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21 July 2003

FinCEN
Department of the Treasury
Section 352 Investment Adviser Rule Comments
P.O. Box 39
Vienna
Virginia 22183

Re: Financial Crimes Enforcement Network: Anti-Money Laundering Programs for Investment Advisers—RIN 1506-AA28

Dear Sir or Madam:

The U.S. Advocacy Committee (USAC) of the Association for Investment Management and Research (AIMR)[1] appreciates the opportunity to comment on the proposed rule by the Department of Treasury's Financial Crimes Network (FinCEN) to implement anti-money laundering programs for investment advisers. The USAC is a standing committee of AIMR charged with responding to new regulatory, legislative, and other developments in the United States affecting the investment profession, the practice of investment analysis and management, and the efficiency of financial markets.

Summary Position

We understand the important purposes that anti-money laundering compliance programs serve. Many financial institutions are in critical positions to detect suspicious activity that could suggest the existence of money laundering or the financing of terrorist activities. To that end, we applaud the intentions of FinCEN to consider all entities that may reasonably contribute to this effort, and support the provisions of the proposal.

[1] With headquarters in Charlottesville, VA and regional offices in Hong Kong and London, the Association for Investment Management and Research® is a non-profit professional association of over 66,000 financial analysts, portfolio managers, and other investment professionals in 117 countries of which 56,900 are holders of the Chartered Financial Analyst® (CFA®) designation. AIMR's membership also includes 127 affiliated societies and chapters in 46 countries.

Discussion

On its face, the anti-money laundering (AML) compliance program for investment advisers generally appears reasonable, both in terms of the scope of the program and the requirements that the adviser must meet in successfully establishing the program. We appreciate the flexibility envisioned in the rule in recognition of the different types, sizes, and resources of investment advisers, by providing that advisers can tailor their programs in accordance with the particular kinds of risks presented by their clients and services.

We also appreciate that while four requirements must be met in each adviser's AML program, the proposed rule allows the adviser room to decide how best to structure its program to meet these requirements. We support this lack of a "one size fits all approach, " particularly in light of the variety of services offered by different advisers, as well as the variety of relationships between advisers and their clients, some of which may not provide opportunities for assessing the behaviors that FinCEN is hoping to detect and curtail through these rules. We think that the risk-based approach that advisers are encouraged to use in fashioning their programs responds to this reality.

Reporting of Information

Under the proposed rule, certain advisers would have to create a written anti-money laundering program that creates the necessary mechanisms for preventing the adviser from being used for money laundering or the financing of terrorist activities. This program, among other things, would require ongoing training for appropriate persons. Yet, the proposal does not provide much discussion regarding how an adviser, who becomes aware of attempts to involve it in money laundering activities, should deal with the information. We believe that this needs to be part of an effective compliance program.

We understand that FinCEN is considering whether or not to require advisers to file suspicious activity reports (SARs), but is not proposing through this proposal to do so. (We do note the telephone number provided in the proposal for those wanting to voluntarily report suspected terrorist activities.) We hope that any future proposal to require SARs will be open to a public comment period so that we can comment specifically on their requirements. Until then, we urge FinCEN to provide clarification on the adviser's duties to report, and the methods it should use to best communicate any suspicious activities that may indicate money laundering.

Role of Certain Advisers

As noted above, we think that the proposed scope of the AML program is generally appropriate, in light of the range of advisers' activities, relationships with clients, and ability to detect suspicious activities. We agree with the proposed rule's premise that advisers who do

not manage client assets are less vulnerable to money laundering and terrorist financing activities, and thus are not required to implement an AML program. The proposal recognizes that since these advisers "do not accept funds or hold financial assets directly, and have relatively few (or no) assets under management, these firms are unlikely to play a significant role in money laundering."

We question, therefore, the inclusion of one group of investment advisers that would be covered by the requirements of the proposal AML program. Under the proposed rules, advisers that advise pooled investment vehicles would have to assess whether the vehicle, or the entity that created the vehicle reduces the risk of money laundering, if those vehicles were not already subject to anti-money laundering requirements under the Bank Secrecy Act.

As part of its program, the advisers would have to establish procedures for analyzing

> the money laundering risks posed by a particular investment vehicle by using a risk-based evaluation of relevant factors including: the type of entity; its location; the statutory and regulatory regime of that location (e.g., if the entity is organized or registered in a foreign jurisdiction, does the jurisdiction comply with the European Union anti-money laundering directives, and has the jurisdiction been identified by the Financial Action Task Force as non-cooperative); and the adviser's historical experience with the entity or the references of other financial institutions.

The proposal further provides that as

> the entity's potential vulnerability to money laundering increases, the adviser's procedures would need to reasonably address these increased risks, such as by obtaining and reviewing information about the identity and transactions of the investors in the vehicle.

While we believe that it is important for advisers to take all reasonable measures to aid the effort to keep themselves from being used to launder money, and to report any terrorist activity, we also believe that there is a balance to be achieved between "know your client" responsibilities and the monitoring of pooled investment vehicles that may be created and administered to by third parties. While it may be reasonable for the adviser to 'vet" the organizers, trustees or other entities that have ultimate responsibility for establishing the pooled vehicle, we question the degree to which an adviser can reasonably be expected to monitor the transactions of individual investors in the pool. This responsibility may more appropriately belong to the organizers/trustees of the vehicle, and could otherwise affront basic privacy issues.

Finally, we suggest that FinCEN consider the role of advisers with custody for purposes of formulating the final rule. We believe that advisers that maintain custody of client assets may be in a particularly vulnerable situation, which warrants additional guidance from FinCEN.

Similarly, we believe that advisers that manage relatively new charitable trusts or foundations may also be vulnerable to the types of activities that this rule seeks to deter and urge FinCEN's consideration of this group in its final rule.

Conclusion

We support FinCEN's efforts to curtail money laundering or the financing of terrorist activities, and believe that investment advisers have a role to play in helping to identify these activities. If we can provide additional information, please do not hesitate to contact Deborah Lamb at 770.971.7010, da-lamb@msn.com or Linda Rittenhouse at 434.951.5333, linda.rittenhouse@aimr.org.

Sincerely,

/s/ Deborah A. Lamb
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Deborah A. Lamb
Chair, U.S. Advocacy Committee

/s/ Linda L. Rittenhouse
_____
Linda L. Rittenhouse
Staff, AIMR Advocacy

Cc: Members of the U.S. Advocacy Committee
Rebecca T. McEnally, CFA, PhD.,
Vice President—AIMR Professional Standards and Advocacy