June 9, 2026

VIA ELECTRONIC SUBMISSION
Financial Crimes Enforcement Network (FinCEN)
P.O. Box 39
Vienna, VA 22183

RE: Anti-Money Laundering and Countering the Financing of Terrorism Programs, FINCEN–2026–0034 and RIN 1506–AB72

To Whom It May Concern:

SIFMA[1] writes in support of FinCEN's notice of proposed rulemaking (NPRM) to "fundamentally reform the requirements for financial institutions' anti-money laundering and countering the financing of terrorism (AML/CFT) programs...that better achieve the purposes of the BSA and lead to more effective outcomes…" [2] We also support the proposed enhancement of FinCEN's role in AML/CFT supervision and enforcement. We recommend certain changes below to enhance these proposals and better achieve FinCEN's goals.

We wish to thank FinCEN for incorporating our comments on the 2024 NPRM into this new proposal, which reflects substantial progress towards the Anti-Money Laundering Act of 2020's (AML Act) mandate to modernize the Bank Secrecy Act (BSA) regime, reduce burdens, and stimulate innovation. We look forward to further efforts by FinCEN to modernize other elements of the BSA regime, including currency transaction report (CTR) and suspicious activity report (SAR) reforms, public-private partnership feedback, and innovation. Combined, these efforts will help financial institutions, law enforcement, and national security agencies more effectively combat illicit financial activity. In addition, we appreciate FinCEN's recognition that our members' "…AML/CFT programs safeguard national security and generate significant public benefits by preventing the flow of illicit funds in the financial system and by assisting law

[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] FinCEN, Anti-Money Laundering and Countering the Financing of Terrorism Programs, 91 Fed. Reg. 18704 (Apr. 10, 2026).

enforcement and national security agencies with the identification and prosecution of persons attempting to launder money or undertake other illicit activity through the financial system."[3]

Setting clear expectations is critical to fulfilling the AML Act's mandate and FinCEN's goal to modernize the outdated BSA regime so that financial institutions can more efficiently and effectively safeguard national security and generate significant public benefits. Without clear expectations, a finalized rule could become a matter of form over substance, and financial institutions will never be able to move away from check-the-box compliance that diverts finite resources away from higher risks, or from shifting regulatory expectations that do not result in better outcomes for financial institutions, law enforcement, or national security agencies. Our comments below are intended to help ensure FinCEN's AML/CFT Program Rule accomplishes these worthy goals.[4]

## Executive Summary

- Standards and key terms must be clear and immutable. The preamble contains several helpful concepts that are not incorporated into the regulatory text. Thus, we propose FinCEN incorporate key elements of the NPRM's preamble into the regulatory text, not only for clarity, but also for regulatory certainty. Regulatory rather than preamble text is more binding, enduring, easily accessible and relied upon by practitioners, stakeholders, and examiners.
- Expand and clarify the FinCEN Supervisory Policy to cover enforcement actions by other regulators, not just the defined federal financial institutions regulatory agencies, for consistent application and interpretation of the BSA. Additionally, make the policy transparent and provide a financial institution with the opportunity to present its case.
- Retrain examiners on effective outcomes and enhance the feedback loop between examiners, law enforcement, and financial institutions for greater effectiveness.
- Extend the effective date to 24 months from 12 months, with the proviso that financial institutions can comply before the effective date of the final rule.

## 1. Standards and Key Terms Must be Clear and Immutable

We support FinCEN delineating the requirements for a financial institution to have an effective program and focusing on the maintenance of AML/CFT programs. So that expectations are clear, and flexibility is ensured when financial institutions undertake significant effort and time to transform their existing AML/CFT programs into this new paradigm, and that their

[3] *Id.* at 18709.

