INSTITUTE OF INTERNATIONAL BANKERS

Stephanie Webster
General Counsel
E-mail: swebster@iib.org

299 Park Avenue, 17th Floor
New York, N.Y. 10171
Direct: (646) 213-1149
Facsimile: (212) 421-1119
Main: (212) 421-1611
www.iib.org

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VIA ELECTRONIC SUBMISSION

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

Re: ***Notice of Proposed Rulemaking on Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities (Docket Number FINCEN–2021–0005, RIN 1506–AB49/AB59)***

Dear Sir or Madam:

The Institute of International Bankers ("IIB") appreciates this opportunity to provide comments to the Financial Crimes Enforcement Network ("FinCEN") on its notice of proposed rulemaking ("NPRM") to implement the beneficial ownership information ("BOI") access and safeguards provisions of the Corporate Transparency Act ("CTA").[1]

The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB's members consist principally of international banks that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. The U.S. operations of foreign banking organizations ("FBOs") are an important source of credit for U.S.

[1] *Beneficial Ownership Information Access and Safeguards Requirements*, 87 Fed. Reg. 77404 (proposed December 16, 2022). The IIB submitted comments to FinCEN on May 5, 2021 in response to the advance notice of proposed rulemaking soliciting input on a broad range of questions related to implementation of the CTA's provisions, and on February 7, 2022 in response to FinCEN's notice of proposed rulemaking to implement the CTA's beneficial ownership information reporting requirements.

borrowers. FBOs comprise the majority of U.S. primary dealers and enhance the depth and liquidity of U.S. financial markets. FBOs also contribute greatly to the U.S. economy through the direct employment of U.S. citizens and permanent residents, as well as through other operating and capital expenditures.

The IIB appreciates FinCEN's efforts to engage with the financial services industry and other stakeholders as it implements this important new law, which seeks to provide greater transparency into legal entities and their owners and, thereby, assist national security, intelligence, law enforcement and regulatory agencies in preventing money laundering, terrorist financing and other illicit activities through the U.S. financial system. As an organization whose members have operations across the globe, the IIB also supports efforts to bring the United States into greater alignment with corporate transparency requirements in other jurisdictions. The CTA represents an important step toward harmonizing international anti-money laundering ("AML") and countering the financing of terrorism ("CFT") standards.

Equally important, however, are the statute's goals of creating a highly useful BOI database for all stakeholders, facilitating financial institutions' compliance with AML, CFT and customer due diligence ("CDD") obligations and minimizing burdens on reporting companies and the regulated community. Based on the proposed access and safeguards provisions in the NPRM, the IIB respectfully submits that the BOI database will offer such limited utility to financial institutions that it is likely to be significantly outweighed by the burdens of access. As such, many financial institutions may decide not to utilize the database at all.

We provide below our comments on the proposal, as well as its relationship to the forthcoming proposal related to revisions to the CDD rule. Our key comments are as follows:

I. FinCEN should broaden the circumstances under which financial institutions are permitted to access and use BOI from the registry to include all customer due diligence requirements under applicable law, and not just beneficial ownership identification and verification requirements under the CDD rule.

II. FinCEN should reconsider the requirement that financial institutions disclose BOI only to persons physically present in the United States, as this limitation would place substantial burdens on financial institutions with global footprints, negatively impact customers that transact with financial institutions globally and be inconsistent with U.S. and international regulatory expectations for enterprise-wide risk management.

III. FinCEN should clarify that financial institutions will obtain the underlying BOI when a reporting company has included a FinCEN identifier in its report in place of the requisite BOI.

IV. To ensure a highly useful database while balancing the burdens on stakeholders and reinforce the expectation that financial institutions implement risk-based compliance programs, we support FinCEN's proposal to provide access to the registry on a *voluntary* basis only and to provide a safe harbor for security and information safeguards consistent with those required under the Gramm-Leach-Bliley Act ("GLBA"). We urge FinCEN to clarify that financial institutions will be permitted to rely on the registry and to provide for an automated BOI request process and real-time access for financial institutions.

