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Memorandum

FinCEN Issues Final AML Program and SAR Filing Requirements Rule for Investment Advisers

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Introduction

On August 28, 2024, the Financial Crimes Enforcement Network (FinCEN) issued a long-awaited final rule that will make most SEC-registered investment advisers (RIAs)[1] and exempt reporting advisers (ERAs)[2] "financial institutions" for purposes of certain anti-money laundering laws and regulations under the Bank Secrecy Act (BSA). Under this rule, effective **Jan. 1, 2026**, covered RIAs and ERAs will be required to adopt anti-money laundering (AML) and countering the funding of terrorism (CFT) programs, file Suspicious Activity Reports (SARs), and comply with certain record-keeping requirements. The rule provides authority to the SEC to examine covered investment advisers' compliance.

Key Takeaways From the Final Rule

Unless Expressly Exempted, the Rule Applies to All RIAs and ERAs. The rule expressly exempts mid-sized advisers, multi-state advisers, pension consultants, and RIAs that do not report any assets under management on Form ADV. Additionally, FinCEN declined to extend the rule beyond RIAs and ERAs, meaning it does not apply to state-registered investment advisers, foreign private advisers that are not ERAs, and family offices.

Unless Expressly Exempted, AML/CFT Programs Must Be Applied to All Advisory Activities. Covered advisers must apply AML/CFT programs to all advisory activity, with only a handful of activity- and customer-based exemptions. Advisers will not be required to apply their AML/CFT programs to non-advisory services (*e.g.*, making managerial/operational decisions about the activities of portfolio companies).

[1] *See* 15 U.S.C. 80b–3(a). Any person who is registered or required to register with the SEC under section 203 of the Investment Advisers Act of 1940 (Adviser Act).

[2] *See* 15 U.S.C. 80b–3(l), (m). Any person that currently is exempt from SEC registration under section 203(l) or 203(m) of the Advisers Act.

- The only funds explicitly excluded from AML/CFT requirements are mutual funds[3] and 1940 Act-registered exchange-traded funds, as well as collective investment funds[4] sponsored by banks and trusts. These funds are already subject to the AML/CFT programs of financial institutions.
- For "foreign-located investment advisers" (RIAs or ERAs whose principal office and place of business is outside the U.S.), the final rule applies only to advisory activities that (i) take place within the U.S., including through the involvement of the adviser's U.S. personnel or (ii) provide advisory services to a U.S. person, including through a foreign-located private fund with a U.S. person investor. FinCEN's guidance notes that although the presence of one investor that is a U.S. person requires the investment adviser to apply the requirements of the final rule to the entirety of a private fund, the fund as a whole (not the individual U.S. investor) is the customer of the foreign-located investment adviser. So, for example, if an adviser determines that a fund has a U.S. nexus, the adviser is required to conduct due diligence on the U.S. and non-U.S. investors in a fund. The advisor may also be required to file suspicious activity reports in connection with the actions of both the U.S. and non-U.S. investors.
- AML/CFT programs do not need to be applied in the context of advisory services provided to another adviser that is subject to this rule, such as in certain subadvisory relationships.

RIAs and ERAs Must Comply With Suspicious Activity Reporting Requirements. Advisers will be required to file SARs for any suspicious transaction relevant to a possible violation of law or regulation conducted or attempted by, at, or through the adviser. Advisers are expected to report suspicious activity that touches their advisory activities—meaning that, with respect to portfolio companies, only information available to an adviser in the course of its advisory services, such as information obtained during due diligence of a potential investment, would trigger a SAR filing obligation. Guidance provided by FinCEN indicates that the actions of investors in a fund, not just the fund itself, may trigger SAR filing obligations. Information obtained through non-advisory activities, such as through having common employees with a portfolio company, should not trigger the SAR filing obligation.

Written AML/CFT Program Must Be Approved by the Board. As expected, the rule requires all covered advisers to develop and implement a written, "risk-based" AML/CFT program. This program must be approved in writing by the adviser's board of directors, trustees, or other persons that have functions similar to a board of directors.

