

April 8, 2025

By Electronic Transmission

Andrea Gacki
Director, Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Re: *Request to Delay Compliance Date for Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Reporting Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers; RIN 1506-AB58*

Dear Ms. Gacki:

The Investment Company Institute¹ is writing to request that the Financial Crimes Enforcement Network (FinCEN) delay the compliance date for the AML/CFT Program and Suspicious Activity Reporting Requirements for Registered Investment Advisers and Exempt Reporting Advisers² (the “Rule”) until at least 18 months after the related proposed rulemaking on customer identification programs for advisers³ is finalized. This extension will provide advisers with adequate time to complete implementation in an orderly manner with a full understanding of all required elements of a compliant AML/CFT program. With respect to the Rule, we also request that FinCEN eliminate duplicative burdens on advisers and other financial institutions, facilitate risk-based approaches to compliance, permit advisers to avoid duplicative AML/CFT activities without requiring formal contractual delegations in certain circumstances, clarify advisers’ obligations when they have limited customer information, and clarify obligations for certain non-U.S. advisers.

¹ The [Investment Company Institute](https://www.ici.org) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$39.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional \$9.3 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

² Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, Financial Crimes Enforcement Network, Treasury, 89 Fed. Reg. 72156 (Sept. 4, 2024) (“Adopting Release”), available at <https://www.federalregister.gov/documents/2024/09/04/2024-19260/financial-crimes-enforcement-network-anti-money-launderingcountering-the-financing-of-terrorism#footnote-1-p72156>. Registered investment advisers and exempt reporting advisers are referred to collectively herein as “advisers.”

³ Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers, 89 Fed. Reg. 44,571 (May 21, 2024) (“CIP Proposal”), available at <https://www.govinfo.gov/content/pkg/FR-2024-05-21/pdf/2024-10738.pdf>.

Section 1: FinCEN Should Delay the Compliance Deadline for the Rule

ICI has been actively engaged with our members on implementation since the Rule was adopted in August 2024. We lead a working group focused on AML/CFT issues, have held numerous one-on-one member calls, and have consulted with expert outside counsel. Through this work, it has become clear that advisers need additional time to implement the Rule in an orderly, resource-efficient manner.

FinCEN and the Securities and Exchange Commission (SEC) jointly proposed customer identification program (CIP) requirements for advisers shortly after FinCEN proposed the Rule. ICI and other commenters, as well as SEC Acting Chairman (then Commissioner) Uyeda, stressed the interconnectedness of the two rulemakings and provided recommendations regarding their sequencing.⁴ FinCEN acknowledged the interrelated nature of the Rule and the CIP Proposal, stating, “FinCEN intends for this [R]ule and a CIP final rule to have the same compliance date, and any obligation for investment advisers to collect the beneficial ownership information of legal entity customers to not be effective until a CIP rule is finalized and until the [customer due diligence (CDD) rule] applicable to covered financial institutions is revised.”⁵ To date, however, the CIP Proposal has not been finalized, and the Rule’s compliance date is less than eight months away.

Because of this interrelatedness, it is critical that FinCEN and the SEC provide sufficient time to implement the Rule and any related CIP obligations after they are finalized. CIP is a foundational element of an AML/CFT program.⁶ A failure to delay the Rule’s compliance date will effectively result in duplicative implementation costs, as advisers will first need to implement an incomplete AML/CFT program and then later implement a CIP program, potentially having to rework other established elements of their AML/CFT program. These costs are significant and should be evaluated in light of Executive Order 14192, which directs that the total incremental cost of new regulations being finalized for this fiscal year “be significantly less than zero,” and the Executive Memorandum titled “Regulatory Freeze Pending

⁴ “This explicit interrelatedness is the precise reason that the scoping question should be addressed through a two-step process. First, determine the scope of investment advisory services that should be covered under the BSA, which is the subject of the FinCEN Proposed Rule. Second, determine how a CIP should be applied with respect to that set of investment advisers, which is the subject of this proposed rule. [...] Otherwise, it becomes difficult to provide a thoughtful economic analysis for this rulemaking. It also dilutes the quality of public comments submitted in response to the proposal. Commenters seeking to analyze this proposal have no way of knowing the baseline against which the requirements of the proposal should be assessed.” Statement on Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers, SEC Commissioner Mark T. Uyeda (May 13, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-cip-registered-investment-advisers-exmpt-reporting-advisers-051324>.

