September 14, 2016

*Via Electronic Submission (www.regulations.gov)*

Mr. Jamal El-Hindi, Acting Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

**Re: Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, Docket Number FINCEN-2014-0003, RIN 1506-AB10**

Dear Mr. El-Hindi:

The Investment Adviser Association[1] (IAA) is filing this letter to supplement its previous comment letter with updated data on the investment adviser industry. On November 2, 2015, the IAA filed a comment on the Financial Crimes Enforcement Network's proposal relating to anti-money laundering compliance requirements for certain investment advisers.[2]

In our November 2 comment letter, we asked FinCEN to reconsider the scope of its proposal regarding advisers. In our view, the Bank Secrecy Act (BSA) does not need to extend to *all* investment advisers with respect to *all* of their activities in order to have a comprehensive anti-money laundering regime in the United States. We recommended that FinCEN carefully consider the varying types of advisers and the diversity of their advisory activities and client bases, and seek to extend the BSA only where doing so would fill a potential gap in our nation's anti-money laundering regime.

To illustrate this point, we frequently cited to the *2015 Evolution Revolution* report, which is our annual comprehensive profile of the SEC-registered investment adviser industry. On August 23, 2016, we released the 2016 report, which is attached to this letter. The report includes information on 11,847 advisers that filed their annual reports on Form ADV Part 1 as of April 8, 2016. As you continue to consider whether to adopt the proposal, we thought you might find it helpful to note the updated statistics, listed below with reference to our 2015 letter.

[1] IAA is a not-for-profit association that represents the interests of investment adviser firms registered with the U.S. Securities and Exchange Commission (SEC). The IAA's membership consists of approximately 600 firms that collectively manage approximately $20 trillion for a wide variety of clients that are individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org.

[2] *See Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers*, 80 Fed. Reg. 52,680 (Sept. 1, 2015), *available at* http://www.gpo.gov/fdsys/pkg/FR-2015-09-01/pdf/2015-21318.pdf.

1. **Small advisers**. In 2015, we stated that "[b]y applying an asset-based 'small entity' definition that primarily covers advisers that are not even eligible to register with the SEC (with limited exceptions), FinCEN has not appropriately accounted for the rule's impact on the more than 6,000 SEC-registered advisers that have fewer than 10 non-clerical staff. In considering the economic burden of its proposal, FinCEN should consider these advisers to be small entities and take careful note of the potential ways in which the proposal might disproportionately impact them." In a footnote, we also stated that "less than 8% of advisers registered with the SEC in 2015 reported having less than $25,000,000 under management." (2015 letter, at page 2 and footnote 5)

    - In 2016, 6,725 advisers reported having fewer than ten non-clerical employees, with a median number of nine employees. (2016 report, at pages 27-28)

    - The number of advisers registered with the SEC reporting having less than $25,000,000 under management increased slightly from 914 to 987, now representing about 8.3% of advisers. (2016 report, at page 9)

2. **Custody**. In 2015, we noted that the actual physical custody of the cash and securities in a client's account is maintained by a "qualified custodian," such as a bank or broker-dealer, and that advisers themselves rarely serve as qualified custodians. In a supporting footnote, we stated that only 78 advisers (or 0.7% of advisers) reported acting as qualified custodians in connection with their advisory services. (2015 letter, at page 3 and footnote 8)

    - In 2016, the number of advisers that reported acting as "qualified custodians" in connection with their advisory services dropped to 74, making up only 0.6% of advisers. (2016 report, at page 25)

3. **Qualified custodians**. We explained that the fact that a small number of advisers serve as qualified custodians themselves is not a gap in the AML regime: in cases where the adviser acts as the qualified custodian, the adviser also is either a bank or broker and acting as a qualified custodian in such capacity—not as an adviser. Further, we noted that, in 2015, only a very small number of advisers reported being entities that could be eligible under the so-called "Custody Rule" (17 C.F.R. § 275.206(4)-2) to serve as qualified custodians: only 4% are dually registered with the SEC as investment advisers and broker-dealers, only 0.2% are banks, and only 0.2% are futures commission merchants. (2015 letter, at footnote 8)

    - The number of dually registered firms has declined. In 2016, only 444 or about 3.7% of advisers are dually registered as investment advisers and broker-dealers. The percentage of advisers that are banks and futures commission merchants remains unchanged. (2016 report, at page 32)

4. **Affiliations with qualified custodians.** We also noted that, notwithstanding the assertion in the Proposal that advisers "are often dually registered as a broker-dealer in securities or affiliated with" other BSA-defined financial institutions, our statistics find that less than 21% of advisers report an affiliation with a broker-dealer, and just over 7% report an affiliation with a bank or thrift institution. (2015 letter, at footnote 8)

    - Those figures are slightly down in 2016. This year, 20.6% of advisers reported an affiliation with a broker-dealer and 6.9% reported an affiliation with a bank or thrift institution. (2016 report, at page 31)

5. **Advisers with no assets or clients**. In 2015, we explained that certain advisers provide non-management advisory services, such as nondiscretionary financial planning and publication of securities-related newsletters, impersonal "model portfolios" or research reports, noting that 410 (3.4%) advisers reported that they have no clients and 585 (4.9%) reported having no assets under management. (2015 letter, at page 5 and footnote 12)

    - Those numbers are slightly higher. In this year's report, 442 (3.7%) advisers reported that they have no clients and 623 (5.2%) reported having no assets under management. (2016 report, at page 15)

We hope you find these updated statistics helpful. We also hope that the other information contained in the *2016 Evolution Revolution* report will inform your consideration of SEC-registered investment advisers. As always, we would be happy to discuss the report and our comments on FinCEN's proposal at your convenience. Please contact me or Paul D. Glenn, IAA Special Counsel, at (202) 293-4222 with any questions regarding these matters.

Respectfully,

Robert C. Grohowski
General Counsel

cc: David Grim, Director, Division of Investment Management, SEC
Diane Blizzard, Associate Director, Division of Investment Management, SEC

Attachment