V. In considering revisions to the CDD rule, we urge FinCEN to recognize that centralized BOI reporting and the CDD efforts of financial institutions serve different purposes in our national AML/CFT framework and therefore that the scope and extent of reporting necessarily will differ.

We offer these comments in the spirit of helping FinCEN to fulfill the CTA's objectives and would be pleased to discuss our views with FinCEN staff, as helpful.

I. FinCEN Should Broaden the Circumstances Under Which Financial Institutions Are Permitted to Access and Use BOI from the Registry to Include *All* Customer Due Diligence Requirements Under Applicable Law.

The IIB urges FinCEN to allow financial institutions to access and use BOI from the registry for all purposes related to customer due diligence requirements under applicable law, as is the case today with respect to identifying information obtained from customers in connection with customer identification program ("CIP") requirements and the beneficial ownership identification and verification requirements of the CDD rule. In addition, reporting companies should be permitted to pre-authorize such access and use by a financial institution.

The current proposal provides that authorized recipients of BOI may use BOI only "for the particular purpose or activity for which such information was disclosed."[2] Under this framework, FinCEN would disclose BOI to financial institutions only to facilitate their compliance with "customer due diligence requirements under applicable law," which the

[2] *See* proposed 31 CFR 1010.955(c)(1).

NPRM defines for this purpose as the beneficial ownership identification and verification requirements under the CDD rule.[3] Financial institutions would thus be permitted to access the registry only for purposes of facilitating compliance with beneficial ownership identification and verification, and financial institution recipients of BOI from the registry would be permitted to disclose it to others within their organizations only for this purpose;[4] any other use would be prohibited.

The IIB respectfully submits that the NPRM's proposed approach is neither dictated by the CTA, nor consistent with "customer due diligence" as it is commonly understood, nor likely to further the CTA's objectives, as it may well disincentivize financial institutions from using the registry.

a. The NPRM's narrow approach to financial institutions' use of the BOI registry is inconsistent with the language and intent of the CTA and commonly understood concepts of customer due diligence.

In requiring the Treasury Department ("Treasury") to issue rules implementing the BOI reporting provisions, the CTA directs Treasury, "***to the greatest extent practicable***," to collect BOI that is highly useful for, among other purposes, "facilitat[ing] the compliance of … financial institutions ***with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law***."[5]

Congress expressed a clear intent for BOI obtained from the registry to be used by financial institutions for purposes of facilitating not only CDD compliance but also AML/CFT compliance more broadly. In section 6403(d)(1) of the Anti-Money Laundering Act of 2020 ("AML Act"), of which the CTA is a part, Congress referred to the CDD rule by its formal title and its citation in the Federal Register, demonstrating that, if Congress wanted to refer specifically to the CDD rule, it knew how to do so. However, Congress deliberately chose not to refer to the CDD rule in the access provision for financial institutions, and instead chose to use a broader formulation: "customer due diligence requirements under applicable law."[6] The fact that Congress chose to refer specifically to the CDD rule in one section and to "customer due diligence requirements under applicable law" more generally in another clearly shows that Congress intended to authorize financial institutions to use BOI for more than simply CDD rule compliance. FinCEN's proposed approach is inconsistent with this intent.

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3 *See* proposed 31 CFR 1010.955(b)(4)(i); 31 CFR 1010.230.

4 *See* proposed 31 CFR 1010.955(c)(2)(ii).

5 31 U.S.C. § 5336(b)(1)(F) (emphasis added).

6 31 U.S.C. § 5336(c)(2)(B)(iii).

Further, the CTA does not limit "customer due diligence requirements under applicable law" to the identification and verification requirements of the CDD rule, and such a narrow reading is inconsistent with the commonly understood concept of "customer due diligence." The Financial Action Task Force ("FATF") describes CDD to include, among other measures, identifying customers and beneficial owners, verifying those identities and conducting ongoing monitoring of transactions.[7]

FinCEN itself took a similarly comprehensive view of customer due diligence in adopting its CDD rule. In the preamble to that rule, FinCEN described the "four core elements of customer due diligence (CDD)" as including (1) customer identification and verification, (2) beneficial ownership identification and verification, (3) understanding the nature and purpose of customer relationships to develop a customer risk profile and (4) ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information.[8] These core elements are likewise codified in FinCEN's AML program rules, which require financial institutions to implement and maintain AML programs that, among other requirements, include appropriate risk-based procedures to conduct ongoing customer due diligence. CDD for this purpose encompasses not just identification and verification of beneficial owners, as the NPRM would suggest, but also "understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile" and "conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information."[9]

