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FinCEN Bureau of the US Treasury Proposes Standards for Investment Adviser AML Programs

Late last month, the FinCEN bureau at the Treasury Department announced a proposed rulemaking (the text is available [here](#)) prescribing minimum standards for AML programs to be established by SEC-registered investment advisers (RIAs) and requiring RIAs to report suspicious activity to FinCEN by filing suspicious activity reports (SARs). The proposed rules are expected to take effect in mid-2016, and so RIAs may wish to use the intervening time to make sure their AML programs are up to speed in light of the soon-to-be-established requirements.

Although many RIAs already follow best practices in their AML programs, the proposal introduces some new—and possibly unfamiliar—features. Under the proposal, RIAs would be required to

- establish policies, procedures and controls designed to prevent the RIA from being used for money laundering or the financing of terrorist activities and to comply with applicable Federal AML requirements. Any individual AML program should be based on the level of money-laundering risk that an RIA reasonably anticipates. An RIA could delegate the implementation and operation of their AML programs to third-party service providers by contract;
- designate an officer of the RIA to implement and monitor its AML program and provide ongoing training to personnel involved with the program;
- arrange for their AML programs to be tested independently by an unaffiliated service provider or the RIA's own personnel (if the personnel are knowledgeable about AML requirements and not themselves involved in operating the RIA's AML program);
- prepare and submit a SAR for any suspicious transaction involving more than \$5,000; and
- keep records and file reports with the Treasury Department regarding the receipt of cash and negotiable instruments using a FinCEN Cash Transaction Report (replacing current Form 8300).

The details of the proposal may change between now and its final adoption, but RIAs should be prepared to fulfill their new responsibilities over the next nine months.

If you have any questions about these new requirements and procedures and their details, please contact me at the above address.

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