The New Anti-Money Laundering Rule

Schulte Roth&Zabel

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Brad focuses his practice on counseling hedge funds and private equity funds on operational, regulatory and compliance matters. He represents clients on a broad range of issues, including those related to the U.S. Investment Advisers Act, other federal, state and self-regulatory organization requirements and securities trading rules in the United States. Brad also provides guidance to clients with operations in Hong Kong, Japan and other markets throughout Asia and the United Kingdom with respect to regulatory, compliance, trading and operations. Prior to joining Schulte Roth & Zabel, Brad served for 12 years in various in-house roles, including as general counsel and chief compliance officer of investment advisers ranging from multibillion-dollar funds to start-ups, and as a member in the asset management group of a leading investment bank.

A frequent speaker and writer on the topics of fund operations and regulatory compliance, Brad most recently presented on market terms and regulatory issues for co-investments, regulatory changes to Form ADV and recordkeeping requirements, and other compliance topics for private investment funds. He also recently contributed to *Hedge Funds: Formation, Operation and Regulation* (ALM Law Journal Press) and co-authored "The New AML Rules: Implications for Private Fund Managers" and "JOBS Act Update: CFTC Relief Removes Impediment to General Solicitation," which were published in *The Hedge Fund Journal*.

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Jenny advises hedge funds, private equity funds (including mezzanine and distressed funds), hybrid funds, funds of funds and investment advisers in connection with their structuring, formation and ongoing operational needs, general securities law matters, and regulatory and compliance issues. Her experience includes structuring and negotiating seed and strategic investments, advising investment managers regarding the structure and sale of their investment management businesses and the structure of their compensation arrangements, and representing investment managers in connection with managed accounts and single-investor funds.

Recognized by *The Legal 500 United States*, *Expert Guide to the World's Leading Banking*, *Finance and Transactional Law Lawyers* (Investment Funds) and *Expert Guide to the World's Leading Women in Business Law* (Investment Funds) and as an *IFLR 1000* "Rising Star" (Investment Funds), Jenny co-authored *Hedge Funds: Formation, Operation and Regulation* (ALM Law Journal Press) and recently presented at conferences on topics including compliance issues, hedge funds and management company structures, and considerations for emerging hedge fund managers.

Jenny earned her J.D. from Columbia University Law School, where she was a Harlan Fiske Stone Scholar, and her B.A., *cum laude*, from the University of Pennsylvania.

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Seetha focuses on litigation, anti-money laundering and OFAC compliance, banking and securities enforcement, white collar criminal defense and regulatory investigations, and asset recovery for victims. As a former deputy chief in the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, U.S. Department of Justice, Seetha has expertise in matters that include allegations of violations of the Bank Secrecy Act (BSA), complex money laundering, economic sanctions, and civil and criminal forfeiture. During her tenure at AFMLS, she served as one of the first co-heads of the Money Laundering and Bank Integrity Unit, where she supervised a broad range of investigations and prosecutions of global financial institutions, including HSBC, MoneyGram, Standard Chartered Bank and ING, as well as emerging areas of money laundering and BSA enforcement such as online payment systems and virtual currencies. Seetha also worked closely with state and federal banking regulators and U.S. Attorneys' offices nationwide. Prior to her appointment at AFMLS, Seetha served as an Assistant U.S. Attorney for the Southern District of New York, where she worked in the Complex Frauds, Major Crimes and Asset Forfeiture units, investigating and prosecuting bank fraud, mail and wire fraud, tax fraud, money laundering, stolen art and cultural property, and civil and criminal forfeiture cases and appeals. She is also a former law clerk for the Honorable Richard J. Cardamone of the U.S. Court of Appeals for the Second Circuit.

The Legal 500 United States has recognized Seetha as a leading lawyer. She has counseled a range of companies on AML and OFAC compliance programs and procedures, including banks, broker-dealers, hedge funds, private equity firms, loan and finance companies, money services businesses, and online payment companies. She is also a frequent public speaker and has presented on topics that include enforcement trends in the financial services industry, emerging payment systems, effective AML programs, asset forfeiture and diversity of the white collar bar. Seetha is the co-author of "The New AML Rules: Implications for Private Fund Managers" in *The Hedge Fund Journal*, "Federal and State Regulators Target Compliance Officers — Parts I and II" in *The Banking Law Journal* and "The Interplay Between Forfeiture and Restitution in Complex Multi-Victim White Collar Cases" in the *Federal Sentencing Reporter*.

