FinCEN Once Again Proposes Anti-Money Laundering Program Requirements for Investment Advisers

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On Feb. 15, 2024, the US Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") proposed its long-anticipated rule, which will subject certain investment advisers to significant anti-money laundering and counter-terrorist financing-related compliance obligations ("Proposed Rule"). Specifically, the Proposed Rule requires certain investment advisers to (i) establish and implement anti-money laundering and countering the financing of terrorism ("AML/CFT") programs, (ii) file suspicious activity reports ("SARs") with FinCEN, and (iii) fulfill recordkeeping, information sharing, investor due diligence and other AML/CFT-related obligations mandated by the Bank Secrecy Act ("BSA").[1] The Proposed Rule applies to investment advisers registered with the Securities and Exchange Commission ("SEC"), also known as registered investment advisers ("RIAs") and exempt reporting advisers ("ERAs") (collectively, "Covered Advisers"). The public comment period will remain open until April 15, 2024.

This *Alert* outlines the scope of the proposal and obligations that will be applicable to Covered Advisers and highlights areas where FinCEN has asked for public comment. It is anticipated that many industry participants and trade associations will submit comments on this proposal.

Prior Rulemaking Attempts

The Proposed Rule arrives nearly nine years after FinCEN last proposed similar AML regulations for RIAs in 2015,[2] which followed even earlier efforts by FinCEN in 2002 and 2003 to apply AML regulations to the asset management industry.[3] Although these proposed rules were never finalized, the asset management industry responded to them by implementing AML programs and investor due diligence measures on a voluntary basis. Over time, industry best practices developed that captured the requirements of the prior proposed rules. However, the Proposed Rule includes requirements that exceed prior proposed rules and industry best practices, as well as requirements that may be unfamiliar to many Covered Advisers—most notably the obligation to have a prescriptive AML/CFT program and report suspicious activity.

Investment Advisers Covered by the Proposed Rule

As noted above, while some investment advisers have voluntarily implemented certain AML/CFT measures, investment advisers are not presently included in the definition of "financial institution" under the BSA, which means that they, unlike banks, broker-dealers and certain other financial institutions, are not subject to BSA implementing regulations requiring an AML/CFT compliance program, recordkeeping and reporting. The Proposed Rule extends the BSA implementing regulations to two types of investment advisers:

1. Those registered or required to be registered with the SEC under Section 203 of the Advisers Act of 1940 ("Advisers Act"); and
2. Those that meet an exemption from SEC registration under Section 203(l) or Section 203(m) of the Advisers Act and report to the SEC as an exempt reporting adviser.[4]

As FinCEN noted in the preamble to the Proposed Rule, even though RIAs and ERAs are presently subject to certain SEC rules that require an RIA or ERA to report certain kinds of illegal conduct or collect relevant information, these SEC rules do not provide a comprehensive AML/CFT regulatory framework or a process to assess and report suspicious activity to appropriate authorities. FinCEN requests comment on whether ERAs should be excluded from the definition of "investment adviser" and if any other types of advisers or entities should be included in the definition.

Application to Non-US-Based RIAs and ERAs. The proposed definition of "investment adviser" would include non-US investment advisers (i.e., investment advisers located outside the US) that are RIAs or ERAs. The BSA permits FinCEN to regulate financial institutions located outside the US in certain circumstances.[5] FinCEN explains in the preamble to the Proposed Rule that "[c]onsistent with longstanding SEC practice and guidance interpreting investment adviser registration requirements under the Advisers Act, unless subject to an exemption, investment advisers located abroad generally must register with the SEC if they 'make use of the mails or any means or instrumentality of interstate commerce in connection with [their] business as an investment adviser.' . . . FinCEN has previously similarly defined certain financial institutions on the basis of SEC registration, regardless of their physical location."[6] FinCEN requests comment on any challenges faced by non-US Covered Advisers under the Proposed Rule. FinCEN further seeks comment on any potential conflicts that the Proposed Rule potentially creates with domestic or foreign law.

