset of a client relationship, Covered Advisers should conduct a thorough assessment to determine the inherent risks posed by each client. Factors considered in this assessment should include geographic risk, client type, and transaction patterns. High-net-worth clients, clients with complex organizational structures, or those connected to high-risk jurisdictions may be considered high risk. For clients classified as higher risk, enhanced due diligence and stricter monitoring measures are recommended (and expected by regulators). To verify the legitimacy of a client's finances, Covered Advisers should document the source of wealth and funding, especially for high-net-worth individuals and complex legal entity clients. Covered Advisers should also require high-risk clients to provide additional documentation, such as tax returns, business registrations, financial statements, or contracts, to verify their identity and business activities accurately. Meanwhile, standard CDD procedures can be maintained for lower-risk clients, allowing advisers to allocate resources efficiently and focus on high-priority areas.[41]

Ambiguity Regarding Investors in Unregistered Pooled Investment Vehicles

The Final Rule does not explicitly define who is the customer of a Covered Adviser in the context of private funds and other unregistered pooled investment vehicles. The Final Rule also does not clarify how a Covered Adviser should assess and mitigate the risks posed by intermediaries, such as fund administrators or placement agents, who may act on behalf of the investors in a pooled investment vehicle.[42] These ambiguities may create challenges and uncertainties for Covered Advisers in complying with the Final Rule.

Suspicious Activity Reporting and Safe Harbor Provisions

Under the Final Rule, Covered Advisers will be required to file suspicious activity reports (SAR) for any client transactions that indicate potential financial crimes, as described below. Covered Advisers will have to follow the same SAR filing guidelines to which mutual fund advisers are already subject.[43]

Filing Triggers and Red Flags

Covered Advisers will be required to file a SAR if they suspect or have reason to suspect that a transaction of $5,000 or more involves funds derived from illegal activity, is intended to evade AML laws, appears to lack a legitimate business purpose, or could be associated with criminal financing, such as terrorism. Common red flags include clients using complex, layered transactions, transferring large sums of money to high-risk jurisdictions, or maintaining accounts that show sudden, unexplained changes in transaction volume or behavior. Additional triggers may include attempts by clients to avoid due

diligence questions or cases where a client's financial activity conflicts with their stated wealth source. [44]

Documentation and Filing Specifics

To file a SAR, Covered Advisers must first document their reasons for suspicion clearly and thoroughly. SAR filings require detailed descriptions of the transaction in question, the nature of the suspicion, and any supporting evidence of observations that led to the filing. FinCEN requires that SARs be submitted electronically through the BSA E-Filing System within 30 days of detecting suspicious activity, allowing an additional 30 days if more information is needed. FinCEN recommends that Covered Advisers include as much specific detail as possible, such as transaction dates, account numbers, and the identity of any parties involved. Covered Advisers are further advised to maintain separate, secure records of all SAR-related documents to facilitate regulatory audits and ensure compliance. Such records must be retained for a minimum of five years from the date of the filing of the SAR, which is largely consistent with the record retention requirement for Covered Advisers in Rule 204-2 under Advisers Act.[45]

The Safe Harbor Provisions

The BSA includes important legal protections, known as "safe harbor" provisions, that protect Covered Advisers from liability when filing SARs in good faith.[46] These provisions mean that, provided a Covered Adviser files a SAR according to FinCEN guidelines and with reasonable suspicion, it will be protected against lawsuits or claims under US law from clients whose activities have been reported. Furthermore, BSA regulations prohibit Covered Advisers from disclosing to clients or other parties that a SAR has been filed, in order to ensure confidentiality in the reporting process. By following these guidelines and maintaining confidentiality, Covered Advisers can fulfill their regulatory obligations without fear of legal repercussions, provided that their SAR filings are made responsibly and with adequate documentation.