[3] *See* 15 U.S.C. 80a–3, 80a-5, 80a-8. Any fund which, under the Investment Company Act of 1940 (Company Act), is an "investment company" that is an "open-ended company" required to register with the SEC under Section 8 of the Company Act, including any exchange-traded funds (ETF) that are required to registered and generally organized as an open-ended company ("open-ended funds") or unit investment trust.

[4] *See* 12 CFR 9.18. Any collective investment fund sponsored by a bank or trust company subject to the BSA.

- Many RIAs and ERAs already have or are already subject to risk-based AML programs and conduct substantial due diligence. Nevertheless, there may be a number of good reasons to re-evaluate existing policies in advance of the January 1, 2026 effective date, including:
    - Advisers may want to compare existing programs with guidance in FinCEN's commentary and the minimum requirements established by the rule to ensure alignment with FinCEN's expectations; in particular, the minimum requirements established by FinCEN may require advisers to update their policies to address testing for compliance, training for appropriate personnel, and identifying and reporting suspicious activities.
    - Advisers currently subject to an enterprise-wide AML/CFT program might consider adopting a more narrowly-tailored AML/CFT program that applies just to the RIA/ERA (although FinCEN acknowledges that an enterprise-wide policy may be appropriate if it addresses the specific risks faced by the RIA/ERA);
    - Given that the SEC will now have examination authority with respect to AML/CFT programs, RIAs/ERAs would benefit from documenting their risk-assessment and associated updates to AML/CFT programs; and
    - Information obtained by an adviser during due diligence exercises in connection with potential investments potentially could trigger SAR obligations.
- We note that FinCEN intends for the still-pending Customer Identification Program (CIP) rule to also become effective on Jan. 1, 2026. Depending on the scope of that final rule, covered RIAs and ERAs may also need to revise their policies and procedures as well as renegotiate or amend contracts with a range of banks, broker-dealers, fund administrators, and any other party to whom advisers may delegate or share compliance obligations.[5]

Delegation Permitted but RIAs and ERAs Retain Liability. An adviser can contractually delegate the implementation and operation of some or all aspects of its AML/CFT program to third-party providers, including foreign-located service providers and fund administrators. However, the adviser will remain fully responsible and legally liable for, and be required to demonstrate to examiners, adherence to the AML/CFT program requirements.

RIAs and ERAs Must Comply With Money "Travel" and "Recordkeeping" Rules, but Most Transactions Should Be Exempt. Covered advisers will be required to create and retain records regarding transfers of money. Many retail funds will be exempt from these rules, as most retail customers' funds are custodied with financial institutions that are already subject to the BSA's travel and recordkeeping rules, but they will apply to private fund advisers with "authority and discretion over the fund and customer assets in the fund."

[5] In addition to the pending CIP rule, FinCEN intends to address a requirement for advisers to collect beneficial ownership information for legal entity customers in a subsequent rulemaking.

Requirement to File Currency Transaction Reports. Advisers must continue to file reports whenever they receive currency in amounts of $10,000 or more, but instead of reporting such transactions via the FinCEN/IRS Form 8300, advisers will file Currency Transactions Reports (CTRs). Currency is defined to include hard currency, cashier's checks, bank drafts, traveler's checks, and money orders.

Further Information About the Final Rule

As discussed above, through this new rule, FinCEN is adding most RIAs and ERAs to the definition of "financial institution" under the BSA. The final rule is designed to address concerns about illicit finance risks in the U.S. adviser sector. In particular, FinCEN highlights in its commentary to the final rule a February 2024 risk assessment conducted by the Department of the Treasury, which found that sanctioned persons, corrupt officials, fraudsters, and other criminals have exploited the investment adviser industry to access the U.S. financial system and launder funds. Moreover, the risk assessment found that foreign states, most notably China and Russia, leverage advisers and their advised funds through investment in early-stage companies to access certain technologies and services with national security implications.[6]

BSA OBLIGATIONS WILL APPLY WHEN ENGAGING IN ADVISORY ACTIVITY

FinCEN largely declined to provide customer- or activity-based exemptions, instead generally requiring covered advisers to apply the requirements of the final rule whenever engaging in advisory activity, with only a handful of exceptions.