The preamble to the Proposed Rule describes illicit finance threats involving the investment adviser industry, including non-US investment advisers, such as the risks that: (1) in some instances, the investment adviser industry has served as an entry point into the US market for illicit proceeds associated with foreign corruption, fraud and tax evasion; (2) certain advisers manage billions of dollars ultimately controlled by Russian oligarchs and their associates who help facilitate Russia's war against Ukraine; and (3) certain RIAs and ERAs and the private funds they advise are also being used by foreign states, most notably China and Russia, to access certain technology and services with long-term national security implications through investments in early-stage companies.

Application to Other Investment Advisers and State-Registered Investment Advisers. The proposed definition of "investment adviser" would exclude state-registered investment advisers and advisers relying on the foreign private adviser exemption.[7] FinCEN notes that future rulemaking may include these other types of investment advisers. FinCEN requests comment on whether the "investment adviser" should include these other types of investment advisers in addition to Covered Advisers.

Application to Dually-Registered Covered Advisers. For Covered Advisers that are dually-registered with the SEC as investment advisers and broker-dealers, the Proposed Rule allows for a single AML/CFT program so long as the program meets the requirements applicable to both the Covered Adviser and broker-dealer.

Requirements of the Proposed Rule

The Proposed Rule requires that Covered Advisers adopt and implement a written, risk-based AML/CFT program that has five main components as follows:

1. *Written policies, procedures and internal controls.* The AML/CFT program must be based on a risk-assessment of the types of advisory services a Covered Adviser provides and the nature of the investors to which it provides advisory services. A Covered Adviser's risk assessment would need to consider the types of accounts[8] offered (e.g., managed accounts), the types of investors opening accounts, the geographic location of investors and the sources of wealth for investor assets. FinCEN expects Covered Advisers will generally be able to adapt existing policies and procedures to meet this requirement.

2. *Designation of a compliance officer.* Covered Advisers must designate a person or persons responsible for implementing and monitoring the operations and internal controls of their AML/CFT program, who is "knowledgeable and competent" regarding the regulatory requirements and the Covered Adviser's money laundering risks. Depending on the size of the Covered Adviser and the type of services offered, the compliance officer need not be dedicated full-time to BSA compliance, but "should be an officer of the investment adviser" and someone who has "established channels of communication with senior management demonstrating sufficient independence and access to resources to implement a risk-based and reasonably designed AML/CFT program."[9] FinCEN noted that RIAs could designate this responsibility to their chief compliance officer, a role that is required by the Advisers Act to administer an RIA's compliance policies and procedures.[10]
3. *Ongoing training for appropriate persons*. The Proposed Rule requires Covered Advisers to provide training to appropriate persons, such as employees whose duties bring them in contact with AML/CFT requirements or possible money laundering and terrorist financing ("ML/TF") or other illicit finance. The training may be conducted through outside or in-house seminars and may include computer-based, in-person, or virtual training. The Proposed Rule does not dictate a one-size-fits-all approach. Rather, the nature, scope and frequency of training would be determined by the employees' responsibilities and the extent to which their functions bring them into contact with the BSA's requirements and possible money laundering. FinCEN notes that employees who need training must receive it at the start of their duties and receive "periodic updates and refreshers," although it does not prescribe a minimum frequency.
4. *Independent testing.* The Proposed Rule requires Covered Advisers to conduct independent testing of the AML/CFT program to ensure that the program is functioning as intended. The testing may be conducted by a qualified outside party or the adviser's personnel, provided those employees are not involved in the operation or oversight of the program. The frequency of the testing would depend upon the ML/TF and other illicit finance risks of the Covered Adviser and the Covered Adviser's overall risk management strategy. If a Covered Adviser delegates administration of any part of its AML/CFT program to a third-party service provider, such as a fund administrator, the Covered Adviser must undertake reasonable steps to assess whether the service provider carries out such AML/CFT procedures effectively. The preamble to the Proposed Rule notes that simply obtaining a "certification" from a service provider that the service provider has a satisfactory AML/CFT program is insufficient for meeting this independent testing requirement.
5. *Risk-based procedures for (i) understanding the nature and purpose of customer (which, for Covered Advisers, are investors) relationships for the purpose of developing an investor risk profile; and (ii) conducting ongoing monitoring to identify and report suspicious transactions and, maintain and update investor information.* This requires Covered Advisers to gather information at the onset of the advisory relationship with an investor to develop a baseline against which investor activity is assessed for suspicious activity reporting and conduct ongoing monitoring to assess whether such information remains accurate.As described below, the Proposed Rule does not yet include a formal requirement to conduct investor identity verification or collect beneficial ownership information from legal entity investors, but parts of the Proposed Rule require Covered Advisers to collect certain information from investors through its investor due diligence obligations. The Proposed Rule also requires ongoing monitoring of investor information and transactions. This may be achieved by integrating investor information into a transaction monitoring system or utilizing the information sharing provisions under section 314(b) of the USA PATRIOT Act (as discussed below) to request relevant information from other financial institutions.

