

United States Senate

WASHINGTON, DC 20510

March 30, 2022

Hon. Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Dear Secretary Yellen:

We write to urge the Financial Crimes Enforcement Network (FinCEN) to revise and reissue, as necessary, proposed rules from 2015 on anti-money laundering (AML) and suspicious activity report filing requirements for investment advisers. In doing so, we urge FinCEN to use its discretionary authority to include investment advisers in the definition of “financial institution” in the Bank Secrecy Act (BSA), which would require them to file currency transaction reports and keep certain records related to the transmittal of funds. Finally, we urge FinCEN to work with the Securities and Exchange Commission (SEC) to ensure adequate examination of the industry for AML purposes.

Investment advisers are exempt from requirements to maintain AML programs, verify the identities of their customers, and report suspicious transactions to FinCEN. Other financial institutions like banks, broker-dealers, mutual funds, futures commission merchants, introducing brokers in commodities, and insurance companies, among others, have been subject to these requirements for decades. According to the SEC’s Investment Adviser Information Reports, during just the last ten years, assets under management attributed to registered investment advisers has ballooned from approximately \$44 trillion to approximately \$113 trillion, raising fresh questions of whether FinCEN should eliminate these special exemptions.

The private funds segment of the asset management industry may be particularly attractive for money launderers and sanctioned persons due to existing regulatory gaps. In an Intelligence Bulletin from May 2020, the FBI indicated with high confidence that “threat actors likely use private placement of funds, including investments offered by hedge funds and private equity firms, to launder money, circumventing traditional AML programs.” Press reports have confirmed the FBI’s assessment. According to an article in BuzzFeed, a prominent Russian oligarch has used opaque corporate structures to invest at least \$1.3 billion with private funds managed by U.S. investment advisers. And according to the New York Times, this very same oligarch made up to 100 investments in hedge funds and private equity funds managed by the nation’s largest asset managers, which allegedly did not confirm the source of these funds.

While the largest advisers to private funds may voluntarily implement AML programs, those advisers are not subject to regular examinations to test the adequacy of their programs. No government agency currently holds advisers accountable for adhering to their voluntary AML and sanctions compliance commitments. By contrast, banks, broker-dealers, and insurance companies are subject to periodic examinations to spot violations of the BSA and any compliance weaknesses.


Last month, FinCEN issued an alert warning financial institutions to be vigilant against attempts by politically exposed Russians to launder money, evade sanctions, and hide their assets. Requiring advisers to establish AML programs, report suspicious activity, and file currency transaction reports, among other requirements, would go a long way towards deterring these individuals—and other illicit actors—from using private equity funds, hedge funds, venture capital funds, credit funds, real estate funds, and other private pools of capital to enter the U.S. financial system. Following Russia’s unprovoked invasion of Ukraine, the United States has worked with its allies and partners to find the assets of sanctioned Russian oligarchs. However, loopholes and vulnerabilities in our financial reporting laws have made it increasingly challenging for federal investigators to identify where oligarchs and other criminal actors are placing their assets. Holding investment advisers to the same AML standards applicable to other financial institutions would help achieve this important national security objective.

In August 2015, FinCEN proposed rules to do just that. The proposal would have closed existing regulatory gaps by requiring investment advisers to implement and maintain AML programs. In the preamble to the proposal, FinCEN noted that “[a]s long as investment advisers are not subject to AML program and suspicious activity reporting requirements, money launderers may see them as a low-risk way to enter the U.S. financial system.” The recent FBI assessment, press reports of potential sanctions evasion by Russian oligarchs, and FinCEN’s own alerts to financial institutions demonstrate that these concerns may have become more acute in the years since FinCEN proposed these rules. We are pleased that the Administration shares these concerns as described in the United States Strategy on Countering Corruption in December 2021, which commits Treasury to re-examining the proposed rules from 2015. President Biden has rightly proposed additional funding for FinCEN to address the growing regulatory and enforcement demands on the agency, and we look forward to working with our colleagues to provide expanded resources in the fight against financial crime.

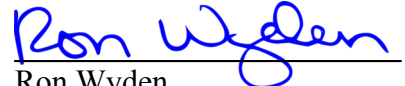
Investment advisers have an important role to play in safeguarding the U.S. financial system from crime. They can be valuable partners for FinCEN as it seeks to meet our enormous challenges to combat not only money laundering, but also fraud and other financial crimes. Such a partnership is also important to ensure the effectiveness of U.S. sanctions programs, which have expanded significantly during the pendency of FinCEN’s rulemaking. Accordingly, it is critical that rigorous AML and sanctions compliance standards be extended to investment advisers.

For these reasons, we respectfully request that you move as quickly as practicable to address this weakness in the AML system. We appreciate FinCEN’s efforts this year on a variety of fronts and amid competing priorities, including drafting and publishing several new rules to implement the Anti-Money Laundering Act and Corporate Transparency Act of 2021. Thank you for your attention to this critical matter, and we look forward to your reply.


Sincerely,



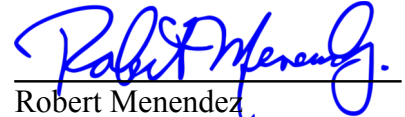
Jack Reed
United States Senator



Ron Wyden
United States Senator



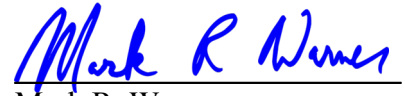
Richard J. Durbin
United States Senator



Robert Menendez
United States Senator



Sherrod Brown
United States Senator



Mark R. Warner
United States Senator

cc: Hon. Gary Gensler, Chairman, Securities and Exchange Commission
Mr. Himamauli Das, Acting Director, Financial Crimes Enforcement Network