To fulfill Congress's directive that the BOI reporting regime, *to the greatest extent practicable*, be highly useful in financial institutions' AML, CFT and CDD compliance efforts, the IIB respectfully requests that the final rule authorize financial institutions to access the registry and use BOI for purposes of compliance with *all* customer due diligence requirements under applicable law, and not just beneficial ownership identification and verification.

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7 FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (adopted 2012; updated March 2022) ("FATF Recommendations"), Recommendation 10 and Interpretive Note to Recommendation 10.

8 Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29397 (May 11, 2016).

9 *See*, *e.g.*, 31 CFR 1020.210(a)(2)(v).

b. Limiting financial institutions' ability to access and use BOI as proposed is unlikely to further the CTA's objectives, as it will disincentivize use, while broader access would not jeopardize the security and confidentiality of sensitive BOI.

Financial institutions currently obtain identifying information from customers for a variety of reasons, including compliance with CIP and beneficial ownership identification and verification requirements and general know-your-customer ("KYC") policies and procedures. Further, customer information is often stored in integrated KYC systems, from which it may be accessed and used for various AML/CFT compliance purposes. Restricting financial institutions' ability to use BOI from the registry as proposed is unlikely to further the CTA's objectives, as additional information would need to be obtained from customers to ensure effective implementation of financial institutions' compliance programs. Broadening financial institutions' ability to use BOI from the registry, on the other hand, would align with current practices without jeopardizing the security and confidentiality of BOI.

The proposed limits on financial institutions' ability to use BOI from the registry are inconsistent with current practices.

Within financial institutions today, customer information is accessed and used for various AML/CFT compliance purposes, including verifying customer or beneficial owner identity as required by the CIP and CDD rules, performing customer risk rating, conducting sanctions screening, monitoring customer activity, filing suspicious activity or sanctions-related reports when warranted, conducting refreshes of customer information and responding to subpoenas. In addition, customer information may be shared with internal or external auditors or others involved in assessing a financial institution's compliance with AML/CFT requirements. These uses have become regulatory expectations, and institutions that do not use customer information more widely for financial crime risk mitigation may be subject to regulatory criticism. Yet these uses would appear to be prohibited for BOI obtained from the registry under FinCEN's proposal.

Further, in some types of transactions, a single financial institution collects customer due diligence information and, with the consent of the customer, shares that information with other institutions involved in the transaction. For example, in the syndicated loan context, the agent bank typically obtains CDD information and shares it with other lenders in the syndicate. Under the proposed rule, each bank participating in a loan syndicate would need to obtain the borrower's consent to access the borrower's BOI from the registry, or would request such information directly from the borrower.

Additionally, under the proposed rule, financial institutions would be authorized to access the BOI registry only for purposes of facilitating their compliance with the CDD rule requirement to identify and verify beneficial owners of their legal entity customers – they would apparently not even be authorized to use BOI from the registry to identify and verify the customer itself, let alone for other AML/CFT compliance activities in which they routinely engage.

> *The proposed conditions for financial institutions will disincentivize them from using the registry*.

Given the proposed limitations on financial institutions' ability to use BOI from the registry, any financial institution choosing to access it would need to create a system to identify, and restrict access to, information from the registry, separate and apart from its existing KYC systems. Such a requirement would impose a significant operational and compliance burden and would lead institutions to request the information on a parallel track from their customers anyway, leading to additional unnecessary burdens on reporting companies. In addition, financial institutions would face the potential for significant liability for failing to comply with the rule's strict limits on disclosure. Under these circumstances, there would be no incentive for a financial institution to assume these burdens if it is then unable to use BOI from the registry in the day-to-day operation of its AML/CFT compliance program.

> *Contrary to FinCEN's view, broadening financial institutions' ability to use BOI from the registry would not jeopardize the security and confidentiality of BOI*.

