



May 5, 2021

VIA ELECTRONIC SUBMISSION

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: FinCEN Advance Notice of Proposed Rulemaking on Beneficial Ownership Information Reporting Requirements (Docket Number FINCEN-2021-0005, RIN 1506-AB49)

Dear Sir or Madam:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to submit comments to the Financial Crimes Enforcement Network (“FinCEN”) on its advance notice of proposed rulemaking (“ANPRM”) regarding the beneficial ownership information reporting requirements in the Corporate Transparency Act (“CTA”). SIFMA and its member financial institutions commend FinCEN for issuing the ANRPM and for soliciting comments from the public as it considers how best to implement this important new law.

SIFMA strongly supports the objectives of the CTA to protect U.S. national security interests and to better enable efforts to counter money laundering, terrorism financing, and other illicit activity by making it more difficult for malign actors to conceal their ownership of corporations, limited liability companies (“LLCs”), and other similar entities in the United States. SIFMA encourages FinCEN, in promulgating rules implementing the CTA, to remain alert to Congress’s instruction to reduce any burdens on both financial institutions and reporting companies that are unnecessary or duplicative.² To achieve the CTA’s objectives, it is important that FinCEN’s database collect and maintain accurate and reliable beneficial ownership information, with

¹ SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly one million employees, we advocate for legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association (GFMA).

² CTA § 6403(d)(1)(C).

sufficient access given to financial institutions to help them meet their customer due diligence and other anti-money laundering (“AML”) compliance obligations.

In this letter, we focus on three key topics: (1) alignment of the FinCEN database and its requirements with the requirements of FinCEN’s customer due diligence rule (“CDD Rule”); (2) creation of a robust database on which financial institutions can rely, if they so choose, and have access for their CDD Rule and related AML compliance purposes; and (3) FinCEN’s outreach to reporting companies and financial institutions regarding their obligations under the CTA. SIFMA and its member firms – which include broker-dealers and banks with customer due diligence and related AML obligations – believe that focusing on these topics and the related questions that FinCEN has raised in the ANPRM will be critical in ensuring that the FinCEN database is a well-functioning tool that supports law enforcement and financial sector efforts to combat illicit financial activity while mitigating burdens on impacted stakeholders.

I. Harmonization of the FinCEN Database and the CDD Rule

As a general approach to the CTA’s implementation, SIFMA urges FinCEN, wherever possible, to adopt requirements and standards that align with the existing CDD Rule and to harmonize the two sets of rules (and particularly the key definitions that are used in both).³ We urge FinCEN to take this approach for several reasons.

- First, FinCEN should draw on the experiences that it and industry participants have had with the CDD Rule. That rule, to FinCEN’s credit, was developed after multiple requests for comment and reflects significant feedback from a broad range of interested parties. The CDD Rule has now been in place for three years and financial institutions and their legal entity customers have developed an understanding of the rule’s requirements. We urge FinCEN to leverage that collective experience to the greatest extent possible.
- Second, harmonization with the CDD Rule would reduce confusion and ease compliance burdens for reporting companies already familiar with the CDD Rule’s requirements from opening bank, broker-dealer, and other accounts with financial institutions.
- Third, differences in the rules could create gaps in information collection, which would limit the FinCEN database’s effectiveness and frustrate law enforcement, national security agencies, and financial institutions when they seek to access and use the FinCEN database for their respective purposes.

SIFMA recognizes that the CTA calls on FinCEN to revise the CDD Rule only after the effective date of the FinCEN database. Nonetheless, we urge FinCEN to consider that, for financial institutions and their legal entity customers, harmonization of the beneficial ownership database and the CDD Rule’s requirements is crucially important, and these two frameworks should be aligned as closely as possible to avoid conflicting or inconsistent regulatory reporting. We suggest previewing potential changes to the CDD Rule in the forthcoming beneficial ownership

³ See 31 C.F.R. § 1010.230.

reporting rulemaking to facilitate robust industry comment and to ensure close coordination of these inextricably linked sets of rules.

One key area in which FinCEN should ensure that the CTA's requirements are consistent with the CDD Rule is its definitions. For example, as FinCEN notes in ANPRM Question 3, the CTA defines "beneficial owner," in part, by reference to an individual having "substantial control." In response to FinCEN's question, SIFMA believes that this term should be defined and should be aligned, to the extent permitted under the statutory restrictions of the CTA, with the CDD Rule's concept of "control." Each of the reasons that the FinCEN database should be generally aligned with the CDD Rule applies to the key definitions themselves. Stated differently, if the key definitions are not consistent, there will necessarily be gaps and variances between the information collected under the CTA and per the CDD Rule. Such gaps will serve neither reporting companies nor users of the FinCEN database well.

