

CHAPTER 13

ANTI-MONEY LAUNDERING REQUIREMENTS

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§ 13.01 Background

Adopted, in part, in response to the September 11 terrorist attacks, the USA PATRIOT Act of 2001¹ expanded existing anti-money laundering legislation—the Bank Secrecy Act of 1970,² by imposing new and far-reaching obligations on a broad range of “financial institutions.”³ Included in that definition are, among others:

- Investment companies⁴ and investment bankers;
- Futures commission merchants, commodity trading advisors (“CTAs”) and commodity pool operators (“CPOs”);
- Persons involved in real estate closings and settlements;

¹ Pub. L. No. 107-56, 115 Stat. 272 (enacted Oct. 26, 2001) (codified as amended in scattered sections of 12, 15, 18, and 31 of U.S.C.S.). The USA PATRIOT Act (“USPA”) is the shorthand name given to “The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.”

² Pub. L. No. 91-508, 84 Stat. 1114-36 (codified as amended at 12 U.S.C.S. §§ 1730d, 1829b, 1951-1959; 18 U.S.C.S. § 6002; and U.S.C.S. §§ 321, 5311-5314, 5316-522) [hereinafter cited as the “BSA”].

³ The USPA primarily applies to “financial institutions,” as defined in the BSA. The relevant provisions of the USPA are contained in Title III, the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, which amends the BSA and related laws. The main purpose of these provisions is to increase the power of U.S. agencies to detect, prevent and prosecute money laundering and the financing of terrorism.

⁴ The term “investment company” has not to date been fully defined by the BSA or any rule yet adopted by Treasury. Currently, these rules only define certain investment companies, *e.g.*, mutual funds, closed-end funds and unit investment trusts (“UITs”). The definition of “financial institution” under the USPA does not specifically include investment advisers. As discussed below, the Treasury, however, has proposed rules that will extend its anti-money laundering requirements to registered investment advisers and unregistered investment companies. *See* §§ 13.02 and 13.03, *below*.

- Broker-dealers (registered or unregistered); and
- Money transmitters.

These obligations require financial institutions and, to a more limited extent, “financial agencies” to adopt policies and procedures reasonably designed to detect and deter money laundering and the financing of terrorism. The USPA provides the U.S. Department of the Treasury (the “Treasury”) with broad authority to impose requirements and restrictions on the operations of these entities.⁵

In this regard, the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) adopted final rules in April 2002 that require mutual funds to establish and maintain anti-money laundering programs.⁶ FinCEN and the SEC jointly adopted a final rule that requires mutual funds to establish and maintain procedures to verify the identity of their “customers” who open new “accounts.”⁷ Rules also require financial institutions to report the receipt of cash payments over \$10,000 in one transaction or one or more related transactions (*i.e.*, “structuring”).⁸

Moreover, in the spring of 2002, the regulators proposed rules to require: (1) investment advisers and unregistered funds to adopt anti-money laundering programs;⁹ (2) open-end investment companies to file “suspicious activity reports”;¹⁰ and (3) mutual funds (and other financial institutions) to exercise

⁵ While most relevant provisions of the USPA apply to “financial institutions,” some also apply to “financial agencies.” A “financial agency” is a person acting as a financial institution, bailee (a holder of property on behalf of a third party), depository trustee, or agent, or acting in a similar way related to money, credit, securities, or gold. *See* 31 U.S.C.S. § 5312(a)(1). It is likely that any U.S. or non-U.S. investment fund or adviser that constitutes a “financial institution” under the USPA will also constitute a “financial agency.” In addition, investment advisers that are not “financial institutions” may also constitute “financial agencies,” depending on their activities within the United States. For example, if an investment adviser holds assets on behalf of a U.S. advisory client pending investment or execution of a discretionary management agreement with that client, the adviser could be regarded as a bailee of that client and therefore as a “financial agency” under the USPA. It is unlikely that investment advisers that are not “financial institutions” and that do not carry on any “financial agency”-type activities within the United States will constitute “financial agencies.”

⁶ 31 C.F.R. § 103.130 (2002).

⁷ 31 C.F.R. § 103.131.

⁸ 31 C.F.R. § 103.23.

