

## FinCEN Proposal for Investment Advisers Clears OMB Hurdle

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The White House's budgetary office has approved a U.S. Treasury Department plan to require investment advisers to adopt anti-money laundering controls, including suspicious activity reporting.

The U.S. Office of Management and Budget (OMB) on Thursday concluded a review of the proposal submitted by the Financial Crimes Enforcement Network (FinCEN) in April, according to its Web site and a federal official with the General Services Administration, which administers the office's Web site.

The review's conclusion kicks the draft rule back to the bureau, which is now free to publish the proposal at will, said the official, who did not want to be named.

FinCEN initially proposed extending anti-money laundering (AML) obligations to unregistered investment companies in 2002 and to commodity trading advisers in 2003 but withdrew the plans in 2008, citing the need to allow for new input from the financial sector.

Details of the bureau's current draft rule remain scarce, though it is expected to outline obligations similar to those required of broker-dealers. A FinCEN spokesman did not respond to inquiries.

FinCEN is also working with the Securities and Exchange Commission to define registered investment advisers as financial institutions, said David Cohen, then-undersecretary for terrorism and financial intelligence for the Treasury Department, in November.

U.S. officials have recently highlighted the lack of AML oversight for the sector, which managed over \$66 trillion in assets as of April.

"Investment advisers commonly maintain accounts with broker-dealers that enable the adviser to execute trades on behalf of a pooled investment vehicle client, such as a hedge fund, that benefits investors in the pooled investment vehicle," according to the U.S. National Money Laundering Risk Assessment released last month.

But investment advisers, rather than broker-dealers, often have the relationships with underlying investors necessary to identify signs of money laundering, the report said.

The lack of regulation in the sector "creates a significant blind spot in our understanding of whose interests are represented by this \$66 trillion of assets, substantially undermining

financial transparency in our capital markets,” said Chip Poncy, a former Treasury Department official, in congressional testimony last month.

“This gap also puts broker-dealers and other covered capital market sectors in the unfair and difficult position of trying to manage illicit financing risks of the investment-adviser sector they service,” he added.

While some investment advisers have voluntarily adopted AML controls, those efforts often fall short of federal standards, particularly when it comes to independent audits, said Ross Delston, a Washington, D.C.-based attorney.

“Since investment advisers are often dealing with high-net-worth individuals and sometimes foreign high-net-worth individuals, the regulatory expectation will be to conduct enhanced due diligence specifically looking at sources of wealth,” said Delston.

Of the expected obligations for the industry, suspicious activity reporting could prove particularly onerous, said Carol Spawn Desmond, a consultant to investment advisers and asset managers.

“Are they now going to be the industry watchdog for all of the counterparties and transactions going up and down?” said Desmond.

<http://www.moneylaundering.com/News/Pages/135275.aspx>