

# Client Alert

Current Issues Relevant to Our Clients

January 22, 2015

## SEC Extends AML Relief: Broker-Dealers May Rely on Investment Advisers to Perform CIP Obligations; FinCEN Indicates Potential Investment Adviser AML Program Rule

The Securities and Exchange Commission (“SEC”) recently issued a no-action letter which grants relief to broker-dealers, allowing them to rely on investment advisers to perform some or all of their Customer Identification Program (“CIP”) obligations under federal anti-money laundering (“AML”) legislation. The letter extends existing relief granted in 2013 that was set to expire in January of 2015. The 2015 no-action letter, which is the latest in a line of letters dating back to 2004, will expire in January of 2017 or the date upon which an AML program rule for investment advisers becomes effective.

In a related action, the Financial Crimes Enforcement Network (“FinCEN”) has drafted a notice of proposed rule making (“NPRM”) outlining minimum standards for AML programs to be established by certain investment advisers and to require such investment advisers to report suspicious activity to FinCEN. FinCEN further indicated that it has been working closely with the SEC in developing the proposed AML rules applicable to investment advisers. The drafted NPRM suggests that a potential AML program rule for investment advisers may be forthcoming. Broker-dealers and investment advisers relying on the 2015 no-action letter should monitor the status of future FinCEN proposals.

According to the 2015 no-action letter, a broker dealer may rely on an investment adviser to perform its CIP obligations if: (1) the broker-dealer’s reliance on the investment adviser is reasonable under the circumstances; (2) the investment adviser is an investment adviser registered with the SEC under the Investment Advisers Act of 1940; and (3) the investment adviser enters into a contract with the broker-dealer outlining its AML responsibilities. Such a contract must include representations that the investment adviser:

- has implemented its own AML program consistent with federal AML requirements and will continually update such program;
- will perform the specified requirements of the broker-dealer’s CIP in a manner consistent with the PATRIOT Act;

- will promptly disclose to the broker-dealer potentially suspicious or unusual activity detected as part of the CIP being performed on the broker-dealer’s behalf in order to enable the broker-dealer to file a Suspicious Activity Report;
- will certify annually that its representations remain accurate and that it is in compliance with such representations; and
- will promptly provide its books and records relating to its performance of the CIP to the SEC, a self-regulatory organization or authorized law enforcement agencies at the request of the broker-dealer, the SEC, a law enforcement agency or a self-regulatory organization.

A broker-dealer that chooses not to utilize the relief granted in the 2015 no-action letter may still contractually delegate its obligations under CIP to an investment adviser. However, the broker-dealer will remain solely responsible for assuring compliance with the CIP rule and therefore, must actively monitor the operation of its CIP and assess its effectiveness.

### For More Information

*To discuss any topic covered in this Client Alert, please contact a member of the Investment Management Group or visit us online at [chapman.com](http://chapman.com).*

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2015 Chapman and Cutler LLP. All rights reserved.

Attorney Advertising Material.