February 14, 2022

VIA ELECTRONIC SUBMISSION

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

> **Re:** **Review of Bank Secrecy Act Regulations and Guidance (Docket No. FINCEN-2021-0008)**

Dear Sir or Madam:

The Securities Industry and Financial Markets Association ("SIFMA")[1] commends the Financial Crimes Enforcement Network's ("FinCEN") ongoing efforts to modernize the anti-money laundering and countering the financing of terrorism ("AML/CFT") regime to protect U.S. national security in a cost-effective and efficient manner.

We would like to direct you to our previous comments (attached) that, to the extent they have not already been addressed, are helpful to FinCEN's request for information.[2] In 2017 and in response to Executive Orders 13771 and 13722, we suggested reforming the general AML/CFT framework to account for new and different types of risks than what existed when the Bank Secrecy Act was enacted over 50 years ago.[3] We identified several areas for review, and we appreciate that FinCEN has addressed, or is in the process of addressing, some areas already, like expanding the scope of Section 314(b)'s safe harbor for information sharing and the recently proposed pilot program to permit sharing suspicious activity reports with non-U.S. affiliates.[4] Other areas remain to be addressed, including the filing thresholds for various reports that have

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[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] *See,* Review of Bank Secrecy Act Regulations and Guidance, 86 FR 71201 (Dec. 15, 2021).

[3] SIFMA Comment Letter on Review of Regulations (July 31, 2017), https://www.regulations.gov/comment/TREAS-DO-2017-0012-0069

[4] *See*, FinCEN, Section 314(b) Fact Sheet (Dec. 2020); SAR Sharing Pilot Program, 87 FR 3719 (proposed Jan. 25, 2022).

remain unchanged for decades, do not make sense for particular types of institutional businesses, and result in voluminous reports with little benefit to law enforcement and regulators. We hope that our comments on the Customer Due Diligence ("CDD") Rule will be addressed in the upcoming rulemaking mandated by the Anti-Money Laundering Act of 2020. There may be additional aspects of the rule that need to be changed or clarified, but it is difficult to provide comments at this time without knowing how the CDD rule will be revised. We fully support a rule that is efficient and effective while not imposing undue costs and regulatory burdens on financial institutions. We also direct you to our recently filed letter on the Beneficial Ownership Information Reporting Requirements proposed rulemaking and how we believe the CDD rule should be revised vis-à-vis the Beneficial Ownership database.[5]

More recently, in our comments on FinCEN's advance notice of proposed rulemaking to implement an AML program effectiveness standard, we said that an effective AMT/CFT regime would provide financial institutions with greater flexibility in how they allocate resources to support their AML programs more effectively and efficiently.[6] Prescriptive requirements are not the right approach and industry-specific considerations need to be taken into account in developing the regulatory framework for AML programs. For example, the required data elements for customer identification programs ("CIP") run counter to a risk-based approach, requiring information that could be obtained from trusted vendors rather than clients.[7] Financial institutions should be afforded flexibility to focus on risks specific to their business, and encouraged to embrace technologies, like artificial intelligence, that can make their AML programs more efficient and effective and generate information with a high degree of usefulness to law enforcement.

Lastly, the Bank Secrecy Act Advisory Group ("BSAAG") is a valuable resource for FinCEN to utilize in this effort. SIFMA and its members participate on various subcommittees and provides input that way.

We appreciate FinCEN taking into consideration our comments and we look forward to engaging with you on this effort.

Sincerely,

Bernard V. Canepa

Bernard V. Canepa
Managing Director and Associate General Counsel
Attachments

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[5] SIFMA Comment Letter on Beneficial Ownership Information Reporting Requirements (Feb. 7, 2022), https://www.regulations.gov/comment/FINCEN-2021-0005-0411

[6] SIFMA Comment Letter on Anti-Money Laundering Program Effectiveness (Nov. 16, 2020), https://www.regulations.gov/comment/FINCEN-2020-0011-0095

[7] For example, financial institutions should be able to collect the first four digits of a client's SSN and obtain the full number from a trusted non-documentary verification vendor. In addition, FinCEN should retire prescriptive requirements that are obsolete, like the Section 326 terrorist list verification requirement since no list has ever been promulgated.