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Gary focuses on white-collar criminal defense and securities regulatory matters, complex commercial litigation, internal investigations, anti-money laundering issues, civil and criminal forfeiture proceedings and appellate litigation. He represents public companies, financial institutions, hedge funds, other entities and individuals as subjects, victims and witnesses in federal and state criminal investigations and regulatory investigations by the SEC, SROs and state attorneys general. He has conducted numerous internal investigations involving potential violations of the Foreign Corrupt Practices Act, financial statement fraud, money laundering and other matters, and advises companies on compliance with the FCPA and anti-money laundering and OFAC regulations. As a former Assistant U.S. Attorney and chief appellate attorney in the Southern District of New York, Gary investigated, prosecuted, tried and appealed numerous white collar criminal cases involving money laundering, fraudulent investment schemes, bank fraud, insider trading, art theft, illegal kickbacks, terrorist financing and other financial crimes. His civil litigation experience includes claims of fraud and breach of contract, securities class actions and derivative actions, contests over corporate control, and disputes arising from the sale of a business. He has handled more than 150 appeals in federal and state courts involving issues of both criminal law and procedure and complex commercial law. He has successfully argued 15 appeals in the U.S. Court of Appeals for the Second Circuit and most recently led the firm's pro bono representation in *Hurrell-Harring v. State of New York*, which resulted in a historic settlement that lays the foundation for statewide reform of New York's public defense system, and for which he received *New York Law Journal*'s 2015 Lawyers Who Lead by Example Award.

Gary is listed as a leading litigation attorney in *Benchmark Litigation: The Definitive Guide to America's Leading Litigation Firms & Attorneys*, *The Legal 500 United States* and *New York Super Lawyers*. He serves on the board of directors of The Legal Aid Society and the board of editors of the *Business Crimes Bulletin*. He regularly presents on FCPA, insider trading and trading compliance, risk management and crisis management issues at conferences and is an accomplished writer. He is the recipient of two Burton Awards for Achievement in Legal Writing — in 2008 for co-authoring "The Foreign Corrupt Practices Act: Recent Cases and Enforcement Trends," which appeared in the *Journal of Investment Compliance*, and in 2015 for authoring "Pension Forfeiture and Prosecutorial Policy-Making," which was originally published in the *N.Y.U. Journal of Legislation and Public Policy Quorum*. He is also the co-author of the "Scienter: Trading 'On the Basis Of'" chapter in the *Insider Trading Law and Compliance Answer Book* (Practising Law Institute) and of "The New AML Rules: Implications for Private Fund Managers" in *The Hedge Fund Journal*.

Gary obtained his J.D. from New York University School of Law and his B.A. from New York University.

The New Anti-Money Laundering Rule

I. Overview of the New Proposed Anti-Money Laundering ('AML') Rule for Registered Investment Advisers

A. Relevant Statutes and Regulations

1. The Money Laundering Control Act ("MLCA"), 18 U.S.C. §§ 1956 and 1957.

2. The Bank Secrecy Act ("BSA") of 1970, 31 U.S.C. §§ 5311 – 5330, as amended, including by the USA PATRIOT Act of 2001, and the BSA's implementing regulations, 31 C.F.R. Chapter X.

3. Economic sanctions enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") prohibit U.S. citizens, businesses and financial institutions from engaging in transactions with persons designated on OFAC lists or located in prohibited jurisdictions (for example, individuals and entities on OFAC's Specially Designated Nationals and Blocked Persons List).

4. The Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333(a), provides for a private right of action for damages to any U.S. national "injured in his or her person, property, or business by reason of an act of international terrorism."

B. Background of the Proposed Rule

1. The BSA currently requires "financial institutions" to have effective AML compliance programs. "Financial institutions" currently include banks, broker-dealers, any entity required to register under the Commodity Exchange Act ("CEA") (including futures commission merchants ("FCMs"), introducing brokers in commodities ("IB-Cs"), commodity trading advisors ("CTAs"), and commodity pool operators ("CPOs")), mutual funds, operators of credit card systems, money services businesses, insurance companies, casinos, loan or finance companies, and dealers of precious metals, stones and jewels. The AML program rules instituted under the USA PATRIOT Act do not yet apply to private funds and investment advisers.

