

Regulatory Alert

Regulatory Insights for Financial Services

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Financial Crime & AML: FinCEN Final Rule for Investment Advisers

KPMG Insights:

- **New Requirements.** Rule mandates AML/CFT programs and SAR reporting for most investment advisers, expanding the regulatory perimeter to “close the gap” in regulatory coverage and enhance efforts to thwart illicit finance.
- **Supervisory Focus.** Expanding breadth/depth of supervisory, enforcement, and regulatory expectations focused on AML/CFT/BSA requirements to keep pace with the continuous evolution and sophistication of emerging financial crime threats and vulnerabilities (e.g., beneficial ownership reporting, customer due diligence).

Furthering efforts to combat illicit finance threats, vulnerabilities, and risks, the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) issues a [final rule](#) that imposes anti-money laundering/ countering the financing of terrorism (AML/CFT) program and suspicious activity reporting (SAR) requirements on most investment advisers, including those to private funds.

Modifications from the proposed rule ease some of requirements, including:

- A narrowing of the definition of “investment adviser” to exempt certain mid-size advisers, multi-state advisers, pension consultants, and investment advisers that do not report any assets under management on Form ADV.
- An expansion of the entities excluded from the AML/CFT program and other requirements to include bank- and trust company-sponsored collective investment funds as well as investment advisers subject to the final rule that are advised by the investment adviser.
- The decision not to adopt a requirement that the AML/CFT program be the responsibility of and performed by persons in the United States that is subject to oversight by the Treasury and the appropriate federal functional regulator.

- Clarification that for foreign investment advisers, the rule only applies to activities that take place in the United States or provide services to a U.S. person.

The rule is intended to complement other previous FinCEN actions to prevent illicit finance risks (see KPMG’s Regulatory Alert, [here](#) and [here](#)).

Details from the final rule are highlighted below.

Applicability. The final rule will apply to “investment advisers” that are Registered Investment Advisers (RIAs) and Exempt Reporting Advisers (ERAs), including investment advisers to private funds.

Definitions. The rule amends and/or adds the following definitions:

- *Financial Institution:* Amends 31 CFR 1010.100(t) to include “Investment Adviser.”
- *Investment Adviser:* Adds a definition to 31 CFR 1010.100 to include:
 - *RIAs* – Any person who is registered or required to register with the SEC under section 203 of the Advisers Act (15 U.S.C. 80b-3(a)), which includes investment advisers with more than \$110 million in assets under management (AUM) (unless eligible to rely on an exception).

- In a change from the proposed rule, the final rule narrows the definition of “investment adviser” to exempt RIAs that register with the SEC solely because they are i) mid-size advisers, ii) multi-state advisers, or iii) pension consultants, and iv) RIAs that do not report any assets under management on Form ADV.
- *ERAs* – Any person that is exempt from SEC registration under section 203(l) or 203(m) of the Investment Advisers Act, which includes investment advisers that i) advise only private funds and have less than \$150 million AUM in the United States, or ii) advise only venture capital funds.
- *Correspondent account*: Amends § 1010.605(c) to include for investment advisers “any contractual or other business relationship established between a person and an Investment Adviser to provide advisory services”.
- *Covered financial institution*: Adds Investment Advisers to the definition of “covered financial institution.” Note: This amendment will subject Investment Advisers to FinCEN’s rules implementing special standards of due diligence for correspondent accounts established or maintained for foreign financial institutions and private banking accounts established or maintained for non-U.S. persons. See additional discussion below.

Requirements. The final rule will require investment advisers to:

- Develop and implement a board-approved risk-based AML/CFT program applicable to all advisory activities.
- File reports with FinCEN, including:
 - Currency Transaction Reports (CTRs) for a transaction or series of transactions conducted in one day involving the transfer of more than \$10,000 in currency by, to, or through the investment adviser (CTRs replace the previous requirement to file Form 8300 when the investment adviser received more than \$10,000 in cash and negotiable instruments).
 - Suspicious Activity Reports (SARs) detailing suspicious transactions involving or aggregating at least \$5,000 in funds or other assets (consistent with BSA requirements for financial institutions) as well as any suspicious transaction relevant to a possible violation of law or regulation.
- Comply with the Recordkeeping and Travel Rules (31 CFR 1010.410(e) and 31 CFR 1010.410(f), respectively), which require creating and retaining

records for the transmittal of funds and passing certain information pertaining to the transaction on to the next financial institution in the payment chain, subject to some exceptions.

- Participate in FinCEN’s information-sharing program under section 314 of the USA PATRIOT Act (i.e., between and among FinCEN, law enforcement, agencies, and certain financial institutions).
- Implement special due diligence requirements for correspondent and private banking accounts under section 312 of the USA PATRIOT Act, and comply with “special measures” under sections 311 of the USA PATRIOT Act and 9714(a) of the Combatting Russian Money Laundering Act related to a “primary money laundering concern”. *NOTE: In a change from the proposal, the final rule allows investment advisers to exclude mutual funds, collective investment funds, and other investment advisers advised by the investment adviser, from these requirements (see discussion below).*
- Fulfill other obligations applicable to financial institutions subject to the BSA and FinCEN’s implementing regulations.

The final rule:

- Maintains the exclusion of mutual funds from the investment adviser’s AML/CFT program requirements (mutual funds are already identified as “financial institutions” under the BSA and 31 CFR 1010.100(t), and further clarifies that investment advisers are not obligated to verify that the mutual fund has implemented an AML/CFT program).
- Expands the exclusion from the investment adviser’s AML/CFT program requirements to: (i) bank- and trust company-sponsored collective investment funds and (ii) any other investment adviser subject to the final rule that is advised by the investment adviser.
- Does not adopt the proposed requirement that the investment adviser’s AML/CFT program be the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator.
- Defers to a future rulemaking, a customer identification program (CIP) requirement or an obligation for investment advisers to collect beneficial ownership information for legal entity customers. (See KPMG Regulatory Alert, [here](#).)
- Does not cover State-registered investment advisers, or foreign private advisers or family offices.

(Note: the final rule provides that investment advisers may deem satisfied the SAR filing requirements as well as special due diligence requirements for correspondent and private banking accounts and other “special measures” for any mutual fund, bank- and trust company-sponsored collective investment fund, or any other investment adviser they advise subject to this rule that is already subject to AML/CFT program requirements.)

Examination Authority. In line with FinCEN's existing delegation of authority to the Securities and Exchange Commission (SEC) for examining brokers, dealers, and mutual funds regarding compliance with the Bank Secrecy

Act (BSA) and FinCEN's implementing regulations, the final rule assigns the SEC the authority to examine investment advisers' compliance with AML/CFT requirements.

Effective Date and Compliance Period. The final rule is effective January 1, 2026, and compliance is required as of that date.

For more information, contact [John Caruso](#) or [Dan Boylan](#).

Contact the author:



Amy Matsuo
Principal and National Leader
Regulatory Insights
amatsuo@kpmg.com

kpmg.com/socialme



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