October 22, 2025

VIA ELECTRONIC SUBMISSION

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

Re: Notice of Proposed Rulemaking on Delaying the Effective Date of the Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers (Docket Number FINCEN-2025-0072, RIN 1506-AB58 and 1506-AB69)

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to provide comments on the notice of proposed rulemaking (the "**Proposed Rule**")[2] issued by the Financial Crimes Enforcement Network ("**FinCEN**") to delay the effective date of its rulemaking extending anti-money laundering/countering the financing of terrorism ("**AML/CFT**") requirements to certain investment advisers registered with the U.S. Securities and Exchange Commission ("**SEC**") and to exempt reporting advisers (collectively, "**Covered Advisers**") ("**AML Program Rule**")[3].

MFA strongly supports FinCEN's goal of combatting money laundering, terrorist financing, and other illicit financial activity and has long supported FinCEN's AML rulemaking efforts related to investment advisers. To further that goal, we support the delay in the compliance date of the AML Program Rule. Delaying the effective date of the AML Program Rule will provide the time necessary for FinCEN to provide clarity on the AML Program Rule in several important respects. This clarity is necessary for the industry to implement the requirements of AML Program Rule by January 1, 2028, and to reduce unnecessary costs without forgoing the intended benefits of the AML Program Rule.

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1 Managed Funds Association ("**MFA**"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

2 Proposed Rule, "Delaying the Effective Date of the Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers," 90 Fed. Reg. 45361 (Sept. 22, 2025).

3 FinCEN, "Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers," 89 Fed. Reg. 72156 (Sept. 4, 2024).

To the extent additional guidance is not provided in a timely manner, additional time beyond January 1, 2028, may be necessary for the industry to avoid expending unnecessary resources. We would be pleased to meet with FinCEN or SEC staff to provide additional context for our requested clarifications and background on the asset management industry, if helpful.

Executive Summary

1. Support for delay of effective date
    - MFA supports FinCEN's proposal to delay the effective date of the AML/CFT Program Rule for registered investment advisers and exempt reporting advisers to at least January 1, 2028.
    - The delay will allow FinCEN to provide critical guidance and clarifications, enabling the industry to implement the rules efficiently and avoid unnecessary costs.
2. Clarification of the AML Program Rule
    a. Scope of advisory services:
        - MFA requests additional guidance on what constitutes "advisory services" versus "non-advisory services" under the rule.
        - FinCEN is encouraged to provide more examples of excluded activities (*e.g.*, pre-engagement services, administrative functions, research not tied to AUM).
        - Voluntary AML procedures for non-advisory services or non-U.S. requirements should not trigger enforcement under the U.S. rule.
    b. Reliance on third parties:
        - MFA seeks clarification that delegation of AML functions to fund administrators is appropriate and that advisers can satisfy due diligence requirements on third-party service providers by reviewing summaries or certifications, not full policies or audits.
        - Periodic monitoring of third parties should be risk-based and not required on a fixed schedule.
        - Delegation of AML functions should be indirect (*e.g.*, via a private fund) and that contracts need not detail every delegated function.
    c. Risk-based AML/CFT program application:
        - MFA urges FinCEN to clarify expectations for risk-based procedures, especially for private fund investors and account relationships.
        - Advisers should be able to rely on information from investors (via fund administrators) unless reason exists to doubt its accuracy.

- Existing industry practices should be leveraged for low-risk relationships (*e.g.*, private fund investors with pre-existing relationships with financial institutions).

d. Special due diligence for correspondent and private banking accounts:

- MFA notes that guidance is appropriate for the application of special due diligence requirements, including confirmation that such requirements do not apply to accounts held by investment advisers or financial institutions acting as nominees.
- The definition of "beneficial owner" for private funds should be clarified, along with the scope of due diligence obligations.

e. Suspicious activity report ("**SAR**") filing obligations:

- MFA notes that advisers typically do not hold investor funds directly and requests clarification on the scope of transactions and information that must be monitored for suspicious activity.
- SAR filings by private fund managers would be exceedingly rare.
- FinCEN is encouraged to clarify that automated transaction monitoring systems are not always required and provide a list of red flags for training purposes.

f. SAR sharing and confidentiality:

- MFA requests guidance permitting advisers to share SARs and related information with affiliates, private funds, and their personnel, consistent with bank and broker-dealer practices.
- FinCEN should clarify that third parties delegated to monitor/report suspicious activity are considered agents for SAR confidentiality purposes.

g. Funds transfer and travel rules:

- MFA asks FinCEN to confirm that the funds transfer and travel rules have limited applicability to advisers, given that private fund assets are typically held at custodians, not by advisers themselves.