⁹ Anti-Money Laundering Programs for Unregistered Investment Companies, 67 Fed. Reg. 60,617 (Sept. 26, 2002). The proposed guidelines are substantially the same as those FinCEN established for mutual funds.

¹⁰ Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Transactions, 68 Fed. Reg. 2,716 (Jan. 21, 2003).

special due diligence with respect to certain correspondent accounts and private banking accounts.¹¹

[1] Definitions

Money laundering is a criminal offense that involves a scheme to conceal the acquisition of “dirty” money through criminal means by introducing it into the financial system for the purpose of commingling “dirty” money with legitimate or “clean” money or activities and, thereby, converting dirty money to clean money to make it appear that the money has been derived from legitimate activity or purpose. For example, drug traffickers or terrorists may hide the sources of funds through a series of transactions that lets them write checks or wire funds through money market mutual funds or bank accounts.

There are three primary stages of money laundering:

- **Placement** — refers to the physical movement of currency or other funds derived from illegal activity to a place or into a form that is less suspicious to law enforcement authorities, and more convenient for the criminal. Investment companies or advisers are not commonly used during the placement stage because they rarely receive significant amounts of currency from or disburse significant amounts of currency to investors.¹²
- **Layering** — refers to creating complex layers of financial transactions to distance illegal proceeds from their criminal sources. Criminals could accomplish layering through mutual fund accounts by sending and receiving money to certain accounts, then wiring it quickly through several accounts at multiple institutions, or by redeeming fund shares purchased with illegal proceeds, and then reinvesting that money in another fund.¹³
- **Integration** — refers to converting illegal proceeds into the legitimate economy or legitimate businesses through normal financial or commercial operations. For example, if a criminal redeemed shares of a mutual fund

¹¹ 67 Fed. Reg. 37,736 (May 30, 2002). Treasury issued an interim final rule deferring that automatic implementation of such special due diligence matters for financial institutions other than (1) banks, (2) (with respect to private banking accounts but not correspondent accounts) securities brokers and dealers, futures commission merchants and introducing brokers. 67 Fed. Reg. 48,348 (July 23, 2002).

¹² See Amendment to the Bank Secrecy Act Regulations—Requirement that Mutual Funds Report Suspicious Transactions, Department of The Treasury, 68 Fed. Reg. 2,716, ns.15-16, and accompanying text (Jan. 21, 2003).

¹³ See Amendment to the Bank Secrecy Act Regulations—Requirement that Mutual Funds Report Suspicious Transactions, Department of The Treasury, 68 Fed. Reg. 2,716, ns.15-16, and accompanying text (Jan. 21, 2003).

that were purchased with illegal funds, then wired the proceeds to a bank account, the transfer would appear to be legitimate from the bank's point of view.¹⁴

Mutual funds present risks for money laundering, because they are widely held, easy to access, and investors can easily redeem their shares into cash. For example, money market funds typically offer check writing privileges, and function much like bank accounts. Money launderers are more likely to use mutual funds in the “layering” and “integration” stages, when the funds are less immediately identifiable than they are at the “placement” stage.¹⁵

[2] Legislative History

[a] Bank Secrecy Act of 1970 Congress enacted the BSA in response to evidence from law enforcement representatives that policies preventing banks from disclosing confidential account information were hindering their investigations of organized crime and other criminal activities.¹⁶ The BSA's stated purpose, until September 11th, was to assist in detecting and preventing criminal activity by creating a paper trail from financial institutions back to criminal organizations.¹⁷

The BSA authorizes the Treasury to require banks and other financial institutions to keep certain records of financial transactions that are considered useful in criminal, tax and regulatory investigations.¹⁸ In addition, the BSA authorizes the Secretary of the Treasury to require financial institutions, and, in some cases, other businesses and private citizens, to file reports on certain financial transactions to make it easier to track criminal activity.¹⁹

¹⁴ See Amendment to the Bank Secrecy Act Regulations—Requirement that Mutual Funds Report Suspicious Transactions, Department of The Treasury, 68 Fed. Reg. 2,716, ns.15–16, and accompanying text (Jan. 21, 2003).

¹⁵ See Amendment to the Bank Secrecy Act Regulations—Requirement that Mutual Funds Report Suspicious Transactions, Department of The Treasury, 68 Fed. Reg. 2,716, ns.15–16, and accompanying text (Jan. 21, 2003).