⁵ Adopting Release at 72195. It is anticipated that applicable CDD rules will be revised in connection with a mandate under the Corporate Transparency Act.

⁶ Customer identification provides the basis for various AML/CFT program elements, such as know-your-customer (KYC) and customer risk characteristics and assessments, transaction pattern monitoring in support of Suspicious Activity Report (SAR) filings, and Travel Rule originator compliance, among other elements, as these obligations all require fulsome CIP data. It is impossible for advisers to know the scope of their “customers” covered by the Rule until the CIP rule is finalized. For example, based on the CIP Proposal, it is not clear how ERISA accounts will be treated by the Rule and any final CIP rule.

Review,” which directs executive agencies to consider delaying the effectiveness of certain rules.⁷ FinCEN recently cited Executive Order 14192, among other authorities, in its interim final rule release exempting U.S. companies from beneficial ownership information reporting requirements. FinCEN acknowledged that the recent executive orders have “resulted in a reassessment of the balance struck” by the beneficial ownership reporting rule.⁸ We encourage FinCEN to similarly reassess the costs and benefits of the Rule and its current compliance deadline.

Uncertainty regarding the status of the Corporate Transparency Act (CTA) also exacerbates these challenges. FinCEN has indicated that advisers will eventually be subject to CDD requirements related to the beneficial ownership of legal entity customers, but ongoing litigation regarding the status of the CTA has created further uncertainty.

It is also clear that the Rule raises significant interpretive and operational challenges, and even with final resolution of open issues regarding CIP and CDD obligations, the current 12-month compliance period is insufficient. For example, some members may be considering implementing compliance and/or technological systems provided by third-party vendors or service providers to enhance their AML/CFT programs. We understand that currently such technological systems are not broadly available for advisers (unlike, for example, banks). Aspects of the Rule may also require advisers to renegotiate hundreds of contracts with other financial institutions or service providers. An extension of the compliance date would allow advisers to thoughtfully implement all aspects of the Rule.

Accordingly, we request that FinCEN delay the compliance date for the Rule until the final compliance date for the CIP rulemaking, which should be at least 18 months after adoption of a CIP rule for advisers, so that advisers can fully understand and assess their obligations and concurrently implement the AML/CFT program and CIP requirements in an orderly manner.

Section 2: FinCEN Should Clarify Certain Aspects of the Rule

ICI strongly supports FinCEN’s efforts to protect the U.S. financial system from money laundering and terrorist financing activities and broadly supports the Rule’s objectives. We appreciate that FinCEN made certain changes in the final Rule in response to industry comments. But certain aspects of the Rule continue to raise significant implementation challenges. We request that FinCEN clarify certain aspects of the Rule to alleviate unnecessary, duplicative burdens on advisers.

2.1 Avoid Duplication of Efforts and Facilitate Risk-Based Approaches

ICI appreciates that the Rule exempts mutual funds, collective investment trusts, and certain arrangements that involve a sub-adviser from the scope of an adviser’s AML/CFT program. But other advisory relationships would create a similar duplication of efforts if kept within scope. For example, the typical investment advisory relationship involves multiple financial institutions, including the investment adviser, which manages the client’s assets, and the qualified custodian, which holds and safeguards the client’s assets. The vast majority of advisory client assets are held in accounts of qualified custodians that are

⁷ Exec. Order No. 14,192 (“Unleashing Prosperity Through Deregulation”), 90 Fed. Reg. 9065 (Feb. 6, 2025); “Regulatory Freeze Pending Review: Memorandum for the Heads of Executive Departments and Agencies,” 90 Fed. Reg. 8249 (Jan. 28, 2025).

⁸ See Beneficial Ownership Information Report Requirement Revision and Deadline, Financial Crimes Enforcement Network, Treasury, 90 Fed. Reg. 13688 (Mar. 26, 2025), available at <https://www.govinfo.gov/content/pkg/FR-2025-03-26/pdf/2025-05199.pdf>.

financial institutions already subject to the BSA and related AML/CFT rules.⁹ These banks and broker-dealers are already required to satisfy AML/CFT program requirements, including CIP obligations, with respect to such clients. Under the Rule, however, an adviser would also be required to perform AML/CFT functions with respect to the same clients. Additionally, many sub-advisory relationships would not currently be exempt from either the sub-adviser's or the primary adviser's AML/CFT program under the Rule, imposing a duplicative burden on the adviser and sub-adviser.¹⁰ Additional examples of duplicate, and even triplicate, obligations are included in the Appendix.

