TRANSPARENCY INTERNATIONAL U.S.
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Transparency International U.S.
1100 13th St NW
Suite 800
Washington, DC 20005
info-us@transparency.org
us.transparency.org

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# 3 Takeaways from Treasury's Proposed Rule to Combat Money Laundering in Investment Adviser Sector

On February 13, 2024, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") proposed a new rule to combat money laundering, including laundering of the proceeds of corruption, through the investment adviser sector. The Draft Rule comes nearly 10 years after a related rulemaking was initiated, but never finished. The Draft Rule details both the *types* of investment advisers that would be covered by the proposal, as well as the associated anti-money laundering ("AML") *requirements* for those individuals.

1. **The Draft Rule would apply to investment advisers regardless of whether they are also required to register with the SEC.**

As Transparency International U.S. ("TI US") initially set out in a May 2021 factsheet, AML rules for investment advisers "should cover the full range of advisers to avoid loopholes that allow for exploitation by bad actors." Critically, this included both investment advisers that are required to register with the Securities and Exchange Commission ("SEC"), known as Registered Investment Advisers (or "RIA"s) and advisers that are exempt from registering with the SEC, known as Exempt Reporting Advisers (or "ERA"s).

Fortunately, the scope of the Draft Rule mirrors this approach, adding to the Bank Secrecy Act's definition of "financial institution" both RIAs *and* ERAs as they perform advisory activities (e.g., managing customer assets, providing financial advice, executing transactions for clients). Notably, the definition of "investment adviser" does not extend to investment brokers and dealers or to mutual funds (both already have AML obligations under the Bank Secrecy Act).

2. **Commendably, the Draft Rule would require investment advisers to adopt some AML obligations.**

In an April 2022 letter to the U.S. Department of the Treasury ("Treasury"), TI US and other leading anticorruption organizations called on Treasury to immediately promulgate a rule requiring investments advisers to (1) adopt an AML program that includes ongoing

customer due diligence, (2) for corporate and other legal entity clients, identify each client's beneficial owners, and (3) report suspicious activities to FinCEN.

Laudably, the Draft Rule would require investment advisers to (1) adopt an AML program that includes ongoing customer due diligence, (2) report suspicious activities (in essence, activities that have no business or apparent lawful purpose or are not the sort in which the particular client would normally be expected to engage) to FinCEN, and (3) collect and retain certain information in connection with fund transfers and ensure that certain information pertaining to the transmittal of funds "travel" with the transmittal to the next financial institution in the chain.

3. **Unfortunately, the Draft Rule would not require investment advisers to collect basic information about the people behind their corporate clients.**

Contrary to the requirements proposed by Treasury's recent draft rule to combat money laundering through U.S. residential real estate, and despite Treasury having successfully launched the U.S.'s first beneficial ownership registry just earlier this year, the Draft Rule does not include the essential AML requirement that investment advisers collect or verify basic information about the actual people behind their corporate clients (known as a company's "beneficial owners").

Treasury states that it "anticipates addressing" this requirement in a future joint rulemaking with the SEC and invites comments as to whether it "should" in fact apply such requirements once the joint rulemaking is completed. Should Treasury fail to ultimately incorporate this requirement, it would leave unnecessary risks to the U.S. financial system and leave the United States noncompliant with the relevant, global standards established by the Financial Action Task Force.

**For questions or comments, please contact:**
Scott Greytak, Director of Advocacy
Transparency International U.S.
sgreytak@transparency.org
+1 202-642-1515