

Anti-Money Laundering Alert: FinCEN Withdraws Anti-Money Laundering Rule Proposals

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The Financial Crimes Enforcement Network ("FinCEN") announced on October 30th that it has withdrawn its proposed anti-money laundering rules for certain unregistered investment companies (including many hedge funds), investment advisers, and commodity trading advisors (collectively, the "Rules").

FinCEN proposed the Rules in 2002 and 2003 pursuant to the Banking Secrecy Act ("BSA"). The BSA requires certain financial institutions to establish anti-money laundering programs.

Unless and until FinCEN publishes a new anti-money laundering proposal, it will not proceed with mandating anti-money laundering compliance requirements under the BSA for unregistered investment companies, commodity trading advisors or investment advisers. FinCEN will allow industry comment on future proposals and will provide access to pending rules on its website.

Many unregistered investment companies, investment advisers, and commodity trading advisors have voluntarily adopted anti-money laundering policies, procedures and controls in anticipation of the Rules' finalization. Firms considering altering any existing policies, procedures, or controls in light of the withdrawal should carefully analyze the consequences of doing so in light of: (i) the possibility that the Treasury will propose new requirements similar to the Rules; (ii) possible exposure under provisions of the U.S. criminal code for aiding and abetting money laundering or terrorist financing; and (iii) the damage to a firm's reputation that would result from accepting customers or processing transactions with links to money laundering, terrorist financing or other financial crime. In addition, as FinCEN emphasizes in its notice of withdrawal, unregistered investment companies, investment advisers, and commodity trading advisors must conduct their transactions through other financial institutions (e.g., broker-dealers, banks, futures commission merchants, and futures introducing brokers) that are subject to BSA requirements. Those other financial institutions may continue to need attestations regarding or information resulting from the operation of the anti-money laundering practices of unregistered investment companies, investment advisers, and commodity trading advisors.

In the press release accompanying the withdrawal, FinCEN also announced that proposed rules awaiting industry comment or finalization will now be available at a new, dedicated page on FinCEN's website, [here](#).

We will continue to monitor the regulation of unregistered investment companies, investment advisers, and commodity trading advisors, issuing additional Alerts and Advisories as developments merit.

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