¹⁶ See Secretary of the Treasury, A Report to Congress in Accordance with Section 357 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 at 5 (Apr. 26, 2002) [hereinafter cited as the “Section 357 Report”]; see also The Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission, A Report to Congress in Accordance with § 356(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Dec. 31, 2002) at 2 (“Section 356(c) Report”).

¹⁷ See Section 357 Report, at n.10.

¹⁸ Section 357 Report, at 3.

¹⁹ Section 357 Report, at 3.

The BSA's initial focus was on banks, and early regulations only covered activities by banks and other financial institutions that offered bank-like services or that regularly dealt in cash. The BSA was amended several times: in 1986 Congress designated money laundering as a crime, and in 1992 Congress authorized the Secretary of the Treasury to adopt regulations requiring financial institutions to establish anti-money laundering programs.²⁰ Before 2001, these regulations required banks and similar financial institutions to take the following actions:

- Keep records related to certain monetary instrument purchases and fund transfers;
- Report currency transactions of more than \$10,000 by, through, or to the financial institution;
- Report the transport of currency across U.S. borders;
- Report certain accounts that U.S. citizens and residents hold at foreign financial institutions; and
- Report suspicious transactions relevant to possible violations of the law.²¹

Current BSA regulations differ in two key respects from their originally intended application. First, the BSA now regulates many kinds of financial institutions other than banks, including broker-dealers, investment companies, futures commission merchants, CPOs, travel agencies and casinos, to name a few.²² Second, the BSA now focuses on required disclosure to federal agencies of information useful in fighting financial crimes, rather than merely ensuring that a paper trail exists from financial institutions back to criminal organizations.

[b] USA PATRIOT Act As an amendment to the BSA, the intent of the USPA is to make it easier to prevent, detect and prosecute money laundering and terrorist financing. Put simply, the USPA directs federal regulators to apply the BSA's anti-money laundering provisions to the expanded list of financial institutions. In effect, the USPA accelerated the implementation of the BSA, and mandated additional safeguards for certain types of financial relationships.

In particular, the USPA amended the BSA to direct federal financial regulators to require investment companies (and other financial institutions) to:

²⁰ See Money Laundering Control Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207; Annunzio-Wylie Anti-Money Laundering Act, Pub. L. No. 102-550, 106 Stat. 3672; see also Section 357 Report, at n.10.

²¹ Section 357 Report, at 6, 7.

²² Prior to 2001, however, regulations implementing the BSA applied only to banks and certain other institutions that offered bank-like services or that regularly dealt in cash.

- Establish anti-money laundering programs (Section 352);
- Adopt customer identification programs reasonably designed to verify the identity of persons seeking to open accounts (Section 326);
- File suspicious activity reports (Section 356); and
- Conduct special due diligence for correspondent accounts and private banking accounts (Section 312).

To date, regulators have issued final rules that require mutual funds to comply with Sections 352 and 326 of the USPA. Final rules for unregistered investment companies and investment advisers have not yet been adopted.²³

[3] Sanctions

The USPA expands the list of offenses that constitute the crime of money laundering to include an additional number of “specific unlawful activities” such as bribery of a public official, misappropriation, theft, or embezzlement of public funds, smuggling and export control violations, and offenses with respect to which the United States would be obligated, pursuant to a multilateral treaty, to extradite the offender or to submit the case for prosecution if the offender were found within the United States.²⁴ In addition, the USPA imposes new civil penalties on any person who engages or attempts to engage in a transaction involving more than \$10,000 in criminally derived proceeds.²⁵ Section 363 amends 31 U.S.C.S. § 5321 to authorize the Secretary to impose on financial institutions a civil penalty of not less than 2 times the amount of the transaction, but not more than \$1,000,000. Violations of the anti-money laundering laws may be subject to criminal penalties including fines or imprisonment.²⁶ Section 373 modifies the scienter requirement of 18 U.S.C.S. § 1960, and the legislative history of the USPA makes it clear that

²³ Financial Crimes Enforcement Network (FinCEN), Anti-Money Laundering Programs for Unregistered Investment Companies, 67 Fed. Reg. 60,617 (Sept. 26, 2002).

