



# FinCEN proposes rule to require investment advisers comply with AML/CFT regulations

Initial perspectives related to Financial Crimes Enforcement Network (FinCEN) rule proposal

On February 13, 2024, the Financial Crimes Enforcement Network (FinCEN) released a notice of proposed rulemaking (NPRM) that would require certain investment advisers (IAs) to apply anti-money laundering and countering the financing of terrorism (AML/CFT) requirements pursuant to the Bank Secrecy Act (BSA), including implementing risk-based AML/CFT programs, reporting suspicious activity to FinCEN, and fulfilling recordkeeping requirements.<sup>1</sup> The new proposal is similar to proposals published by FinCEN in [2003](#) and [2015](#) that would have required covered IAs to establish AML programs and report suspicious activity; however, the most recent proposal was never finalized and was formally withdrawn concurrent with the new proposal. The comment period for the current proposal is open until April 15, 2024. IAs will have twelve months to comply from the effective date of the rule.

## 5 insights you should know

**Scope:** The proposal defines “covered IAs” as (1) investment advisers registered or required to register with the SEC and (2) investment advisers that report to the SEC as exempt reporting advisers (ERAs) pursuant to the Investment Advisers Act of 1940. IAs advising a mutual fund may deem their AML/CFT program requirements satisfied so long as the mutual fund has developed and implemented an AML/CFT program compliant with the AML program requirements applicable to mutual funds.

**Risk-based AML/CFT program:** Covered IAs would be required to develop and implement a risk-based, written AML/CFT program appropriately tailored to the risk profile of their business and approved by their Board of Directors. Additionally, IAs will need to put in place monitoring capabilities to ensure compliance with the applicable provisions of the BSA and FinCEN regulations.

**Recordkeeping requirements:** IAs would become subject to the Travel Rule and funds transfer recordkeeping requirements which require covered institutions to create and retain records for transmittals of funds that equal or exceed \$3,000 and ensure that certain information pertaining to the transmittal of funds “travels” with the transmittal to the next financial institution in the payment chain.

**Suspicious activity reporting:** The proposal would require IAs to file suspicious activity reports (SARs) for suspicious transactions that involve or aggregate at least \$5,000 in funds or other assets. Additionally, the rule would encourage the voluntary reporting of suspicious transactions, such as those below the \$5,000 threshold, and provide for the same liability protection as mandatory reporting.

**Third-party delegation:** The proposal would permit an IA to delegate aspects of its AML/CFT program. However, the IA would retain full responsibility and legal liability for program compliance and would also need to ensure that FinCEN and the Securities and Exchange Commission (SEC) are able to access information and records relating to the third-party managed AML/CFT program.

## 5 considerations to evaluate

**1 Conduct a gap assessment of existing AML/CFT program or controls:** To prepare for a final rule, IAs should conduct an assessment of their existing AML/CFT controls and capabilities, if any. An AML/CFT program should include, at a minimum, policies, procedures, and internal controls; provide for independent testing for compliance; designate a person(s) responsible for overseeing the program; provide ongoing training; and provide for ongoing customer due diligence.

**2 Update policies, procedures, and systems to meet requirements:** IAs should consider updating their policies and procedures in anticipation of the new obligations noted above as well as other requirements under the proposed rule, including procedures for: (1) information-sharing provisions between FinCEN, law enforcement, agencies and certain financial institutions (2) special due-diligence requirements for correspondent accounts established or maintained by foreign financial institutions and private banking accounts established or maintained for non-US persons (3) special measures pursuant to Section 311 of the Patriot Act (4) Filing of Currency Transaction Reports (CTRs).

**3 Develop suspicious transaction monitoring and reporting capabilities:** IAs should implement monitoring capabilities to review transactions for potential illicit activity. IAs should develop clear policies and procedures for reporting suspicious or unusual activity that is tailored to its risk profile, including evaluations, documentation, timely SARs filings, and confidentiality preservation. Additionally, IAs should develop internal reports for senior management and boards to stay informed of the firm’s SAR filings.

**4 Ensure robust third-party due diligence:** IAs who elect to use a third-party administrator for their AML/CFT program should implement—and periodically assess—a thorough due diligence program oversee the third-party’s compliance capabilities. Under the proposal, the IA would still be required to identify and document the procedures implemented to address its vulnerabilities and then undertake reasonable steps to assess whether the service provider carries out such procedures effectively.

**5 Prepare to direct more resources toward AML/CFT compliance:** IAs should prepare to direct increased resources to mature their AML/CFT program, including employee training, independent testing, ongoing customer due diligence, and suspicious activity reporting. This may require hiring specialized risk and compliance staff. Internal systems would need to be updated to capture required information.

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