[4] For ease and because we write from the broker-dealer perspective, all references to regulatory text cite the broker-dealer provisions but are equally applicable to other financial institutions. Many of our members are in fact part of larger financial institutions organizations with banks and enterprise-wide AML/CFT programs.

programs are judged consistently year after year, FinCEN must clarify and define key terms in the regulatory text.

a. Explicate the Phrase "in all material respects"

Section 1023.210(c) requires a financial institution to maintain an effective AML/CFT program by implementing "in all material respects" the four pillars of a traditional AML/CFT program. This phrase is unclear and could be the subject of debate that moves the goalpost away from the AML Act's goals over the long run. Therefore, we recommend that FinCEN define or otherwise provide a framework for what "in all material respects" means. We provide the following definition to be added to the regulatory text as new Section 1023.210(c)(1)-(3):

> *(1) Failure to implement in all material respects.* For purposes of this paragraph (c), a broker-dealer fails to implement its AML/CFT program in all material respects when deficiencies in the program— (i) are widespread across one or more program components; and (ii) materially impair the broker-dealer's overall ability to identify, monitor, mitigate, or report risks identified as material in the broker-dealer's risk assessment processes.
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> *(2) Presumption of implementation; self-identified gaps.* A broker-dealer is presumed to have implemented its AML/CFT program in all material respects where the broker-dealer's governance and control functions regularly and timely identify material implementation gaps and regularly and timely initiate and implement reasonable steps to remediate the identified gaps.
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> *(3) Totality of the circumstances.* An assessment of whether a broker-dealer has implemented its AML/CFT program in all material respects shall be based on the totality of the relevant facts and circumstances, including but not limited to the considerations identified in paragraphs (c)(1) and (2) of this section.

Setting clear expectations and consistently judging a financial institution's maintenance of its AML/CFT program is essential to achieving the AML Act's goals of focusing on effective outcomes.

b. Resource Allocation Flexibility

We appreciate FinCEN striving to adopt into regulations the AML Act's expectation that financial institutions should be allowed to allocate finite resources from lower-risk customers and activities to higher-risk ones.[5] To make FinCEN's position[6] in the preamble crystal clear that

[5] 31 U.S.C. 5318(h)(2)(B)(iv)(II). Under proposed Section 1023.210(b)(1)(ii), a broker-dealer, for example, establishes an AML/CFT program if its policies, procedures, and controls mitigate its AML/CFT risks, "…including by directing more attention and resources toward higher-risk customers and activities…rather than [lower-risk ones]…"

[6] *Supra* note 2 at 18717: "The proposed rule envisions financial institutions exercising more flexibility in deploying attention and resources in accordance with the proposed rule without fear of supervisory criticism or action from examiners for directing more attention and resources on higher risk customers and activities rather lower risk customers and activities[,]" and "…Treasury and FinCEN believe that financial institutions are best positioned to

financial institutions have such flexibility and will not be second-guessed under the standard laid out for examiners in the preamble, we recommend that FinCEN make the following changes to Section 1023.210(b)(1):

> Establishes [~~a~~] risk-based [~~set of~~] internal policies, procedures, and controls that ~~is~~ are reasonably designed to [~~ensure~~ promote] compliance with the Bank Secrecy Act and this chapter [~~and to~~ by directing more attention and resources toward higher-risk customers and activities, consistent with the risk profile of the broker-dealer, rather than toward lower-risk customers and activities,] and to:

We believe that these changes are more appropriate in the chapeau language because the mitigation of risks in a flexible manner and at the discretion of the financial institution is rooted in the policies, procedures, and controls that the institution establishes. This makes clear FinCEN's and our members' understanding that they will have flexibility allocating resources and remove any expectation from examiners that allocations will be like-for-like. This is important because, in directing attention and resources to higher-risk customers and activities and innovating their AML/CFT programs to be even more effective, financial institutions are likely to deploy innovative technologies that may reduce, eliminate, or substitute resources. Incorporating these changes will preclude second-guessing by examiners, which is critical because they will be expected "…to assess whether a financial institution's resource allocation decisions are informed by, and consistent with, reasonably designed risk assessment processes."[7] These assessments will be occurring as financial institutions develop and implement new technologies and innovation, including artificial intelligence tools, to assess ML/TF risks, monitor transactions, and scale operations, for example.

