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Proposed New Rule May Require Registered Investment Advisers to Adopt Anti-Money Laundering Programs

August 28, 2015 – Investment advisers registered with the SEC would be required to comply with broad array of anti-money laundering obligations under a rule proposed this week by the Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury.

The proposed rule, classifying RIAs as "financial institutions" for purposes of the Bank Secrecy Act closes a gap in the law that FinCEN first tried to close in 2003, and would delegate to the Securities and Exchange Commission (the "SEC") its authority to examine RIAs for compliance with the new requirements.

The proposed rule would, for example, require RIAs to develop programs designed to prevent the deposit of laundered money with the adviser, to file specified currency transaction and suspicious activity reports and to establish more detailed recordkeeping. Although the proposed rule does not deal with the need for RIAs to develop a customer identification program or conduct customer due diligence, FinCEN noted in its release announcing the proposed rule that both these requirements are anticipated to be addressed through joint rulemaking with the SEC. The proposed rule will be out for a 60-day comment period.

In 2003, FinCEN had proposed two sets of similar rules intended to require investment advisers and unregistered investment companies to establish AML programs. Ultimately, FinCEN abandoned the proposals, opting to do additional research to ensure that its regulatory framework was being implemented "effectively and efficiently" across the industries that were captured under the current. However, as FinCEN noted, the regulatory landscape relating to investment advisers has changed significantly since 2003 due to the passage of the Dodd-Frank Act and suggested that investment advisers to private funds are particularly susceptible to money laundering schemes.

Currently, the BSA applies to "financial institutions" such as mutual funds, broker-deals in securities, bank and insurance companies but not to investment advisers. Although most investment advisers work with and rely on such financial institutions, FinCEN noted that such banks or broker-dealers may not have sufficient information to adequately identify money laundering threats and that money launderers may exploit these gaps in knowledge more effectively by operating through investment advisers rather than banks or broker-deals directly.

If you have any further questions, please contact your Morrison Cohen attorney.

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