Chelsea Groton Bank
904 Poquonnock Rd, Groton, CT 06340

February 13, 2023

Policy Division
Financial Crimes Enforcement Network
PO Box 39
Vienna, VA 22183

RE: Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities; Docket Number FINCEN-2021-0005 and RIN 1506-AB49/AB59

Dear Sir or Madam:

About Us

Chelsea Groton Bank (the Bank) is the largest independent, full-service, mutually owned community bank in Southeastern Connecticut. Its headquarters is located in Groton, Connecticut. The Bank has fourteen branches located in New London County, CT, which also comprises its CRA Assessment Area along with Westerly, RI. In addition, the Bank has a loan production office in Hartford County, CT and a market area that extends to cover all of Connecticut, Massachusetts, and Rhode Island. The Bank has assets totaling just over $1.6 billion and is regulated by the FDIC.

The Bank provides a range of products and services to individuals and businesses across its market area. The Bank's deposit product line includes checking accounts, savings accounts, certificates of deposit, and money market accounts. Additionally, most branches offer safe deposit box rentals. The Bank has a relationship with Elan for credit cards. The Bank also offers an array of lending products, including residential mortgages and consumer loans. Chelsea Groton also provides insurance and investment services through Chelsea Groton Financial Services, a division of Chelsea Groton Bank that offers products in partnership with Infinex Investments Inc.

The Bank has deep community roots, as it was formed from the merger of the Chelsea Savings Bank and the Groton Savings Bank, which were both formed locally in the 1850s. Our signature is personal service, so we have invested in transforming our branches into gathering spaces for education and consultation on financial matters. The Bank has also invested in technological advancements, such as new online and mobile banking platforms, remote deposit capture, and cash management products, to assist in servicing customers when, where, and how they want to do their banking business.

We thank you for this opportunity to offer our feedback on FinCEN's proposal concerning access to and the safeguarding of beneficial ownership information.

Summary

Chelsea Groton Bank supports the establishment of the Registry and the goals of the Corporate Transparency Act (CTA), namely, combating illicit finance through the establishment of the Registry, while simultaneously reducing the regulatory burden on both small businesses and regulated entities. However, we believe that the proposal is fatally flawed and will not accomplish either of these objectives. Accordingly, FinCEN should withdraw the current proposal

and engage with the financial services industry and small businesses to develop a new proposal that will better achieve the objectives of the CTA and AMLA.

The proposal is not consistent with the objectives of the CTA and AMLA and, as currently conceived, the Registry will be of limited, if any, value to banks. Although it is difficult to assess fully how the proposal will affect banks until FinCEN explains how it intends to amend the CDD Rule, it is nevertheless clear that the proposal does not meet Congress' goal of promoting financial transparency while eliminating duplicative reporting requirements and reducing unnecessary regulatory costs and burdens.

The proposal creates a framework in which banks' access to the Registry will be so limited that it will effectively be useless, resulting in a dual reporting regime for both banks and small businesses. Obtaining customers' BOI from the Registry will not support banks' compliance with the CDD Rule and the proposal also precludes banks from using BOI more broadly to fulfill regulatory requirements beyond compliance with the CDD Rule. There is no assurance that the BOI in the Registry will be accurate, complete, and reliable. Thus, the proposal would not enhance banks' CDD processes, but instead would impose additional compliance costs, resulting in an inefficient allocation of resources across bank AML compliance programs. Finally, the requirement in the CDD Rule that banks collect and maintain BOI in all cases will be redundant and unnecessary once the CTA has been fully implemented.

As conceived, the proposal is fatally flawed and should be withdrawn. FinCEN should engage with key stakeholders, including banks and small businesses, to develop a new proposal that would establish a more efficient and effective regulatory framework for both banks and reporting companies. As a starting point, we recommend that the new proposal:

- Allow banks to use BOI more broadly to discharge their responsibilities under the BSA;
- Clarify that banks are not required to access the Registry;
- Consider modern technological solutions that would provide a secure and efficient means of accessing the Registry;
- Include a safe harbor from liability for financial institutions that use BOI obtained from the Registry; and
- Amend the CDD Rule to clarify that banks are not required to collect and maintain BOI in all cases.

Analysis and Recommendations

Banks' access to the Registry is so limited that it will effectively be useless.

The CTA authorizes FinCEN to disclose BOI to banks to facilitate compliance with "customer due diligence requirements under applicable law." Because this particular statutory language is undefined, FinCEN has the authority to determine the scope within which banks may use BOI obtained from the Registry. Yet the proposal narrowly defines "customer due diligence requirements under applicable law" to mean the beneficial ownership requirements of the CDD Rule, set forth at 31 CFR 1010.230, which require covered financial institutions to identify and verify beneficial owners of their legal entity customers. FinCEN justifies this narrow information-retrieval process by asserting that it will reduce the overall risk of inappropriate use or unauthorized disclosure of BOI. As presently conceived, however, the proposal would make banks' access to BOI in the Registry practically useless.