1. MFA Supports Delaying the Effective Date of the AML Program Rule

To aid the industry in effectively and efficiently implementing the requirements of the AML Program Rule, MFA supports delaying the effective date of the AML Program Rule to at least January 1, 2028. A delay of the effective date will provide FinCEN with time to issue the guidance necessary to efficiently and effectively implement the AML Program Rule. For years, the asset management industry has adopted and maintained AML compliance measures on a voluntary basis. But without additional guidance, as discussed below, the industry will expend unnecessary time and resources in trying to interpret the AML Program Rule and implementing AML/CFT

programs that may or may not be aligned with regulatory expectations. Indeed, FinCEN explicitly acknowledged in the preamble to the AML Program Rule (the "**Preamble**") several areas where additional guidance may be necessary, including the application of the Section 312 special due diligence requirements, sharing of SAR filings among affiliates, and Section 314(b) information sharing. MFA urges FinCEN to issue this guidance in addition to other clarifications important to private fund managers as outlined herein.

A delay of the effective date will also provide time for FinCEN to finalize the customer identification program ("**CIP**") rule for Covered Advisers ("**CIP Proposed Rule**"),[4] should it and the SEC repropose and ultimately adopt it. In our view, Covered Advisers must consider the CIP Proposed Rule and AML Program Rule in tandem to develop a holistic, risk-based compliance program that meets the requirements of both rules. If the SEC and FinCEN elect to repropose the CIP Proposed Rule, we recommend that any compliance date align with the revised compliance date for the AML Program Rule. The importance of coordinating the compliance date for these two closely related rules may necessitate a further extension of the January 2028 compliance date.

2. Clarification of the AML Program Rule

MFA urges FinCEN to use the additional time afforded by a delay of the effective date of the AML Program Rule to provide guidance on the following subject areas in order to reduce costs without foregoing the intended benefits of the AML Program Rule.

a. Scope of Advisory Services

The AML Program Rule makes clear that a Covered Adviser must only apply its AML/CFT program to the aspects of its business that constitute advisory services provided by the Covered Adviser, and it does not need to apply its AML/CFT program to non-advisory services.[5] The AML Program Rule does not define advisory services or non-advisory services; it instead refers the public to prior judicial precedent and SEC guidance.[6] The Preamble includes examples of certain advisory services, such as the management of customer assets and the submission of customer transactions for execution.[7] It also includes one example of non-advisory services: activities

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4 CIP Proposed Rule, "Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers," 89 Fed. Reg. 44571 (May 21, 2024).

5 *See* 89 Fed. Reg. 72156, 72181 ("The adviser will not be required to apply its AML/CFT program to non-advisory services.").

6 *See* Final Rule, 89 Fed. Reg. at 72186 n.208 ("Existing judicial precedent interprets whether a person is advising others (or acting as an "investment adviser" under the Advisers Act), and the SEC staff has issued guidance on what services qualify. *See, e.g.*, *Abrahamson* v. *Fleischner*, 568 F.2d 862, 869–72 (2d Cir. 1977), cert. denied, 436 U.S. 913 (1978); *Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services*, SEC Statement of Staff Interpretation, Advisers Act Release No. 1092 (Oct. 8, 1987).").

7 *See* 89 Fed. Reg. at 72181 ("Advisory services subject to an AML/CFT program would include, for example, the management of customer assets and the submission of customer transactions for execution.").

undertaken for portfolio companies by a Covered Adviser's personnel.[8] Although FinCEN declined to further describe what services constitute advisory services and non-advisory services, the industry would benefit from additional examples of what is excluded given that determining which activities are considered advisory services is critical to determining which policies, procedures, and internal controls are needed.