FinCEN states in the NPRM that allowing financial institutions to use BOI from the registry only for purposes of identifying and verifying customers' beneficial owners would "better protect the security and confidentiality of sensitive BOI."[10] We disagree, as financial institutions have developed and maintain robust policies, procedures and controls to safeguard the security and confidentiality of sensitive customer information. These measures are required by the GLBA and other applicable legal and regulatory requirements. In addition, they are critically important to mitigate legal and reputational risks from unauthorized disclosures, and financial institutions take the protection of customer information very seriously.

For financial institutions, obtaining BOI from the registry would not present heightened risks related to the security or confidentiality of sensitive information. Indeed, the fact

[10] 87 Fed. Reg. at 77415.

that customer information may be obtained from different sources today does not impact the risks associated with securing that information – or the seriousness with which financial institutions take their responsibility to do so – and the IIB respectfully submits that the need to protect sensitive BOI does not support a narrower reading of the CTA's reference to "customer due diligence requirements under applicable law."

> *There is no reason to treat BOI from the registry any differently from BOI obtained directly from customers*.

In issuing the CDD rule, FinCEN explained that it "generally expects beneficial ownership information to be treated like CIP and related information, and accordingly used to ensure that covered financial institutions comply with other requirements."[11] FinCEN indicated that financial institutions should, for example, use BOI to help ensure that they do not engage in prohibited transactions or dealings involving persons subject to U.S. sanctions and to develop risk-based procedures for additional screening (e.g., negative media searches), when appropriate.

The IIB respectfully submits that there is no reason to treat BOI obtained from the registry any differently from the BOI that financial institutions collect and use through their AML/CFT compliance efforts today, and that any other result will limit both the utility of the registry for financial institutions and achievement of the CTA's goal of reducing burdens on financial institutions and reporting companies.[12]

c. Any perceived statutory limitation on financial institutions' use of the registry could be mitigated by allowing customers to consent to broader access.

We recognize that FinCEN may believe the CTA limits its ability to allow broader access to and use of the registry for financial institutions. Although we would respectfully

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[11] 81 Fed. Reg. at 29408-09.

[12] Financial institutions anticipate that some customers may resist complying with requests for beneficial ownership and other customer due diligence information once the BOI reporting rule takes effect, to the extent that customers have already reported BOI to FinCEN. If the registry access provisions are finalized as proposed, use restrictions would constrain financial institutions' ability to use BOI obtained from the registry for purposes of carrying out AML/CFT compliance functions, and a financial institution may therefore prefer to receive a copy of a customer's BOI report directly from the customer rather than accessing it through the registry. For the avoidance of doubt, we respectfully request that FinCEN confirm in the final rule that limitations on use and disclosure and associated liability provisions (e.g., proposed 31 CFR 1010.955(f)(1)) would not apply in this scenario. In other words, a BOI report obtained directly from a customer, rather than via the registry, may be treated in the same manner as other information obtained from customers today.

disagree with this position for the reasons explained above, we believe statutory authority concerns could be addressed by allowing customers to consent to a financial institution's broader access and use. For example, a customer could provide its consent during the account opening process for the financial institution to obtain BOI from the registry as appropriate in connection with its AML/CFT and CDD compliance efforts. We note that financial institutions already obtain consents from customers for a variety of purposes related to use and disclosure of information and urge FinCEN to revise the proposed rule to accommodate this approach.

II. FinCEN Should Not Limit Disclosure of BOI to Persons Physically Present in the United States.

The proposed prohibition on financial institutions' disclosure of BOI from the registry to persons physically present in the United States would limit the utility of the registry and be inconsistent with current practice. Further, it is not required by applicable law and is inconsistent with U.S. and international regulatory expectations for enterprise-wide risk management.

As described in the NPRM, FinCEN envisions that there are circumstances in which financial institution employees may have a need to share BOI with counterparts; for example, according to FinCEN, they may be working together to onboard a new customer. The proposed rule therefore authorizes disclosure of BOI within a financial institution, but only to persons *physically present in the United States*. FinCEN states that it believes this limitation is necessary to provide appropriate protection to BOI against disclosures to foreign governments outside of the framework established by the CTA.

