ALERTS

The New AML Rules: Implications for Private Fund Managers

September 8, 2015

On Aug. 25, 2015, the Financial Crimes Enforcement Network ("FinCEN") issued for public comment a proposed rule (the "Proposed Rule") requiring investment advisers registered with the SEC ("RIAs") to establish anti-money laundering ("AML") programs and report suspicious activity to FinCEN pursuant to the Bank Secrecy Act ("BSA").

The long-anticipated Proposed Rule arrives nearly seven years after FinCEN withdrew earlier proposed AML rules, published in 2002 and 2003, directed at investment advisers, unregistered investment companies and commodity trading advisors. In issuing the current Proposed Rule, FinCEN noted that there have since been significant changes in the relevant regulatory framework for investment advisers, in particular the requirement, as part of the Dodd-Frank Act of 2010, that advisers to private investment funds, including hedge funds and private equity funds, register with the SEC. According to FinCEN, there were 11,235 RIAs as of June 2014, managing a reported $61.9 trillion in assets. As long as these investment advisers are not subject to AML program and suspicious activity reporting requirements, FinCEN stated, "money launderers may see them as a low-risk way to enter the U.S. financial system."

In the wake of FinCEN's previously proposed AML rules in the early 2000s, many investment advisers have developed AML programs and screening measures as part of an AML best practice to "Know-Your-Investor." But there is a substantial difference between such voluntary programs and being legally required to maintain an effective AML program — which will mean oversight by the SEC and could trigger penalties and enforcement actions if that program is ineffective. In addition, the Proposed Rule includes requirements that may be unfamiliar to many RIAs, most notably the obligation to report suspicious activity. This *Alert* explains the Proposed Rule in more detail and considers some of its most significant implications, focusing on 15 of the most important practical questions it raises for investment advisers.

Related People

Marc Elovitz

Partner

New York

Melissa Goldstein

Partner

Washington, DC

Betty Santangelo

New York

Practices

HEDGE FUNDS

INVESTMENT MANAGEMENT

BANK REGULATORY

LITIGATION

REGULATORY AND COMPLIANCE

SEC ENFORCEMENT AND WHITE COLLAR DEFENSE

Attachments

Download Alert