We propose providing the additional clarification outlined below.

First, FinCEN should clarify that the following are examples of activities undertaken by a Covered Adviser that would not be considered "advisory services" for purposes of the AML Program Rule:

- Information provided by a Covered Adviser to a prospective investor to help it determine whether to enter into a formal relationship with the Covered Adviser and/or a Covered Adviser-advised private fund;
- Services provided to persons, including a Covered Adviser's employees, who have not entered into an investment management agreement with the Covered Adviser;
- A Covered Adviser employer providing educational, investment-related information to a Covered Adviser employee solely in connection with an employer-sponsored employee benefit program;[9]
- Administrative functions, such as back-office processing and trade reconciliation, pricing, recordkeeping, and accounting functions; and
- Research, due diligence or modeling where the research, due diligence or modeling is not tied to the Covered Adviser's assets under management for regulatory purposes or for which the Covered Adviser does not receive a fee.

Second, FinCEN should clarify that the voluntary adoption of procedures not required by the AML Program Rule, including procedures designed to comply with non-U.S. legal requirements or the voluntary application of AML/CFT procedures to non-advisory services is out of scope for enforcement of the AML Program Rule even if such AML/CFT procedures are included in the Covered Adviser's written AML/CFT program. For example, if a Covered Adviser's written AML/CFT program included a section detailing procedures to comply with the AML laws of the Cayman Islands, the inadvertent failure to follow such procedures would not result in a violation of the AML Program Rule for which money penalties would be assessed or other sanctions or remedies would be imposed.

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[8] *See id*. ("One example of non-advisory services would be in the context of private funds, including venture capital funds: an adviser's personnel may play certain roles with respect to the portfolio companies in which its customer fund invests. Generally, activities undertaken in connection with those roles (*e.g.,* making managerial/operational decisions about the activities of portfolio companies) would not be 'advisory activities.'").

[9] *See* Letter to Olena Berg, Assistant Secretary, Department of Labor, from Jack W. Murphy, Chief Counsel, Division of Investment Management, SEC (Feb. 22, 1996).

b. Reliance on Third Parties

The Preamble states that a Covered Adviser is permitted to "contractually delegate" the implementation and operation of some or all aspects of its AML/CFT program to a third-party service provider, including a fund administrator, so long as the Covered Adviser undertakes reasonable steps to assess whether the service provider carries out such procedures effectively.[10] FinCEN provides a non-exhaustive list of examples of reasonable steps that a Covered Adviser may take.

With regard to conducting an assessment as to whether the service provider can and does carry out AML/CFT procedures effectively, the Preamble provides that "[s]uch oversight measures could include, for example, having the adviser conduct due diligence on the third party's AML/CFT policies and determining whether they meet the adviser's standards" and "having the adviser periodically monitor compliance with such requirements."[11] MFA anticipates that members may have difficulty conducting due diligence and monitoring of such procedures where a third party service provider is unwilling to share its proprietary AML/CFT policies or procedures or independent or internal audit reports with a Covered Adviser. In many cases, summaries of the AML/CFT laws applicable to the third party, the requirements imposed by the third party's AML/CFT program, and the audit findings that relate to the services performed for the Covered Adviser are shared. Such summaries may take various forms, including, for example, an AML certification letter or a completed due diligence questionnaire. MFA asks FinCEN to acknowledge that it is not a regulatory expectation that a Covered Adviser obtain a copy of a third-party service provider's AML/CFT program, or independent or internal audit reports, but can instead utilize summaries of such documents to satisfy regulatory expectations regarding appropriate due diligence.

With regard to the contractual delegation requirement, we request confirmation that delegation to a third-party service provider may be effectuated indirectly, without a contract between the Covered Adviser and the third party as is current industry best practice. For example, a private fund (that the Covered Adviser manages) may engage third-party service provider without the Covered Adviser being party to that agreement. In such circumstances, given the nature of the relationship between the Covered Adviser and the private fund, the Covered Adviser will separately have a different agreement with the private fund.

