

## FinCEN adopts investment adviser AML rules

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### United States

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The Financial Crimes Enforcement Network (FinCEN) adopted a [final rule](#) that adds most federal Registered Investment Advisers (RIAs) and Exempt Reporting Advisers (ERAs) to the definition of “financial institution” under the regulations that implement the Bank Secrecy Act (BSA), and will require such advisers to:

- adopt and implement risk-based and reasonably designed Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Programs;
- file Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs);
- record originator and beneficiary information for transactions (i.e., comply with the Recordkeeping and Travel Rules adopted under the BSA);
- respond to section 314(a) requests from FinCEN to search their records to determine whether they maintain or have maintained any account for, or have engaged in any transaction with, an individual, entity or organization named in FinCEN’s request, and
- implement special due diligence measures for correspondent and private banking accounts.<sup>1</sup>

The final rule will not apply to RIAs that register with the SEC solely because they are (i) mid-sized advisers, (ii) multi-state advisers, or (iii) pension consultants, as well as (iv) RIAs that do not report any Assets Under Management (AUM) on Form ADV. The final rule applies to RIAs that have their principal office and place of business outside the United States (US) only with respect to their activities that (i) take place within the US, including through the involvement of US personnel of the investment adviser, or (ii) provide services to a US person or a foreign-located private fund with an investor that is a US person.

Notwithstanding the foregoing, the final rule also will not apply to State-registered advisers, foreign private advisers or family offices. RIAs and ERAs also can exempt from their AML/CFT programs any (i) mutual fund, (ii) collective investment fund, or (iii) investment adviser that they advise and that separately meets the definition of “financial institution” and is subject to the requirements of the final rule.

Importantly, the final rule does not require the collection of beneficial ownership information for legal entity customers of investment advisers and does not address the application of Customer Identification Program (CIP) requirements for investment advisers. Instead, FinCEN acknowledges in the final rule that it may consider subsequent rulemaking imposing a requirement on investment advisers to collect beneficial ownership information for legal entity customers, and that it will address the application of CIP requirements in a separate

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<sup>1</sup> Financial Crimes Enforcement Network: 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).

CIP final rule that was jointly proposed with the US Securities and Exchange Commission in May 2024.

## **Impact and Actions**

**AML/CFT Program.** Each RIA and ERA subject to the final rule will be required to maintain a reasonably designed, risk-based AML/CFT program under the final rule, including: (i) developing internal policies, procedures and controls to comply with the applicable requirements of the BSA and address money laundering, terrorist financing and other illicit finance risks; (ii) designating an AML/CFT compliance officer; (iii) instituting an ongoing employee training program; (iv) soliciting an independent test of AML/CFT programs for compliance, and (v) implementing risk-based procedures for conducting ongoing customer due diligence. RIAs and ERAs will be required 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.

**File SARs and CTRs.** Each RIA and ERA subject to the final rule will be required to file a report of any suspicious transaction relevant to a possible violation of law or regulation with FinCEN. In addition, any such RIA or ERA will be required to report transactions in currency more than \$10,000. Currently, all investment advisers report such transactions on Form 8300. A CTR will replace Form 8300 for RIAs and ERAs subject to the final rule.

**Recordkeeping and Travel Rules.** Each RIA and ERA subject to the final rule will need to obtain and retain originator and beneficiary information for certain transactions and pass on this information to the next financial institution in certain funds transmittals involving more than one financial institution.

**Respond to Section 314(a) Requests.** FinCEN's regulations under Section 314(a) enable law enforcement agencies, through FinCEN, to reach out to financial institutions to locate accounts and transactions of persons who may be involved in terrorism or money laundering. Requests contain subject and business names, addresses and as much identifying data as possible to assist the financial industry in searching their records. The final rule allows these requests to be made to RIAs and ERAs subject to the final rule. These RIAs and ERAs will also be able to provide information on suspected illicit finance activity to law enforcement or other financial institutions participating in 314(b) information-sharing programs.

**Special Due Diligence Measures for Correspondent and Private Banking Accounts.** Each RIA or ERA subject to the final rule must maintain due diligence measures that include policies, procedures, and controls that are reasonably designed to enable the RIA or ERA to detect and report, on an ongoing basis, any known or suspected money laundering or suspicious activity conducted through or involving any correspondent or private banking account that is established, maintained, administered or managed in the US for a foreign financial institution.

The final rule will take effect January 1, 2026. Each RIA and ERA subject to the final rule will be required to comply with the rule beginning on that date.

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If you have any questions about this Legal Briefing, please feel free to contact any of the attorneys listed or the Eversheds Sutherland attorney with whom you regularly work.



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