



VIA ELECTRONIC SUBMISSION

February 14, 2023

Himamauli Das, Acting Director  
Financial Crimes Enforcement Network  
RE: Docket Number FINCEN—2021—0005  
RIN 1506—AB49/AB59

Acting Director:

NIBA submits this comment to the above captioned request for response entitled “Beneficial Ownership Information and Safeguards, and Use of FinCEN Identifiers for Entities” Notice of Proposed Rulemaking.

Founded in 1991, NIBA is an association for derivative professionals who place transactions in behalf of their customers primarily in futures, options, swaps and forex markets. NIBA’s mission is: (1) to provide the education members need to grow their businesses, to service their customers and to stay in compliance; and (2) to provide a unified voice in order to represent members in rulemaking and other discussions. NIBA’s membership includes registered Introducing Brokers (IBs), Commodity Trading Advisors (CTAs) and Commodity Pool Operators (CPOs). We also enjoy the support of Futures Commission Merchants (FCMs) and service providers unique to the derivatives community.

NIBA firm and individual members are regulated by the National Futures Association (NFA), the Commodity Futures Commission (CFTC) and, some members, by the Securities and Exchange Commission (SEC). NIBA supports the objectives of the proposal – to protect U.S. national security interests and the U.S. financial system.

We have identified three general areas of concern in the proposal on which we comment below:

1. The proposal is too narrow as written to be used effectively in the real-world, everyday activities in which our members work.

As an example, a IB should be permitted to share beneficial ownership information (BOI) with an affiliated CTA in order to manage the risk of being exposed to an individual who owns multiple legal entities. This practice promotes good risk management and compliance practices.

Many financial institutions (FIs) outsource their due diligence and anti-money laundering requirements to third-party service providers. These providers should be permitted to make a request for BOI on the FI’s behalf provided certain strict conditions are met.

Futures Commission Merchants often rely on IBs to engage with a customer. FCMs/IBs should be able to rely on a consent form that is provided to the IB who maintains the direct relationship with the customer. The proposed rule may be unworkable for certain FIs with regard to limiting employees access since many use integrated databases to hold all customer information. Our members handle sensitive customer information on a daily basis, and should be able to treat BOI in the same manner as any other type of confidential customer information.

2. Only FinCEN is allowed to search its records.

The proposal requires FIs to provide a specific name to FinCEN in order to request BOI. Unless the name provided by the customer to the NIBA members exactly matches the name contained in FinCEN's database, it is likely no useful information, or information at all will be returned. That does nothing to further the purpose of the BOI rules and protect the marketplace. FIs should be able to run limited searches on their own.

3. Only FINRA and NFA (named SROs) are allowed to receive BOI information from FIs.

Financial Institutions should be able to disclose BOI information to any SRO exercising a market regulation function such as the CME Group. Introducing Brokers provide market information to a client, develop a trading/marketing program and solicit a transaction (sometimes using a CTA-managed program.) The transaction is generally placed through an FCM for execution on the trading platform/exchange. Each of these parties is engaged in risk management decisions and depend on truthful, complete customer information. These parties act together for the customer and should be allowed to share all the customer's confidential information with appropriate safeguards in place.

Thank you for the opportunity for NIBA to comment on this proposal. Our comments are not meant to be all inclusive, but rather as discussion points for the agency and the community. Please do not hesitate to contact me to continue the conversation.

Respectfully submitted,

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