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National Association of Insurance and Financial Advisors

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July 7, 2003

FinCEN
Office of Chief Counsel
Section 352 Investment Adviser
Rule Comments
P.O. Box 39
Vienna, VA 22183

ATTN: Section 352 Investment Adviser Rule Comments

Dear Chief Counsel:

This letter will provide the comments of the National Association of Insurance and Financial Advisors ("NAIFA") on the Financial Crimes Enforcement Network's ("FinCEN's") proposed rule on anti-money laundering programs for investment advisers. NAIFA (formerly the National Association of Life Underwriters) is a federation of approximately 800 state and local associations representing over 70,000 life and health insurance agents and advisors. Originally founded in 1890, NAIFA is the nation's oldest and largest trade association of insurance agents and financial services professionals. NAIFA's mission is to improve the business environment, enhance the professional skills and promote the ethical conduct of agents and others engaged in insurance and related financial services who assist the public in achieving financial security and independence.

While NAIFA supports the adoption of reasonable, sound compliance programs by investment advisers, money laundering programs should not be required of advisers. Investment advisers typically do not handle customer funds and therefore are not in a position to "launder" those funds. In fact, the SEC has proposed regulations that would generally prohibit advisers from holding client funds or securities directly. Rather than directly handling client assets, advisers provide guidance, planning and recommendations for their customers. These services should not be burdened with the additional compliance costs attendant to anti-money laundering compliance programs.

1. Investment Advisers are not the Right Parties to Task with Anti-Money Laundering Compliance

FinCEN's rationale for imposing anti-money laundering compliance obligations on other entities has been that those entities handle client funds that may be profits from illegal activities or may be laundered. This is true of the businesses FinCEN has imposed anti-money laundering compliance obligations on to date including banks, money services businesses, jewelers, car dealers, loan companies, broker-dealers, and investment companies, among others. These regulated entities serve as gatekeepers to the financial services system and have the potential to detect and prevent money laundering before it occurs. This rationale does not, however, fit investment advisers. Investment advisers provide their clients with advice and reports, and may help manage client assets, but advisers typically do not handle client funds nor do they actually place those funds into financial vehicles that may be used in attempts to launder money.

FinCEN's rationale for extending its rules to investment advisers is that they have knowledge of client transactions. But this is not a rationale that FinCEN has used in the past to require the implementation of anti-money laundering compliance programs. Requiring investment advisers to create anti-money laundering compliance programs then would create a new extension of FinCEN's rules that may be difficult to keep within rational boundaries. If advisers must have such compliance programs, why shouldn't a host of other parties with information about monetary transactions be required to create anti-money laundering compliance programs? For example, attorneys often advise clients on various aspects of their financial transactions – will FinCEN require them to have anti-money laundering compliance programs? Psychologists, psychiatrists and other counselors also may learn details of their clients' financial transactions – will FinCEN require them to have anti-money laundering compliance programs? None of these situations fit the rationales that FinCEN has established for deterring money laundering. FinCEN should not require entities that do not handle client funds and place them in financial vehicles that are at risk of money laundering to implement anti-money laundering compliance programs.

2. Notice Provisions for Unregistered Advisers Should be Amended

FinCEN's proposed rule applies to advisers that are exempt from registration with the Securities and Exchange Commission, but have more than $30 million or more in assets under management. The proposed rule requires these unregistered advisers to file a detailed notice regarding their business on an annual basis. The notice is to include among other things the number of clients and amount of assets the adviser has under management. This notice should not be required on an annual basis. FinCEN states in the preamble that it needs this notice to identify investment advisers that are not registered with the SEC. While that is reasonable, there is no need to require advisers to re-submit notices on an annual basis. The rule should be amended to require a notice only when the adviser changes its contact information (address, telephone number, etc.) or closes its advisory business. Otherwise, this is an unnecessary burden on advisers that does not advance FinCEN's regulatory objectives.

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In sum, NAIFA believes FinCEN should not require investment advisers to implement anti-money laundering compliance programs. Such a rule would extend FinCEN's reach beyond the rationale that it has used in the past for the imposition of these types of regulations and represents a potentially sweeping view that would require many other entities with information about financial transactions to develop anti-money laundering compliance programs.

We respectfully urge FinCEN to reconsider the proposed rule. Thank you for your consideration of our views on these issues.

Sincerely,

/s/
Gary A. Sanders
Senior Counsel for Law and
Government Relations