

Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors

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FinCEN Proposes Rules for Investment Advisers to Establish Anti-Money Laundering Programs

On August 25, 2015, the Financial Crimes Enforcement Network (FinCEN) published a Notice of Proposed Rulemaking (the "Proposed Rule") that would require certain investment advisers registered with the U.S. Securities and Exchange Commission to establish anti-money laundering (AML) programs and report suspicious activity to FinCEN under the Bank Security Act (the "BSA"). This proposed rule addresses money laundering vulnerabilities in the U.S. financial system. The issuance of the proposed rule was not unexpected, as it has been in process by the U.S. Treasury Department since 2003 but was withdrawn in 2008. Other financial institutions such as mutual funds, broker-dealers in securities, and banks are already required to have AML programs and file suspicious activity reports to the BSA.

In brief, the proposed rule has three regulatory changes that would impact registered investment advisers. First, the proposed rule would require investment advisers to establish and maintain a written AML program that generally includes preventing the investment adviser from being used to facilitate money laundering or financing terrorist activities. It also requires the adviser to and monitor compliance with the BSA and FinCEN's regulations. Second, the proposed rule would impose a requirement that investment advisers report certain suspicious activities to U.S. authorities. An investment adviser must file a suspicious activity report within 30 days after becoming aware of a suspicious transaction. Lastly, the proposed rule would expand the general definition of 'financial institution' to include registered investment advisers, therefore subjecting investment advisers to the general reporting and recordkeeping requirements of the BSA.

FinCEN indicates that this rulemaking is the start of a series of new regulations aimed at strengthening investment advisers AML obligations. This proposed rule is out for a 60-day comment period, written comments on the proposed rule must be submitted on or before November 2, 2015.

For more information, contact your Anchin relationship partner or Jeffrey I. Rosenthal, Partner-in-Charge of Anchin's Financial Services Practice at 212.840.3456.

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