II. Scope of, Reliability of, Access to and Use of the FinCEN Database

SIFMA believes that, to enhance its usefulness and effectiveness, the FinCEN database should collect information from the broadest possible array of legal entities, after appropriately accounting for those legal entities that may take advantage of statutory exemptions, and include robust information about these entities and their relationships with their beneficial owners. Additionally, the information should be kept updated and be verified by FinCEN, and financial institutions should have access to the information.

a. Scope of Information

The FinCEN database will be most useful if its scope is appropriately calibrated. The CTA includes many carefully crafted exemptions to the definition of "reporting company," reflecting a congressional determination of the lower risk profile of these types of entities. SIFMA supports exempting such entities from the reporting requirements of the CTA to allow an appropriate focus on higher-risk legal entity types.

Where an exemption does not apply, we recommend FinCEN interpret the applicability of reporting requirements broadly. Thus, in response to FinCEN's questions about the phrase "other similar entity" in the CTA's definition of reporting company [ANPRM Question #1], SIFMA recommends defining "other similar entity" to encompass all entities created through filings with secretaries of state or other state offices. For example, general partnerships and business trusts created by a filing with a state office should be captured as reporting companies.⁴

Further to the goal of informational completeness (and harmonization with the CDD Rule), FinCEN should collect data points that are required under the CDD Rule but not explicitly required in the CTA. Specifically, we think FinCEN should require reporting entities and associated individuals to submit their U.S. tax identification/social security numbers. Such information may be important for users of the database to confirm the identity of the reporter and

⁴ By contrast, SIFMA believes that the state-chartered non-depository trust companies that FinCEN mentions in Question #1c should not be treated as reporting entities because they are subject to Bank Secrecy Act requirements.

may be helpful to FinCEN to ensure FinCEN does not issue more than one identifier to the same individual or entity, as required by the CTA.

It also would be helpful for reporting companies to provide information on themselves, their organizational structures, and their related parties. This information would be highly useful to authorized users of the database to understand the reporting entity and the relationships between it and its beneficial owners [ANPRM Questions #10-13]. Such information – which could include legal entity type (e.g., corporation or LLC), business line, operating vs. holding company, ownership structure charts, and identification of intermediate entities that stand between the reporting company and the beneficial owner – may be collected by financial institutions on a risk basis. The existence of this information in the FinCEN database would allow users to gain a better understanding of the reporting entity.

FinCEN may also consider making it an option for entities to report their unique legal entity identifier (“LEI”) given by the Global Legal Entity Identifier Foundation. The LEI may serve to verify information provided by the entity, as LEI reference data is validated as part of the required operating model of the global LEI system before an LEI is issued. The LEI is already an optional data point in the form of beneficial ownership certification that FinCEN provided as an appendix to the CDD Rule and could be a helpful component of the data included in the FinCEN database.

b. Reliability of Information

With appropriate allowances for the burdens that may be involved to reporting companies, FinCEN should take steps to ensure that the information in the database is accurate, up-to-date, and reliable. Unless the information in the database satisfies these criteria, the FinCEN database will not meet the CTA’s requirement that it be “highly useful” to authorized users.⁵

To meet this requirement, FinCEN should take steps to confirm the continued accuracy of the database’s third-party information. This could be accomplished by, for example, requiring reporting companies to certify as to the accuracy of the information supplied to FinCEN. There also should be a requirement for reporting companies to update FinCEN promptly if there are any changes to the information that has been supplied to the database [ANPRM Questions #20-21, 23]. Wherever possible, FinCEN should seek to adopt streamlined processes for such reporting and updates in recognition of the congressional directive to minimize burdens on reporting companies.

In addition, FinCEN should take affirmative steps to monitor the database and to resolve data discrepancies. To this end, FinCEN should utilize any and all verification mechanisms available, including from other government agencies, and require reporting companies to supply any missing data and address inconsistent data. Any updates to information in the database should be reported out, subject to proper controls, to database users that previously accessed such entity’s information and have elected to receive updates.

⁵ CTA § 6402(8)(C).

