

and terrorist financing activity. The CTA would then develop and implement procedures and controls that would reasonably address each vulnerability and assure compliance with these requirements, and periodically assess the effectiveness of its procedures and controls.

A CTA's vulnerabilities to money laundering and terrorist financing activity are minimal with respect to clients for whom the CTA does not direct accounts. CTAs that direct accounts for some clients may have other clients for whom the CTA provides very different services, such as trading advice, newsletters or research reports. Accordingly, a CTA could exclude from its anti-money laundering program clients for whom it does not direct accounts.

CTAs face higher vulnerability to money laundering when clients place their assets with a futures commission merchant and the funds are directed by the CTA. A CTA's procedures for these clients, for example, would seek to identify unusual transactions whereby clients deposit checks drawn on (or wire transfers made from) accounts of third parties with no family or business relation to the client, or through numerous checks or transfers from one or more issuers or institutions. In addition, a CTA's procedures would identify unusual transactions, such as those involving the subsequent withdrawal of assets from the futures commission merchant through transfers to unrelated or numerous accounts, or to accounts in countries in which drugs are known to be produced or other countries at high-risk for money laundering or terrorist financing.²²

A CTA's vulnerability to money laundering may rise further with respect to clients who make frequent additions to or withdrawals from their accounts held with futures commission merchants. A CTA would need to establish procedures to identify which clients engage in such activity and assess the reasonableness of the additions or withdrawals in light of the clients' investment objectives and the CTA's existing knowledge of the clients' personal finances or business operations.

A CTA faces the highest degree of vulnerability in the event that clients deposit or attempt to deposit assets in their accounts at futures commission merchants in the form of cash. Similar

vulnerability exists if the client establishes custodial arrangements that allow the client to remain anonymous to other intermediaries. The CTA would need to establish procedures to assess whether there are legitimate circumstances underlying the client's request before proceeding with the relationship.

A CTA's program should take into account the extent to which it provides trading advice to pooled investment vehicles. As discussed above, CTAs to pooled investment vehicles that are subject to anti-money laundering program requirements under BSA rules may exclude the vehicles from their anti-money laundering programs. However, a CTA must include other pooled vehicles it advises in its anti-money laundering program.

CTAs providing advice to pooled investment vehicles that are not subject to BSA anti-money laundering program requirements and that are created and administered by a third party,²³ would have little or no information about the investors in the pooled vehicle or their transactions. In this situation, the CTA would need to establish procedures to assess whether the entity that administers the vehicle, or the nature of the vehicle itself, reduces the risk of money laundering. For example, an employee retirement savings plan sponsored by a public corporation that accepts assets only in the form of payroll deductions or rollovers from other similar plans presents no realistic opportunity for money laundering activity, whereas an offshore vehicle not itself subject to any anti-money laundering program requirement would present a more significant risk. The CTA's program would need to analyze the money laundering risks posed by a particular investment vehicle by using a risk-based evaluation of relevant factors including: the type of entity; its location; the statutory and regulatory regime of that location (*e.g.*, if the entity is organized or registered in a foreign jurisdiction, does the jurisdiction comply with the European Union anti-money laundering directives, and has the jurisdiction been identified by the Financial Action Task Force as non-cooperative); and the CTA's historical experience with the entity or the references of other financial institutions. As the entity's potential vulnerability to money laundering increases, the CTA's procedures would need to reasonably

address these increased risks, such as by obtaining and reviewing information about the identity and transactions of the investors in the vehicle.

FinCEN recognizes that some elements of a CTA's anti-money laundering program may best be performed by personnel of these separate entities, such as futures commission merchants. It is permissible for a CTA to delegate contractually appropriate parts of the implementation and operation of its anti-money laundering program to another affiliated or unaffiliated entity. However, the CTA would remain responsible for the effectiveness of the program, as well as ensuring that federal examiners are able to obtain information and records relating to the anti-money laundering program and to inspect the third party for purposes of the program.

Accordingly, the CTA would still be required to identify the particular procedures appropriate to address its vulnerability to money laundering and terrorist financing, and then undertake reasonable steps to assess whether the third party would carry out such procedures effectively. For example, it would not be sufficient simply to obtain a certification from the third party that it "has a satisfactory anti-money laundering program."

Certain CTAs also may be registered in other capacities, including as futures commission merchants or introducing brokers. These CTAs may already have anti-money laundering programs in place.²⁴ FinCEN does not require that such CTA's establish multiple anti-money laundering programs. The same program may apply to an entity that functions as more than one type of financial institution, so long as the program is appropriately designed to address the different risks posed by the different aspects of the entity's business and satisfies each of the anti-money laundering program requirements to which it is subject in each of its capacities.

Policies, procedures, and internal controls also should be reasonably designed to assure compliance with BSA requirements. The BSA currently requires CTAs to report on Form 8300 the receipt of cash or certain non-cash instruments totaling more than \$10,000 in one transaction or two or more related transactions.²⁵ In order to

²² See, *e.g.*, <http://www.state.gov> for International Narcotics Control Reports listing states that are sponsors of terrorism or have narcotics problems, and <http://www.fincen.gov> for FinCEN Advisories identifying countries whose anti-money laundering regimes do not meet international standards.

²³ FinCEN understands that CTAs (acting in their capacity as a CTA) do not create or administer pooled investment vehicles, so that all CTAs advising pooled vehicles that are not subject to an anti-money laundering program requirement would fall within this description.

²⁴ Previously, the NFA issued a rule for its futures commission merchant members and introducing broker members, requiring them to implement anti-money laundering programs. NFA Rule 2-9(c).

²⁵ See 31 CFR 103.30. It should be noted, however, that CFTC Rule 4.30, 17 CFR 4.30, prohibits a CTA that is not also a futures