FinCEN stated in the Adopting Release that “the flexibility in the risk-based approach can allow an investment adviser that is a portfolio manager in a wrap-fee program or provides advisory services to a separately managed account to appropriately adjust its application of AML/CFT measures based on the presented risk.”¹¹ We request that FinCEN provide additional examples of lower-risk customers, which should include any customer subject to the AML/CFT program of another BSA-regulated financial institution involved in the investment advisory relationship. This guidance would mitigate the duplicative burdens potentially created by the Rule. We also request that FinCEN provide further guidance on how, and in what circumstances, an adviser could “appropriately adjust” its AML/CFT program with respect to such lower-risk customers. For example, we believe that it would be reasonable for an adviser not to undertake duplicative Travel Rule obligations already placed on a customer's custodian (discussed further below). We also believe it would be reasonable for an adviser that solely provides investment management services for a client (e.g., selecting investments) not to undertake duplicative CIP and CDD requirements in light of obligations already placed on another adviser or other BSA-covered financial institution involved in the relationship, such as an introducing broker-dealer.¹²

2.2 Eliminate Contractual Delegation Where Appropriate

The Rule permits advisers to contractually delegate some elements of their AML/CFT programs to service providers, such as broker-dealers, custodians, transfer agents, or fund administrators. In many cases, these service providers are best positioned to perform AML/CFT functions (e.g., because they have the most direct relationship with and knowledge of the customer). We understand, however, that many key service providers, including many custodians, are unlikely to contractually agree to a provision that allows an adviser to “rely” on the service provider to perform the adviser's AML/CFT program obligations, even if the provider is itself subject to identical AML/CFT obligations. The requirement to *contractually* delegate the activities of the AML/CFT function to a service provider imposes an enormous

⁹ This includes qualified custodians that are federally regulated banks, as well as registered broker-dealers. There are also other client arrangements for which, like a collective investment trust, a BSA-covered bank with an existing AML/CFT program serves as trustee (e.g. collateralized loan obligations (CLOs)).

¹⁰ The Rule contains an exclusion that “will permit an investment adviser (acting as subadviser) to exclude from its AML/CFT program another investment adviser (the primary adviser) to which it provides subadvisory services where the subadviser has a direct contractual relationship with the primary adviser and not with the underlying customer of that primary adviser.” Adopting Release at 72,184. A sub-adviser may, however, at times have a contractual relationship with both the primary adviser and the underlying customer and would not be eligible for this exemption. In this circumstance, both the primary adviser and the sub-adviser would be required to include the same customer within the scope of their AML/CFT programs under the Rule.

¹¹ Adopting Release at 72,182.

¹² Such arrangement would be based on a reasonable understanding between the covered entities, where one is best positioned to conduct the AML Program activities (e.g., holds the customer account) and not due to imposition of a contractual delegation.

implementation burden on advisers and industry participants. Unlike a mutual fund complex that may contractually delegate its AML/CFT program activities to a single transfer agent, an adviser may be a party to hundreds of advisory and related agreements with service providers. The costs of this implementation burden greatly outweigh the limited benefits, as many service providers are already performing adequate AML/CFT functions.

We request that FinCEN provide guidance to alleviate this unnecessary burden and instead impose the contractual delegation obligation only in instances where an adviser contracts with a party that is not a BSA-regulated financial institution. Where the other institution *is* a BSA-regulated financial institution that is involved in the investment advisory relationship, FinCEN could clarify, for example, that it would be reasonable for an adviser not to perform AML/CFT functions that are duplicative of AML/CFT functions performed by such BSA-covered financial institution, if the adviser has determined through reasonable due diligence that the other institution is subject to the BSA and AML/CFT regulations thereunder.

