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October 30, 2023

By Electronic Transmission

Andrea Gacki
Director, Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Re: Agency Information Collection Activities; Submission for OMB Review; Comment Request; Beneficial Ownership Information Reports

Dear Director Gacki:

The Investment Company Institute (“ICI”)¹ provides this comment letter in response to the 30-day notice² (“Notice”) issued by the Department of Treasury (“Treasury”), on behalf of the Financial Crimes Enforcement Network (“FinCEN”), for the beneficial ownership information (“BOI”) report (“BOIR”) information collection request to the Office of Management and Budget (“OMB”) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

ICI appreciates Treasury’s and FinCEN’s continued engagement with stakeholders in seeking to implement the Corporate Transparency Act (“CTA”) in the least costly and burdensome manner for reporting entities and financial institutions.³ ICI continues to urge FinCEN and Treasury to consider the interconnected nature of all three phases of the CTA implementation process. ICI also reiterates that the effects of the first two phases of the implementation process will undoubtedly impact the third phase and the resulting obligations placed on financial institutions to effectively implement the re-written customer due diligence (“CDD”) requirements for collecting beneficial ownership information as set forth in 31

¹ The Investment Company Institute (ICI) is the leading association representing regulated investment funds. ICI’s mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$31.5 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$8.8 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, London, and Hong Kong and carries out its international work through ICI Global.

² Agency Information Collection Activities; Submission for OMB Review; Comment Request; Beneficial Ownership Information Reports, 88 FR 67443 (Sep. 29, 2023).

³ The CTA is codified at 31 U.S.C. 5336 et seq.

C.F.R. § 1010.230(b) (“CDD Rule”), as required by the CTA, and additional questions and concerns may arise as a result.

In this regard, although the scope of the Notice is limited to the BOIR and how reporting entities should handle incomplete or unknown elements of BOI, FinCEN should consider the ancillary matter of how financial institutions will ultimately be encouraged or required to use the information in the BOI database in meeting their CDD obligations. ICI submits the following comments.

A. Consideration of Incomplete BOIRs in Meeting CDD Obligations

ICI is not taking a view on whether the BOIR should include an “unknown” option or specific dropdown explanatory tabs for incomplete or unknown BOI. Rather, ICI respectfully requests that FinCEN clarify financial institutions’ obligations in accessing the BOI database, particularly if reporting entities are permitted to submit incomplete BOIRs. As discussed above, although not directly relevant to the Notice, the BOI database access requirements and the forthcoming amendments to the CDD Rule will need to consider the effect of reporting entities submitting incomplete BOIRs. ICI questions what benefit is gained by financial institutions accessing incomplete or inaccurate BOI data. In this regard, ICI urges FinCEN to clarify whether there are future expectations regarding financial institutions’ obligations to access and use the BOI in the BOI database in meeting their CDD Rule obligations. For example, will financial institutions be required to:

- Use the BOI database to validate or confirm customer information provided to a financial institution by a customer during the onboarding process to meet the financial institution’s CDD Rule obligations?
- Report to FinCEN if information provided to it by the customer is inconsistent with the information in the BOI database?
- Continuously monitor changes in the BOI database and update CDD information if the customer’s information is updated in the BOI database?

ICI submits that the answer to all of the above should be in the negative. A financial institution should not be required to access or continuously monitor the BOI database or use the information in meeting its CDD Rule obligations and should not be responsible for notifying FinCEN of inaccurate or inconsistent BOI data. Rather, as discussed in our letter to FinCEN dated February 13, 2023,⁴ financial institution use of the BOI database should be voluntary. Until reported BOI for a reporting entity is complete and certified to be accurate, the reported BOI may be unreliable and would serve no useful purpose to a financial institution in meeting its CDD Rule obligations or in its efforts to prevent the financial institution from being used for money laundering, terrorist financing, or other illicit purposes.