Delegation of AML/CFT Duties

While not explicitly included in the Final Rule text, in its response to comments, FinCEN has stated that Covered Advisers shall be permitted to contractually delegate some or all aspects of their AML and CFT programs to third parties, including to affiliates. Due to the diverse array of business models through which different Covered Advisers operate, FinCEN has stated that the decisions regarding the extent of such delegation shall be made at each Covered Adviser's own discretion.[47]

Regardless, and consistent with FinCEN's treatment of delegation for other financial institutions, Covered Advisers will remain fully responsible and legally liable for any AML/CFT duties that they may choose to delegate, similar to the reliance arrangement through which broker-dealers and advisers are currently operating. Covered Advisers who choose to delegate certain aspects of their AML/CFT programs must ensure that FinCEN and the SEC have the ability to obtain information and records regarding their AML/CFT programs, and may be required to demonstrate their delegated program's compliance with AML/CFT requirements and FinCEN's implementing regulations.[48]

Any Covered Adviser considering delegating its AML/CFT programs to third parties must still identify and document appropriate procedures to address their individual vulnerability to illicit financing and undertake "reasonable steps" to evaluate whether the third-party service provider would be able to effectively execute such procedures.[49] FinCEN has stated that the level of oversight a Covered Adviser must maintain over its third-party service providers to whom AML/CFT programs are delegated will be dependent on the specific adviser's overall risk profile for illicit financial activities, as well as the type of AML/CFT responsibilities that have been delegated to the third-party service provider. While Covered Advisers will be prohibited from solely relying on a certification from the service provider stating that the service provider "has a satisfactory anti-money laundering program,"

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Covered Advisers may take such certification into account as an element of their periodic oversight of the service provider's operational framework surrounding delegated duties.[50]

Although all Covered Advisers must periodically monitor the compliance of their third-party service providers with AML/CFT requirements, FinCEN has largely left the frequency and extent to which Covered Advisers must monitor their third-party service providers up to the Covered Adviser's own discretion. FinCEN's position is that the Covered Adviser is the person best positioned to assess the risks of their business and design and oversee an AML/CFT program that can best address these risks, and thus should individually determine the requisite scope of their monitoring of service providers.[51]

In navigating this new regulatory landscape, Covered Advisers should keep in mind that, regardless of delegation to third-party service providers, the ultimate responsibility for failures of their AML/CFT programs will fall on them. Reliance on the contractual representations of third-party service providers will not exculpate Covered Advisers from liability should those representations prove to be false, misleading, or cease to be true.[52]

Regulatory Oversight and Enforcement; Potential Consequences of Non-Compliance

Both FinCEN and the SEC will be responsible for regulatory oversight and enforcement of the Final Rule. FinCEN has delegated examination authority to the SEC due to the agency's established regulatory role and experience with the investment advisory industry and its existing authority to examine broker-dealers and mutual funds for compliance with FinCEN's regulations implementing the BSA. The Final Rule states that the SEC will determine its own examination procedures and priorities. This means that in 2026, SEC Examiners will have the authority to assess Covered Advisers' adherence to the BSA's AML/CFT requirements as part of SEC examinations. The SEC will be responsible for inspecting and evaluating each Covered Adviser's AML/CFT program, scrutinizing the effectiveness of risk-based customer due diligence, transaction monitoring, and SAR protocols. As outlined in the Final Rule, SEC Examiners will look for clear, consistent documentation of AML practices, effective internal controls, and accurate recordkeeping. Covered Advisers that fail to meet these standards could face enforcement actions by the SEC and FinCEN.[53]

The potential consequences for non-compliance with AML/CFT obligations are substantial and can extend beyond immediate regulatory penalties. According to the BSA, penalties for AML non-compliance can include significant fines, legal sanctions, and even criminal charges in cases of severe negligence or willful misconduct. Financial penalties can vary based on the nature and scope of the violation, but are designed to act as a deterrent against lapses in AML/CFT compliance.[54]

Beyond fines, Covered Advisers that fail to comply with AML/CFT regulations risk reputational damage, as a regulatory enforcement action or publicized AML/CFT violation can harm a Covered Adviser's credibility and client trust, potentially leading to a loss of business and market standing.

FinCEN's delegation of examination authority to the SEC underscores the importance of AML/CFT compliance in the investment advisory sector. Covered Advisers will face dual oversight from FinCEN and the SEC. In an era of heightened regulatory scrutiny and sophisticated financial crime, Covered Advisers should consider taking a proactive and robust approach to AML/CFT compliance to meet regulatory expectations and protect their reputation.