Foreign-Located Advisers

For foreign-located advisers (RIAs or ERAs that have their principal office and place of business outside the United States), the final rule applies only to advisory activities that (A) take place within the United States, including through the involvement of U.S. personnel of the adviser or (B) provide advisory services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person.

Guidance provided in the final rule states that FinCEN considers U.S. personnel to be involved in advisory activities if, for example, an employee of the adviser manages assets of a client from a U.S. office or other U.S. workplace of the adviser, or if the employee works remotely from the United States on a regular basis. Conversely, the commentary suggests that a U.S. citizen employee of the adviser managing assets of a client from a non-U.S. office of the foreign-located adviser would generally not constitute U.S. personnel involved in advisory activities for this purpose.

Additionally, the commentary notes that the provision of advisory services to a U.S. person or a foreign-located private fund with an "investor"[7] that is a U.S. person includes, but is not limited to, providing investment advice to

[6] *See US Sectoral Illicit Finance Risk Assessment Investment Advisers (*also titled *2024 Investment Adviser Risk Assessment)*, Dep't of the Treasury (2024), available here.

[7] *See* 17 CFR 275.202 (a)(30)–1(c)(2). The final rule defines "investor" by reference to Advisers Act under which a foreign private adviser can determine whether private funds it advises have more than 14 "investors in the United States."

a U.S. person, regardless of the location from which such investment advice is provided. Therefore, a foreign-located adviser would be providing advisory services to a U.S. person if, for example, the adviser manages assets from an office outside of the United States on behalf of an individual U.S. person. With respect to a foreign-located investment adviser's advisory activities to a foreign located private fund, the final rule requires a foreign-located investment adviser to determine whether any foreign-located private fund that it advises has at least one investor who is a U.S. person. FinCEN's guidance on this point states (1) "[t]his determination must be made with respect to every investor in that foreign-located private fund" and (2) "[i]f a foreign-located private fund has at least one U.S. person investor, the foreign-located investment adviser must apply the final rule with respect to that foreign-located private fund." When a foreign-located investment adviser's activities involving a private fund fall within the scope of the final rule, FinCEN expects the foreign-located investment adviser to subject its advisory activities with respect to the fund to internal policies, procedures, and controls reasonably designed to prevent the investment adviser from being used for money laundering, terrorist financing, or other illicit finance activities and to achieve compliance with the applicable provisions of the BSA and implementing regulations.

This requirement means that advisers of funds with relatively low U.S. investment may fall within the scope of this rule. FinCEN states, however, that "a foreign-located investment adviser retains the option of availing itself of foreign private adviser status if it has limited U.S. ties and does not wish to apply the requirements of the final rule to private funds with lower levels of U.S. investment. Given this option, FinCEN anticipates it is unlikely that a significant number of foreign-located investment advisers will be required to apply the requirements of the rule on the basis of having a small number of investors that are U.S. persons or small amount of U.S. investment."

Excluded Funds

The final rule does not apply to covered advisers in the context of providing advisory services to mutual funds and collective investment funds. FinCEN explains that these funds are excluded because they are already subject to the BSA rules but notes that the exclusion is permissive, not mandatory—in other words, advisers can, but are not required to, comply with the final rule when providing advisory services to mutual funds and collective investment funds. The final rule also clarifies that covered advisers are not required to verify that a mutual fund or collective investment fund has a compliant AML/CFT program.

