

Locke Lord QuickStudy: FUNDamentals: Navigating FinCEN's New AML Regulations for Investment Advisers

FUNDamentals™ Series

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Troutman Pepper Locke published an update in July 2025. [Please click here to read the update.](#)

On August 28, 2024, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued a final rule (the "Rule") that amends the definition of "financial institution" under the Bank Secrecy Act ("BSA") to include certain investment advisers. The Rule will require covered investment advisers to, among other things, report suspicious banking activity by their individual clients and investors in pooled investment vehicles to FinCEN pursuant to the BSA. The Rule will take effect on January 1, 2026. Concurrently on August 28, 2024, FinCEN issued a Fact Sheet that provides additional information regarding these requirements.

The Rule requires (i) investment advisers registered with (or required to be registered with) the U.S. Securities and Exchange Commission ("SEC") and (ii) advisers that report to the SEC as exempt reporting advisers (together, "Covered Investment Advisers")^[1] to implement anti-money laundering and anti-terrorist finance ("AML/TF") compliance programs, report suspicious activities, and conduct customer due diligence ("CDD") with respect to their clients (including investors in collective investment vehicles advised by Covered Investment Advisers). In addition, with regard to foreign private advisers, the Rule only applies to advisory activities that (i) take place within the United States, including through the involvement of U.S. personnel of the investment adviser or (ii) the provision of advisory services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person.

FinCEN supports the need for the Rule by stating that (i) Covered Investment Advisers, the U.S. financial system, and U.S. economy have been exploited with "illicit proceeds associated with foreign corruption, fraud, and tax evasion, as well as billions of dollars ultimately controlled by sanctioned entities including Russian oligarchs and their associates, (ii) investment advisers, including those exempt from Securities and Exchange Commission (SEC) registration, and their private funds, particularly venture capital funds, are being used by foreign states, most notably the People's Republic of China (PRC) and Russia, to access U.S. technology and services with long-term national security implications through investments in early-stage companies, and (iii) there are numerous examples of investment advisers defrauding their customers and stealing their funds.

While many Covered Investment Advisers have already implemented anti-money laundering programs,^[2] to comply with this Rule, Covered Investment Advisers will be required to assess their specific AML risks, review their compliance infrastructure, and ensure that their compliance programs align with FinCEN's requirements. Failure

to comply could result in significant penalties and reputational damage. In short, the new Rule will require Covered Investment Advisers to review and possibly update their existing AML/TF compliance programs.

Key Provisions of the Final Rule

- **AML/TF Program:** Covered Investment Advisers must develop and implement written compliance policies, procedures, and internal controls (an “AML/TF Compliance Program”) that are reasonably designed to prevent their operations, including their advised clients, from being misused by investors to facilitate money laundering or terrorist financing. The AML/TF Compliance Program must be risk-based and tailored to the size, complexity, and risk profile of the Covered Investment Adviser’s activities. Specifically, Covered Investment Advisers should:
 - Perform a risk assessment to identify and evaluate the AML/TF risks associated with their business and investor profiles,
 - Draft written policies and procedures tailored to their AML/TF risk profile,
 - Designate an AML/TF compliance officer responsible for oversight and implementation of the IA’s AML/TF policies and procedures,
 - File certain reports, such as Suspicious Activity Reports (SARs – see Section 3 below) with FinCEN, and
 - fulfill certain other obligations applicable to financial institutions subject to the BSA and FinCEN’s implementing regulations, such as special information sharing procedures.
- **Customer Due Diligence (“CDD”):** The Rule mandates that Covered Investment Advisers establish CDD procedures, including verifying the identity of their individual clients and investors into their pooled investment vehicles, understanding the nature of their investors’ businesses and their expected transaction patterns, assessing their risk profiles, and monitoring transactions for suspicious behavior. In subsequent rulemaking, FinCEN expects to coordinate with the SEC to determine requirements to identify and verify the beneficial owners of legal entity investors.
- **Suspicious Activity Reporting (“SAR”) and Currency Transaction Reports (“CTR”):** Existing FinCEN regulations require banks, casinos, card clubs, money services businesses, broker-dealers in securities, mutual funds, insurance companies, futures commission merchants, introducing brokers in commodities, and loan or finance companies to report suspicious activity by submitting SARs to FinCEN. The Rule subjects Covered Investment Advisers to suspicious activity reporting requirements similar to those required of the aforementioned other financial institutions. This results in Covered Investment Advisers being required to file SARs with FinCEN relating to any transaction or attempted transaction that may involve money laundering, tax evasion, or other illicit financial activities. The Rule mandates timely and comprehensive SAR filing. Covered Investment Advisers must:
 - File SARs within 30 days of detecting suspicious transactions.
 - Include detailed information on the nature of the suspicious activity, the parties involved, and the rationale for suspicion.
 - File CTRs as required by 31 C.F.R. 1010.330 – “Reports Relating to Currency in Excess of US\$10,000 received in a Trade or Business.”^[B]
- **Expanded Recordkeeping Requirements:** Covered Investment Advisers are required to maintain detailed records, including:
 - Documentation of all CDD measures taken.
 - Transaction records and SAR/CTR filings for at least five years.
 - Evidence of compliance with AML/TF policies and procedures.
- **Risk-Based Approach:** The regulations encourage Covered Investment Advisers to adopt a risk-based approach to AML/TF compliance, allowing for the allocation of resources according to the risk levels associated with different investors, clients and transactions. This includes implementing ongoing monitoring of client/investor transactions and adjusting compliance measures, as necessary.
- **Alignment with International Standards:** The proposed changes are intended to align U.S. regulations with the Financial Action Task Force (FATF) recommendations and other international AML/TF standards, reinforcing the importance of global cooperation in combating money laundering and terrorist financing.

- **Staff Training:** Covered Investment Advisers should consider implementing training sessions for staff to educate them on the new AML/TF requirements, focusing on identifying suspicious activities and understanding compliance obligations.
- **Recordkeeping and Compliance Obligations:** Covered Investment Advisers are required to retain records relating to their AML/TF activities, including SARs, customer identity verification, and other key compliance documents; in most cases records must be retained while the account is open and for five (5) years thereafter. These records must be available for examination by regulatory authorities and law enforcement.

Importance of Compliance

To comply with the Rule, Covered Investment Advisers must take prompt action to assess their AML/TF risks, review their compliance infrastructure, and ensure that their programs align with FinCEN's requirements. Failure to comply could result in significant penalties and reputational damage. These regulatory updates increase Covered Investment Advisers responsibility to protect against financial crimes. For investment advisory clients, the Rule will require greater cooperation with Covered Investment Advisers so that the Covered Investment Advisers can enhance the overall security and transparency of their investment activities.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

[1] Covered Investment Advisers does not include state-registered investment advisers or family offices.

[2] Many investment advisers have contracted with the fund administrators to conduct AML/TF due diligence and certain screening efforts are also enhanced by bank screening when investor funds are received or distributed.

[3] In summary, if a Covered Investment Adviser (generally, on behalf of a client) receives currency from an investor in excess of \$10,000 in one or more related transactions during a 12-month period, it must report the receipt of such currency by filing a Form 8300. Form 8300 is a joint IRS and FinCEN form that may be electronically filed with FinCEN.

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