Conclusion

Some Covered Advisers may already be familiar with AML/CFT requirements or otherwise be able to leverage enterprise expertise within their organization. For example, advisers to registered funds are subject to AML/CFT rules applicable to the funds they advise, and may have existing AML/CFT

policies and procedures in place. Similarly, dual registrants that are also broker-dealers or advisers owned by or affiliated with other BSA financial institutions (for example, banks, broker-dealers) may have access to AML/CFT resources and best practices from their other lines of business. However, even for these Covered Advisers, the Final Rule may introduce new or different obligations that require adjustments to their existing AML/CFT programs or to their particular business and client-base. For instance, the Final Rule may expand the scope of persons and activities that are subject to AML/CFT due diligence and reporting, or impose additional recordkeeping and testing requirements.

For other Covered Advisers, the Final Rule may present a significant challenge, as they may have little or no prior experience with AML/CFT compliance. These Covered Advisers may need to develop and implement AML/CFT policies and procedures from scratch, or seek external guidance or assistance from lawyers, consultants, or vendors. They may also need to invest in AML/CFT training, technology, and staffing to ensure adequate compliance capabilities and oversight.

Regardless of their current level of AML/CFT preparedness, Covered Advisers might consider taking the following steps with a view towards full compliance with the Final Rule by the effective date of January 1, 2026:

- Conduct a comprehensive risk assessment of their businesses based on their products, services, geographic footprint, and FinCEN's National AML/CFT Priorities, and update it periodically to reflect any changes in their business activities.
- Establish a written AML/CFT program that is reasonably designed to prevent, detect, and report money laundering, terrorist financing, and other illicit activities.
- Designate a qualified individual or individuals as the AML/CFT compliance officer(s) who are responsible for implementing and monitoring the AML/CFT program, and who have sufficient authority, resources, and access to information.
- Implement risk-based customer identification and verification procedures that collect and verify relevant information about the identity, beneficial ownership, source of funds, and expected transaction activity of their advisory clients, and that apply enhanced due diligence to higher-risk clients or transactions.
- Implement transaction monitoring systems or processes that enable the identification and investigation of suspicious or unusual activity to facilitate the filing of SARs when required.
- Implement recordkeeping systems or processes that maintain and retain required records of client information, transactions, and AML/CFT compliance activities, and that enable the production of such records upon request by FinCEN, the SEC, or other authorities.
- Implement internal controls that ensure the effective implementation and oversight of the AML/CFT program, and that include policies and procedures for employee screening, training, testing, reporting, and auditing.
- Review and update their investment advisory agreements, privacy notices and policies, and other relevant documents to ensure that they do not contain overly restrictive or conflicting provisions that may hinder their AML/CFT compliance obligations.
- Adequately inform advisory clients regarding their AML/CFT procedures.

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NOTES

1 FinCEN: Anti-Money Laundering/Countering the Financing of Terrorism Program, 89 Fed. Reg. 72,156, 72,207 (Sept. 4, 2024).

2 Regulatory Freeze Pending Review, 90 Fed. Reg. 8249 (Jan. 28, 2025).

3 FinCEN: Anti-Money Laundering Programs for Investment Advisers, 68 Fed. Reg. 23,646 (May 5, 2003).

4 FinCEN: Withdrawal of the Notice of Proposed Rulemaking; Anti-Money Laundering Programs for Investment Advisers, 73 Fed. Reg. 65,568 (Nov. 4, 2008).

5 FinCEN, Notice of Proposed Rulemaking, Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 Fed. Reg. 52680 (Sept. 1, 2015).

6 89 Fed. Reg. at 72,213.

7 *See, e.g.*, Bernard V. Canepa, Securities Industry and Fin. Markets Ass'n, SEC Staff No-Action Letter, 2022 WL 18957866 (Dec. 9, 2022).

8 *Id.* at 72,168.

9 "US personnel" is defined as any director, officer, employee, or agent of the investment adviser conducting advisory activities from a US-located branch, or office of the investment adviser, regardless of citizenship.

10 *Id.* at 72,172.

11 "US person" is defined as a person meeting the definition in 17 CFR 230.902(k), which is part of Regulation S under the Securities Act.

12 "Foreign-located private fund" is defined as any foreign-located issuer that is a private fund as that term is defined under 15 U.S.C. 80b-2(a)(29).

