

ALERT

# Anti-Money Laundering Update: Treasury to Re-Propose Long Anticipated AML Program Rules Aimed at Hedge Funds, PE Funds and Certain Investment Advisers

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On Dec. 11, 2023, the US Department of the Treasury (“Treasury”) issued a statement<sup>1</sup> that it plans to release an updated notice of proposed rulemaking (“NPRM”) prescribing anti-money laundering/counter terrorist financing (“AML/CFT”) obligations for certain investment advisers in the first quarter of 2024.

Treasury’s statement highlights that investment advisers are not presently subject to consistent or comprehensive AML/CFT obligations in the United States and expresses its concern that this gap in regulation creates “the risk that corrupt officials and other illicit actors may invest ill-gotten gains in the US financial system through hedge funds, private equity firms, and other investment services.”

The issuance of this updated NPRM has long been anticipated, given that the Financial Crimes Enforcement Network (“FinCEN”), a bureau of Treasury responsible for administering the Bank Secrecy Act, has previously proposed AML regulations for investment advisers — most recently in 2015 — but has never finalized them.<sup>2</sup> Since 2015, Treasury and FinCEN have made various statements in publications and speeches noting their concern about the issues this absence of regulation creates.<sup>3</sup> For example, the US Strategy on Countering Corruption, a publication issued by Treasury in December 2021,<sup>4</sup> noted, among other things, that “the lack of regulatory oversight of [investment advisers] means that it [is] possible for money launderers to evade scrutiny more effectively by operating through investment advisers rather than through broker-dealers or banks directly.”<sup>5</sup> In the 2022 release of the National Money Laundering Risk Assessment, Treasury provided a comprehensive summary of the attributes of the investment advisor industry that it identified as creating vulnerabilities that illicit actors may be able to exploit, including the industry’s lack of AML/CFT regulatory requirements.<sup>6</sup> FinCEN’s then-Acting Director Himamauli Das also gave a statement in 2022 before the House Committee on Financial Services where he noted that “the lack of a comprehensive AML/CFT regulatory framework for investment advisers may create vulnerabilities that illicit actors may be able to exploit.”<sup>7</sup> More recently, in

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<sup>1</sup> Treasury, FACT SHEET: US Department of the Treasury Actions to Prevent and Disrupt Corruption (Dec. 11, 2023), available [here](#).

<sup>2</sup> FinCEN, Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 Fed. Reg. 52680 (Sept. 1, 2015), available [here](#). For more information regarding the 2015 proposed rule, please see our prior *Alert*, “New Anti-Money Laundering Rules for Registered Investment Advisers Proposed by FinCEN,” available [here](#).

<sup>3</sup> Certain provisions of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) already apply to investment advisers, but investment advisers are not yet subject to regulations requiring the implementation of an AML program.

<sup>4</sup> The White House, United States Strategy on Countering Corruption (Dec. 2021), available [here](#).

<sup>5</sup> *Id.* at 22.

<sup>6</sup> US Department of the Treasury, “National Money Laundering Risk Assessment” (Feb. 2022), at 63-66, available [here](#).

<sup>7</sup> Himamauli Das, “Statement by Himamauli Das Acting Director Financial Crimes Enforcement Network United States Department of the Treasury before the Committee on Financial Services US House of Representatives” (April 28, 2022), available [here](#).



2023, Treasury's Under Secretary for Terrorism and Finance Brian Nelson and FinCEN Director Andrea Gacki hinted that Treasury was working to address risks presented by the investment adviser sector.<sup>8</sup>

If the updated NPRM is similar to FinCEN's 2015 NPRM, the updated NPRM would solicit public comments on whether SEC-registered investment advisers of private funds should be included in the general definition of "financial institution" in the Bank Secrecy Act implementing regulations and, as such, required to establish an AML program, file currency transaction reports and suspicious activity reports with FinCEN, and maintain certain transaction records. The updated NPRM may also address whether investment advisers will be required to develop investor identity verification and due diligence procedures.

Treasury's statement was part of a press release about Treasury's broader initiatives to address the illicit finance and national security threats posed by corruption — including prioritizing efforts to implement FinCEN's Beneficial Ownership Reporting Rule, which will become effective on Jan. 1, 2024,<sup>9</sup> and issuing a NPRM in the first quarter of 2024 to solicit public comments on AML/CFT requirements for the residential real estate sector.

Investment advisers should prepare to evaluate their AML policies and procedures next year in light of the proposed regulatory changes.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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<sup>8</sup> See Brian Nelson, "Remarks by Under Secretary for Terrorism and Financial Intelligence Brian Nelson at Deloitte's 15th Annual Anti-Money Laundering Conference" (Oct. 17, 2023), available [here](#) ("We are also turning our sights to investment advisers, a set of professionals in a \$120 trillion sector that are generally not subject to comprehensive AML/CFT obligations. Investment advisers have facilitated the movement of illicit proceeds tied to a range of predicate crimes — including foreign corruption, fraud, tax and sanctions evasion, and can also be exploited by our adversaries to invest in sensitive US technologies. We are conducting risk assessments on this sector and are considering possible policy options."); see also Andrea Gacki, "Prepared Remarks of FinCEN Director Andrea Gacki During ACAMS: The Assembly (delivered virtually)" (Oct. 3, 2023), available [here](#) ("FinCEN, along with our Treasury colleagues, has been examining the money laundering risks and vulnerabilities with certain "gatekeeper" industries such as real estate and investment advisers, and identifying how best to address those risks.")

<sup>9</sup> For additional information on the Corporate Transparency Act, please see our prior client *Alerts*: (1) "FinCEN Issues Final Rule Requiring Reporting of Beneficial Ownership Information," available [here](#); (2) "The Corporate Transparency Act: Key Considerations for Compliance With the Beneficial Ownership Reporting Rule," available [here](#) and (3) "The Corporate Transparency Act: The Private Funds Guide to Compliance With the Beneficial Ownership Reporting Rule," available [here](#).