A key benefit in delaying the effective date of the AML Program Rule is to allow FinCEN to clarify how Covered Advisers can rely on third parties to reduce costs without forgoing the intended benefits of the AML Program Rule. Absent this guidance, Covered Advisers will expend unnecessary resources in overseeing third-party service providers in a manner not necessary to effectuate the AML Program Rule's goals. We propose providing the additional clarification outlined below.

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[10] *See* Final Rule, 89 Fed. Reg. at 72188 ("FinCEN will permit an investment adviser to delegate contractually the implementation and operation of some or all aspects of its AML/CFT program to a third-party provider, including a fund administrator. Because investment advisers operate through a variety of different business models, each investment adviser must decide which aspects of its AML program are appropriate to delegate.")

[11] Final Rule, 89 Fed. Reg. at 72188. We recognize that these examples were based on information provided by commenters and managers may engage in other measures as well.

First, FinCEN should clarify that in order for a Covered Adviser to conduct reasonable due diligence to assess whether a third-party service provider can carry out delegated AML/CFT procedures effectively, the Covered Adviser should undertake reasonable due diligence on such third party to determine that the third party has the requisite expertise, resources and procedures to conduct the delegated AML/CFT function(s). Such reasonable due diligence includes, but is not limited to: (1) reviewing the third party's AML/CFT policies and procedures or a summary thereof; (2) assessing whether the third-party service provider is a regulated financial institution or other regulated entity that is subject to local AML/CFT laws; or (3) obtaining representations from the third-party service provider regarding their AML/CFT compliance functions and services. Where a Covered Adviser has determined that the third party is a regulated financial institution or other regulated entity that is subject to local AML/CFT laws, we urge FinCEN to confirm that it is reasonable that the Covered Adviser can presume third party has the requisite expertise, resources and procedures.

Second, FinCEN should clarify that a Covered Adviser would satisfactorily conduct periodic monitoring of a third party to which it has delegated aspects of its AML/CFT program if it (or its delegate, which may itself be a third-party service provider, such as an auditor) conducts periodic monitoring on a risk-based basis. There is no regulatory expectation that such periodic monitoring occur on a fixed cadence, such as semiannually or annually, and that the frequency of such periodic monitoring should be determined by the Covered Adviser's overall risk profile for money laundering, terrorist financing, or other illicit finance activities, and the types of AML/CFT responsibilities delegated to the service provider, and may occur less frequently than annually.[12]

Third, FinCEN should clarify contractual delegation of some or all of a Covered Adviser's AML/CFT program to a third party must evidence the third party's commitment to perform the relevant AML/CFT functions but, particularly where a Covered Adviser is delegating many functions of its AML/CFT program, the contractual delegation is not required to specifically detail each aspect of the AML/CFT program being delegated. For example, sufficient contractual delegation may include general descriptions of the services delegated, reference to the laws and rules with which delegation is meant to comply, and/or reference to complying with procedures of the Covered Adviser or third party that are consistent with the AML Program Rule.

Fourth, FinCEN should clarify that a Covered Adviser may delegate some or all aspects of its AML/CFT program to a third party by contracting indirectly with the third party, including the Covered Adviser managing a private fund and the fund, in turn, contracting with the third party. The Covered Adviser should not be obligated to enter into agreements with the third party for the sole purpose of bringing the delegated functions into direct contractual privity with the Covered Adviser.

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[12] The Preamble also provides that "having the adviser periodically monitor compliance with such requirements" would be another way to assess whether the service provider can and does carry out AML/CFT procedures effectively, and "[t]he appropriate frequency of [the] oversight would depend on the adviser's overall risk profile for money laundering, terrorist financing, or other illicit finance activities, and the types of AML/CFT responsibilities delegated to the service provider." Final Rule, 89 Fed. Reg. at 72188.

c. Risk-Based AML/CFT Program Requirement Application to Customers

The AML Program Rule requires risk-based AML/CFT policies and procedures to guard against money laundering and terrorist financing. Covered Advisers are not currently required to implement a CIP on investors in the Covered Adviser's private funds (and would not be required to do so if the CIP Proposed Rule is finalized as proposed), but a Covered Adviser must implement risk-based procedures for conducting ongoing customer due diligence for the purposes of "[u]nderstanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information."[13]

Covered Advisers intend to implement risk-mitigating AML-related procedures based on the risk level presented by the private fund investor or account relationship. MFA suggests leveraging existing industry practices to facilitate Covered Adviser compliance with the AML Program Rule in an efficient manner. We propose providing the clarification set forth below.