Approval of the AML/CFT Program. The AML/CFT program must be approved, in writing, by the Covered Adviser's board of directors or trustees ("Board") or if there is no Board, then other persons that have functions similar to a Board, such as the general partner of the Covered Adviser. The Proposed Rule also requires that Covered Advisers make available their written AML/CFT program for inspection by FinCEN and the SEC.

Application of AML/CFT Program to Activities of Covered Advisers. The Proposed Rule does not require Covered Advisers to extend their AML/CFT program to the non-advisory activities engaged in by the Covered Adviser, such as making managerial or operational decisions about portfolio companies.[11] But the Proposed Rule requires Covered Advisers to extend their AML/CFT program to cover sub-advisory activities even if the Covered Adviser is only engaged as a sub-adviser for a limited purpose. Accordingly, this is an area that may necessitate additional clarity from FinCEN in the final rule. Indeed, FinCEN requests comment on how a final rule should address sub-advisory and other advisory services that do not involve management of client assets. In addition, the Proposed Rule does not require RIAs that advise mutual funds to extend AML/CFT program requirements to the mutual funds they advise because mutual funds are already subject to AML/CFT program requirements.[12] Unlike mutual funds, registered closed-end funds do not have an existing AML/CFT program requirement and are not subject to the requirements imposed under the BSA implementing regulations. FinCEN expects that, absent other indicators of high-risk activity, an RIA could treat registered closed-end funds as lower-risk for purposes of their AML/CFT programs.[13]

Investor Identify Verification and Due Diligence

The Proposed Rule requires Covered Advisers to adopt special due diligence for private banking and correspondent bank accounts involving high risk investors pursuant to the requirements of Section 312 of the USA PATRIOT Act.

Private Bank Accounts. The Proposed Rule requires Covered Advisers to adopt due diligence measures, such as policies and procedures, which enable Covered Advisers to detect and report suspicious activity involving high net worth foreign persons with private bank accounts.[14] Those measures include ascertaining the identity of all nominal and beneficial owners of a private banking account; ascertaining whether any such nominal or beneficial owners is a senior foreign political figure ("SFPF") or family member or close associate of a SFPF; ascertaining the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and reviewing the activity of the account to ensure that it is consistent with the information obtained about the investor's source of funds, and with the stated purpose and expected use of the account. FinCEN requests comment on whether the private bank account rules should apply to Covered Advisers.

Correspondent Accounts. The Proposed Rule would amend the definitions for "correspondent account"[15] and "covered financial institution"[16] to align the existing rule to the activities conducted by Covered Advisers. The term account, in the phrase "correspondent account," would include "any contractual or other business relationship established between a person and an investment adviser to provide advisory services." Covered Advisers would be required to establish due diligence requirements to monitor correspondent accounts for foreign financial institutions ("FFIs"). Those diligence requirements include obtaining and considering information relating to the FFI's AML program; obtaining the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account; determining whether the FFI in turn maintains correspondent accounts for other FFIs; and determining, for any correspondent account established or maintained for a FFI whose shares are not publicly traded, the identity of each owner of the FFI and the nature and extent of each owner's ownership interest. FinCEN requests comment on the extent to which Covered Advisers provide advisory services or enter into advisory relationships that are similar to a "correspondent account" relationship.

Nominee Arrangements. While FinCEN identified nominee arrangements as a potential area of concern, FinCEN did not discuss how to address the common industry practice for Covered Advisers to rely on the AML/CFT practices of other regulated financial institutions in connection with nominee arrangements. Under the Proposed Rule, it is unclear whether FinCEN would permit nominee arrangements to continue to be used by Covered

Advisers where the identity of underlying principals is not known to the Covered Adviser. FinCEN is silent on whether the practice of obtaining an AML representation letter from a nominee will be permitted or whether it is expected that Covered Advisers will no longer rely on nominees to conduct due diligence and identity verification of underlying principals.