The IIB acknowledges the concerns underlying this proposed approach, but respectfully submits that customer information – including the same types of information that will be submitted to the registry – is shared today with persons outside of the United States. For example, a financial institution may offshore certain AML compliance functions to an affiliate or a third-party service provider, may coordinate with overseas branches, offices, affiliates or parent organizations in onboarding a customer that transacts with the institution globally or may work with such non-U.S. offices or entities in investigating unusual cross-border activity. There is no prohibition on such sharing under the Bank Secrecy Act ("BSA") and, furthermore, it appears Congress did not share FinCEN's concern, as it imposed no cross-border sharing limitation related to customer information in the language of the CTA or the AML Act more broadly.

U.S. regulators require financial institutions to maintain comprehensive AML compliance programs that address BSA requirements "applicable to all operations of the organization" and have recognized that some institutions implement this requirement through comprehensive enterprise-wide risk management frameworks that identify and monitor risks "within or across affiliates, subsidiaries, lines of business, or jurisdictions."[13] In addition, many foreign regulators recommend that international financial institutions take an enterprise-wide view of their customers, including those customers' beneficial owners, as necessary to effectively manage financial crime risk that may be presented across an institution's global footprint. These approaches recognize that illicit actors do not respect national borders and are consistent with FATF's recommendation that financial groups "be required to implement group-wide AML/CFT programs, "including policies and procedures for sharing information within the group for AML/CFT purposes."[14] It would not be possible to implement such an enterprise-wide approach, or the less centralized alternative noted by U.S. regulators that still manages certain AML compliance aspects (e.g., risk assessments, internal controls) on a consolidated basis, without the sharing of customer information across jurisdictions in some instances.[15] More importantly, financial institutions' ability to manage financial crime risk may be significantly diminished without such sharing.

Financial institutions have developed robust policies, procedures and controls to obtain appropriate customer consents for sharing information offshore and, as referenced above, to ensure compliance with applicable legal and regulatory requirements for safeguarding shared information from unauthorized use and disclosure. Prohibiting financial institutions from treating BOI obtained from the registry in the same manner would diminish the effectiveness of financial institutions' global financial crime risk management activities and further limit the utility of the registry for financial institutions. It might also lead to institutions continuing to collect BOI from customers directly so that it can be shared enterprise-wide, thus imposing additional burdens on reporting companies. In addition, it would be burdensome for reporting companies that may have relationships with a financial institution in multiple jurisdictions, an outcome inconsistent with the CTA's directive that Treasury minimize burdens on reporting companies in implementing the BOI registry.

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13 Federal Financial Institutions Examination Council, BSA/AML Examination Manual: BSA/AML Compliance Program Structures — Overview (February 27, 2015).

14 FATF Recommendations, Recommendation 18; *see also* FATF Recommendations, Interpretive Note to Recommendation 18 ("Group-level compliance, audit, and/or AML/CFT functions should be provided with customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes…. Similarly, branches and subsidiaries should receive such information from these group-level functions when relevant and appropriate to risk management.").

15 *Id*.

III. FinCEN Should Clarify that Financial Institutions Will Obtain Underlying BOI When a Beneficial Owner Provides a FinCEN Identifier.

Under the current proposal, reporting companies would be permitted to report an intermediate entity's FinCEN identifier in lieu of an individual's BOI when the reporting company and intermediate entity have the same beneficial owners.[16] In addition, under the final BOI reporting rule, reporting companies may report an individual beneficial owner's FinCEN identifier in lieu of the individual's BOI.[17]

The IIB urges FinCEN to clarify in the final rule that financial institutions requesting a reporting company's BOI will receive both the company's BOI report and the BOI underlying any FinCEN identifier included in the company's report. A contrary result could significantly limit the registry's utility for financial institutions, if they would not be able to obtain information about a company's beneficial owners when it has reported their FinCEN identifiers instead of the BOI otherwise required to be reported. It would be counter-intuitive for a registry intended to "unmask shell companies"[18] and enhance transparency to return opaque information to authorized financial institution users.

