**Listening Session Regarding Proposed Rule “Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers”**

This document summarizes a listening session that the U.S. Department of the Treasury (Treasury) and its Financial Crimes Enforcement Network (FinCEN) held with representatives of the investment adviser industry about the notice of proposed rulemaking (NPRM) titled *Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting* issued on February 13, 2024 (Docket Number 2024-02854) (IA NPRM).FinCEN is adding this summary of the listening session to the docket for the NPRM to help ensure that the public is aware of the listening session and understands the information that was provided to Treasury and FinCEN in this session. Treasury and FinCEN did not provide any new substantive information about the NRPM or substantively respond to any comments during the listening session.

DATE: April 8, 2024.

TIME: 3 p.m. – 4 p.m. Eastern Time

LOCATION: Virtual

TREASURY ATTENDEES:

* FinCEN Deputy Director Jimmy Kirby, and staff of FinCEN, Treasury’s Office of Terrorist Financing and Financial Crimes, and Treasury’s Office of General Counsel.

OTHER ATTENDEES:

* James Hopegood - Alternative Investment Management Association (AIMA)
* Gail Bernstein, William Nelson - Investment Adviser Association (IAA)
* Erica Evans - Investment Company Institute (ICI)
* Genie Cesar-Fabian - Institutional Limited Partner Association (ILPA)
* Jeff Himstreet - Managed Fund Association (MFA)
* Ashlyn Roberts - National Venture Capital Association (NVCA)
* Kevin Ehrlich - Securities Industry and Financial Markets Association, Asset Management Group (SIFMA AMG)
* Staff of the Securities and Exchange Commission

SUMMARY

* Overall comments on the rule: MFA supported strong anti-money laundering practices (AML) in the investment adviser sector and felt that the NPRM was an improvement on FinCEN’s 2015 proposed rulemaking that was not taken to completion regarding AML obligations for investment advisers. MFA requested that FinCEN consider when finalizing the rule diversity in the industry and the fact that investment advisers are not custodians of funds, unlike broker-dealers and banks which investment advisers work with and which already have AML obligations.
* MFA and the ICI supported the NPRM’s objective of addressing illicit finance risks in the sector. The ICI noted the particularly high risk of fraud in the sector.
* SIFMA, AIMA, IAA stated that the rule would not meaningfully address illicit finance risks given that according to their view most investment advisers do not perform the highest risk activities (e.g., managing funds; processing transactions).
* SFIMA and the NCVA felt that the rule would create unnecessary costs on advisers, in particular smaller entities, affecting their ability to invest into legitimate, innovative industries.
* Scope of the Rule: AIMA noted that requiring foreign-based Exempt Reporting Advisers (ERAs) to comply with the requirements of the NPRM was duplicative given these ERAs are mostly located in jurisdictions with satisfactory AML/CFT regulatory regimes that are compliant with relevant international standards.
* ICI welcomed the FinCEN’s proposal to not require investment advisers to include a mutual fund in its AML/CFT program given the existing AML/CFT requirements on mutual funds. ICI also recommended FinCEN exclude collective investment trusts (CITs) from the scope of an investment adviser’s AML/CFT program, for similar reasons.
* NCVA recommended that venture capital funds and private funds be exempted from the scope of the rule, noting that such firms had not been subject to prior regulations affecting the wider investment adviser sector such as those promulgated under the Dodd-Frank Act.
* Reporting Requirements: AIMA, IAA, ICI, NCVA, and SIFMA each advised against requiring all investment advisers to file suspicious activity reports, currency transaction reports, or otherwise meet the reporting requirements specified in the NPRM given the wide variance in role performed by advisers across the sector and the corresponding level of information each adviser is privy to.
* SIFMA also noted that the lack of familiarity many investment advisers have with such reporting requirements may generate additional costs on industry and government.
* Delegation of Responsibilities: MFA and NCVA requested that any final rule allow investment advisers to delegate responsibilities for aspects of an adviser’s AML/CFT program to contracting parties, which the MFA and NVCA believed were better positioned to meet the reporting requirements of the rule.
* Classification as Financial Institutions: SIFMA raised concerns with the proposed classification of investment advisers as financial institutions (FIs), reflecting that future regulation affecting all FIs may not be easily implemented by investment advisers, which differ in purpose and activity to other FIs, such as banks, broker-dealers, or money transmitters.
* Enforcement: IAA queried whether the Securities and Exchange Commission (SEC) had the resources necessary to supervise the current population of approximately 15,000 Registered Investment Advisers (RIAs) against these new requirements. IAA also questioned how the SEC would examine ERAs given the SEC’s existing examination posture towards ERAs.
* Implementation Deadline: MFA stated that a 12-month implementation deadline would create unnecessary burdens on both IAs and firms to whom they delegate obligations by requiring the parties to amend existing agreements and suggested providing firms with an additional 12 months to implement the rule.