



April 12, 2024

Submitted online through <https://www.regulations.gov>

Andrea M. Gacki
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
Washington, DC 20220

RE: RIN 1506-AB58: Anti-Money Laundering Requirements for SEC-Registered Investment Advisers and Exempt Reporting Advisers (FINCEN-2024-0006)

Dear Ms. Gacki:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”),¹ I am writing in response to the Financial Crimes Enforcement Network (“FinCEN”) proposal *Financial Crimes Enforcement Network: Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers*, FINCEN-2024-0006 and RIN 1506-AB58 (the “Proposal”).² The Proposal would close a current gap in federal anti-money laundering regulations by adding to the definition of “financial institution” subject to the Bank Secrecy Act those investment advisers that are either registered with the U.S. Securities and Exchange Commission (“SEC”) or exempt from registration but required to report to the SEC as exempt reporting advisers. NASAA supports the Proposal for the reasons outlined herein and encourages its adoption.³ In addition, as discussed below, if FinCEN should later determine that *state*-registered investment advisers are being used (or are attempting to be used) by money launderers, we request that you engage with NASAA so that our members can work with FinCEN to respond to this issue.

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA’s membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² The Proposal is available at <https://www.federalregister.gov/documents/2024/02/15/2024-02854/financial-crimes-enforcement-network-anti-money-launderingcountering-the-financing-of-terrorism>.

³ The Proposal follows up on similar previous FinCEN proposals to apply anti-money laundering rules to SEC-registered advisers and exempt reporting advisers. NASAA supported these proposals as well. See Letter from NASAA President Judith Shaw Re: *Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers* (Nov. 2, 2015), available at <https://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Letter-to-FinCEN-RIN-1506-AB10.pdf>.

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The Bank Secrecy Act and related anti-money laundering regulations promulgated by FinCEN serve an important public policy objective of preventing the U.S. financial services industry from being used for illicit purposes. NASAA fully supports this objective. The Proposal would close a current gap in anti-money laundering regulations by extending certain of FinCEN's current anti-money laundering regulatory requirements, including the establishment of internal anti-money laundering compliance programs and filing of Suspicious Activity Reports ("SARs"), to SEC-registered investment advisers and exempt reporting advisers.⁴ NASAA members engaged with Treasury Department staff on this issue prior to the Proposal's issuance and we acknowledge FinCEN's findings that such illicit activities are occurring and pose a significant risk to the U.S. financial system.⁵

NASAA also acknowledges FinCEN's assessment that, while it is appropriate to extend FinCEN's anti-money laundering rule regime to SEC-registered investment advisers and exempt reporting advisers, it is unnecessary to extend this regime to state-registered investment advisers. FinCEN has not found evidence that state-registered investment advisers are being used as conduits for money laundering and considers this risk to be low.⁶ NASAA agrees that the risk of state-registered adviser participation in money laundering activities should be lower than for federal-covered advisers. State-registered investment advisers have lower assets under management ("AUM") than SEC-registered investment advisers. State-registered advisers also are usually smaller organizations (often composed of a single person) that know all of their customers personally. State-registered investment advisers thus are not typically structured to be easy or efficient tools for money launderers. However, should FinCEN ever find that state-registered investment advisers are being utilized by money launderers, it is our expectation and hope FinCEN would contact us so that our member state securities regulators can work with you to address this issue.

Should you have any questions about this letter, please contact either the undersigned or NASAA's General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,



Claire McHenry
NASAA President and
Deputy Director
Nebraska Bureau of Securities

⁴ The Proposal does not, for example, include FinCEN's current customer identification program requirements as FinCEN intends to work with the SEC on a future joint rulemaking related to this issue. *See* Proposal at n.5.

⁵ *See id.* at nn. 69-84.

⁶ *See id.* at n. 95 ("FinCEN is not proposing to cover State-registered investment advisers because the Treasury risk assessment found few examples of State-registered investment advisers being misused for money laundering, terrorist financing, or other illicit financial activities.").