

anti-money laundering program reasonably designed to prevent the commodity trading advisor from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable provisions of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) (BSA) and this part. The commodity trading advisor may exclude from its anti-money laundering program any pooled investment vehicle it advises that is subject to an anti-money laundering program requirement under another provision of this subpart.

(2) Each commodity trading advisor's anti-money laundering program must be approved in writing by its board of directors or trustees, or if it doesn't have one, by its sole proprietor, general partner, or other persons who have similar functions. A commodity trading advisor shall make its anti-money laundering program available for inspection by FinCEN or the Commodity Futures Trading Commission upon request.

(c) The anti-money laundering program shall, at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the commodity trading advisor from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable provisions of the BSA and this part;

(2) Provide for independent testing for compliance to be conducted by the commodity trading advisor's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03-10841 Filed 5-2-03; 8:45 am]

BILLING CODE 4810-02-P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Investment Advisers

AGENCY: Financial Crimes Enforcement Network (FinCEN), Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: FinCEN is proposing to amend its Bank Secrecy Act rules to require certain investment advisers that manage client assets to establish anti-money laundering programs, to establish minimum requirements for such programs, and to delegate its authority to examine certain investment advisers for compliance with such program requirements to the Securities and Exchange Commission.

DATES: Written comments may be submitted to FinCEN on or before July 7, 2003.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments may be sent to Internet address regcomments@fincen.treas.gov with the caption "Attention: Section 352 Investment Adviser Rule Comments" in the body of the text. Comments may be mailed to FinCEN, Section 352 Investment Adviser Rule Comments, P.O. Box 39, Vienna, VA 22183. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number). **FOR FURTHER INFORMATION CONTACT:** Office of Chief Counsel (FinCEN), (703) 905-3590; Office of the General Counsel (Treasury), (202) 622-1927; or Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622-0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107-56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that

includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 5318(h)(2) authorizes the Secretary of the Treasury (Secretary), after consulting with the appropriate Federal functional regulator, which in the case of investment advisers is the Securities and Exchange Commission (SEC), to prescribe minimum standards for anti-money laundering programs. The Secretary has delegated the authority to administer the BSA to the Director of FinCEN. To date, FinCEN has issued interim final rules prescribing minimum anti-money laundering program requirements for numerous types of financial institutions,¹ has proposed rules for other financial institutions,² and is studying how to design such standards for numerous other types of financial institutions.

FinCEN is today proposing a similar rule for commodity trading advisors, which is published elsewhere in this issue of the **Federal Register**.³

II. Investment Advisers Determined To Be Financial Institutions

The BSA does not expressly enumerate investment advisers among the entities defined as financial institutions under sections 5312(a)(2) and (c)(1).⁴ Nevertheless, the BSA

¹ *Anti-Money Laundering Programs for Financial Institutions*, 67 FR 21110 (April 29, 2002); *Anti-Money Laundering Programs for Mutual Funds*, 67 FR 21117 (April 29, 2002); *Anti-Money Laundering Programs for Money Services Businesses*, 67 FR 21114 (April 29, 2002); *Anti-Money Laundering Programs for Operators of a Credit Card System*, 67 FR 21121 (April 29, 2002).

² *Anti-Money Laundering Programs for Unregistered Investment Companies*, 67 FR 60617 (Sept. 26, 2002); *Anti-Money Laundering Programs for Insurance Companies*, 67 FR 60625 (Sept. 26, 2002); *Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels*, 68 FR 8480 (Feb. 21, 2003).

³ Commodity trading advisors, which are subject to regulation by the Commodity Futures Trading Commission (CFTC), were added to the statutory BSA list of "financial institutions" in section 321 of the Act.

⁴ The BSA definition includes institutions that are already subject to federal regulation such as banks, savings associations, credit unions, securities broker-dealers, and futures commission merchants. Money services businesses (such as money transmitters and currency exchanges) are also defined as financial institutions under the BSA, and, like the former categories, under FinCEN's implementing regulations. The BSA definition also includes dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment bankers; investment companies; and commodity pool operators and