First, where there is an absence of known high-risk factors (such as senior foreign political figure status), a Covered Adviser may continue the industry practice of applying its risk-based AML/CFT program to treat as lower risk (absent circumstances to the contrary):

- a holder of a separately managed account that custodies its assets with a Bank Secrecy Act ("**BSA**")-regulated financial institution, such as a bank or broker dealer, or an AML-regulated financial institution located in a low-risk jurisdiction[14] ("**Regulated Financial Institution**");
- an investor in a Covered Adviser's private fund that wires funds to and from a Regulated Financial Institution;
- an investor in a Covered Adviser's private fund that is a Regulated Financial Institution (*e.g.*, an omnibus arrangement or acting as nominee for an underlying principal), where such Regulated Financial Institution provides assurances that such arrangement is subject to its AML/CFT program; and
- investors in a Covered Adviser's private fund that are introduced to the private fund by a Regulated Financial Institution with which the investor has an existing customer relationship and such Regulated Financial Institution provides assurances that the investor is subject to its AML/CFT program.

Second, for the purpose of assessing risk for a Covered Adviser's risk-based AML/CFT policies, procedures and internal controls, MFA seeks clarification that the Covered Adviser can rely on information provided by its

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[13] *See* AML Program Rule, 31 C.F.R. § 1032.210(b)(5).

[14] "Low-risk jurisdiction" means Financial Action Task Force ("**FATF**")-member jurisdictions. *See* FATF, *Who we are*, available at https://www.fatf-gafi.org/en/the-fatf/who-we-are.html. Some countries, because of geopolitical or other concerns, may warrant a higher risk profile (e.g., China or Russia).

customers or investors in a Covered Adviser's private funds. The Covered Adviser moreover would not otherwise obligated to confirm the accuracy of the information provided by such persons (including through the use of screening tools), so long as the Covered Adviser has no knowledge of facts that would reasonably call into question the reliability of such information.

d. Special Due Diligence for Correspondent and Private Banking Accounts

MFA encourages FinCEN to reconsider the applicability of the special due diligence requirements: they are ill-fitting for the investment adviser industry generally, and particularly so for investment managers to private funds. The AML Program Rule extends special due diligence requirements for correspondent accounts and private banking accounts to Covered Advisers. In the Preamble, FinCEN noted that it would work with the SEC "with respect to implementation and examination of this requirement and may issue guidance, if deemed necessary."[15] If FinCEN declines to exempt Covered Advisers from the special due diligence requirements, FinCEN should clarify, in addition to the below requests, that the special due diligence requirements do not apply where an investor in a private fund is a Regulated Financial Institution acting as nominee for an underlying investor.

1. Correspondent Accounts

MFA recommends that FinCEN confirm that the requirements relating to correspondent accounts are inapplicable to private fund managers because they do not establish accounts "to receive deposits from, or … make payments for or on behalf of" or handle other financial transactions related to their clients. Absent such clarification, given the lack of detail in the Preamble with respect to correspondent accounts, MFA requests that FinCEN confirm the following analysis is correct as doing so is critical to developing procedures.

Special due diligence requirements for correspondent accounts are only applicable if each of the following conditions are met:

- there is a contractual or other business relationship established between a person and a Covered Adviser to provide advisory services ("**Account**");
- the Account is established for a Foreign Financial Institution (as defined below); and
- the Account is established "to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution."[16]

Foreign Financial Institution does not include a non-U.S. entity that, if it were located in the U.S., would be a Covered Adviser and, accordingly, Covered Advisers are not obligated to apply special due diligence requirements for correspondent accounts to accounts held by U.S. or non-U.S. investment

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15 Final Rule, 89 Fed. Reg. 72206.