FinCEN was asked, but ultimately declined, to exclude various other types of funds, such as European PIVs, closed-end funds, and funds established for retirement plans, non-profits, government owned or controlled entities, etc. That said, as described in greater detail below, FinCEN states in commentary to the final rule that an RIA "may focus aspects of its AML/CFT program on activities or customers that it considers higher risk, and may comply with the BSA by applying more limited measures to those customers or activities that it identifies as lower risk," identifying closed-end and real estate funds as examples of the kinds of funds that may, in many cases, be considered "lower risk."

Excluded Subadvisory Services

While FinCEN declined to categorically exclude subadvisory services, wrap-fee programs, and separately managed accounts, the final rule provides that AML/CFT programs do not need to be applied in the context of advisory services provided to another adviser that is subject to this rule. Thus, advisers can exclude subadvisory relationships, wrap-fee programs, and separately managed accounts so long as (1) their direct customer is another adviser subject to the BSA and (2) the adviser does not have a direct contractual relationship with the other adviser's underlying customers.

Critically, however, advisers cannot exclude subadvisory or other similar services when providing advisory services to a BSA-defined financial institution other than an adviser. Covered advisers will still be required to apply their AML/CFT program, for example, in wrap-fee programs where a broker-dealer is the sponsor or in subadvisory agreements with a State-registered adviser or an exempt foreign private adviser.

Portfolio Company Services

An adviser will not be required to apply its AML/CFT program to non-advisory services. In the context of private funds, this concept is most relevant in terms of determining when the AML/CFT program must be applied to dealings involving portfolio companies. Generally, activities undertaken in connection with an adviser's involvement in making managerial/operational decisions about the activities of portfolio companies would not be "advisory activities" and thus not subject to the final rule. FinCEN also makes clear that the final rule does not require advisers to collect additional information from portfolio companies about their activities.

The final rule's obligations do apply, however, in the context of directing investments—for example, FinCEN suggests that an adviser would be required to file a SAR if an investor requests access to non-public technical information about a portfolio company where such behaviors indicate potential illicit transfers of controlled technology. FinCEN also notes that a SAR may be required where the adviser identifies information that leads it to know, suspect, or have reason to suspect suspicious activity during due diligence of a potential investment target to the extent such due diligence may implicate the adviser's advisory services. As noted above, the potential that due diligence findings could trigger SAR obligations is one reason why it may be advisable to review existing AML/CFT programs, particularly as related to M&A and due diligence practices.

WRITTEN AML/CFT PROGRAM

Section 1032.210(a)(1) of the final rule requires covered RIAs and ERAs to develop and implement a written AML/CFT program that is risk-based and reasonably designed to prevent the adviser from being used for money laundering, terrorist financing, or other illicit finance activities. This program must be approved in writing by its board of directors or trustees,[8] and covered RIAs and ERAs will be required to make their AML/CFT programs

[8] If an RIA or ERA does not have a board, then the program must be approved by the adviser's sole proprietor, general partner, trustee, or other persons that have functions similar to a board of directors.

available for inspection by FinCEN or the SEC. The AML/CFT program must be implemented on or before January 1, 2026.

While generally providing for flexibility in terms of the details of AML/CFT programs, the final rule sets out certain required common elements:

- Independent testing of the AML/CFT program by the adviser's personnel or a qualified outside party.[9]
- Designation of a person or persons to be responsible for implementing and monitoring the operations and internal controls of the AML/CFT program.[10]
- Ongoing training on the AML/CFT program for appropriate persons.[11]
- Appropriate risk-based procedures for conducing ongoing customer due diligence (CDD) that includes: (i) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (ii) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.[12]

Beyond these required elements, the AML/CFT program requirement must be risk-based and reasonably designed. This approach is intended to give advisers the flexibility to design their programs so that they are commensurate with the specific risks of the advisory services they provide and the customers they advise.

An adviser's assessment of the risks presented by the different types of advisory services it provides should consider, among other factors, the types of accounts offered (*e.g.*, managed accounts), the channel(s) through which such accounts are opened, the types of customers opening such accounts, and related information about such customers, including their geographic location, sources of wealth, and investment objective. While declining to categorically declare any one type of customer or service as low-risk, FinCEN's commentary to the final rule provides certain instructive examples of funds that may generally be considered lower or higher risk.