c. Flexibility for Assessing Risks

We appreciate the preamble's acknowledgment that assessing risk is a continuous obligation, and that financial institutions may assess risk through a range of interconnected processes, procedures, and controls, not necessarily a single, enterprise-wise risk assessment. For example, in practice, risk identification, documentation, and mitigation often involve multiple inputs – such as product-specific risk assessments, customer due diligence reviews, transaction monitoring, periodic control evaluations, and other risk assessment processes – which collectively inform the institution's overall risk management approach. To better align the rule text with how institutions assess risk in practice, we request the following changes to proposed Section 1023.210(b)(1)(i)(C):

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identify and evaluate their ML/TF risks and to make decisions related to risk identification and resource allocation in accordance with risk identification. The proposed rule, therefore, **does not contemplate regulatory second-guessing of a financial institution's reasonable determinations regarding appropriate resource allocation or conclusions regarding specific risks."** (emphasis added).

[7] *Id.*

> Are updated ~~promptly~~ [as appropriate] upon any change that the broker-dealer knows or has reason to know significantly changes the broker-dealer's money laundering and terrorist financing [~~, and other illicit finance activity~~] risks.[8]

In response to FinCEN's request for comment specifically on when financial institutions must review or update their risk assessment processes, and to ensure flexibility in risk assessments, we request that FinCEN remove the word "promptly" and replace it with "as appropriate." First, "promptly" is vague and subject to interpretation. A financial institution and their examiner could have a healthy debate over the timeframe in which a new risk was incorporated. Second, "as appropriate" provides a financial institution with the flexibility to assess and incorporate new risks, as necessary. This would alleviate concerns that examiners may expect wholesale updates to other risk assessments as well as different expectations and standards that may exist among examiners.[9]

We also request that FinCEN remove "…including products, services, distribution channels, customers, and geographic locations" from the requirement to evaluate the ML/TF risks.[10] This language is not only superfluous given a reasonably designed AML/CFT program identifies and mitigates risks wherever presented by the firm's business activities, but also implies that these elements must be included in a risk assessment process, which is contrary to FinCEN's statement that financial institutions are best positioned to identify their own risks. Moreover, only "products, services, and customers" are "business activities," whereas "distribution channels" and "geographic locations" are risk factors to be considered and not subject to separate risk assessment processes; as currently proposed, there could be an expectation that they would be subject to separate processes.

These changes also reinforce deference to an institution's risk-based and reasonably designed methods. Under this paradigm, examiners should not second-guess how, for example, broker-dealers conduct their risk assessments and what they cover, in line with FinCEN's position that institutions are best positioned to identify and evaluate the risks presented by their business activities.

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[8] With respect to the term "illicit finance," we object to FinCEN's definition in the preamble by reference to section 281(5) of the Countering America's Adversaries Through Sanctions Act ("CAATSA") as "the financing of terrorism, narcotics trafficking, or proliferation, money laundering, or other forms of illicit financing domestically or internationally, as defined by the President." *Id.* at 18704, Fn. 3. While the AML Act did add the phrase "or other forms of illicit finance" to Section 5318(a)(2) of Title 31 of the United States Code, it did not define the term "illicit finance" by reference to CAATSA, which would expand executive branch authority over the scope of the AML/CFT without legislative authorization.

[9] For example, many financial institutions have multiple regulators, and an SEC or FINRA examiner may have different expectations or standards when reviewing the adequacy of a firm's risk assessments than a banking examiner guided by the FFIEC manual, which is inapplicable to broker-dealers.

