

U.S. Treasury Renews Push to Make Investment Advisers Subject to the BSA

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The United States Department of the Treasury (U.S. Treasury) announced that it aims to publish a proposed rule in early 2024 (the 2024 NPRM) that would subject investment advisers to the anti-money laundering (AML) requirements of the Bank Secrecy Act (BSA).¹

This is not the first time that lawmakers have attempted to bring investment advisers into the ambit of the BSA. Indeed, the 2024 NPRM would be the U.S. Treasury's fourth attempt at expanding the AML requirements of the BSA to investment advisers. The U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) first attempted to subject investment advisers to AML requirements in 2002² and 2003³ in separate proposed rulemakings, which were both withdrawn in 2008 after meeting heavy opposition from the private fund industry.⁴ In 2015, FinCEN again issued a proposed rule (the 2015 NPRM) that required investment advisers to (i) designate a qualified AML officer, (ii) implement a system of internal controls comprised of policies and procedures, (iii) subject the AML program to independent testing, and (iv) provide AML training to employees.⁵ The 2015 NPRM did not result in a final rule due to the 2017 presidential moratorium on federal regulations.⁶ An additional attempt to subject

investment advisers to AML requirements came in 2021 in response to the Pandora Papers leak, but was short-lived.⁷

The U.S. Treasury will be reexamining the 2015 NPRM for the 2024 NPRM. We recommend that you review the 2015 NPRM and our prior client alert on [AML Best Practices for Private Fund Managers](#) to identify potential gaps in your existing AML programs and consider whether your AML program has the capabilities, flexibility, and resources to be scaled to address the full suite of AML requirements if investment advisers become subject to the BSA.

Lowenstein Sandler will be closely monitoring how the 2024 NPRM evolves and to what extent the U.S. Treasury intends to apply the BSA to investment advisers. As always, we are available to assist with your AML compliance needs. For any questions on AML or this article, please contact the authors at LSAMLTeam@lowenstein.com.

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/11/fact-sheet-u-s-leadership-in-the-fight-against-global-corruption/>

² <https://www.federalregister.gov/documents/2002/09/26/02-24145/financial-crimes-enforcement-network-anti-money-laundering-programs-for-unregistered-investment>

³ <https://www.federalregister.gov/documents/2003/05/05/03-10840/financial-crimes-enforcement-network-anti-money-laundering-programs-for-investment-advisers>

⁴ <https://www.federalregister.gov/documents/2008/11/04/E8-26202/financial-crimes-enforcement-network-withdrawal-of-the-notice-of-proposed-rulemaking-anti-money>

⁵ https://www.fincen.gov/sites/default/files/shared/1506-AB10_FinCEN_IA_NPRM.pdf

⁶ <https://www.federalregister.gov/documents/2017/01/24/2017-01766/memorandum-for-the-heads-of-executive-departments-and-agencies-regulatory-freeze-pending-review>

⁷ <https://www.congress.gov/bill/117th-congress/house-bill/5525>

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