IV. Access to the Registry for Financial Institutions Should Be Voluntary and Should Not Impose Additional Obligations, the Proposed Safeguards Safe Harbor Should Be Adopted, and FinCEN Should Allow Bulk Registry Requests and Real-Time Access to Enhance the Registry's Utility.

As explained in this Section IV, the IIB supports FinCEN's proposal to provide financial institution access to the registry on a *voluntary* basis only and to provide a safe harbor for security and information safeguards consistent with those required under the GLBA. We request that FinCEN expressly state that access to the registry will not give rise to additional AML-related obligations and that financial institutions may rely on information obtained from the registry. In addition, we suggest certain clarifications related to the process by which financial institutions may access or obtain information from the registry to enhance its utility, specifically related to updates to BOI reports, to financial institutions' ability to request and obtain BOI for multiple companies at one time, and to their ability to access information from the registry on a real-time basis.

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16 *See* proposed 31 CFR 1010.380(b)(4)(ii)(B).

17 31 CFR 1010.380(b)(4)(ii)(A).

18 FinCEN Press Release, FinCEN Issues Notice of Proposed Rulemaking Regarding Access to Beneficial Ownership Information and Related Safeguards (December 15, 2022) (quoting FinCEN Acting Director Himamauli Das).

a. Financial institutions' access to the registry should be voluntary only; access should not impose additional obligations or become a regulatory expectation, and financial institutions should be able to rely on BOI from the registry.

As we have commented previously, a key purpose of the AML Act is to "reinforce" that a financial institution's AML/CFT program "shall be risk-based."[19] It stands to reason, therefore, that financial institutions should be afforded access to the BOI registry on a *voluntary* basis only, as appropriate in connection with the implementation of risk-based compliance programs. Additionally, the ability to access the registry should not impose further obligations on financial institutions or become a regulatory expectation, and they should be permitted to rely on BOI information from the registry.

- *Access to the registry should be voluntary*. Under the proposed rule, FinCEN would disclose information to a financial institution only "[u]pon receipt of a request from [the] financial institution,"[20] and the NPRM notes that authorized recipients of BOI would be affected by the proposed rule only "if they elect to access BOI."[21] To ensure proper coordination between the BOI reporting provisions and financial institutions' risk-based compliance programs, the IIB supports this proposed approach and urges FinCEN to ensure the final rule expressly states that financial institutions' use of the registry is not mandatory.

- *Access should not give rise to additional CDD or other obligations*. FinCEN should clarify that the existence of information in the BOI registry about a financial institution's customer will not give rise to any additional CDD or other AML-related responsibility or expectation for the institution. In other words, because information about a company is reported to FinCEN and a financial institution can access that information through the registry, the financial institution should not be *required* to consider or review the information solely because it is available. Furthermore, financial institutions that choose to access the registry should not be obligated to report discrepancies to FinCEN, unless warranted in the context of their suspicious activity report filing obligations.

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19 National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283 (January 1, 2021), Division F, Section 6002(4).

20 *See* proposed 31 CFR 1010.955(b)(4)(i).

21 87 Fed. Reg. at 77428.

- *Use of the registry should not become a regulatory expectation*. Authorizing financial institutions to access the BOI registry should not result in a "ratcheting up" of compliance expectations that are not aligned with risk considerations, and FinCEN should emphasize to federal functional regulators that use of the registry is not a regulatory expectation. Rather, consistent with FinCEN's proposal to allow voluntary access to the registry, financial institutions should not be compared against each other on the basis of their use of the registry, and clear guidance from FinCEN on this point will be critical to avoid both a substantial increase in the burden placed on financial institutions without commensurate AML/CFT benefit and the risk of criticism from banking regulators if a financial institution does not use the registry.