2. In 2002 and 2003, the Financial Crimes Enforcement Network ("FinCEN") proposed AML rules directed at investment advisers, unregistered investment companies and CTAs. Although the proposed rules were withdrawn in 2008, many investment advisers and private investment funds responded by developing and maintaining AML programs consistent with the proposed rules.

3. On Aug. 25, 2015, nearly seven years after FinCEN withdrew these earlier proposed AML rules, FinCEN issued for public comment a proposed rule requiring investment advisers registered with the SEC ("RIAs") to establish AML programs and report suspicious activity to FinCEN pursuant to the BSA (the "Proposed Rule").

4. The Proposed Rule will apply to "[a]ny person who is registered or required to register with the SEC" under Section 203 of the Investment Advisers Act of 1940, as amended (the "Advisers Act"). It thus will not apply to investment advisers that fall within an exemption from SEC registration, such as firms that rely on the exemption for venture capital fund advisers under Advisers Act Section 203(l), the exemption for private fund advisers managing less than $150 million in regulatory assets under management from a place of business in the United States under Section 203(m) or the exemption for foreign private advisers under Section 203(b)(3), family offices relying on Rule 202(a)(11)(G)-1, or CTAs whose business is not predominantly securities-related advice. However,

FinCEN cautions that "future rulemakings" may include other types of investment advisers found to present AML risks.

5. FinCEN is proposing to delegate to the SEC examination authority over RIAs for compliance with FinCEN's rules.

6. The public comment period has closed and the Proposed Rule will be subject to additional review and revision before it is finalized by FinCEN. The effective date is proposed as six months after the rule is published in the *Federal Register*. Accordingly, the earliest that RIAs might have to comply with the new rule is sometime in mid-2016.

C. AML Program Requirements

1. Under the Proposed Rule, an AML program must be approved in writing by the RIA's board of directors or its equivalent and include the following "four pillars":

   (a) Establish and Implement Policies, Procedures and Internal Controls to Ensure Ongoing Compliance: This means establishing and implementing written AML policies, procedures and internal controls. The AML program must be "reasonably designed to prevent the investment adviser from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with" the BSA. Regulators want to see a "risk-based" approach in the design of the program.

   (b) Designation of a Qualified Person or Persons Responsible for Implementing and Monitoring the Operation and Internal Controls of the Program (the "AML officer"): The RIA must designate an individual or committee responsible for implementing and monitoring the operations and internal controls of the program, who is "knowledgeable and competent" regarding the regulatory requirements and the RIA's money laundering risks. Depending on the RIA's size and type of services, the AML officer need not be dedicated full time to BSA compliance, but "should be an officer of the investment adviser."

   (c) Ongoing Training for Appropriate Personnel: The nature, scope and frequency of training would be determined by the employees' responsibilities and the extent to which their functions bring them into contact with the BSA's requirements and possible money laundering. In addition to ensuring that such ongoing training complies with the Proposed Rule (e.g., tailoring training to the audience), the RIA should document its practices related to training so that it is prepared for an SEC examination with respect to compliance with the AML rules.

   (d) Independent Testing for Compliance: The Proposed Rule requires testing on a "periodic basis," explaining that the frequency of testing will depend upon the RIA's assessment of the risks posed. Such testing, designed to ensure that the program is functioning as intended, may be conducted by a qualified outside party. Alternatively, testing may be conducted by employees of the RIA, provided those employees are not involved in the operation or oversight of the AML program.

2. The government often evaluates AML programs according to their effectiveness. Recent enforcement actions demonstrate that deficiencies relating to any of these four AML pillars can result in liability under the BSA.[1]

3. The Proposed Rule will allow RIAs to delegate contractually the implementation and operation of aspects of its AML program. But importantly, the RIA, not the third-party administrator or other delegee, remains responsible for the effectiveness of the program as well as for ensuring access to documents and information by regulators like FinCEN and the SEC.