16 *See* 31 C.F.R. § 1010.605(c). A Foreign Financial Institution means: (1) a foreign bank; (2) a branch or office located outside the U.S. of a U.S. broker-dealer, futures commission merchant, introducing broker in commodities or mutual fund; (3) a non-U.S. entity that, if it were located in the U.S., would be a broker-dealer, futures commission merchant, introducing broker in commodities or mutual fund; or (4) a non-U.S. dealer in foreign exchange or money transmitter. *See* 31 C.F.R. § 1010.605(f).

advisers. With regard to a correspondent account for a Foreign Financial Institution, a Covered Adviser must apply the obligations set forth in the correspondent account rule (31 C.F.R. § 1010.610(a), (d) and (e)) but the Covered Adviser is not required to look through the Foreign Financial Institution and conduct due diligence on the customers of the Foreign Financial Institution.[17]

2. Private Banking Accounts

Private fund managers do not establish accounts to take deposits, and as such MFA requests confirmation that the requirements for private banking accounts are inapplicable to private fund managers. Based on the Preamble, we understand that the special due diligence rule for private banking accounts, which requires Covered Advisers to conduct special due diligence on certain "private banking accounts," [18] may conceivably be applicable to certain U.S. and non-U.S. investment advisory relationships, potentially with relationships such as separately managed accounts.

MFA requests that FinCEN issue guidance clarifying that in the case of a private fund, the private fund itself would be the "direct" or "nominal" owner of the account with the Covered Adviser and the beneficial owners of the account would be individuals that have the ability, directly or indirectly, to control, manage or direct the private fund. Stated differently, investors in the private fund (*i.e.*, limited partners of the private fund) would not be "direct" or "nominal" owners of the account with the Covered Adviser, and the requirements to conduct due diligence would not extend to persons holding limited partnership interests in the private fund (or their beneficial owners) unless such persons are otherwise beneficial owners of the account (*i.e.*, control persons).

e. SAR Filing Obligation

The requirement of the AML Program Rule for a private fund manager to monitor for suspicious activity and file SARs with FinCEN is likely to be used rarely (or even less frequently). The AML Program Rule requires advisers to monitor for any suspicious transaction (or pattern of transactions) conducted or attempted "by, at or through" the Covered Adviser that involves or aggregates at least $5,000 in funds or other assets. Covered Advisers do not typically hold investor funds. Rather, in the private fund context, investor funds are commingled with other investor funds and held in account(s) in the name of private fund and maintained at a financial institution, such as a bank or broker-dealer (not the Covered Adviser).

There are typically no financial transactions directly between Covered Advisers and investors in private funds advised by the Covered Adviser. When making its investment into a private fund, the investor generally sends its money to the private fund's custodial account, either directly or through a fund administrator, and when

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[17] Obligations under 31 C.F.R. §§ 1010.610(b) and (c) are limited to foreign banks but would apply if the foreign bank had a correspondent account with a Covere Adviser.

[18] *See* 31 C.F.R. § 1010.620(b) (requiring a Covered Adviser to, at a minimum, (1) ascertain the identity of all nominal and beneficial owners of a private banking account; (2) ascertain whether any nominal or beneficial owners are senior foreign political figures; (3) ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and (4) review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account).

the investor redeems its interest, the private fund wires the redemption proceeds to the investor from the private fund's custodial account to the investor's bank account. Although the Covered Adviser is likely to receive or provide information related to such a transaction, the funds involved in the transaction do not pass through custodial accounts held in the name of the Covered Adviser.

