



Americans for Financial Reform Education Fund

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Secretary Vanessa Countryman
Securities and Exchange Commission
100 F St NE
Washington, DC 20549-1090

July 22, 2024

Re: Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers

Americans for Financial Reform Education Fund appreciates this opportunity to comment on the joint proposal from the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) and the Securities and Exchange Commission (the "Commission") to implement a Customer Identification Program (CIP) for both Registered Investment Advisers (RIAs) and Exempt Reporting Advisers (ERAs).

Banking institutions, broker dealers, credit unions, and mutual funds for decades have already been required under their Customer Identification Programs.

RIAs manage \$125 trillion in assets¹ and there are about 5,846 ERAs,² meaning these funds manage significantly more than the \$23 billion in assets³ of commercial banks. Failing to require CIPs for RIAs and ERAs would leave open a glaring loophole that has been used by sanctioned individuals, terrorists, and criminals to launder money.

AFREF therefore supports the Commission and FinCEN's proposal to require RIAs and ERAs under their Customer Identification Programs to verify the identity of their customers or clients (or, know your customer (KYC) requirements). The proposal appropriately includes, at a minimum, their date of birth, address, and an ID number such as a social security number or

¹ Securities and Exchange Commission. Division of Examinations. 2023 Examination Priorities. Feb 7, 2023. <https://www.sec.gov/files/2023-exam-priorities.pdf>

² Department of Treasury. 2024 Investment Adviser Risk Assessment. February 2024. <https://home.treasury.gov/system/files/136/US-Sectoral-Illicit-Finance-Risk-Assessment-Investment-Advisers.pdf>

³ Federal Reserve Bank of St. Louis FRED. Total Assets, All Commercial Banks. Accessed on Jul 19, 2024. <https://fred.stlouisfed.org/series/TLAACBW027SBOG>

taxpayer ID. In instances where accounts are opened in the name of a corporation, partnership, or trust, both RIAs and ERAs should also be required to obtain and verify the natural persons with authority or control of those accounts.

Investment advisers still need to verify the General Partners of private funds

In response to the proposal's question on whether investment advisers should require identification and verification of private fund customers, investment advisers should verify the identity of the General Partners of private funds given they are the beneficial owners of the funds and have the investment and operational control of those funds.

Such verification is especially necessary for investment advisers with private fund customers given private funds' poor track record of operational and risk failures. For example, the SEC's Division of Exams found in 2014 that 50 percent of the examined private funds had some sort of violation or material weakness in the proper collection of fees or allocation of expenses.⁴ Without an explicit requirement, private fund advisers have also refused to voluntarily disclose critical information. The fourth largest pension fund in America, for example, failed to obtain a thorough and complete breakdown of all the fees they were being charged by several private funds they were invested in.⁵

Account transfers still need to be subject to CIP protocols

Although customer accounts that are transferred from one financial institution to another are not technically being opened, FinCEN should require re-verification due to the inconsistency across the industry, posing weak spots that could be exploited by money launderers.

For example, even though banks have been subject to anti-money laundering (AML) provisions since 2001, drug traffickers have still managed to launder money through certain banks that they understood had less robust fraud controls, leading the Drug Enforcement Administration to describe banks such as Citigroup as "money launderers' favorite bank".⁶ The United Kingdom's Financial Conduct Authority (FCA) has also fined Santander, Standard Chartered, HSBC Bank, and NatWest for repeated money laundering failures.⁷ Similarly, by not requiring new AML and KYC checks on transferred accounts, FinCEN runs the risk that potential money launderers

⁴ Bowden, Andrew J. Securities and Exchange Commission. Spreading Sunshine in Private Equity. May 6, 2014. <https://www.sec.gov/newsroom/speeches-statements/2014-spch05062014ab>

⁵ Willmer, Sabrina. Bloomberg News. Private Equity's Opaque Costs Mystify the Pensions That Pay Them. Mar 29, 2022. <https://www.bloomberg.com/news/articles/2022-03-29/private-equity-firm-fees-create-headache-for-pension-plans>

⁶ Miller, Joe and Gandel, Stephen. Financial Times. Citi was money launderers' favourite bank, US law enforcement officials say. Jul 1, 2024. <https://www.ft.com/content/0187827b-f755-47fd-91ff-c3e755548097>

⁷ Financial Conduct Authority. FCA fines Santander UK £107.7 million for repeated anti-money laundering failures. Sep 12, 2022. <https://www.fca.org.uk/news/press-releases/fca-fines-santander-uk-repeated-anti-money-laundering-failures>

could open accounts at less stringent firms and transfer them to other institutions without sufficient re-verification.

Financial institutions should not be allowed to rely on 3rd parties to conduct CIPs without robust accountability

Given the number of smaller RIAs and ERAs, FinCEN should consider allowing firms to hire third parties or other financial institutions to conduct a CIP. However, to avoid the rise of third party firms who simply rubber stamp CIPs and a “race to the bottom” to attract such business, FinCEN should make clear that firms who opt to use third parties are still responsible for lapses.

Conclusion

We reiterate our support for FinCEN’s earlier proposal that would require Registered Investment Advisers and Exempt Reporting Advisers to enact the same anti-money laundering and Combating the Financing of Terrorism safeguards that many other financial institutions such as banks and mutual funds currently follow.⁸

For any further questions please do not hesitate to contact Andrew Park at andrew@ourfinancialsecurity.org

⁸ Americans for Financial Reform Education Fund. Comment to Treasury FinCEN Supporting Greater Anti-Money Laundering Screening for Registered Investment Advisers, Exempt Reporting Advisers, and Family Offices. Apr 15, 2024.
<https://ourfinancialsecurity.org/2024/04/letter-to-the-regulators-comment-to-treasury-fincen-supporting-greater-anti-money-laundering-screening-for-registered-investment-advisers-exempt-reporting-advisers-and-family-offices/>