Listed Registered Closed-End Funds: Can Generally Be Considered Low Risk

In commentary, FinCEN states that absent other indicators of high-risk activity, an adviser may treat exchange-listed, registered closed-end funds as lower risk for purposes of their AML/CFT programs. An exchange-listed registered closed-end fund may be treated as lower risk given that they generally (a) do not offer their shares continuously or redeem their shares on demand; (b) issue a fixed number of shares, which typically trade at

[9] Section 1032.210(b)(2).

[10] Section 1032.210(b)(3). This person is often referred to as the AML/CFT officer but FinCEN states that the actual title of the individual responsible for day-to-day AML/CFT compliance is not determinative, and the AML/CFT officer for these purposes need not be an "officer" of the adviser.

[11] Section 1032.210(b)(4).

[12] Section 1032.201(b)(5).

negotiated prices on a stock exchange or in the over-the-counter market; (c) do not have an account relationship with their investors; and (d) have shares that are purchased and sold through broker-dealers or banks.

Real Estate Funds: Can Oftentimes Be Considered Lower Risk

Similarly, FinCEN suggests that where a financial institution is involved in the operations of a real estate fund, it can also likely be considered lower risk. FinCEN explains that BSA-defined financial institutions are typically involved in real estate funds' operations, and where that is the case, such funds are already somewhat subject to those financial institutions' AML/CFT programs. Further, FinCEN views the risks as somewhat lower for real estate funds because of its concurrently-released "Anti-Money Laundering Regulations for Residential Real Estate Transfers,"[13] which imposes separate AML requirements on certain real estate transactions.

Private Funds: Cannot Be Categorically Treated as Low Risk

In contrast, FinCEN's guidance states that private funds, even those with restrictions on redemptions or withdrawals, cannot be categorically treated as lower risk, as there are other relevant factors, such as investment strategy, targeted investors, and jurisdiction, which may vary significantly for each adviser or fund. When determining its risk profile with respect to a private fund it advises, an adviser may wish to consider among other things, minimum subscription amounts and restrictions on the type of investors, redemptions or withdrawals, and the types of currency used in transactions conducted with investors.

In assessing the potential risk of a private fund under the rule, FinCEN states that advisers generally should gather pertinent facts about the structure or ownership of the fund, including the extent and nature of information provided to the adviser about the investors in that private fund, who may or may not themselves also be customers of the adviser. Where an adviser attempts to and is unable to obtain identifying information about the investors in a private fund as part of its risk-based evaluation of the private fund, the adviser may determine that such private fund poses a higher risk for money laundering, terrorist financing, or other illicit finance activity.

When a private fund's potential vulnerability to such money laundering, terrorist financing, or other illicit finance activity is high, the adviser's procedures will need to take reasonable steps to address these higher risks and to achieve and monitor compliance with the BSA (including to obtain sufficient information to monitor and report suspicious activity).

REQUIREMENT TO FILE SARS

Sections 1032.320(a)(2)(i) through (iv) of the final rule specify that an adviser will be required to report a transaction if it knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part): (i) involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade any Federal law or

[13] See FinCEN, Anti-Money Laundering Regulations for Residential Real Estate Transfers, Final Rule 89 FR 70258 (Aug. 29, 2024), effective Dec. 1, 2025.

regulation or to avoid any transaction reporting requirement under Federal law or regulation; (ii) is designed, whether through structuring or other means, to evade the requirements of the BSA; (iii) has no business or apparent lawful purpose, and the investment adviser knows of no reasonable explanation for the transaction after examining the available facts; or (iv) involves the use of the investment adviser to facilitate criminal activity.[14]

FinCEN expects advisers to report suspicious activity only when that activity touches an adviser's advisory services (*i.e.*, in connection with their advice on making or selling investments). This excludes non-advisory activities, such as information learned by adviser personnel in their management roles at portfolio companies. In addition, section 1024.320(a)(2) of the final rule limits the SAR filing obligation to transactions where the adviser "knows, suspects, or has to reason to suspect" enumerated types of illicit activity. This is an objective standard that focuses on the evidence available to an adviser based on the particular facts and circumstances of a transaction. However, an adviser's obligation to file a SAR does not extend to activity that is outside the scope of their AML/CFT program.