In the Preamble, FinCEN explained that it "interprets 'transactions conducted or attempted by, at, or through' to encompass an investment adviser's advisory activities on behalf of its clients."[19] In the Preamble, FinCEN provided examples of potentially suspicious activity occurring by, at, or through a Covered Adviser, including suspicious activity involving private funds. The examples involving money movements typically flow through a bank or brokerage account at a financial institution (not Covered Adviser), such as:

- Placement and layering by funding a managed account or investing in a private fund by using multiple wire transfers from different accounts maintained at different financial institutions or requesting that a transaction be processed in a manner to avoid funds being transmitted through certain jurisdictions.
- Transferring funds or other assets involving the accounts of third parties with no plausible relationship with the customer.
- Transfers of funds or assets involving suspicious counterparties—such as those subject to adverse media, exhibiting shell company characteristics, or located in jurisdictions with which the customer has no apparent nexus.

Many of these examples cannot fairly be described as conducted "by, at, or through" the investment adviser. The financial institution that maintains the customer relationship has already conducted an AML review of the accountholder and, especially if the financial institution is U.S.-based or domiciled in a FATF jurisdiction,[20] we encourage FinCEN to clarify that the private fund manager's obligations are appropriately limited. FinCEN should use the additional time before the AML Program Rule's effective date to provide additional clarification, including the limited scope of information to be monitored and the means of so monitoring.[21] FinCEN should also provide a list of red flags in order for the industry to begin training employees on identifying and reporting suspicious activity given that many red flag escalations will come through non-compliance employees.[22]

f. SAR Sharing and Confidentiality

While SARs and any information that would reveal the existence of a SAR are subject to strict confidentiality requirements, such information may be shared in certain circumstances. The AML Program Rule specifies that a Covered Adviser may share a SAR or any information that would reveal the existence of a SAR

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19 Final Rule, 89 Fed. Reg. 72200.

20 *See* note 14, *supra*.

21 The flow of funds in and out of private fund custodial accounts does not go directly through the Covered Adviser, and as such advisers cannot reasonably monitor for suspicious activity using the methods commonly used by other financial institutions, such as automated transaction monitoring with generated alerts.

22 *See, e.g.*, FINRA, Regulatory Notice 19-18 (May 6, 2019) (FINRA notice listing red flags applicable in the securities industry, incorporating Notice to Members 02-21 (Apr. 10, 2002)).

"within the investment adviser's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance."[23]

MFA requests that FinCEN provide guidance -- consistent with its approach for banks and broker-dealers -- that permits Covered Advisers to share SARs and any information that would reveal the existence of a SAR with its affiliates[24] and with U.S. and non U.S. private funds advised by the Covered Adviser, and those private funds' directors, officers, employees and agents (to the extent the private funds have any). Such guidance will lead to more robust reporting and is necessary to ensure that Covered Advisers have clarity that they will not be violating SAR confidentiality when they investigate suspicious activity within the scope of their advisory services. While Covered Advisers advise private funds, such private funds are separate legal entities and may have their own personnel and agents. For example, a non-U.S. private fund may have a money laundering reporting officer with its own obligations to report suspicious activity pursuant to local law. Sharing of SARs or any information that would reveal the existence of a SAR between a Covered Adviser, its directors, officers, employees, and agents and the private fund's directors, officers, employees, and agents would facilitate effective and efficient suspicious activity monitoring and reporting.

In addition, FinCEN acknowledged in the Preamble the role that third parties will play in aiding Covered Advisers in complying with their suspicious activity monitoring and reporting obligations:

> FinCEN recognizes that in certain circumstances an offshore fund administrator may be in the best position to perform certain aspects of an investment adviser's AML/CFT program requirements, including monitoring for suspicious activity. Accordingly, an investment adviser may delegate contractually to an offshore fund administrator to monitor for suspicious activity, provide the details of such activity to the investment adviser, and file SARs on behalf of the adviser. However, the adviser remains fully responsible and legally liable for compliance with AML/CFT requirements.[25]

Implicit in that acknowledgement and the SAR confidentiality regulations is the concept that SARs and any information that would reveal the existence of a SAR may be shared with agents of the Covered Adviser.

To facilitate effective and efficient SAR monitoring and reporting, consistent with the Preamble, we propose that FinCEN should clarify that a third party that has been delegated monitoring, escalation and/or reporting of suspicious activity is considered an agent of the Covered Adviser for purposes of SAR confidentiality. While the SAR confidentiality relationship may be documented by a contract between the Covered Adviser and the third party, the delegation to the third party need not specify that an agency relationship exists between the Covered Adviser.

