

Treasury Department to Propose Anti-Money Laundering Rules for Investment Advisers

The Treasury Department is currently working on a regulatory proposal that would require investment advisers to establish anti-money laundering (“AML”) programs and report suspicious activity according to a Treasury Department official. Investment advisers are currently not specifically required to adopt AML policies and procedures under Treasury regulations; however, the Treasury Department has authority to impose such a requirement under the Bank Secrecy Act of 1970.

During remarks at the American Bankers Association/American Bar Association Money Laundering Enforcement Conference, the Director of the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”), James H. Freis Jr., announced that the Treasury Department is currently working on a regulatory proposal that would require investment advisers to establish anti-money laundering programs and report suspicious activity. Current FinCen regulations apply to banks, broker-dealers, and open-end mutual funds, but not to investment advisers.

FinCen has previously proposed AML rules applicable to investment advisers but withdrew those proposals in 2008. Specifically, FinCEN proposed rulemaking in 2002 that would have required that unregistered investment funds establish AML programs. FinCEN subsequently proposed AML rules in 2003 that would have required that investment advisers establish AML programs. After taking no action on these proposals for several years, FinCen withdrew these proposals in 2008, noting that it would not proceed with an investment adviser AML program requirement without publishing a new proposal for comment. FinCen noted at the time that investment advisers must conduct financial transactions for their clients through other financial institutions that are subject to AML requirements, and their clients’ assets must be carried at these other financial institutions. As a result, investment adviser activity is not entirely outside the current AML regulatory regime.

If FinCen ultimately adopts rules requiring investment advisers to establish AML programs, investment advisers will likely be required to adopt written policies and procedures reasonably designed to comply with Bank Secrecy Act regulations and to detect and report suspicious transactions (including customer identification requirements). These rules would also likely require that investment advisers appoint an AML compliance officer, provide AML training for personnel, and annual testing of the AML program.

Freis noted that FinCEN will work with the states and the Securities and Exchange Commission to build on the changes to the investment adviser industry implemented pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. Freis did not provide specific details about the scope or timing of potential rules. A full copy of the remarks is available at http://www.fincen.gov/news_room/speech/html/20111115.html.

If you would like to discuss any of the issues discussed in this Client Alert, please contact any attorney in our Investment Management Group or visit us online at chapman.com.

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