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FinCEN final rule regarding AML requirements for US investment advisers

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On August 28, 2024, the Financial Crimes Enforcement Network ("FinCEN") issued a final rule expanding the definition of "financial institution" under the Bank Secrecy Act ("BSA") to include certain investment advisers.

Among other things, the final rule prescribes minimum standards for anti-money laundering/countering the financing of terrorism ("AML/CFT") programs to be established by certain investment advisers and requires certain investment advisers to report suspicious activity to FinCEN pursuant to the BSA.

The compliance date for the final rule is January 1, 2026.

Who will be affected by this rule?

The final rule applies to:

- investment advisers registered with or required to register with the SEC ("RIAs"), and
- investment advisers that report information to the Securities and Exchange Commission ("SEC") as exempt reporting advisers ("ERAs").

The final rule excludes from the definition of "investment adviser" firms that are registered with the SEC solely because they are: (1) Mid-Sized Advisers; (2) Multi-State Advisers; or (3) Pension Consultants. RIAs that do not report any Assets Under Management (AUM) on Form ADV are also excluded from the definition of "investment adviser."

Additionally, the final rule does not apply to State-registered investment advisers, foreign private advisers, and family offices.

Investment advisers with their principal office and place of business outside of the US are only required to comply with the final rule with respect to their activities that (1) take place within the United States, including through the involvement of US personnel of the investment adviser or (2) provide services to a US person or a foreign-located private fund with an investor that is a US person.

Recommended next steps

The final rule requires RIAs and ERAs to comply with these new requirements by January 1, 2026. Once the rule goes into effect, investment advisers can expect the SEC's Examination Division to focus on these new requirements during examinations. The new requirements mean RIAs and ERAs should work towards:

- implementing a risk-based AML/CFT program that is reasonably designed to take into account the risks of the investment adviser's customers and the services it provides

- designating a compliance officer responsible for implementing and monitoring the investment advisors AML/CFT program
- establishing an ongoing employee training program
- implementing an independent audit program conducted by a qualified third party or an employee of the investment advisor, provided the employee is not involved in the operation or oversight of the AML/CFT program
- implementing risk-based policies and procedures to comply with customer due diligence requirements
- filing of certain reports with FinCEN, such as Suspicious Activity Reports (“SARs”)
- maintaining certain records, such as those relating to the transmittal of funds (i.e., comply with the Recordkeeping and Travel Rules)
- compliance with sections 314(a) and 314(b) of the USA PATRIOT Act.

For more information on the final rule and what this means for investment advisers, you can read the full Fact Sheet here.

Ensuring that their AML/CFT compliance programs are sufficiently robust and can withstand regulatory examination, should now be a top priority for investment advisers. Early planning and implementation will be necessary and it will require significant time and attention to detail in order to successfully meet all regulatory obligations.

Waystone’s team of US compliance specialists is uniquely qualified to understand these obligations and help you with all aspects of this regulation, including updates to policies and procedures, employee training and carrying out an independent audit. If you would like to discuss this topic further and find out how Waystone can assist you, please reach out to us today.

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