[10] Proposed Section 1023.210(b)(1)(i)(A).

d. Flexibility for Incorporating AML/CFT Priorities

To enshrine FinCEN's position as stated in the preamble, we request that the proposed requirement to "review and, as appropriate, incorporate the AML/CFT priorities" in Section 1023.210(b)(1)(ii) be amended to "[~~review and,~~ take into consideration, as appropriate [based on the broker-dealer's risk assessment processes], the AML/CFT [P]riorities…".[11] We propose this change to address concerns that financial institutions could still be questioned about their decision to exclude certain AML/CFT Priorities, despite FinCEN's understanding that "the AML/CFT Priorities may not always be applicable to a financial institution's risk profile and activities."[12] Doing so would enshrine FinCEN's position that financial institutions only need to incorporate the AML/CFT Priorities applicable to their risk profile and activities, and provide them more deference as to whether and how the financial institution incorporates the AML/CFT Priorities. For example, since a financial institution cannot make all fraud a priority, it must have the discretion to choose which fraud it will treat as a priority based on its business activities and customers.

e. The Implied Presumption of "Effectiveness"

Per FinCEN, for its AML/CFT program to be effective, a financial institution must establish and maintain, by implementing in all material respects, the AML/CFT program. Thus, it appears there is an implied presumption of effectiveness in Section 1023.210(a), and we request that FinCEN make this presumption explicit and further explicate it. This is essential to the AML Act's and FinCEN's goal of focusing on the effectiveness of AML/CFT program outcomes rather than check-the-box compliance. We recommend that FinCEN add the following language into the regulation as new Section 1023.210(f):

> *Reasonableness.* The AML/CFT program of a broker-dealer shall not be deemed ineffective solely on the basis of its metrics and that it does not detect or report all illicit activity. Anomalous, immaterial, isolated, minor, or technical deficiencies in implementation do not constitute a failure to implement an AML/CFT program so long as the program is reasonably-designed, risk-based, and implemented in all material respects.

By doing so, FinCEN solidifies the implied assumption of effectiveness position that a financial institution which establishes and maintains its AML/CFT program is deemed effective, and that the standard is not one of perfection, but rather reasonableness.[13]

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[11] Proposed Section 1023.210(b)(1)(ii).

[12] *Supra* note 2 at 18716.

[13] *Supra* note 2 at 18712: "Consistent with FinCEN and the Agencies' longstanding expectations regarding what effective outcomes entail, **FinCEN believes that, as a practical matter, it is not possible for a financial institution to detect and report all potentially illicit transactions that flow through the institution**." (emphasis added).

f. AML/CFT Officer: Oversight

We appreciate that FinCEN, in response to comments received on the 2024 NPRM, narrowed the breadth of the AML/CFT program management to an individual residing in the U.S. While this may be a challenge for foreign-based financial institutions operating in the U.S., our members are supportive of this provision, but request minor changes that, operationally, will be particularly beneficial to their program management and thus to the overall goal of reasonably designed, effective AML/CFT programs.

In particular, we request the following changes to proposed Section 1023.210(b)(3)(iii):

> "responsible for [oversight of] [~~establishing and implementing~~] the AML/CFT program [, including establishing program requirements,] and coordinating and monitoring [the first line of defense's] day-to-day compliance …"

This change has a positive, substantive impact for financial institutions: it reinforces that the second line of defense, where the AML/CFT officer sits, sets the policy requirements while the first line of defense – the business – owns the risk. Financial institutions rely on the business, which is closest to their customers and activities, as an essential first line of defense against money laundering and illicit financial activity. It is imperative that the regulations make clear, as employee training programs do, that the first line of defense plays a key role in an effective AML/CFT program.

g. Further Promote Responsible Innovation

In furtherance of incorporating FinCEN's goals as explained in the preamble, we recommend that the concept of "responsible innovation" be incorporated into the regulation's text by adding the following under the new "Reasonableness" section proposed above:

> A broker-dealer will not be subject to an AML/CFT enforcement action or a significant AML/CFT supervisory action for responsibly experimenting with innovative technologies.