Customer Identification Program ("CIP") Rule and Customer Due Diligence ("CDD") Rule. The Proposed Rule does not yet extend formal CIP and CDD beneficial ownership information collection requirements ("CDD Rule") to Covered Advisers, requiring them to conduct investor identity verification and collect beneficial ownership information of legal entity *investors*. FinCEN expects to address CIP requirements in a joint rulemaking with the SEC. FinCEN is in the process of revising the CDD Rule to conform it with the requirements of the Corporate Transparency Act implementing regulations[17] and has indicated it will require Covered Advisers to comply with the CDD Rule once it is revised.

Delegation of AML/CFT Compliance to Third-Parties

The Proposed Rule will allow a Covered Adviser to delegate the implementation and operation of aspects of its AML/CFT program to an agent or service provider, but the Covered Adviser would remain responsible and legally liable for the program's compliance with regulations, as well as responding to requests from regulators like FinCEN and the SEC. The preamble to the Proposed Rule notes that for Covered Advisers that currently implement AML/CFT policies and procedures, it is common practice to delegate the administration of such AML/CFT policies and procedures to a fund administrator. FinCEN requests comment on how Covered Advisers currently delegate AML/CFT compliance measures and the extent to which delegation should be permitted. While delegation is permitted under the Proposed Rule, the processes that Covered Advisers use in connection with delegation may change, as may the types of activities delegated. For example, Covered Advisors are expected to assess the procedures of any third parties to which they delegate AML/CFT responsibilities. In addition, it is unclear whether SAR monitoring and filing responsibilities will be delegated to third parties. Effective delegation will require Covered Advisers to have sufficient resources to manage such relationships appropriately.

*Location of Service Provide*r. While FinCEN recognized that some Covered Advisers utilize service providers located outside the US, the Proposed Rule does not make clear the extent to which delegation to non-US service providers is permitted. Under the Proposed Rule, the duty to establish, maintain and enforce an AML/CFT program must be the responsibility of persons in the US who are accessible to, and subject to oversight by, the Secretary of the Treasury and the appropriate federal regulator.[18] FinCEN requests comment on any challenges that Covered Advisers may face in implementing the proposed requirement to have persons in the US responsible for maintaining and enforcing an AML/CFT program.

Special Information Sharing Procedures

The Proposed Rule subjects Covered Advisers to FinCEN's rules implementing the special information-sharing procedures of Section 314 of the USA PATRIOT Act. Under the Proposed Rule, Covered Advisers would be required, upon request from FinCEN, to search their records to determine whether the Covered Adviser maintains any account for, or has engaged in any transaction with, a party named in FinCEN's request. Covered Advisers would also, under Section 314(b), be able to participate in voluntary information sharing arrangements with other financial institutions, including other Covered Advisers, which would enable broader understanding of investor risk and inform potential suspicious activity reporting.

Special Measures

Pursuant to Section 311 of the USA PATRIOT Act and Section 9714(a) of the Combatting Russian Money Laundering Act, Covered Advisers would be required to implement certain "special measures" if the Secretary of the Treasury determines that a foreign jurisdiction, institution, class of transaction, or type of account is a "primary money laundering concern." Special measures include additional recordkeeping, information collection and reporting requirements as well as prohibitions or conditions on the opening or maintenance of certain correspondent accounts.

Reporting Requirements

Suspicious Activity Reports. Under the Proposed Rule, Covered Advisers will be required to file SARs, which are reports that provide tips to law enforcement regarding transactions that could suggest ML/TF or other criminal activity. The proposed SAR requirements provide that a Covered Adviser will be required to file a SAR for transactions involving at least $5,000 conducted or attempted by, at or through the Covered Adviser where the Covered Adviser knows, suspects or has reason to suspect that the transaction:

- Involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity;
- Is designed to evade the BSA or its implementing regulations;
- Has no business or apparent lawful purpose or is not the sort of transaction the investor would normally be expected to engage in, and the Covered Adviser knows of no reasonable explanation for the transaction after examining the available facts; or
- Involves use of the Covered Adviser to facilitate criminal activity.