4. This means that to the extent that an RIA delegates AML functions to an agent or service provider, such as a third-party administrator, it still bears the burden of ensuring that the third-party administrator is effectively carrying out the "four pillars" of the AML program. The Proposed Rule specifically addresses the independent testing and training requirements in the context of service providers, noting that: (i) service providers may conduct independent testing so long as the employees who conduct the testing are not involved in the operation of the program and are knowledgeable of the BSA's requirements; and (ii) employees of an agent or third-party service provider must be trained in BSA requirements relevant to their functions and in recognizing possible signs of money laundering that could arise in the course of their duties.

5. The Proposed Rule does not, however, appear to allow RIAs to delegate the role of the AML officer to a third-party administrator; as noted above, it states that the person designated "should be an officer of the investment adviser."

D. Filing of Suspicious Activity Reports ('SARs')

1. Under the Proposed Rule, an RIA will be required to electronically file a SAR with FinCEN using FinCEN's BSA E-Filing system "no later than 30 calendar days after the date of the initial detection by the reporting investment adviser that may constitute a basis for filing a SAR." The purpose of a SAR is to report suspicious transactions that could suggest criminal activity, particularly money laundering and terrorist financing, but also other criminal activity such as fraud, to regulators and to law enforcement.

2. A SAR filing will be required for transactions involving at least $5,000 conducted or attempted by, at, or through the RIA where the RIA knows, suspects or has reason to suspect that the transaction:

   (a) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity;

   (b) Is designed to evade the BSA or its implementing regulations;

   (c) Has no business or apparent lawful purpose or is not the sort of transaction the particular customer would normally be expected to engage in, and the RIA knows of no reasonable explanation for the transaction after examining the available facts; or

   (d) Involves use of the RIA to facilitate criminal activity.

3. In issuing the Proposed Rule, FinCEN offers several examples of money-laundering "red flags" that might qualify as SAR-worthy events for an investment adviser. These include:

[1] *See, e.g.,* Oppenheimer & Co., Inc., FinCEN Matter No. 2015-01 (Jan. 27, 2015)*;* Halcyon Cabot Partners, Ltd., FINRA Case No. 2012033877802 (Oct. 6, 2015); Global Strategic Investments, LLC, FINRA Case No. 2011025676501 (April 27, 2015); and Cobra Trading, Inc., FINRA Case No. 2013035340001 (Feb. 17, 2015).

(a) A client who exhibits unusual concern regarding the adviser's compliance with government reporting requirements or is reluctant to provide information on its business activities.

(b) A client who appears to be acting as the agent for another entity declines, evades or is reluctant to provide responses to questions about that entity.

(c) A client's account has a pattern of inexplicable or unusual withdrawals inconsistent with the client's investment objectives.

(d) A client's request that a transaction be processed in a manner to avoid the adviser's normal documentation requirements.

(e) A client exhibits a total lack of concern regarding performance returns or risk.

4. RIAs must maintain the confidentiality of a SAR. Disclosing a SAR, or even information that would reveal the existence of a SAR, can constitute a crime under federal law. The disclosure restrictions apply not only to parties implicated in the suspicious activity, but also to other parties, and even apply to demands for documents made in the course of civil litigation.

5. The Proposed Rule also allows RIAs to delegate their SAR reporting responsibilities to a third-party service provider. Here again, the RIA remains responsible for its compliance with the SAR reporting requirement, including the requirement to maintain SAR confidentiality.

6. In addition to filing a SAR, the Proposed Rule requires RIAs to immediately notify an appropriate law enforcement authority by telephone in situations "involving violations that require immediate attention," such as suspected terrorist financing or "ongoing" money-laundering schemes.

7. SAR supporting documentation must be made available to FinCEN, the SEC and any law enforcement agency, and must be maintained by the RIA for a period of five years from the date of filing the SAR.

8. The Proposed Rule acknowledges that in some cases, an RIA and another BSA-covered institution, such as a bank, may file a SAR on the same suspicious transaction, and in such cases will only require that one institution file a SAR. In these cases, the facts, transactions and documents underlying a SAR may be shared for the preparation of a joint SAR. But this too requires careful coordination and planning, given the requirements of SAR confidentiality.

E. Record-Keeping and Travel Rules

1. The Proposed Rule will also subject RIAs to the BSA's Record-Keeping and Travel Rules, which impose several requirements on financial institutions with regard to funds transfers and certain other transactions.

