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FinCEN’s Proposed Rule to Require Investment Advisers to Establish AML Programs

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The U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) recently published a **Notice of Proposed Rulemaking** (the “Proposed Rule”)1 that would extend to certain investment advisers the requirement to establish anti-money laundering (“AML”) programs and report suspicious activity to FinCEN under the Bank Secrecy Act (the “BSA”). The Proposed Rule would also include investment advisers in the BSA’s definition of “financial institutions,” which would require them to comply with the general BSA reporting and recordkeeping requirements applicable to financial institutions. The Proposed Rule has been many years in the making: FinCEN first proposed AML rules for unregistered investment companies in September 2002 and for certain investment advisers in May 2003.2 However, FinCEN withdrew those proposals in November 2008, citing the passage of time as the principal reason for withdrawal.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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