Under the Proposed Rule, a Covered Adviser must file a SAR no later than 30 calendar days after the date of the initial detection by the Covered Adviser that may constitute a basis for filing a SAR. This language mirrors the SAR filing requirement for other financial institutions. Covered Advisers would also be subject to the safe harbor shielding Covered Advisers from civil liability for filing a SAR.

As proposed and consistent with the SAR requirements of other financial institutions, Covered Advisers would be required to maintain the confidentiality of SARs. Disclosing a SAR, or even information that would reveal the existence of a SAR, would constitute a crime under federal law except in limited circumstances.[19] Notably, the Proposed Rule is silent on whether information sharing among Covered Advisers and their funds or administrators would be permitted. FinCEN has requested comment on any other entities or activities where the sharing of SARs would further the purpose of the BSA.

The Proposed Rule allows for a Covered Adviser to delegate the responsibility for SAR reporting to a third-party service provider, but the Covered Adviser would remain responsible for maintaining SAR confidentiality. The Proposed Rule permits Covered Advisers that are dually registered or affiliated with another financial institution to file a single joint SAR provided that the joint SAR contains all relevant facts, and that each institution maintains a copy of the SAR and any supporting documentation.

These SAR filing obligations are likely to impose a significant burden on Covered Advisers that do not yet have procedures for monitoring transactions for suspicious activity and preparing and filing reports with FinCEN. FinCEN estimates that Covered Advisers will file an average of approximately 60 SARs per year.

Currency Transaction Reports ("CTRs"). Covered Advisers would be required to file CTRs for transactions involving more than $10,000 in currency (i.e., cash or coin transactions). In an effort to avoid duplicative requirements, the Proposed Rule removes the requirement for Covered Advisers to report certain currency transactions relating to their trade or business on a Form 8300. CTR-filing is not likely to be a significant burden for Covered Advisers as Covered Advisers do not typically engage in currency transactions.

Recordkeeping

*Transaction Records Under Funds Transfer Travel Rule.*The Proposed Rule requires Covered Advisers to comply with the funds transfer recordkeeping and travel rules, which require financial institutions to obtain and retain records, such as originator and beneficiary information, for each transmittal of funds in excess of $3,000.**[20]** Covered Advisers would also be required to pass on this information to the next financial institution in the payment chain.

Retention Period. Covered Advisers would be required to maintain copies of AML/CFT-related records for five years. These records include, but are not limited to, AML program documents, training logs, audit reports, SARs and SAR supporting documentation, and certain transaction records.

Delegation of Examination Authority to the SEC

The Proposed Rule delegates FinCEN's examination authority for Covered Advisers' AML/CFT regulatory compliance to the SEC. FinCEN highlights that the SEC has expertise in regulating RIAs and ERAs. FinCEN has previously delegated to the SEC examination authority for broker-dealers in securities and certain investment companies, which are BSA-defined financial institutions subject to FinCEN's regulations. The Proposed Rule does not impact FinCEN's authority to impose civil penalties for violations of the BSA and its regulations.

Effective Date

Under this Proposed Rule, the obligation to develop and implement an AML/CFT program discussed herein would be required 12 months from the effective date of the final rule.

Takeaways

Covered Advisers should review the Proposed Rule carefully because it proposes to add significant compliance obligations. Some of the requirements discussed herein may be unfamiliar to Covered Advisers, such as suspicious activity monitoring and reporting, information sharing with FinCEN and law enforcement, and prescriptive measures for conducting investor due diligence. Covered Advisers that use administrators should pay particular attention as the Proposed Rule will impact the manner in which AML/CFT functions can be delegated and outsourced to administrators. FinCEN requests comment on many facets of the Proposed Rule, which will inform FinCEN's final implementing regulations. Particularly, Covered Advisers should consider commenting on the definition of "investment adviser," including any challenges for non-US Covered Advisers, the procedures for delegating to service providers, confidentiality of SARs, including where non-US service providers or fund administrators are involved, and the appropriateness of applying the private bank, correspondent account, fund transfer recordkeeping and travel rules to Covered Advisers.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] Proposed Rule, 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. 12108. (Feb. 15, 2024), available here (hereinafter, "Proposed Rule").

