

Your ID, Please: An Investment Adviser's Guide to the Proposed Customer Identification Program

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The U.S. Securities and Exchange Commission (SEC) and the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) jointly [proposed a rule](#) on May 13 that would require SEC-registered investment advisers (RIAs) and exempt reporting advisers (ERAs) (each an investment adviser and collectively investment advisers) to establish and maintain written customer identification programs (CIPs).¹ In particular, the proposed rule would include prescriptive requirements for investment advisers to confirm the identity of every client, record such verifications and inform clients about the verification activities. It also would impose corresponding recordkeeping requirements.

The proposed rule largely mirrors — and in some respects, duplicates — existing requirements for other financial institutions, such as broker-dealers and mutual funds. This alert highlights the particular impact on investment advisers.

CIP Proposal

Under the proposed rule, each time a person opens a new “account” with an investment adviser, the person becomes a “customer” of the adviser. The definitions of “account” and “customer” are quite broad, and investment advisers might need to include relationships that are not part of current voluntary programs.

¹ [Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers](#), SEC Release No. BSA-1 (May 13, 2024).

The proposed rule follows a February proposal by FinCEN that, if adopted, would require investment advisers to develop and implement an AML/CFT program, file suspicious activity reports (SARs) and currency transaction reports, and meet certain recordkeeping and other requirements. [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. 12,108 (proposed February 15, 2024) (to be codified at 31 C.F.R. pts. 1010, 1032).

Key Definitions

- **Account:** An account would be defined as any contractual or other business relationship between a person and an investment adviser under which the investment adviser provides investment advisory services.
 - The definition would include an account opened for the purposes of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974 (ERISA).
 - The definition would not include any account acquired by the investment adviser through an acquisition, merger, purchase of assets or assumption of liabilities.
- **Customer:** A customer generally would be defined as a natural person or a legal entity that opens a new account with an investment adviser.²
 - The definition generally looks to the account holder.
 - The definition would exclude, among others, an entity regulated by a federal functional regulator or a bank regulated by a state bank regulator and certain listed entities.
 - The definition also would exclude a person who has an existing account with the adviser as long as the adviser has a reasonable belief that it knows the true identity of the person.

Similar to rules for broker-dealers and mutual funds, the proposed rule would require that an investment adviser:

- Establish, document and maintain a written CIP that is appropriate for its size and business.³ Under [FinCEN's February proposal](#), the CIP would be required to be included in the adviser's comprehensive anti-money laundering/countering the financing of terrorism (AML/CFT) compliance program.
- Prescribe procedures for responding to situations in which the adviser is unable to form a reasonable belief as to the identity of the customer. These procedures would be expected to describe (1) when the investment adviser should not open an account, (2) the terms under which an adviser may provide services to a customer while attempting to verify the customer's identity, (3) when the investment adviser should close an account after failing to verify the customer's identity and (4) when the investment adviser should file a SAR.

² A customer also would include an individual who opens a new account for an individual who lacks legal capacity or an entity that is not a legal person.

³ The CIP would be required to include procedures to verify the identity of each of the adviser's customers to the extent reasonable and practicable, such that the adviser may form a reasonable belief that it knows the true identity of each customer within a reasonable time before or after the customer's account is opened. Such procedures must specify the identifying information that the adviser will obtain with respect to each customer who opens an account, which must include (at a minimum) the person's name, date of birth (or formation, with respect to any person other than an individual), address and identification number.

- Include procedures for maintaining a record of any information obtained through the CIP, including procedures for making and maintaining records related to verifying customer identity (as well as procedures for how to do so).

An investment adviser may rely on another financial institution to perform any of its procedures under the CIP. However, the reliance must be documented in a written agreement. In addition, (1) the reliance must be reasonable under the circumstances, (2) the other financial institution is required to maintain an AML/CFT program and (3) the other financial institution must enter into a contract with the investment adviser requiring it to annually certify that it has implemented an AML/CFT program and will perform specified requirements of the investment adviser's CIP. An investment adviser would not be responsible for the other financial institution's failure to fulfill its CIP responsibilities, provided that the investment adviser can establish reasonable reliance and demonstrate it has entered into the required agreement and obtained the required certifications. The investment adviser, however, would remain responsible for ensuring compliance with the rules and, therefore, would have to actively monitor the operation and effectiveness of its CIP.

Key Takeaways

- **Mutual Funds:** An investment adviser would be permitted to deem the CIP requirements satisfied for any mutual fund it advises that has its own CIP program.
- **Overlapping Requirements:** Other financial institutions, including broker-dealers, are already subject to CIP requirements that are substantially similar to those included in the proposed rule. Investment advisers would need to determine whether they could reasonably rely on other financial institutions or expend resources to build out their own CIP program. Current voluntary customer identification procedures outsourced to third parties that are not financial institutions likely would not be sufficient.
- **Private Funds:** Where an investment adviser has a private fund as a customer, the proposed rule generally would require only that the investment adviser collect identifying information of the private fund, not its investors. However, depending on its risk assessment, an investment adviser may need to take additional steps to verify the identity of the private fund by seeking information about individuals with authority or control over the account or may need to look through the account in connection with the customer due diligence procedures that may otherwise be required under FinCEN's February proposal.

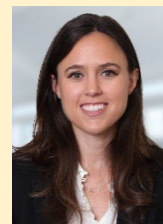
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