- *Financial institutions should be able to rely on the registry*. We urge FinCEN to clarify that financial institutions may rely on BOI obtained from the registry (i.e., may treat it as presumptively accurate). Such reliance would be consistent with current guidance, as financial institutions may rely under the CDD rule on customer certifications related to beneficial ownership information or eligibility for exemptions from beneficial ownership requirements. As with the CDD rule, reliance on the registry could be conditioned on a lack of knowledge of facts that would reasonably call into question the reliability of that information.[22] Further, financial institutions should not be required to check the registry for updates to BOI that has been previously obtained, absent red flags or indications of a change in information relevant to assessing the risk posed by a particular customer.[23]

- *Allowing reliance on the registry is necessary to fulfill the CTA's objectives*. As we have commented previously, the ability for financial institutions to rely on the BOI registry will be necessary to achieve the CTA's goal of minimizing burdens on reporting companies. To provide one example, the BOI reporting rule's approach of allowing use of a passport, driver's license or other identification to document identity is inconsistent with CIP and CDD provisions that require the collection of a taxpayer identification number for individuals who are U.S. persons. If financial institutions are not permitted to rely on the BOI registry for

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[22] *See*, *e.g.*, 31 CFR 1010.230(b)(2); FinCEN, FIN-2018-G001, Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions (April 3, 2018) (questions 3, 6, 10, 12, 21, 26 and 28).

[23] This approach would accord with FinCEN's guidance on the CDD rule. *See*, *e.g.*, 81 Fed. Reg. at 29420 (clarifying that there is no "categorical requirement to update customer information on a continuous or ongoing basis"; rather, the obligation to update customer information is triggered when a financial institution becomes aware of information relevant to assessing the risk posed by a customer).

identity verification, they would need to obtain a different set of information from their customers from that reported to FinCEN, increasing burdens on reporting companies.

b. The proposed safe harbor for safeguards consistent with GLBA requirements should be adopted.

The proposed rule would establish that the security and information handling procedures necessary to comply with section 501 of the GLBA and applicable regulations issued under the GLBA to protect non-public customer personal information would, if applied to BOI under the control of a financial institution, satisfy the requirement to develop and implement administrative, technical and physical safeguards reasonably designed to protect BOI.[24] The IIB believes that financial institutions' procedures implementing section 501 of the GLBA effectively safeguard the confidentiality and security of non-public information and that the ability to rely on existing procedures would facilitate financial institutions' efforts to use the registry. We therefore urge FinCEN to implement the proposed safe harbor.

c. FinCEN should clarify that financial institutions will be able to access the registry on an automated basis and in real time.

To enhance the utility of the registry for financial institution users, the IIB requests that FinCEN clarify certain aspects of the proposal with respect to how financial institutions will be able to request information from the registry and how BOI will be provided.

- *Automated batch processing*. As many financial institutions may have a high volume of account openings, customer information refreshes and other needs for BOI on a daily basis, a customer-by-customer manual request to the registry would be very burdensome. The IIB thus urges FinCEN to clarify that batch requests from financial institutions will be allowed on a streamlined or automated basis.

- *Real-time access*. In addition, the IIB believes financial institutions should be afforded access to the registry on a real-time basis, and urges FinCEN to clarify this point in the final rule. Real-time would ensure that BOI from the registry would be of most use in supporting financial institutions' AML/CFT compliance

[24] *See* proposed 31 CFR 1010.955(d)(2)(ii).

efforts, while delays in access would limit the utility of the registry for financial institution users.[25]

V. Centralized BOI Reporting and Financial Institution CDD Requirements Serve Different Purposes, and FinCEN Should Ensure the Revised CDD Rule Is Risk-Based.

As FinCEN considers revisions to the CDD rule, the IIB urges FinCEN not to lose sight of the fact that centralized BOI reporting and the CDD efforts of financial institutions serve different, though complementary, purposes in our national AML/CFT regime. Accordingly, broad beneficial ownership collection requirements are not appropriate in the CDD rule context, and FinCEN should ensure that the revised CDD rule enables financial institutions to implement ***risk-based*** compliance measures, which in many instances may be narrower than the requirements for BOI reporting to FinCEN.

The FATF makes clear in its recommendations and guidance the distinction between the two types of requirements. The FATF provides guidance on the transparency and beneficial ownership of legal persons, which directs countries to take measures to prevent the misuse of legal entities for illicit financial purposes by ensuring that such entities are sufficiently transparent and that there is adequate, accurate and timely information as to their beneficial ownership and control that competent authorities can obtain or access in a timely fashion.[26] The CTA and FinCEN's BOI reporting rule seek to address these recommendations.