[2] FinCEN, Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 Fed. Reg. 52680 (Sept. 1, 2015). In issuing the current Proposed Rule, FinCEN is withdrawing the 2015 Proposed Rule.

[3] On Sept. 26, 2002, FinCEN issued a proposed rule requiring unregistered investment companies, including private funds, to establish AML programs. *See* FinCEN, Anti-Money Laundering Programs for Unregistered Investment Companies, 67 Fed. Reg. 60617 (Sept. 26, 2002). On May 5, 2003, FinCEN issued another proposed rule requiring certain investment advisers to establish AML programs. *See* FinCEN, Anti-Money Laundering Programs for Investment Advisers, 68 Fed. Reg. 23646 (May 5, 2003). In June 2007, FinCEN announced that it was reviewing the broader AML regulatory framework and, as part of that review, rescinded these proposed rules on November 4, 2008. *See* FinCEN, Withdrawal of the Notice of Proposed Rulemaking; Anti-Money Laundering Programs for Investment Advisers, 73 Fed. Reg. 65568 (Nov. 4, 2008).

[4] In general, an ERA relying on (1) Section 203(l) is an adviser solely to one or more "venture capital funds" (as defined in Rule 203(l)-1 under the Advisers Act) and (2) Section 203(m) is an adviser solely to private funds with less than $150 million in assets under management in the United States.

[5] Proposed Rule, 89 Fed. Reg. at 12130.

[6] *Id*.

[7] The proposed definition does not include entities excluded from the definition of investment adviser under Section 202(a)(11) of the Advisers Act, such as family offices.

[8] The Proposed Rule does not provide a definition of "account" in this context.

[9] Proposed Rule, 89 Fed. Reg. at 12127-28.

[10] See Rule 206(4)-7 under the Advisers Act, otherwise known as the Compliance Rule, which requires an RIA to designate a chief compliance officer ("CCO") to administer its compliance policies and procedures. FinCEN clarified an RIA may designate its current CCO to oversee the AML/CFT program required under the Proposed Rule, but is not required to do so.

[11] Proposed Rule, 89 Fed. Reg. at 12123 ("The requirements of the proposed rule would not apply to non-advisory services. One example of this would be in the context of private equity funds: fund personnel may play certain roles with respect to the portfolio companies in which the fund invests. Activities undertaken in connection with those roles (e.g., making managerial/operational decisions about portfolio companies) would not be "advisory activities").

[12] A mutual fund is an open-end investment company that is registered with the SEC under the Investment Company Act of 1940. Mutual funds are subject to comprehensive AML/CFT obligations under the BSA and are required to establish AML/CFT and customer identification programs, conduct CDD, and report suspicious activity. 31 CFR Part 1024. Because of this, the Proposed Rule would not require Covered Advisers that advise mutual funds to include those mutual funds within the Covered Advisers' own AML/CFT program. This exemption is permissive and not mandatory; a Covered Adviser could include the mutual funds it advises within the Covered Advisers' AML/CFT program.

[13] While registered closed-end funds are subject to comprehensive SEC regulation and oversight and typically trade in the secondary market through broker-dealers who have AML/CFT obligations, unlike mutual funds, registered closed-end funds do not have an existing AML/CFT program or SAR filing requirement.

[14] 31 CFR § 1010.610 through § 1010.620.

[15] 31 CFR § 1010.605(c).

[16] 31 CFR § 1010.605(e).

[17] 31 CFR §§ 1010.380, 1010.955.

[18] 31 USC 5318(h)(5).

[19] The Proposed Rule authorizes disclosure in these instances: (1) where an "investment adviser, or any director, officer, employee or agent of an investment adviser, to disclose a SAR, or any information that would reveal the existence of a SAR, to various authorities"; (2) "disclosures of underlying facts, transactions, and documents upon which a SAR was based in connection with (i) preparation of a joint SAR or (ii) certain employment references or termination notices" and (3) "sharing of a SAR within an investment adviser's corporate organizational structure for purposes consistent with the BSA as determined by regulation or in guidance." Proposed Rule, 89 Fed. Reg. at 12133.

[20] 31 CFR § 1010.410(e).

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