²⁴ See 18 U.S.C.S. §§1956 and 1957, two anti-money laundering criminal statutes established by the Money Laundering Control Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207, that for the first time, made money laundering a federal crime. A long list of offenses currently constituting the crime of money laundering include: (1) knowingly helping launder money from criminal activities; (2) knowingly engaging (including by being willfully blind) in a transaction of more than \$10,000 that involves property from criminal activities; and (3) structuring transactions to avoid BSA reporting requirements. Though the standard of knowledge is “actual knowledge,” actual knowledge includes “willful blindness” (*e.g.*, ignoring redflags).

²⁵ USPA § 363 amending 31 U.S.C.S. §§ 5321 and 5322.

²⁶ See USPA § 363 amending 31 U.S.C.S. § 5322 to read, ‘(d) A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318 [the due diligence provisions], or any special measures imposed under 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000.

a 1960 violation is a general intent crime.²⁷ Accordingly, an investment fund or adviser could become subject to penalties by simply failing to identify criminally derived proceeds among its transactions.

§ 13.02 Anti-Money Laundering Programs

[1] Investment Companies

FinCEN approved regulations for open-end investment companies (“mutual funds”) implementing the anti-money laundering (“AML”) program requirements of the USPA.¹ Specifically, Section 352 of the Act requires financial institutions (including mutual funds) to develop an AML program that at a minimum:

- Establishes internal policies, procedures and controls reasonably designed to detect and prevent use of the mutual fund for money laundering;
- Designates an anti-money laundering compliance officer;
- Provides ongoing employee training; and
- Requires independent audits that test the financial institution’s anti-money laundering program.²

Under rules adopted for registered investment companies, an AML program need only be adopted by mutual funds, which is largely based on a recognition by regulators that the other types of registered investment companies (excluding unregistered investment companies, which are discussed separately below) do not pose the same risks of money laundering as do mutual funds.³

²⁷ DOJ *Report from the Field: The USA PATRIOT Act at Work*, (July 2004) (quoted in *United States v. Mohammed Islam Uddin*, 365 F. Supp. 2d 825, 827; 2005 U.S. Dist. LEXIS 10360, at *5 (E.D. Mich. 2004), available at www.epic.org).

¹ See *Anti-Money Laundering Programs for Mutual Funds*, an interim final rule, 67 Fed. Reg. 21,117 (Apr. 29, 2002) (“OEF AML”).

² 31 C.F.R. § 103.130 (2003).

³ See OEF AML at n.5 and accompanying text. Closed-end funds differ from mutual funds in that they do not offer their shares continuously, nor do they redeem their shares on demand. Closed-end funds are sold typically through broker-dealers and do not have account relationships with their investors. Accordingly, the Treasury does not consider them to present substantial risks for money laundering. See Section 356(c) Report, at 15-16. Interval funds are a type of closed-end fund with limited repurchase rights. As investors do not control either the timing or the amount of repurchase offers, the Treasury believes that interval funds do not present significant money laundering risks at this time. See Section 356(c) Report, at 37. The Treasury reached the same conclusion with respect to UITs, which are pooled investment entities without a board of directors or investment adviser that offer investors redeemable units in an unmanaged, fixed portfolio of securities. Since UITs are available only through broker-dealers or life insurance companies, which are subject to AML program and SAR requirements, the Treasury does not recommend new regulations for these

[a] Establishment and Implementation of Written Policies and

Procedures The rules require mutual funds to develop and implement AML programs that are reasonably designed to prevent them from being used to launder money or finance terrorist activities,⁴ and must include the four required elements described above. AML programs, policies and procedures should be clearly set out in writing and included in operations manuals or employee handbooks.

AML programs need not follow a “one-size-fits-all” format.⁵ Rather, the Treasury recognizes that mutual funds should have the flexibility to tailor their programs to reflect the nature and scope of their operations, activities, and risks or vulnerabilities to money laundering.⁶

NOTE Thus, in formulating an AML program, mutual funds and advisers should consider the extent to which their activities provide opportunities for money laundering and tailor their program accordingly.