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23 Final Rule, 31 C.F.R. § 1032.320(d)(1)(ii)(B).

24 *See* FinCEN, FIN-2010-G005, *Sharing Suspicious Activity Reports by Securities Broker-Dealers, Mutual Funds, Futures Commission Merchants, and Introducing Brokers in Commodities with Certain U.S. Affiliates* (Nov. 23, 2010).

25 Final Rule, 89 Fed. Reg. 72189, n.241.

g. Funds Transfer and Travel Rules

The AML Program Rule extends the recordkeeping and travel rules[26] to Covered Advisers and requires Covered Advisers to obtain and retain the name, address, and other information about the transmittor and the transaction for each transmittal order of $3,000 or more that a Covered Adviser accepts when acting as a transmittor's financial institution. As discussed above, with regard to private funds and separately managed accounts advised by Covered Advisers, the assets of the private fund and separately managed account owner are typically held in a custodial account owned by the private fund or separately managed account owner.

MFA encourages FinCEN to use the additional time before the AML Program Rule's effective date to reconsider our view that the funds transfer and travel rules are inapplicable to Covered Advisers given the nature of the investment advisory business, and in particular, private fund managers. Again, advisers generally do not engage in transmittals of funds involving transmittal orders for customers because advisers do not debit or receive payment from the customers (transactions go through the customer's financial account to the adviser's custodian) and advisers are not a recipient's financial institution because they do not receive and credit money to recipients. Adviser's obligations moreover would be triggered only in very rare circumstances where an adviser makes a payment on behalf of a customer and is later reimbursed by that customer. FinCEN's statement in the preamble that obligations under the Recordkeeping and Travel Rules would apply primarily when advisers act as transmittor or recipient is illogical as recipients have no obligations under these rules. The meaning of FinCEN's statement that an adviser's "authority and discretion" over private fund assets may make them "more likely to have to comply" with the rules is unclear and at a minimum merits additional explanation.

FinCEN therefore should reconsider subjecting advisers to these rules given the significant compliance cost that would be imposed on investment advisers, with minimal, if any, benefit, as all of an adviser's transactions will go through a bank that is already subject to the rules. MFA would welcome a dialogue with FinCEN regarding the types of transactions that would, in MFA's view, be subject to the funds transfer and travel rules.

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[26] The BSA and its implementing regulations impose recordkeeping and information transmittal obligations on financial institutions to assist law enforcement in detecting and preventing money laundering and other illicit activity. *See* 31 USC §§ 5311–5336; 12 U.S.C. §§ 1829b, 1951–1960. Under the BSA, institutions must retain specified records—including customer identification, account statements, and certain transaction details—for at least five years. See FFIEC, *BSA Record Retention Requirements*, Appendix P, in *Bank Secrecy Act/Anti-Money Laundering Examination Manual* (2025), avail. at https://bsaaml.ffiec.gov/manual/Appendices/17; see also 31 C.F.R. ch. X. In addition, the "Travel Rule," codified at 31 CFR §§ 1010.410(e), 1020.410(a), requires that for transmittals of funds of $3,000 or more, the transmittor's financial institution must include and transmit specified originator and beneficiary information in the payment order, and each intermediary institution must retain and pass along such information. See FinCEN, *Funds "Travel" Regulations: Questions & Answers* (Nov. 9, 2010), avail. at https://www.fincen.gov/resources/statutes-regulations/guidance/funds-travel-regulations-questions-answers.

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In conclusion, MFA supports the goals of FinCEN in the Proposed Rule and respectfully requests that FinCEN provide clarifying guidance on the AML Program Rule and its scope to aid the private fund manager industry in implementing the requirements of the AML Program Rule effectively and in a manner that avoids expending resources in ways that are not aligned with regulatory priorities. Please do not hesitate to reach out to Jeff Himstreet (jhimstreet@mfaalts.org) or me at (jhan@mfaalts.org).

Sincerely yours,

/s/ Jennifer W. Han

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