AICPA

April 15, 2024

Ms. Andrea Gacki
Director
Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183
Attn: Docket Number FINCEN-2024-0006 and RIN 1506-AB58

Re: 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

Dear Director Gacki:

We appreciate the opportunity to comment on FINCEN-2024-0006 and RIN 1506-AB58, Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers as proposed by the Financial Crimes Enforcement Network (FinCEN) on February 15, 2024.

We are writing to provide feedback on the proposed ruling under FINCEN 2024-0006, specifically addressing concerns regarding the implications of the proposed regulations on Registered Investment Advisers (RIAs), particularly those of smaller scale.

The proposal's reliance on Assets Under Management (AUM) as the sole determinant for regulatory thresholds overlooks the practical considerations of the size and capacity of RIAs, particularly smaller firms. While AUM is a commonly used metric for compensation, it may not accurately reflect the complexity or scale of a firm, especially when AUM is primarily derived from a small number of clients. Thus, we suggest that regulatory thresholds be evaluated based on a combination of factors, including the number of employees and average AUM per client to better apply to firms with the capacity to take on the additional compliance work. For example, it is common for SEC registered firms to be solo-practices or only have few employees, making the proposed regulation overly burdensome to them. We would suggest that a firm with a staff of 20 could comfortably absorb the proposed compliance requirements.

Moreover, the introduction of additional regulatory requirements, such as independent verification obligations, imposes a significant administrative burden on small RIAs. This is especially troublesome when the addition of this regulation regarding independent verification obligations is a duplication of the same efforts already performed by the RIA’s custodians. As such, RIAs whose client investments are held by an account custodian should be exempt from the proposed regulation. This would avoid regulatory duplication and place the compliance burden on the entity providing the client account, rather than a third-party RIA merely advising on the account.

The cumulative impact of regulatory requirements on small RIAs cannot be overlooked. As regulatory burdens continue to mount, smaller firms face heightened challenges in maintaining compliance, thereby potentially deterring new entrants, and limiting competition within the industry. This not only undermines innovation and diversity within the RIA sector but also has broader implications for financial inclusion efforts with the public, as smaller RIAs often play a vital role in serving diverse populations and fostering closer relationships with clients.

Considering these concerns, we urge FinCEN to carefully reassess the proposed regulations to ensure that they strike an appropriate balance between regulatory objectives and the practical realities faced by small RIAs. Any regulatory framework should aim to support, rather than hinder, the ability of smaller firms to thrive and contribute positively to the financial services landscape. Failure to do so risks undermining the broader public interest by limiting access to personalized financial services and stifling innovation and diversity within the industry.

Thank you for the opportunity to comment on the proposed rules and please reach out to us with any questions or to discuss any of the above-mentioned comments and suggestions in further detail as the Office of Regulations and Interpretations works through this rulemaking. For any questions or clarification, please contact Kate Kiley, Director of Congressional and Political Affairs at Kate.Kiley@aicpa-cima.com, or at 202-434-9219, or Dan Snyder, AICPA Director of Personal and Financial Planning at Dan.Snyder@aicpa-cima.com or 919-402-4064.

Sincerely,

Brooke Salvini, CPA, PFS, CFP®
Chair, AICPA Personal Financial Planning Executive Committee

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