2.3 Clarify Advisers' Suspicious Activity Report (SAR), Travel Rule, and Information Sharing Obligations

The Rule requires advisers to file SARs and subjects advisers to obligations under Section 314(a) and the Recordkeeping and Travel Rules. We request that FinCEN provide additional guidance regarding these obligations, because there are circumstances in which an adviser has limited access to relevant data and the adviser's obligations are unclear.

The Rule requires advisers to report certain transactions if they are “conducted or attempted *by, at or through an investment adviser.*” (emphasis added) With respect to SAR filing obligations, we believe it would be reasonable for an adviser to file a SAR if the adviser has knowledge of suspicious behaviors that are known only to the adviser. However, there are other situations in which an adviser's obligations under the “by, at or through” standard are less clear, such as when payment details are not known to the adviser and are known only to the custodian or other counterparty, including instances when an adviser is only provided a statement reflecting the client's current holdings and no further detail on the source of the payment. We request that FinCEN provide additional guidance regarding circumstances in which an adviser would, or would not, be required to file SARs. This guidance is necessary to avoid unnecessary, duplicate filings that may lack sufficient details.

An adviser's obligations under the Travel Rule are also unclear in some circumstances, as are the potential benefits of subjecting advisers to that rule. For example, an adviser may only have access to a payment instruction, and the adviser may pass that instruction to the custodian without facilitating the payment or retaining the payment record. It would be very difficult, and in fact may not be possible, for the adviser in this scenario to satisfy the Travel Rule obligations.

FinCEN should also provide additional guidance regarding an adviser's obligations under Section 314(a). In many cases, a customer's BSA-regulated custodian is best positioned to perform Section 314(a) screening. We request that FinCEN provide additional guidance on an adviser's Section 314(a) obligations and confirm that, in certain scenarios, it would be reasonable for an adviser not to undertake obligations pursuant to Section 314(a) that are duplicative of functions already performed by the custodian (or other applicable BSA-regulated financial institution). For example, we believe it would be reasonable for an adviser to file a 314(a) records match to the extent it carried the customer account record and performed the transaction servicing activities on behalf of the customer, as in these circumstances, the adviser would possess the account records and actual knowledge of the subject of the

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314(a) inquiry and have a high degree of confidence it is reporting an actual match to all elements contained within the 314(a) record. However, in other instances an adviser's obligations are less clear. For example, if an adviser does not carry the account record, but instead outsources the account servicing to another BSA-covered entity,¹³ that entity would have the full details necessary to perform the screening and reporting.

2.4 Clarify Obligations for Non-U.S. Advisers

The final Rule clarifies that it will apply to “advisory activities of foreign-located investment advisers that (i) take place within the United States, including through the involvement of U.S. personnel of the investment adviser, . . . or (ii) provide services to a U.S. person or a foreign-located private fund with an investor that is a U.S. person.”¹⁴ However, the scope of these obligations with respect to certain non-U.S. activities remains unclear. For example, questions remain with respect to the application of the Rule to certain non-U.S. affiliates of covered advisers. We request that FinCEN provide additional guidance regarding the application of the rule to non-U.S. advisers.

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We would be happy to discuss our request in more detail and provide more information. If you have any questions, or if we can be of assistance in any way, please contact us at paul.cellupica@ici.org or kelly.odonnell@ici.org or Erica Evans at erica.evans@ici.org.

Sincerely,

/s/ Paul Cellupica
General Counsel

/s/ Kelly O'Donnell
Director, Industry Operations and Transfer Agency

cc: The Honorable Mark T. Uyeda
The Honorable Caroline A. Crenshaw
The Honorable Hester M. Peirce

Natasha Vij Greiner, Director
Sarah ten Siethoff, Deputy Director
SEC Division of Investment Management

¹³ Certain BSA-covered entities will not share details or confirmation of filings out of “tipping off” concerns, and may be unwilling to provide advisers confirmation on a case-by-case basis, but may be willing to represent that they maintain Section 314(a) filing obligations as part of an AML Program.

