

FinCEN Narrows the Final AML Requirements for Investment Advisers

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On 28 August 2024, the Financial Crimes Enforcement Network (FinCEN) [finalized regulations](#) that add certain investment advisers (Covered Advisers) to the definition of a “financial institution” under the Bank Secrecy Act thereby requiring Covered Advisers to, among other things, establish anti-money laundering (AML) and counter-terrorist financing (CFT) programs and file Suspicious Activity Reports with FinCEN. The effective date of the new rules is January 1, 2026.

Covered Advisers for purposes of the new AML/CFT requirements include SEC-registered advisers and exempt reporting advisers, but FinCEN narrowed the definition from that included in the proposed rule to exclude:

- State registered advisers;
- SEC-registered advisers that do not report any assets under management on Form ADV;
- Advisers that are registered with the SEC solely because they are mid-sized advisers, multi-state advisers, or pension consultants;
- Advisers that qualify for the foreign private adviser exemption; and
- Family offices that are not required to register with the SEC.

In the case of “foreign-located investment advisers” (advisers whose principal office and place of business is outside the United States), the rule applies only to advisory activities that take place in the United States or that involve providing services to US persons or foreign-located private funds with an investor that is a US person.

FinCEN further limited the final rule by permitting Covered Advisers to exclude certain types of advisory customers (rather than types of advisory services) from the scope of their AML/CFT programs. Specifically, open-end mutual funds, collective investment funds and other investment advisers that are advised by the Covered Adviser and are subject their own AML/CFT programs are excluded. FinCEN chose not to exclude registered closed-end mutual funds advised by an investment adviser from the requirements of the rule; however, FinCEN noted that they would expect that such funds could be treated as low-risk given the nature of their operations. The adoption of this AML/CFT rule does not require Covered Advisers to implement a customer identification program or

to collect beneficial ownership for legal entity customers. Those requirements are subject to a separate joint rulemaking with the SEC, which has not yet been adopted.

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