Encouraging innovation is crucial to keep ahead of bad actors that are equally adept at using new tools, such as GenAI, to circumvent an institution's controls. We cannot emphasize enough that innovation is not just about efficiency; it is critical to keep pace with, and get ahead of, bad actors. Stymying innovation by unrealistic regulatory expectations leaves the U.S. financial system behind and vulnerable. Our recommendation provides assurances that financial institutions can experiment with and implement new technologies that may not go as planned or produce unexpected results without fear of an examination finding or enforcement action as long as it is done responsibly.

## 2. Clarify and Expand FinCEN Supervisory Policy to Cover Enforcement Actions by Other Regulators, Not Just the Federal Financial Institutions Regulatory Agencies, (as Defined)

FinCEN's proposed supervision and enforcement framework is as important to our broker-dealer members as it is to banks, and we therefore request that it extend to all federal agencies and self-regulatory organizations (SROs) that have supervisory oversight and enforcement authority relating to BSA compliance. This would include the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA).

The justification for a narrow ambit – that the economic effects and incentives would be greatest for banks because of their "companionate regulation"– can apply to broker-dealers as well.[14] The SEC and FINRA have companionate regulation. The SEC can utilize, and has utilized, its recordkeeping rules to enforce the BSA, while FINRA can utilize, and has utilized, its Rule 3310, which requires broker-dealers to develop a written AML program that complies with the BSA. In fact, in three of the past five years, the top enforcement issue against broker-dealers by FINRA has been AML.[15] FinCEN's encouragement that other regulators and compliance examiners focus on significant or supervisory failures rather than immaterial issues is an insufficient guardrail.[16]

When applying the policy more broadly as requested, we also request that FinCEN provide greater transparency in the process and provide a financial institution with the opportunity to present its case, comments made by other trades that we support as applicable to broker-dealers.

## 3. Retraining Examiners and Enhancing Their Role

For all of this to work, FinCEN must encourage examiners to improve their own "effectiveness." It is important that examiners are retrained to focus on AML/CFT program outcomes rather than isolated, technical, or immaterial implementation issues. Feedback loops will be essential as financial institutions, examiners, and law enforcement move in tandem to focus on outcomes rather than check-the-box compliance.

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[14] *Supra* note 2 at 18738-39.

[15] *See,* Eversheds Sutherland, 2025 FINRA Sanctions Study (Mar. 16, 2026), https://www.eversheds-sutherland.com/en/united-states/insights/2025-finra-sanctions-study

[16] *Supra* note 2 at 18739.

4. **The Effective Date Should be 24 Months for Financial Institutions to Realize the Benefits of FinCEN's Modernization Efforts**

Finally, we request that FinCEN extend the compliance date to 24 months from the issuance of the final rule. If enacted, the proposal requires financial institutions to reorient their programs dramatically, including updating their policies, procedures, and controls and building out and testing innovative systems. That will take longer than 12 months. Moreover, the establishment and implementation of financial institutions' AML/CFT programs is dependent upon necessary reforms to the supervisory and examination approaches of federal functional regulators, such as conforming updates to the FFIEC BSA/AML Examination Manual, updates to FINRA Rule 3310, and associated examiner training noted above, all of which are crucial to ensuring that supervisory activities are more productive and the objectives of BSA modernization are realized in practice and not undermined. These actions are expected to happen after the Program Rule is finalized but will take time to complete. Additionally, with other rule modernizations as required by the AML Act and similar efforts that FinCEN is or may be undertaking that will also require updates to AML/CFT programs, a longer period is more efficient to incorporate these changes all at once, rather than piecemeal. It has similar benefits to examiners who will be able to review financial institutions' updates wholistically. That said, FinCEN should confirm that financial institutions can comply with the final rule before its effective date.

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SIFMA welcomes the opportunity to comment on this proposal. Please feel free to contact me should you have any questions regarding our comments or any related matters.

Respectfully submitted,

*Bernard V. Canepa*

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