Furthermore, no regulatory obligations should arise out of a financial institution’s use of the BOI database other than applicable confidentiality requirements pursuant to the CTA. In this regard, FinCEN should clarify the obligations of financial institutions when there is a conflict between the BOI database and the information provided by a customer. A financial institution should not have a duty or otherwise be obligated to inform FinCEN of discrepancies in the BOI database and the information it receives from a

⁴ Letter from Joanne Kane, Chief Industry Operations Officer, ICI, and Susan Olson, General Counsel, ICI, to Himamauli Das, Acting Director, FinCEN, regarding *Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities*; Docket Number FINCEN-2021-0005 and RIN 1506-AB49/AB59 (Feb. 13, 2023).

customer. Similarly, a financial institution that identifies a discrepancy between the BOI data received from its customer and the BOI data provided to FinCEN should not be obliged to notify such customer of the discrepancy. Instead, as the BOIR rule requires, it is the responsibility of the reporting entity to ensure its FinCEN BOI data is kept current, accurate, and complete. Here too, ICI requests FinCEN make clear that any regulator that accesses and uses BOIR data for purposes of examining or reviewing financial institutions subject to such regulator's authority may not use any discrepancy in BOIR data as evidence of a financial institution's compliance with its Customer Identification Program and CDD obligations. In addition, a financial institution should have no regulatory obligation or other liability for failing to refresh its internal BOI records if BOIR data is changed at a later date and the financial institution is not informed of such a change by FinCEN. Even if FinCEN establishes a technological solution to notify financial institutions that information in a filer's BOIR has changed, financial institutions should not be obligated to use that information to update customer records.⁵

B. Temporary Relief for Incomplete Forms and "Unknown BOI"

The Notice indicates that a reporting entity's BOI obligations are not satisfied until all required information is complete and accurate, even if the reporting entity uses the "unknown" or dropdown explanatory tabs to submit the BOIR before the relevant reporting deadline.⁶ We request that FinCEN clarify whether a reporting entity's choice to use the "unknown" or drop-down explanatory tabs will extend the deadline for the reporting entity to submit a complete BOIR. Our understanding from the Notice is that it will not, and we request that FinCEN confirm this understanding.⁷ However, if FinCEN intends that submitting an incomplete BOIR will provide a reporting entity with more time to meet its filing obligations, ICI requests that FinCEN set a firm deadline by which a reporting entity must cure a filed-but-incomplete BOIR. ICI recommends that such a deadline be no more than 30 days after the date that a reporting entity files the incomplete BOIR.

ICI also suggests that incomplete BOIRs should not be made available in the BOI database to permitted access persons (except law enforcement) until all required BOI is available. Instead, a submitted-but-incomplete BOIR should be indicated as being in progress but not yet available. If a reporting entity cannot provide all required BOI prior to the applicable deadline, the BOI database should indicate as such. This would eliminate confusion for financial institutions who may use the BOI database as a secondary source to verify information they receive from customers during the CDD process. In addition, FinCEN should clarify whether a BOIR that is submitted and certified as complete can be changed later to "unknown" (or some similar alternative indication), and, if such a change is made, if BOI database access persons will be notified of the change.

Lastly, ICI strongly recommends that FinCEN consider not making available to the reporting entity its FinCEN identifier number until such time as a reporting entity has completed all required BOI data in its filing. This will serve to both motivate filers to timely complete their BOIRs, as well as allow permitted access persons to confidently rely on the FinCEN identifier number as evidence that the filer has satisfied its regulatory obligation, giving the FinCEN identifier number greater legitimacy.

⁵ For example, a financial institution may have reason to believe that the updated BOIR information is inaccurate, in which case it should not be required to rely on that information in any way.

⁶ See Notice at 67444 ("The drop-down options would not excuse reporting companies of their obligation to submit complete and truthful written responses for each field by the applicable filing deadline; all fields must be filled out before a reporting company has satisfied its reporting obligations.").

⁷ See *id.*

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ICI appreciates the opportunity to present our comments in response to the Notice. If you have any questions about the matters discussed in this letter, please contact Kelly O'Donnell (at 202-326-5980 or kelly.odonnell@ici.org) or Erica Evans (at 202-218-3573 or erica.evans@ici.org).

Sincerely,

/s/ Kelly O'Donnell
Director Operations and Transfer Agency,
Investment Company Institute