13 *Id.* at 72,156.

14 *Id.* at 72,170. This stringent regulation of ERAs comes as a result of the findings of the 2024 Investment Adviser Risk Assessment (Risk Assessment) conducted by the US Treasury, which found that ERAs bear the greatest risk of inadvertent involvement with illicit financing, as they advise solely private funds and venture capital funds, both of which the Risk Assessment found to be exceptionally vulnerable to the involvement of bad actors from an AML perspective. US Dep't of the Treasury, *2024 Investment Advisor Risk Assessment* (2024).

15 Dual registrants are not required to establish multiple or separate AML/CFT programs. Instead, they can maintain a single comprehensive AML/CFT program that covers all of their relevant business activities, including those as an investment adviser and as a broker-dealer or bank. FinCEN: Anti-Money Laundering and Countering the Financing of Terrorism Program, 89 Fed. Reg. 72,187 (Sept. 4, 2024).

16 *Id.* at 72,157.

17 *Order Instituting Administrative and Cease-And-Desist Proceedings, Navy Capital Green Mgmt., LLC*, Investment Advisers Act Release No. 6823 (Jan. 14, 2025).

18 31 C.F.R. § 1010.100

19 31 U.S.C. § 5318(h)(1)-(2).

20 89 Fed. Reg. at 72,201.

21 Subject to certain exceptions, FinCEN's Recordkeeping and Travel Rules require financial institutions (including Covered Advisers) to collect and maintain basic information and records concerning (i) parties that are related to a transaction, and (ii) the transaction itself. The purpose of the rule is to ensure that such information accompanies fund transfers as they move from an initiating to a recipient financial institution. This enables financial institutions to perform effective transaction screening as part of their AML/CFT compliance program efforts. It also ensures that law enforcement will have ready access to information critical to the investigation of money laundering and terrorist financing. 13 C.F.R. § 1010.410.

22 *Id.* at 72,202.

23 31 U.S.C. § 5318(h)(1)-(2).

24 89 Fed. Reg. at 72,231.

25 *Id.* at 72,182. As part of the risk assessment process, Covered Advisers should consider FinCEN's national AML/CFT priorities.

26 *Id.* at 72,193.

27 *Id.* at 72,196.

[28] *Id.* at 72,276.
[29] *Id.* at 72,192.
[30] *Id.* at 72,193.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] FinCEN and SEC: Notice of Proposed Rulemaking, Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers, 89 Fed. Reg. 44571 (May 21, 2024).
[35] 89 Fed. Reg. at 72,194.
[36] 89 Fed. Reg. at 72,161.
[37] *Id.* at 72,196.
[38] *Id.*
[39] *Id.* at 72,195.
[40] On July 3, 2024, FinCEN published a NPRM that, if finalized, will codify mandatory risk assessment processes. Anti-Money Laundering and Countering the Financing of Terrorism Programs, 89 Fed. Reg. 55428 (July 3, 2024).
[41] Federal Financial Institutions Examination Council, *Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) Examination Manual* (2015).
[42] *Id.* at 72,159.
[43] *Id.* at 72,168.
[44] FinCEN, Frequently Asked Questions Regarding Suspicious Activity Reporting (Oct. 6, 2006), *https://www.fincen.gov/resources/statutes-regulations/guidance/frequently-asked-questions-suspicious-activity-reporting*.
[45] *Id.*
[46] 31 U.S.C. § 5318(g)(3)(A).
[47] 89 Fed. Reg. at 72,188.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.* at 72,189.
[52] On November 16, 2022, the SEC proposed an Advisers Act rule that, if finalized, will impose minimum due diligence, monitoring, recordkeeping, and Form ADV disclosure requirements, on RIAs who delegate certain "covered functions" to other parties (the definition of which could include AML/CFT obligations). At this time, it is unclear whether this or any similar proposal will move forward during this current administration. Securities and Exchange Commission: Outsourcing by Investment Advisers, 87 Fed. Reg. 68816 (Nov. 16, 2022).
[53] *Id.* at 72,206.
[54] IRS, Internal Revenue Manuals, Part 4, Ch. 26, §7, Bank Secrecy Act Penalties (Oct. 11, 2019).

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