# TREASURY DEPARTMENT WITHDRAWS PROPOSED ANTI-MONEY LAUNDERING RULES FOR UNREGISTERED INVESTMENT COMPANIES, INVESTMENT ADVISERS, AND COMMODITY TRADING ADVISORS

The Financial Crimes Enforcement Network ("FinCEN") of the U.S. Treasury Department ("Treasury") on October 30 announced the withdrawal of proposed anti-money laundering ("AML") regulations that had been pending for more than five years and that would have required unregistered investment companies (e.g., hedge funds), investment advisers, and commodity trading advisors ("CTAs") to implement AML programs. FinCEN cited the "passage of time" as the primary reason for withdrawing the regulations. The proposed AML rules for unregistered investment companies were published in 2002, those for investment advisers and CTAs in 2003.

FinCEN also stated that it will "continue to consider whether and to what extent it should impose requirements under the [Bank Secrecy Act] on these entities" and noted that any subsequent proposals imposing AML requirements would be subject to public notice and the opportunity for comment. A copy of the announcement may be found at http://www.fincen.gov/news_room/.

We do not believe that the announcement is a signal that Treasury has abandoned its interest in AML regulation of hedge funds, advisers, or CTAs. Most of the rest of the financial services industry is already regulated for AML purposes and Treasury is naturally concerned with any perceived vulnerability in the regulatory system.

However, in the short term, Treasury appears to have concluded that its proposed regulations were "stale" and should be revised to reflect developments in these sectors of the financial services industry over the last five years and the enforcement experience of Treasury, the Securities and Exchange Commission (the "SEC"), the Commodity Futures Trading Commission (the "CFTC"), and others with respect to AML regulations already implemented for broker-dealers, mutual funds, and other financial services firms.

The inability to finalize the proposed regulations suggests that Treasury found the task of regulating these entities more complicated than initially anticipated, especially with respect to hedge funds. Most financial institutions already subject to detailed AML rules are also subject to functional regulation and examination by either the SEC, the CFTC, or Treasury Department agencies with direct authority over depository institutions. Under the withdrawn rules, covered financial services firms without a federal functional regulator would have been subject to oversight by FinCEN and/or the Internal Revenue Service – agencies that historically have not had to develop or maintain the level of functional knowledge of these firms that would be necessary for effective AML oversight if AML regulations are adopted.

In the absence of AML regulations specifically directed to these financial service sectors, all U.S. persons, wherever located – including U.S. advisers to offshore funds and accounts – nonetheless remain subject to: (1) U.S. criminal laws that prohibit knowing involvement in transactions involving the proceeds of unlawful activity; (2) Bank Secrecy Act requirements for reporting certain cash or cash-equivalent transactions and the existence of bank or financial accounts located in a foreign country; and (3) U.S. trade and anti-terrorism sanctions regulations enforced by Treasury's Office of Foreign Assets Control that prohibit dealings with embargoed persons and countries. Therefore, we recommend that unregistered investment companies, investment advisers, and CTAs organized or located in the United States, and U.S. citizens involved in the operations of financial services firms located offshore, review or implement policies and practices to avoid violations of these laws.

* * * * * * * * * * * * * * *

If you have any questions regarding this memorandum, please contact Russell L. Smith (202-303-1116, rsmith@willkie.com), Benjamin Haskin (202-303-1124, bhaskin@willkie.com), Barbara Anne Block (202-303-1178, bblock@willkie.com), or the attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099 and has an office located at 1875 K Street, NW, Washington, DC 20006-1238. Our New York telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our Washington, DC telephone number is (202) 303-1000 and our facsimile number is (202) 303-2000. Our website is located at www.willkie.com.

November 3, 2008

Copyright © 2008 by Willkie Farr & Gallagher LLP.

All Rights Reserved. This memorandum may not be reproduced or disseminated in any form without the express permission of Willkie Farr & Gallagher LLP. This memorandum is provided for news and information purposes only and does not constitute legal advice or an invitation to an attorney-client relationship. While every effort has been made to ensure the accuracy of the information contained herein, Willkie Farr & Gallagher LLP does not guarantee such accuracy and cannot be held liable for any errors in or any reliance upon this information. Under New York's Code of Professional Responsibility, this material may constitute attorney advertising. Prior results do not guarantee a similar outcome.