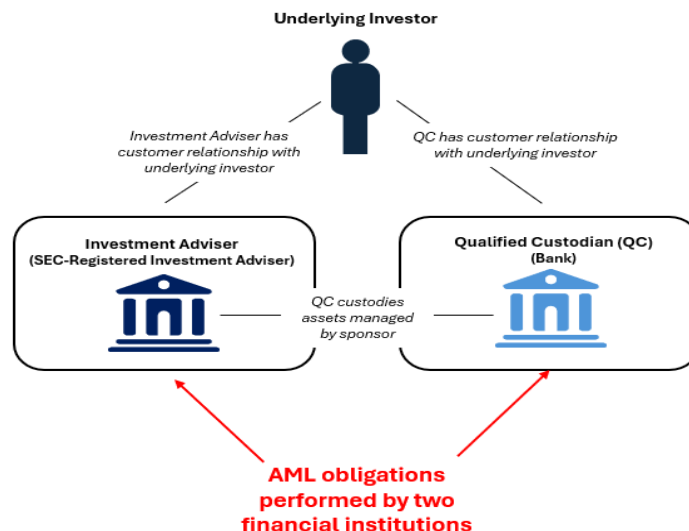
¹⁴ Rule at Section 1032.111.

Appendix

Examples of Duplicate and Triplicate Obligations Under the Rule

Example 1. Investment Adviser has an investment management agreement with Customer to manage Customer’s investments/assets. Investment Adviser has discretionary trading authority over Customer’s assets. Customer does not place trades directly with Investment Adviser, nor does Investment Adviser hold custody of any of Customer’s assets. Customer contracts with a separate Custodian Bank to hold their assets. Custodian Bank is known to Investment Adviser and has provided assurances that Customer assets are held with Custodian Bank. Custodian Bank is a “financial institution” that is also subject to the BSA and is obliged to maintain an AML/CFT program, including a CIP. Custodian Bank conducts the CIP verification requirements with respect to Customer, accepts Investment Adviser’s trading instructions on behalf of Client, processes payments associated with such instructions, and monitors transaction activity within the custodial account for Customer.

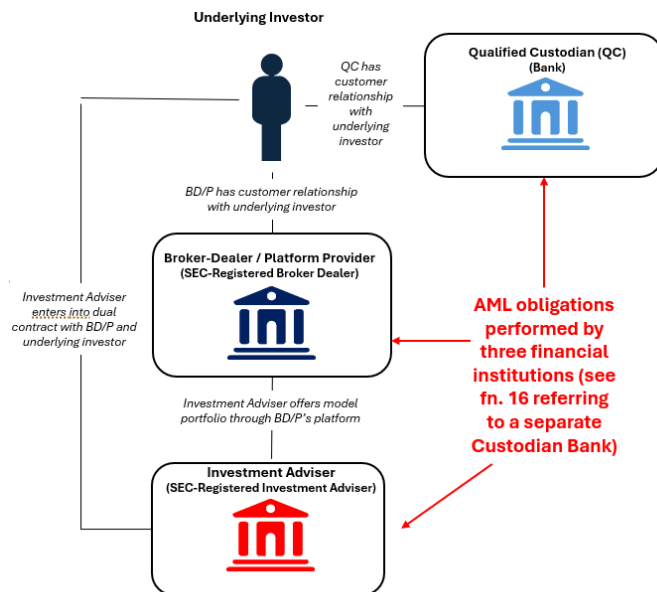
Custodian Bank may not agree to allow Investment Adviser to contractually “rely” on Custodian Bank for, or “delegate” to Custodian Bank, Investment Adviser’s AML/CFT program obligations/activities with respect to Customer. In the absence of a contractually agreed-upon delegation to Custodian Bank (to which Custodian Bank is unlikely to agree), or formal guidance from FinCEN, Investment Adviser would be obligated to perform one or more aspects of the AML/CFT Program with respect to Customer. These activities would duplicate activities conducted by Custodian Bank with respect to Customer.



Example 2. Investment Adviser offers a model portfolio through select wrap program sponsors, referred to here as Broker Dealer/Platform Provider (BD/P). BD/P offers the model portfolio to BD/P’s qualified customers. Customer signs a contract with BD/P, and in select instances, Customer may also sign a contract with Investment Adviser (a “dual” contract). Investment Adviser constructs the model portfolio, while BD/P executes the transactions on behalf of Customer. BD/P maintains custody and oversight of Customer’s account and funds. Investment Adviser maintains investment discretion over the model

portfolio, and may, in the case of a dual contract, trade securities of Customer to ensure the account remains in line with the model.