2. First, financial institutions must obtain and retain records for transmittals of funds in excess of $3,000. The information to be obtained and retained includes the name and address of the transmittor, the payment instructions received from the transmittor, and information provided about the recipient. The record retention period is five years, which is consistent with most RIAs' existing record retention practices. Records must be filed or stored in such a way as to be accessible within a reasonable period of time, and retrievable by the transmittor's financial institution by reference to the name of the transmittor.

3. Second, financial institutions must ensure that certain information pertaining to the transmittal of funds in excess of $3,000 "travel" with the transmittal to the next financial institution in the payment chain. This applies when the financial institution is transmitting funds or receiving funds as an intermediary financial institution to be transmitted to another institution. The information that must be made part of the chain includes the name, address and account number of the transmittor and information provided about the recipient. The Proposed Rule notes that investment advisers would fall within an existing exception to the Record-Keeping and Travel Rules that is designed to exclude transmittals of funds in which the transmittor, originator, recipient or beneficiary are certain categories of financial institutions, including banks, brokers or dealers in securities, and mutual funds. However, this exception applies only where the financial institution is the interested party in the transaction, not where the financial institution is merely sending or receiving funds on behalf of another party.

4. Third, financial institutions are required under the Record-Keeping and Travel Rules to create and retain records for extensions of credit and cross-border transfers of funds, currency, monetary instruments, checks and investment securities, where the transactions exceed $10,000.

F. Filing of Currency Transaction Reports ('CTRs')

1. The Proposed Rule will require RIAs to file CTRs for transactions involving more than $10,000 in currency.

2. This change is unlikely to have a substantial impact on RIAs, as RIAs are already required to report such transactions on a different form, known as a Form 8300, and most RIAs do not deal in cash (and may have policies prohibiting cash transactions).

G. Section 314 of USA PATRIOT Act

1. Under the Proposed Rule, RIAs will be subject to government requests for information under Section 314(a). Section 314(a) authorizes law enforcement agencies to request, through FinCEN, that financial institutions search their records to determine whether they have maintained an account or conducted a transaction with a person that law enforcement has certified is suspected of engaging in terrorist activity or money laundering. Compliance with a Section 314(a) request is not voluntary; financial institutions must provide identifying information for the accountholder or transaction in question. Furthermore, financial institutions must maintain adequate procedures to protect the security and confidentiality of Section 314(a) requests.

2. The Proposed Rule will also expand *voluntary* information-sharing under Section 314(b) of the USA PATRIOT Act to include RIAs. Section 314(b) allows (and in fact encourages) financial institutions and some related entities in the United States to share information for the purpose of identifying and reporting money laundering or terrorist activity, with specific protection from civil liability. Although there are requirements that an RIA must follow to take advantage of Section 314(b)'s safe harbor, it provides a potentially valuable tool for investment advisers to gather from other financial institutions information on investors and other relevant parties where needed.

H. Implementation of a Customer Identification Program ('CIP')

1. At this time the Proposed Rule does not require RIAs to establish a CIP pursuant to Section 326 of the USA PATRIOT Act. The Proposed Rule states that FinCEN will address CIP requirements for RIAs via a joint rulemaking effort with the SEC.

2. On July 30, 2014, FinCEN proposed a new "customer due diligence" ("CDD") rule that goes beyond the customer identification program currently required of financial institutions under the BSA. The new rule requires banks, brokers or dealers in securities, mutual funds, FCMs and IB-Cs to determine the *beneficial owners* of their legal entity customers. While there are some legal entity customers exempt from the rule, for which no beneficial owner needs to be identified, the exemption *does not apply to private investment funds*. This means that under the proposed CDD rule, private investment funds and other non-exempt entities would need to provide beneficial ownership information to financial institutions.

II. Some Practical Implications of the Proposed Rule for RIAs

If the Proposed Rule is adopted in its current form, RIAs will need to consider taking the following actions:

A. Review of Administration Agreement: To the extent an RIA delegates to a third-party administrator AML functions, the RIA should review and revise, as necessary, the administration agreement. If the administration agreement currently includes only the fund, and not the RIA, as a party to the agreement, consider amending it to include the RIA as a party to the agreement. Also consider revising the administration agreement to include any increase or change in the administrator's role with respect to AML functions on behalf of the RIA and the funds and to permit the RIA to inspect, review or otherwise oversee the operations of the administrator with respect to its AML functions and to obtain access to relevant records of the administrator.