Examples of activities occurring by, at, or through an investment adviser include when an adviser's customer instructs the investment adviser to pass on an instruction to the custodian (*e.g.*, an instruction to withdraw assets, to liquidate particular securities, or a suggestion that the adviser purchase certain securities for the customer's account) or an adviser instructs a custodian to execute transactions on behalf of its client.

By way of example, FinCEN states that suspicious activity particularly relevant to private funds, especially venture capital funds, could, involve an investor in such a fund requesting access to detailed non-public technical information about a portfolio company the fund is invested in that is inconsistent with a professed focus on economic return, in a potential case of illicit technology transfer in violation of sanctions, export controls, or other applicable law. Additionally, while FinCEN acknowledges that private fund advisers may have limited involvement in and visibility into the operation of their portfolio companies, FinCEN does identify the following examples of when an adviser may be required to file a SAR on a portfolio company: where the adviser: (i) is approached by a limited partner or other investor in a fund about unusual access to particular technology or processes being developed by a portfolio company, (ii) becomes aware that such a limited partner or investor has reached out to a portfolio company for such information, or (iii) is asked to obscure participation by an investor in a particular transaction to avoid notification to government authorities; FinCEN would consider such activity to be potentially relevant to a possible violation of law or regulation or otherwise indicative of suspicious activity, and an adviser should consider filing a SAR.

While advisers can report suspicious transactions voluntarily using the FinCEN/IRS Form 8300, because they are not presently included in the BSA definition of "financial institution," advisers have not historically been afforded the protection from liability that applies to financial institutions when filing SARs. Section 1032.320(e) of the rule will provide protection from liability, also known as a safe harbor, for making either required or voluntary reports

[14] Presently, advisers can voluntarily report suspicious transactions using the FinCEN/IRS Form 8300.

of suspicious transactions, or for failures to provide notice of such disclosure to any person identified in the disclosure to the full extent provided by 31 U.S.C. 5318(g)(3).[15]

CURRENCY TRANSACTION REPORTS

RIAs and ERAs will now also be required to file Currency Transaction Reports (CTRs) for any transaction involving a transfer of more than $10,000 in currency by, through, or to the investment adviser, unless subject to an applicable exemption. “Currency” includes hard currency as well as cashier’s checks, bank drafts, traveler’s checks, and money order.[16] For many private funds, this requirement will not impose any new obligations as the adviser does not hold any investor funds or assets—rather, the fund administrator conducts the activity that might meet this new requirement.

RECORDKEEPING AND TRAVEL RULES

Under the Recordkeeping and Travel Rules, RIAs and ERAs will be required to create and retain records for transmittals of funds and ensure that certain information pertaining to the transmittal of funds “travels” to the next financial institution in the payment chain.[17]

There are exceptions that are designed to exclude transmittals of funds from the Recordkeeping and Travel Rules’ requirements when certain categories of financial institutions are the transmitter and recipient.[18] The final rule will add investment advisers to the list of institutions among which transfers are excepted from the travel rule. While FinCEN acknowledges that many RIAs and ERAs do not engage in the type of transactional activity covered by these requirements, this means that advisers will be treated in the same manner—and with the same exceptions for transfers to certain other financial institutions—as banks, broker dealers, futures commission merchants, introducing brokers in commodities, and mutual funds.

