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Family Office Insights

Proposed Changes to Anti-Money Laundering Rules for Investment Advisers

US – February 2024

On February 13, 2024, the US Department of the Treasury, acting through the Financial Crimes Enforcement Network (FinCEN), issued proposed rules that would require certain investment advisers to comply with the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) requirements of the Bank Secrecy Act (BSA), to file suspicious activity reports (SARs) and to comply with certain other recordkeeping and notification requirements of the BSA. FinCEN has requested public comments on these proposed rules by April 14, 2024.

Here Is What Family Offices Need to Know

Originally enacted in 1970, the goal of the BSA has been to establish programs to be adopted by "financial institutions" in order to "promote greater effectiveness and efficiency in combating money laundering, the financing of terrorism, proliferation financing, serious tax fraud, trafficking, sanctions evasion and other financial crimes." At present, the BSA defines "financial institutions" as "securities brokers, dealers, investment bankers and investment companies," and, until now, FinCEN has not included in its rulemaking entities that are defined as registered investment advisers or exempt reporting advisers under the Investment Company Act.

As part of FinCEN's continued rulemaking focus on the prevention of money laundering and terrorism financing through enhanced reporting and greater entity transparency,[1] FinCEN noted that "[t]housands of investment advisers overseeing the investment of tens of trillions of dollars into the US economy are generally not subject to comprehensive anti-money laundering and countering the financing of terrorism (AML/CFT) measures."[2]

In order to address this perceived regulatory deficiency, the proposed rules would impose new reporting and compliance obligations on RIAs and ERAs . Specifically, the proposed rules would apply to:

- Investment advisers that are registered with the Securities and Exchange Commission (RIAs)
- Investment advisers that report to the SEC as exempt reporting advisers (ERAs)

In general, investment advisers must register with the SEC if they have over US$110 million in assets. ERAs are investment advisers that advise only private funds and have less than US$150 million in AUM in the US or advise only venture capital funds. ERAs are, and would remain, exempt from full SEC registration but still must file certain information with the SEC. As currently proposed, family offices that qualify for exemption from registration under the "family office rule"[3] would not be directly subject to the new rules.

What the Proposed Rules Say

As currently proposed, RIAs and ERAs would be required to:

- Design and implement AML/CFT control programs. This would, in practice, impose on RIAs and ERAs a similar requirement for a risk-based AML program as the BSA already imposes on broker-dealers and the other entities that it defines as "financial institutions."
- Conduct periodic testing for internal compliance and efficacy of the program.
- Provide ongoing AML/CFT training for appropriate persons and designate appropriate personnel to oversee compliance.
- Conduct ongoing customer due diligence and file SARs and other reports.
- At the direction of the US Treasury, take additional "special measures" under Section 311 of the USA PATRIOT Act to address money laundering concerns, which could include obtaining, retaining, or reporting additional account or customer information.

1 Family Office Insights: Beneficial Ownership Reporting Under the US Corporate Transparency Act.

2 Fact Sheet: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers Notice of Proposed Rulemaking (NPRM) | FinCEN.gov.

3 Investment Advisers Act Rule 202(a)(11)(G)-1. Family Office Insights: The Family Office Rule Under the Investment Advisers Act.

What Comes Next?

As proposed, the new FinCEN rules would not impose additional requirements on family offices that are able to rely on the family office rule, although family offices may find themselves being asked for additional information, regarding identity of account owners, sources and transmittals of funds, and the like, from the investment advisers with which they do business. More importantly, FinCEN has signaled that this most recent set of proposed rules is not its last word on the subject: in its fact sheet announcing the proposed rules,[4] FinCEN stated:

> At this time, FinCEN is not proposing a customer identification program requirement for investment advisers. FinCEN anticipates addressing customer identification program requirements for investment advisers in a future joint rulemaking with the SEC. FinCEN is also not proposing an obligation for investment advisers to collect beneficial ownership information for legal entity customers. FinCEN anticipates addressing this requirement for investment advisers in a subsequent rulemaking.

"At this time" and "subsequent rulemaking" make it clear, if there were otherwise any doubt, that there is more rulemaking on the subject to come. Our Family Office team will be monitoring the rulemaking in this space for further developments.

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4 Fact Sheet: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers Notice of Proposed Rulemaking (NPRM) | FinCEN.gov.