B. Offering Memoranda: Offering memoranda, or private placement memoranda, will likely need to be revised to reflect certain changes in the rules and procedures in light of the new rules. Currently, many offering memoranda discuss the fund's or the administrator's AML policies or procedures under applicable non-U.S. laws. However, such offering documents should be revised to reflect that the RIA is also subject to AML laws and regulations in the United States and has implemented its own policies and procedures to comply with such requirements. The offering memorandum should also be updated to disclose the requirement for SAR reporting, which is a new requirement under the Proposed Rule.

C. Subscription Agreements: Subscription agreements, or subscription documents, may need to be revised if the RIA adopts an AML program that requires fund investors to provide additional or otherwise different documentation or information than what the RIA currently requests from investors in the subscription agreements.

D. Expenses: It is expected that there will be an increase in expenses relating to AML compliance. The expense language in the offering documents and governing documents of the fund (e.g., the partnership agreement) should align with the RIA's actual expense-allocation practices. While most RIAs bear their own internal compliance-related expenses, the fees and expenses of the administrator are typically borne by funds. RIAs will need to carefully consider additional AML compliance-related expenses and whether those are management company or fund expenses.

III. Summary of Comments to FinCEN on the Proposed Rule

Below is a chart that highlights certain of the comments made regarding the Proposed Rule in some (but not all) of the comment letters submitted to FinCEN. All of the comment letters on the Proposed Rule are available online.[2]

No.	Party	Comments
1.	Managed Funds Association (MFA)	• Excluding subadvisers from the definition of "investment adviser" • Providing guidance on delegation of AML program; permitting the delegation of the AML program, SAR reporting and Section 314 requests to offshore administrators • Allowing RIAs to take into consideration the AML procedures of financial institutions or other investor intermediaries when assessing risk • Clarifying that the intent of the Proposed Rule, including SAR reporting, is to cover activities involving investors, and not other aspects of an RIA's operations, such as investment activity • Clarifying that FinCEN does not expect RIAs to incorporate existing non-AML procedures relating to securities laws into their AML programs or SAR monitoring systems • Clarifying that RIAs are not required to reassess the due diligence previously conducted on existing investors • Permitting appropriately knowledgeable and responsible personnel to be designated as an AML officer, even if not an officer of the RIA • Clarifying that, if a committee is designated, not all members of the committee need to be employees of the RIA • Permitting senior management to approve the RIA's AML program, and not requiring written board approval • Permitting SAR sharing within an RIA's corporate organizational structure and between an RIA and the directors and officers of the private funds managed by the RIA and the funds' administrator • Excluding RIAs from the BSA's Record-keeping and Travel rules • Using CTRs for large currency transactions • Clarifying applicability of certain sections of the USA PATRIOT Act • Requiring the SEC to publicly release a copy of its relevant AML examination manual
2.	Securities Industry and Financial Markets Association (SIFMA)	• Limiting scope of the AML rule to RIAs in the United States and relating to their U.S. activity • Excluding from the AML program requirement certain types of investors, advisory activity or advisory relationship • Focusing on the risks posed by direct clients as opposed to certain pooled investment vehicles where investor information is typically limited • Clarifying that risk assessments may take different forms depending on the RIA's business • Accommodating different organizational structures (e.g., allowing for AML program approval by senior management; removing requirement that AML officer must be a corporate officer; allowing AML officer to be an employee of an affiliate of the RIA) • Allowing RIAs to share SAR filings within their corporate organizational structures

[2] Comment letters are available via the *Federal Register* at https://www.federalregister.gov/articles/2015/09/01/2015-21318/anti-money-laundering-program-and-suspicious-activity-report-filing-requirements-for-registered.