FinCEN also notes in the commentary that many RIAs advising retail funds may be exempt from these rules if they custody customer assets with a qualified custodian. In that case, the custodian entity is already required to comply with the Recordkeeping and Travel Rules. For private funds, FinCEN expects that advisers with “authority and discretion over the fund and customer assets in the fund” will need to comply themselves with the Recordkeeping and Travel Rules. In such circumstances, the adviser would be required to maintain all written

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[15] To encourage the reporting of possible violations of law or regulation and the filing of SARs, the BSA contains a safe harbor provision that shields financial institutions making such reports from civil liability. In 2001, the USA PATRIOT Act clarified that the safe harbor also covers voluntary disclosure of possible violations of law and regulations to a government agency and expanded the scope of the safe harbor to cover any civil liability which may exist under any contract or other legally enforceable agreement (including any arbitration agreement). *See* USA PATRIOT Act, sec. 351(a). Pub. L. 107-56, Title III, 351, 115 Stat. 272, 321 (2001); 31 U.S.C. 5318(g)(3).

[16] Presently, advisers are required to report such transactions on FinCEN/IRS Form 8300.

[17] *See* 31 CFR 1010.410(e) and (f) (Recordkeeping and Travel Rules); 31 CFR 1020.410(a) (Records to be Made and Retained by Banks). Financial institutions are also required to retain records for five years. *See* 31 CFR 1010.430(d).

[18] *See* 31 CFR 1010.410(e)(6), (f)(4); 31 CFR 1020.410(a)(6). As relevant here, section 1010.410(e)(6)(i) excludes from the requirements of the Recordkeeping Rule “[t]ransmittals of funds where the transmitter and the recipient” are certain types of listed financial institutions. Section 1010.410(f)(4) excludes these same transmittals from the Travel Rule. This rule amends section 1010.410(e)(6) to add “investment adviser” to its list of financial institutions.

communications received and copies of all written communications sent by the adviser relating to the receipt, disbursement or delivery of funds or securities.

AUTHORIZATION TO IMPOSE INFORMATION SHARING PROCEDURES, SPECIAL DUE DILIGENCE REQUIREMENTS, AND OTHER SPECIAL MEASURES

Required Information Sharing

Sections 1032.500, 1032.520, and 1032.540 of this rule will expressly subject investment advisers to FinCEN's rules authorizing FinCEN to implement the special information-sharing procedures to detect money laundering or terrorist activity of sections 314(a) and 314(b) of the USA PATRIOT Act. Under those sections, and the corresponding implementing regulations, an adviser, upon request from FinCEN, will be required to expeditiously search its records for specified information to determine whether the adviser maintains or has maintained any account for, or has engaged in any transaction with, an individual, entity, or organization named in FinCEN's request.[19] An adviser would then be required to report any such identified information to FinCEN.[20]

Special Due Diligence Requirements and Other Special Measures

Section 311 of the USA PATRIOT Act requires U.S. financial institutions to implement certain "special measures" if the Secretary finds that reasonable grounds exist to conclude that a foreign jurisdiction, institution, class of transaction, or type of account is a "primary money laundering concern."[21] Section 9714(a) of the Combatting Russian Money Laundering Act allows for similar special measures in the context of Russian illicit finance.[22]

Relatedly, Section 312's implementing regulations require that covered financial institutions maintain due diligence programs for correspondent accounts for foreign financial institutions and for private banking accounts that include policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any such correspondent or private banking accounts.[23] Many large advisers may already have an AML Program in place that covers this requirement.

FinCEN's final rule authorizes FinCEN to impose these special measures/due diligence standards on advisers, consistent with the special due diligence standards applied to similarly situated financial institutions under the BSA.

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[19] *See* 31 CFR 1010.520(b)(3)(i).

[20] 31 CFR 1010.520(b)(3)(ii).

[21] 31 U.S.C. 5318A.

[22] Section 9714 (as amended) can be found in a note to 31 U.S.C. 5318A.

[23] 31 CFR 1010.610 through 1010.620.

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