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## FinCEN Proposes New Anti-Money Laundering Rules for Investment Advisers

On August 25, 2015, the Financial Crimes Enforcement Network (FinCEN), a bureau of the US Department of the Treasury, released proposed rules that would extend anti-money laundering (AML) requirements to investment advisers that are registered or are required to be registered (collectively "IAs") with the US Securities and Exchange Commission (SEC). The proposed rules include three regulatory changes:

- *AML Program.* FinCEN's rules would require that IAs: (1) establish and implement policies, procedures and controls designed to prevent the IA from being used to facilitate money laundering or to finance terrorist activities; (2) conduct testing<sup>1</sup> of the AML program to ensure that it meets the requirements of the proposed rules and functions as desired; (3) designate an AML compliance officer; and (4) provide ongoing AML training for firm employees. FinCEN notes that the program should be risk-based and tailored to the advisory services provided and the types of clients advised by the IA.<sup>2</sup>
- *Suspicious Activity Reporting.* The proposed rules would require IAs to identify and report suspicious activity to FinCEN pursuant to the Bank Secrecy Act (BSA).
- *Filing and Recordkeeping Requirements.* Under the proposed rule, IAs would be added to the definition of "financial institution" in the BSA, which would subject IAs to additional BSA requirements, including Currency Transaction Report filings and rules pertaining to recordkeeping and the transmittal of records.

FinCEN proposes delegating examination for compliance with the proposed rules to the SEC. Finally, while the proposed rules do not set forth customer identification or customer due diligence requirements, FinCEN indicates that it will address these issues as related to IAs in future rulemaking, and that proposed rules dealing with customer identification program requirements will be addressed via joint rulemaking with the SEC.

It is worth noting that there have been previous proposals to require that investment advisers establish AML programs. FinCEN issued notices of proposed rulemaking on the subject in 2002 and 2003, subsequently withdrawing its proposals in 2008. There remain questions as to the necessity of the current proposed rules, including whether FinCEN accurately gauges the likelihood that IAs will be utilized in money laundering schemes or for the purpose of terrorist financing, and whether other industry participants currently subject to AML requirements are better suited to make the assessments detailed in the

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<sup>1</sup> Testing under the proposed rules may be conducted by the IA's employees (provided those employees are not involved in the operation or oversight of the AML program), the IA's affiliates or unaffiliated service providers.

<sup>2</sup> Where the IA is the primary adviser to a private fund or other unregistered pooled investment vehicle, FinCEN expects that, as part of its AML program, the IA should look through to the underlying clients in the fund or vehicle and assess the risk of money laundering and terrorist financing presented by the client.

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proposed rules. Importantly, the rules as proposed, are not without costs, and the burdens on IAs will likely increase as a result of the forthcoming customer identification and customer due diligence programs.

The proposed rules are subject to a comment period that ends 60 days after the rules are published in the *Federal Register*. A copy of the proposed rules is available [here](#), and a copy of FinCEN's press release concerning the proposed rules can be found [here](#).

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