For example, funds that accept direct investments to their affiliated transfer agent would be subject to different risks from those funds that are sold exclusively through intermediaries, such as broker-dealers. Also, a money market mutual fund with daily subscriptions and redemptions, a large number of investors and low minimum investment requirements is likely to be more at risk from attempted money laundering activities than a private fund with a relatively small number of investors all of whom have significant contact with the investment manager, and high minimum investment requirements.

In most cases, a mutual fund will delegate the responsibility for relevant

investment companies. Notwithstanding the fact that closed-end funds and UITs are under no obligation to establish AML programs, in certain circumstances these funds may still want to establish some comparable “know your customer” procedures in order to maintain a business relationship with their service providers which are subject to the USPA, such as broker-dealers. (NASD Conduct Rule 3011 requires NASD member firms to develop, and a member of the firm’s senior management to approve, programs designed to achieve and monitor compliance with the BSA and related regulations. *See* SEC Act Rel. No. 45798, 2002 SEC LEXIS 1047 (Apr. 22, 2002)). For example, in the case of a registered fund of hedge funds structured as a closed-end fund, the fund may be required by its service providers and underlying investment funds which are subject, directly or indirectly, to the USPA to make certain representations that the fund will conduct due diligence on its investors. *See* Section 356(c) Report.

⁴ OEF AML, 67 Fed. Reg. 21,117, at 21,118.

⁵ OEF AML, 67 Fed. Reg. 21,117, at 21,119.

⁶ OEF AML, 67 Fed. Reg. 21,117, at 21,119.

activities such as dealing with subscriptions, redemptions, collection of investor information and monitoring investor activities to a third party such as an administrator, distributor or placement agent. It is permissible for a mutual fund to contractually delegate the implementation and operation of its AML program to a third party, *e.g.*, a service provider.⁷

NOTE The mutual fund, however, remains fully responsible for the effectiveness of its AML program, as well as ensuring that federal examiners are able to obtain accountholder information and records in compliance with the BSA and to inspect the third party for purpose of the program. As regulatory requirements evolve, compliance programs must be updated to include the associated policies, procedures, training, and testing.

Therefore, mutual funds should review the relative activities of each service provider and determine to what extent a service provider should be responsible for ensuring compliance with the fund's AML program. The scope of delegation may vary among mutual funds or service providers. But, when responsibility for implementing a mutual fund's AML program is delegated to a third party, the mutual fund should obtain or require the following from the third party:

- Written consent from the third party ensuring the ability of U.S. federal examiners to obtain information and records relating to the AML program and to inspect the third party for purposes of the AML Program;⁸
- Representations that such third party has an AML program in place that satisfies those USPA and BSA requirements applicable to the mutual fund that have been delegated to the third party;⁹
- Contractual obligations requiring continual compliance with the program with respect to the services provided to the fund or adviser;¹⁰ and
- Periodic reports on the implementation of the program and any related issues and the ability to monitor and audit the program on a reasonable basis.¹¹

Procedures concerning omnibus accounts can be more limited in scope, as

⁷ See OEF AML, 67 Fed. Reg. 21,117, at 21,119.

⁸ See OEF AML, 67 Fed. Reg. 21,117, at 21,119.

⁹ See OEF AML, 67 Fed. Reg. 21,117, at 21,119.

¹⁰ See OEF AML, 67 Fed. Reg. 21,117, at 21,119.

¹¹ See OEF AML, 67 Fed. Reg. 21,117, at 21,119.

funds typically have little or no information about the identity of the beneficial owners of shares held in those accounts.¹² Nevertheless, mutual funds need to conduct an ongoing assessment of the money laundering risks posed by particular omnibus accounts, and adopt additional procedures if necessary.¹³

[b] Compliance Officer A person or committee must be designated as responsible for the implementation, testing and oversight of the AML program, and provided with complete authority and resources to make and enforce the policies and procedures included in the program (hereinafter, “AML Compliance Officer”).¹⁴ The personnel should be “competent and knowledgeable” regarding BSA requirements and assessing money laundering risks.¹⁵ The AML Compliance Officer should also, through appropriate contractual agreements obtained from service providers, have the ability to monitor or audit the AML program of any third parties participating in the implementation of the mutual fund’s or adviser’s AML program.¹⁶ The person charged with supervising the program should be a fund officer.¹⁷