BD/P is a BSA-covered financial institution and is required to maintain its own AML/CFT Program, including CIP. BD/P conducts CIP and related CDD on its customers (including Customer) and is best positioned to monitor the ongoing transaction activity within Customer’s account.¹⁵ BD/P may be unwilling to contractually permit Investment Adviser to rely on BD/P for, or delegate to BD/P, Investment Adviser’s AML/CFT program obligations. In the absence of contractual delegation to BD/P, or formal guidance from FinCEN, Investment Adviser would be obligated to perform one or more aspects of the AML/CFT Program with respect to Customer. These activities would duplicate activities conducted by BD/P with respect to Customer.¹⁶

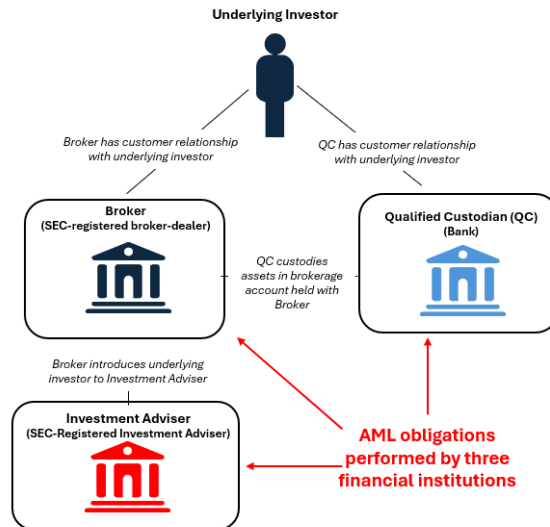


Example 3. Investment Adviser offers advisory services to a high-net-worth Customer. Customer is introduced to Investment Adviser through Customer’s brokerage relationship (Broker). Customer maintains its bank account with a separate, unaffiliated Custodian Bank. Broker maintains the brokerage account for Customer, and Custodian Bank maintains a bank account and transaction/payment history for Customer. In this example, both Broker and Custodian Bank are directly subject to BSA AML/CFT

¹⁵ In some wrap programs, the sponsor (BD/P) does not share identifying information with the Investment Adviser. Rather, BD/P may use an account number to differentiate accounts and may provide only very limited information to the Investment Adviser (e.g., BD/P may provide information such as the Customer’s state of residence to facilitate state notice filings or the Customer’s classification as “high net worth” to facilitate Form ADV disclosure). In these circumstances, it would be impossible for Investment Adviser to perform CIP and related CDD with respect to Customer.

¹⁶ If, rather than BD/P providing custody, the Customer contracted with a separate Custodian Bank, the Custodian Bank would also be subject to BSA AML/CFT program obligations. In this circumstance, in the absence of contractual delegation to BD/P or Custodian Bank, or formal guidance from FinCEN, Investment Adviser would be obligated to perform one or more aspects of the AML/CFT Program with respect to Customer. These activities would *triplicate* activities conducted by BD/P and Custodian Bank with respect to Customer.

program obligations. Requiring Adviser to perform the aspects of an AML/CFT program already being performed by both Broker and Custodian Bank constitutes a triplicate obligation.



Example 4. Travel Rule, Section 314(a) screening, and SAR Filing obligations. Investment Adviser enters into an advisory agreement with Customer. Customer also maintains a bank and custodial relationship with Custodial Bank. Investment Adviser receives a FinCEN Section 314(a) query containing Customer’s identity details, but Investment Adviser does not maintain the Customer’s account or transaction register and is therefore not able to screen its records with respect to the 314(a) target entity. Custodian Bank maintains the Customer record, transaction register, and details of payment history. Custodian Bank receives the FinCEN Section 314(a) query containing Customer’s details as well and replies to FinCEN on the match to its records.

Despite not having the information necessary to respond to the Section 314(a) query, Investment Adviser would have a regulatory obligation under the Rule, as written, to conduct the screening. Any data that Investment Adviser could submit to FinCEN related to its knowledge of Customer’s identity would be duplicative of the data submitted by Custodian Bank in its Section 314(a) filing.

This same fact pattern applies to both Investment Adviser’s Travel Rule obligations and SAR filing obligations under the Rule.