No.	Party	Comments
3.	Financial Services Roundtable (FSR)	• Excluding from the AML program (and other attendant) requirements certain types of advisers or advisory activity • Allowing RIAs to share SAR filings within a consolidated financial organization • Removing requirement that AML officer must be a corporate officer • Allowing for reliance and delegation of AML diligence and monitoring between primary and sub-advisers
4.	Investment Adviser Association (IAA)	• Excluding certain types of advisory business from adopting AML obligations • Addressing practical burdens (e.g., allowing for AML program approval by senior management; removing requirement that AML officer must be a corporate officer) • Providing flexibility in the independent testing requirement and permitting small advisers to employ an internal testing program that may include employees involved in the AML program • Confirming that the obligation to assess AML risks relating to the underlying investors of a private fund applies only when the RIA is the primary adviser to that private fund and has access to information about the private fund's underlying investors • Allowing RIAs to share SAR filings within their corporate organizational structures • Permitting RIAs to coordinate any SAR reporting obligations with their qualified custodians • Reassessing costs of the proposal, particularly to smaller advisers
5.	Investment Company Institute (ICI)	• Rescinding the BSA regulations applicable to mutual funds or, alternatively, exempting mutual funds from an RIA's AML program • Exempting sub-advisory services from an RIA's AML program • Confirming that RIAs may be unable to "look through" to investors in funds in certain situations, including where privacy laws and other local requirements may prevent an RIA from obtaining information about investors • Not applying the rule to non-U.S. RIAs because an RIA's obligations under the BSA may not be consistent with local privacy rules and other requirements • Allowing RIAs to share SAR filings within their corporate organizational structures • Confirming that an RIA that is dually registered as a broker-dealer, or is affiliated with a bank, is expected to comply only with the BSA rules applicable to RIAs with respect to its investment advisory activities • Excluding from the final rule advisory services provided to employees' securities companies
6.	Alternative Investment Management Association (AIMA)	• Limiting rule to RIAs who are U.S.-domiciled or not already subject to adequate AML rules in their own jurisdiction • Confirming that delegations of duties under the AML program could be made to entities that are not U.S. financial institutions and can be made to non-U.S. entities (e.g., a third-party administrator who is not a financial institution)
7.	The Financial Services Institute (FSI)	• Authorizing RIAs to share SARs within their corporate organizations • Clarifying that the SAR obligation rests with the financial institution that identifies the suspicious activity where an individual is licensed with both an RIA and a broker-dealer • Exempting RIAs from the requirements of the Record-Keeping and Travel Rules so long as their custodian agrees to ensure compliance with these rules for the RIA's customers

No.	Party	Comments
8.	Private Equity Growth Capital Council (PEGCC)	• Excluding from the AML program requirements private equity funds and RIAs that manage only such funds • Providing clear guidance regarding: (i) which funds and other advisory clients present low risks; and (ii) the nature of the AML program requirements that apply in the case of low-risk products and clients • Clarifying that activities outside the scope of advisory services do not trigger requirements, including SAR requirements, under the AML rules
9.	Wells Fargo & Company (Wells Fargo)	• Excluding from the AML program requirements advisory services that RIAs provide to registered open-end and closed-end funds • Excluding from the AML program requirements advisory services that RIAs provide to wrap fee programs and primary advisers • Excluding foreign advisers that have no place of business in the United States from the definition of "financial institution" under the BSA • Permitting RIAs to share SARs within their corporate organizational structures
10.	American Bankers Association (ABA)	• Emphasizing that the AML programs that RIAs are expected to adopt should be commensurate with their size, customer base and business operations
11.	TIAA-CREF	• Excluding certain low-risk activities and related risk assessments • Applying AML program requirements only to asset management activities and limited aspects of the provision of individualized financial advice • Excluding advisory services to clients with trading or custodial accounts at broker-dealers or banks • Excluding advisory services to mutual fund clients • Excluding adviser-initiated investment activity and encouraging voluntary SAR filing (not requiring mandatory SAR filing) • Excluding subadvisory services • Permitting SAR sharing within an RIA's corporate organizational structure • Applying only to advisory services • Noting that planned giving programs pose low AML risks • Clarifying that a dually registered entity's broker-dealer AML policies and practices are conclusively presumed to be sufficient for the entity's overall AML program requirements • Clarifying that an adviser may safely rely on the AML program activities conducted by a broker-dealer or bank through which client transactions related to a real estate fund are effected
12.	T. Rowe Price Associates Inc.	• Excluding non-U.S. advisers from the AML requirements • Excluding an RIA: (i) acting as an adviser or sub-adviser to a mutual fund; or (ii) serving in a relationship not involving the discretionary management of client assets • Limiting a sub-adviser's responsibilities to solely relate to the party that hired the sub-adviser so that there will be no obligation to "look through" to the vehicle's investors • Authorizing the sharing of SARs within an RIA's organizational structure

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