The FATF has separately provided recommendations and guidance as to the customer due diligence measures that financial institutions should be required to undertake. The FATF specifies expected CDD measures but indicates that financial institutions should determine the extent of those measures using a ***risk-based approach***.[27] This could include, for example, verifying the identity of a customer and its beneficial owner only if account transactions rise above a defined threshold in the case of a customer presenting low risk of money laundering or terrorist financing.[28]

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[25] Additionally, we request that BOI provided by FinCEN from the registry indicate when the relevant reporting company last updated its BOI report, so that a financial institution receiving the information may assess on a risk basis whether to request additional customer information.

[26] *See*, *e.g.*, FATF, Guidance on Transparency and Beneficial Ownership (October 2014), paragraph 23; FATF Recommendations, *supra*, Recommendation 24.

[27] *See* FATF Recommendations, Recommendation 10.

[28] *See* FATF Recommendations, Interpretive Note to Recommendation 10.

FinCEN's CDD requirements for financial institutions seek to address these FATF recommendations, and not the recommendations described above relating to legal person transparency and beneficial ownership. Accordingly, the revised CDD rule need not – and we believe should not – require financial institution information collection that is as expansive as the BOI reporting provisions.

For example, as we commented previously, we do not believe that financial institutions should be required, under any version of a revised CDD rule, to collect information on all control persons of their legal entity customers. It would be very challenging to obtain such information from all customers, including those that are not subject to the BOI reporting requirements, and financial institutions could face difficulty in managing the volume of data that would result if they were to obtain such information (whether from the registry or directly from customers). More importantly, requiring financial institutions to obtain information on *all* control persons is not necessary to achieve the goals of the CTA and would be inconsistent with the "risk-based principles for requiring reports of beneficial ownership information" that Treasury is required to consider in revising the CDD rule.[29]

Similarly, requiring financial institutions to collect information about company applicants would be burdensome to financial institutions and legal entities that open accounts with financial institutions (again, including those that may not be subject to BOI reporting requirements), without advancing the purposes of the CTA, as this information will be more readily accessible to law enforcement through the registry.

More fundamentally, we note that the BOI registry will capture information for entities created or registered to do business *in the United States* and that the exclusions from BOI reporting use this "reporting company" population as the baseline. As noted above, however, financial institutions will have legal entity customers that are neither created nor registered to do business in the United States (e.g., non-U.S. governmental agencies, foreign financial institutions). The BOI reporting rule does not exclude such entities because they do not meet the "reporting company" definition in the first instance. The CDD rule, however, properly excludes these and other types of customers from the rule's beneficial ownership requirements based on FinCEN's "assessment of the risks and determination that beneficial ownership information need not be obtained … because the information is generally available from other credible sources."[30] This analysis remains

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[29] National Defense Authorization Act for Fiscal Year 2021, Title LXIV, Section 6403(d)(3)(A). Of course, financial institutions may choose to obtain information on all control persons of a legal entity customer, if warranted based on the risk presented or otherwise.

[30] 81 Fed. Reg. at 29413.

valid, and the scope of entities for which financial institutions will need to collect beneficial ownership information under the CDD rule should not be broadened merely because the BOI exclusions were developed using a different baseline.

We therefore strongly urge FinCEN, as it considers revisions to the CDD rule, to take into account the different roles these requirements play in the U.S. AML/CFT regime and ensure that the revised CDD rule enables financial institutions to implement risk-based compliance measures, which will necessarily vary from the scope of the BOI reporting requirements.

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As FinCEN works to implement the CTA, we urge FinCEN to create mechanisms for continued feedback on and, as appropriate, modification or guidance with respect to the requirements for BOI reporting, access and use, particularly once it becomes clear how the CDD rule may be revised. We believe this "feedback loop" will be necessary to ensure the three CTA rulemakings work together to make highly useful BOI available to authorized users, calibrate the associated burdens on reporting companies and regulated institutions appropriately and reinforce AML/CFT requirements and expectations for financial institutions that are risk-based.

We appreciate FinCEN's consideration of our comments on this important rulemaking and stand ready to provide any further information that may be helpful. Please feel free to contact the undersigned with any questions.

Very truly yours,

Stephanie Webster
General Counsel