Failure to take these steps may result in conflicts between the information that resides in the database and that is otherwise available to financial institutions and other users of the database. These conflicts may lead to duplicative information requests for reporting companies, create confusion about true ownership of reporting companies, and generally diminish the value of the FinCEN database. Facing conflicting information, financial institutions would need to embark on their own diligence efforts, which would result in additional costs and burdens for both financial institutions and reporting companies. This outcome would contradict the statutory mandate that the database “minimize burdens” on reporting companies and financial institutions alike as well as be “highly useful” to the authorized users.⁶

We think it is also important for FinCEN to clarify that financial institutions do not have an independent obligation to contribute to, confirm, verify, or update third-party supplied information in the database. That is, per the directions of the CTA, financial institutions should be regarded, just like law enforcement and national security agencies, as eligible users of the database and should not have the added responsibility of ensuring its accuracy. Moreover, because reporting companies provide information for the FinCEN database subject to criminal penalty or fine, financial institutions should be able to rely on information in the database without the need for further verification.

c. Accessibility and Use of Information

Following the consent of the reporting company, SIFMA encourages FinCEN to make the information in the database readily accessible to financial institutions to facilitate the effective and efficient use of the database. In particular, we believe that reporting companies should be permitted to pre-authorize specific financial institutions to have access to their information in the database and their FinCEN identifiers. With that pre-authorization, financial institutions should be allowed real-time access to all of the pertinent information on the reporting company (and its related parties) maintained in the database [FinCEN ANPRM Question #35]. Requiring a financial institution to obtain specific approval from the reporting company in each instance of accessing the database would frustrate the purpose of using the database, and the financial institution would likely request the information from the company itself rather than using the database.

Financial institutions also should be permitted access to the database not only for customer onboarding (and related identification and verification), but also for other ongoing AML compliance purposes. For example, financial institutions may use beneficial ownership information for investigative purposes. We believe regular and open access to beneficial ownership information in the database would facilitate the ability of financial institutions to meet their ongoing risk-based monitoring obligations.

We also think that database access should be provided as seamlessly and in as close to real-time as possible. Such access may be necessary for financial institutions to be able to use the database to meet their pre-account opening and ongoing diligence obligations. Artificial limits on the access granted to financial institutions will minimize the database’s usefulness and result in financial institutions duplicating information collection efforts. Such an outcome would lead to

⁶ CTA § 6402(8)(A), (8)(C).

needless frustration and dissatisfaction, in addition to the increased burden for both reporting companies and financial institutions.

Finally, FinCEN should make clear that financial institutions' use of the database is optional. Financial institutions should retain the flexibility to use the database as a tool or to seek information about customers through other means, based on their own assessments of reliability and efficiencies. Use of the database should not become a requirement or a supervisory "best practice" that forces financial institutions to rely on the database when they believe other processes are more suitable for their and their customers' needs.

III. FinCEN Outreach

FinCEN poses questions regarding its outreach and notification to reporting companies and financial institutions [FinCEN ANPRM Questions #17, 41-43]. SIFMA strongly encourages FinCEN to notify reporting companies of their obligations under the CTA and to create publicly accessible materials describing the new requirements.

New and existing reporting companies are responsible for their accurate and timely compliance, and therefore FinCEN should reach out directly to reporting companies. SIFMA also encourages FinCEN to engage with tribal governments to address the potential impact of beneficial ownership reporting under the CTA on tribal-owned businesses and to ensure outreach to impacted businesses.

One unintended consequence of the CTA's requirements may be that reporting companies become reluctant to provide financial institutions any information beyond what is required for the FinCEN database. As you are familiar, financial institutions are required to have risk-based AML policies and procedures in accordance with their own risk determinations that take into consideration the risk profile of specific accountholders. As such, financial institutions commonly collect information in their due diligence efforts beyond what is statutorily required. To avoid any unintended consequences of the CTA's requirements, FinCEN's communications and outreach should emphasize that financial institutions have their own statutory requirements and risk-based standards that the CTA supplements but does not replace.

FinCEN also should communicate with secretaries of state and other appropriate state authorities so that these agencies can inform corporate organizers of the reporting requirements. We also recommend communication directly with financial institutions and applicable industry groups to ensure financial institutions have opportunities to learn how to gain access to the FinCEN database and adjust their systems for information collection and compliance programs accordingly.

* * *

We appreciate your consideration of our comments and look forward to engaging with FinCEN further on the implementation of the CTA. Please feel free to contact the undersigned at 202-962-7300 or SIFMA's counsel on this matter, Satish M. Kini or Brenna Rae Glanville at Debevoise & Plimpton LLP, at 202-383-8000 with any questions.

Respectfully submitted,

Aseel M. Rabie

Aseel M. Rabie
Managing Director, Associate General Counsel
Securities Industry and Financial Markets Association

Bernard V. Canepa

Bernard V. Canepa
Vice President, Assistant General Counsel
Securities Industry and Financial Markets Association