[c] Ongoing Training Mutual funds should inform and train, as necessary, their officers and personnel (and their affiliated and third party service providers) on how to ensure compliance with their anti-money laundering policies and procedures.¹⁸ The training may be conducted by outside or in house seminars, and may include computer-based training. The level, frequency, and focus of the training may be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activities. In particular, the training program should provide

¹² See OEF AML, 67 Fed. Reg. 21,117, at 21,119 and 21,120. Broker-dealers establish omnibus accounts with mutual funds in their own names, then record share ownership and transactions of their customers, the underlying beneficial owners. Typically, mutual funds do not know the identity of the broker-dealers’ customers, or even specific purchase and redemption transactions, which are netted daily by the broker-dealer in the omnibus account. Broker-dealers using omnibus accounts are also subject to anti-money laundering requirements under rules at the Treasury and NASD. Anti-Money Laundering Programs for Money Services Businesses, 67 Fed. Reg. 2,111 (Apr. 29, 2002); Special NASD Notice to Members 02-21 (Apr. 2002).

¹³ See OEF AML, 67 Fed. Reg. 21,117, at 21,120. Although the Treasury does not expect mutual funds to fully scrutinize omnibus account activity, the funds must evaluate whether particular omnibus accounts, under the circumstances, present unusual risks of money laundering. For example, factors to be considered include the type of entity, its location, type of regulation, and the viability of the entity’s anti-money laundering program.

¹⁴ See OEF AML, 67 Fed. Reg. 21,117, at 21,120.

¹⁵ See OEF AML, 67 Fed. Reg. 21,117, at 21,120.

¹⁶ OEF AML, 67 Fed. Reg. 21,117, at 21,120.

¹⁷ OEF AML, 67 Fed. Reg. 21,117, at 21,120.

¹⁸ OEF AML, 67 Fed. Reg. 21,117, at 21,120.

both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employees' roles and functions in the AML program.¹⁹

For those employees whose duties bring them in contact with possible money laundering activities, the training should occur when the employees assume those duties, but these employees should also receive periodic updates and refreshers regarding the fund's program.²⁰

[d] AML Program Audit A mutual fund should have its AML program independently audited on at least an annual basis. Audit reports should be presented to the fund board for their review and appropriate action taken to address any identified deficiencies.²¹ The audit could be carried out by employees of the mutual fund, its affiliates or unaffiliated service providers so long as those same employees are not involved in the operation or oversight of the program.²² Policies and procedures of the mutual fund need to be reviewed and tested to ensure they are actually being implemented and are working as intended.²³ In addition, the auditor should have access to any third parties to whom the mutual fund has delegated its compliance responsibilities to ensure the third parties' compliance with their AML programs.²⁴

[2] Unregistered Investment Companies

Treasury and FinCEN have proposed rules that would extend the AML program requirement to unregistered investment companies.²⁵ The proposed rules would

(Text continued on page 13-13)

¹⁹ See OEF AML, 67 Fed. Reg. 21,117, at 21,120. FinCEN notes that appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concern, what steps should be followed when suspicions arise, and OFAC and other government lists. OEF AML, 67 Fed. Reg. 21,117, at n.15.

²⁰ See OEF AML, 67 Fed. Reg. 21,117, at 21,120.

²¹ See OEF AML, 67 Fed. Reg. 21,117, at 21,120.

²² See OEF AML, 67 Fed. Reg. 21,117, at 21,120.

²³ See OEF AML, 67 Fed. Reg. 21,117, at 21,120.

²⁴ Comparable regulations applicable to the banking industry require that internal or external auditors should be able to: (1) attest to the overall integrity and effectiveness of management systems and controls; (2) test transactions in all areas of the bank with emphasis on high-risk areas, products and services; (3) assess employees' knowledge of regulations and procedures; (4) assess adequacy of the bank's process for identifying suspicious activity; and (5) require that audit findings be incorporated into board or senior management reports and promptly reviewed and followed. See Comptroller's Handbook, BSA, at 6.

²⁵ Anti-Money Laundering Programs for Unregistered Investment Companies, 67 Fed. Reg. 60,617 (Sept. 26, 2002) ("URIC AML Proposal").