

PUBLICATION

SEC and FinCEN Propose Customer Identification Rule for Registered Investment Advisers

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The Securities Exchange Commission (SEC) and the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) issued a proposed rule on May 13, 2024 (Proposed Rule), which could have sweeping effects on the practices of both Registered Investment Advisers (RIAs) and Exempt Reporting Advisers (ERAs), (RIAs and ERAs collectively, Advisers). The Proposed Rule would require Advisers to implement Customer Identification Programs (CIP) to better identify and document the identity of their customers. The SEC and FinCEN proposed this rule to combat the use of the investment industry as a conduit for the movement of illicit funds and criminal activities, facilitating otherwise prohibited access to the U.S. financial system.

Summary of Proposed Rule

The Proposed Rule aligns the CIP requirements for Advisers with those of other financial market participants who are already subject to CIP regulations, such as banks and broker-dealers. It would require Advisers to establish a CIP that includes guidelines for verification, documentation, and maintenance of customer identification records.

Specifically, the Proposed Rule establishes minimum requirements for an Adviser's CIP. The Proposed Rule requires that a written CIP be part of the Adviser's AML program. The CIP must be appropriate for the business of the Adviser and proportional to its size. Additionally, certain identification procedures must be based on the present and relevant risks pertaining to a specific customer or account, the factors to be analyzed can include: the method of opening the account, the Adviser's location, and the Adviser's customer base. Certain customer information will always be required, including name, date of birth for an individual, date of formation for an entity, address, and identification number. For verification purposes, the presence of additional risks increases the amount of information that must be obtained. Generally, an Adviser will not be required to look through to the beneficial owners of an entity unless the higher-risk triggers of a CIP warrant further investigation.

An Adviser must utilize its risk-based approach to determine if additional information is necessary to form a reasonable belief of the true identity of the customer. Under the Proposed Rule, verification can be done through documentary or non-documentary means. The CIP must contain procedures for determining when documentary proof is required. Documentary proof includes items such as government-issued identifications, articles of incorporation, business licenses, and partnership agreements. On the other hand, if nondocumentary evidence is sufficient, necessary CIP procedures can be as simple as ensuring the logical consistency of information provided to the Adviser.

The Proposed Rule details the procedures to be included in a CIP for situations where an Adviser cannot form a reasonable belief of the verified identity of a customer. Specifically, the CIP should detail when the Adviser should not open an account, the terms upon which the Adviser can provide temporary advisory services to the customer/accounts while attempting to fulfill identification requirements, the time when an Adviser should close an account, and when the Adviser should file a suspicious-activity report in accordance with law.

Lastly, the Proposed Rule requires Advisers to address record maintenance in their CIP. Generally, the records should include the relevant identifying information of a customer, a description of the methods and/or documents used to verify the identification of the customer, and in the event of a discrepancy in customer identification, a description of how such issues were resolved by the Adviser.

Conclusion

If you have any questions concerning the Proposed Rule, need assistance in developing your Customer Identification Program, or need assistance with any other aspect of your compliance program, please contact the authors or any member of [Baker Donelson's Broker-Dealer/Investment Adviser Team](#).