

MEMO# 35776

July 26, 2024

ICI Files Comment Letter on SEC and FinCEN Joint Proposal Regarding Customer Identification Program Requirements for Certain Investment Advisers

[35776]

July 22, 2024

TO: ICI Members

AML Compliance Working Group SUBJECTS: Anti-Money Laundering
Compliance

Intermediary Oversight

Investment Advisers

Operations

Risk Oversight

Transfer Agency RE:

ICI Files Comment Letter on SEC and FinCEN Joint Proposal Regarding Customer
Identification Program Requirements for Certain Investment Advisers

In May, the Securities and Exchange Commission (SEC) and the Financial Crimes Enforcement Network (FinCEN) jointly proposed new rules (Adviser CIP Proposal) requiring SEC-registered investment advisers and exempt reporting advisers (collectively, investment advisers) to establish Customer Identification Programs (CIPs).[\[1\]](#) The Adviser CIP Proposal follows a related FinCEN proposal in February which, if adopted, would require investment advisers to establish anti-money laundering/countering the financing of terrorism (AML/CFT) programs, along with other related requirements (Adviser Program Rule).[\[2\]](#)

Background

The Adviser Program Rule, if adopted, would require investment advisers to establish AML/CFT programs, file suspicious activity reports (SARs), and maintain records of originator and beneficiary information for certain transactions. Investment advisers would not be required to apply these new requirements to their mutual funds (a term that, as defined by FinCEN, includes mutual funds and open-end exchange-traded funds). The Adviser Program Rule proposal did not include a CIP requirement or an obligation to collect beneficial ownership information for legal entity customers. FinCEN indicated that it

expected to address these obligations in subsequent rulemakings.

The Adviser CIP Proposal would require investment advisers to establish, document and maintain a written CIP as part of their AML/CFT program established pursuant to the Adviser Program Rule. Broadly speaking, the Adviser CIP Proposal would require investment advisers to:

- Obtain, at a minimum, certain identifying information with respect to each customer;
- Establish and implement risk-based procedures for verifying the identify of customers within a reasonable time before or after the customer's account is opened, such that the investment adviser is able to "form a reasonable belief that it knows the identity of each customer;"
- Maintain certain records of information obtained in implementing the CIP;
- Establish procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations provided by a government agency; and
- Notify customers that the investment adviser is requesting information to verify their identities.

"Customer" is proposed to mean "any person, including a natural person or legal entity, who opens a new account with an investment adviser," and "account" is proposed to mean "any contractual or other business relationship between a person and an investment adviser under which the investment adviser provides investment advisory services," with certain exclusions.

FinCEN and the SEC proposed to permit an investment adviser to rely on another financial institution to perform CIP requirements if a customer of the investment adviser is opening, or has opened, an account with the other financial institution, provided that: such reliance is reasonable under the circumstances; the other financial institution is subject to AML/CFT requirements and is regulated by a Federal functional regulator; and the other financial institution enters into a contract with the investment adviser requiring it to certify annually that it has implemented an AML/CFT program and will perform the specified CIP requirements ("reliance provision").

ICI Comment Letter

ICI filed a comment letter on July 22 commenting on several aspects of the Adviser CIP Proposal. In the letter, we urge FinCEN and the SEC to withdraw the Adviser CIP Proposal and repropose any necessary CIP requirements after FinCEN finalizes an Adviser Program Rule. We state in the letter that the pace and sequencing of FinCEN's AML/CFT-related proposals make it practically impossible to provide informed comments on the Adviser CIP Proposal. We also stress that, given the volume and interconnectedness of the rulemakings, it is imperative that FinCEN provide advisers a sufficiently lengthy time to responsibly comply with the multiple, related new obligations, and we request at least 18 months to comply with any final investment adviser CIP rule.

In the event that FinCEN and the SEC determine to move forward on the Adviser CIP Proposal, we made several additional recommendations, which are summarized below.

- **We argue that the scope of any final rule should be significantly narrowed to exclude advisory clients whose identities are already required to be verified by another entity that has CIP obligations under the BSA and is involved in the investment advisory relationship.** We explain that the proposed CIP

requirements are duplicative and unnecessary because the vast majority of advisory client assets are held in accounts of qualified custodians that are federally regulated banks, which already have their own CIP obligations. We also comment that the written contract aspect of the proposed reliance provision is unworkable and would be highly burdensome to implement

- **We comment that any final rule should be harmonized with CIP rules applicable to mutual funds.** In the letter, we highlight several aspects of the Adviser CIP Proposal that are inconsistent with existing CIP obligations for other financial institutions and particularly for mutual funds. We request that any final rule be aligned with existing CIP rules for mutual funds.
- **We stress that any release accompanying the final rule should clarify the NPRM's discussion of mutual funds.** We explain certain unnecessary confusion raised by the NPRM's discussion of mutual funds and request clarification that investment advisers, like all other financial institutions subject to a CIP rule, may exclude any mutual fund from its CIP because the mutual fund is regulated by a federal functional regulator.

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Notes

[1] *Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers*, 89 Fed. Reg. 44,571 (May 21, 2024) ("NPRM"), available at <https://www.govinfo.gov/content/pkg/FR-2024-05-21/pdf/2024-10738.pdf>. For a summary of the proposal, see ICI Memo 35074, available at <https://www.ici.org/memo35074>.

[2] *Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers*, 89 FR 12108 (Feb. 15, 2024) (the "proposal"), available at <https://www.govinfo.gov/content/pkg/FR-2024-02-15/pdf/2024-02854.pdf>. For a summary of the proposal, see ICI Memo 35627, available at <https://www.ici.org/memo35627>.