We recommend that FinCEN expand banks' authorized use of BOI, principally because: (1) banks' access to the Registry will not support their compliance with the CDD Rule; (2) broader use of BOI would facilitate a more efficient allocation of resources and banks' compliance with the BSA; and (3) the proposed restrictive approach will do little to safeguard BOI.

Obtaining customers' BOI from the Registry will not support banks' compliance with the CDD Rule.
The CDD Rule simply requires banks to identify and verify the identity of the beneficial owners of their legal entity customers—it does not require banks to verify that those individuals are, in fact, beneficial owners. The BOI in the Registry will not help banks verify the identities of their customers' beneficial owners since, in most cases, that BOI will be the same information that customers provide to banks through the banks' CDD processes. Further, while it is not part of the current proposal, if FinCEN is contemplating changing the amended CDD Rule to require banks to verify the status of the beneficial owners provided by their customers, i.e., whether they are, in fact, the customer's beneficial owners, we would be strongly opposed to it.

Banks use BOI to fulfill regulatory requirements beyond compliance with the CDD Rule.
The proposal fails to acknowledge that banks use BOI to fulfill regulatory requirements beyond compliance with the CDD Rule, and thus the proposed narrow use of BOI obtained from the Registry should be eliminated. The purpose of CDD is much broader than simply collecting and storing BOI. Indeed, the Federal Financial Institutions Examination Council's BSA/AML Manual (the FFIEC Manual) states:

> *The cornerstone of a strong BSA/AML compliance program is the adoption and implementation of risk-based CDD policies, procedures, and processes for all customers, particularly those that present a higher risk for money laundering and terrorist financing. The objective of CDD is to enable the bank to understand the nature and purpose of customer relationships, which may include understanding the types of transactions in which a customer is likely to engage. These processes assist the bank in determining when transactions are potentially suspicious.*

The FFIEC Manual further acknowledges that "beneficial ownership information collected under the [CDD Rule] may be relevant to other regulatory requirements," such as "identifying suspicious activity, and determining Office of Foreign Assets Control (OFAC) sanctioned parties." Additionally, the preamble of the CDD Rule underscores the broad purpose of CDD, specifically that BOI should be leveraged throughout a banks' AML compliance program:

> *Explicit CDD requirements would also enable financial institutions to assess and mitigate risk more effectively in connection with existing legal requirements. It is through CDD that financial institutions are able to understand the risks associated with their customers, to monitor accounts more effectively, and to evaluate activity to determine whether it is unusual or suspicious, as required under suspicious activity reporting obligations. Further, in the event that a financial institution files a [SAR], information gathered through CDD in many instances can enhance SARs.*

Given the broad purposes of CDD, banks must be able to use BOI obtained from the Registry to discharge their responsibilities generally under the BSA, including complying with the Customer Identification Program Rule, monitoring customer transactions, reporting suspicious activity and OFAC screening. Limiting the purpose for which banks may use BOI obtained from the Registry will simply result in an inefficient use of resources that will detract from, rather than enhance, banks' efforts to mitigate AML/CFT risks and comply with the BSA.

Moreover, since the proposal would not prohibit banks from using BOI obtained directly from their customers for a variety of purposes, if FinCEN does not amend the proposal, banks would have to expend additional resources to ensure that BOI obtained from the Registry is appropriately identified and walled off from BOI collected directly from customers to prevent the former from being used for the broader purposes of risk mitigation and BSA compliance. Because bank regulators' access to the Registry is to "assess, supervise, enforce, or otherwise determine the

compliance of such financial institution with customer due diligence requirements under applicable law," this is a real concern for banks, as the proposal would create additional technical compliance requirements, which is contrary to the objectives of AMLA.

The proposed restrictive approach will not enhance the safeguarding of BOI.
Banks have long collected beneficial ownership and other sensitive data from their customers and are already required to protect against its unauthorized disclosure. For years, banks have served as the intermediary between law enforcement and consumers—collecting, maintaining, and reporting vast amounts of personally identifiable information (PII) associated with their customers—and they are subject to stringent requirements that require them to protect against the unauthorized disclosure of PII, including BOI. Limiting banks' use of and access to BOI in the Registry to protect information that many banks already maintain and are required to safeguard belies reality and limits the value of the Registry for banks.

In addition to legal protections, there are long-standing public-private sector efforts to safeguard sensitive information, such as a multiyear project that the Federal Banking Information Infrastructure Committee (FBIIC) and Financial Services Sector Coordinating Council (FSSCC) completed in late 2022. The goal of this effort was to enhance transparency and awareness of security measures for firm data maintained at federal regulatory agencies and enhance awareness of any potential issues that could impact such data. This is a good example of how the public and private sectors have collaborated to better protect sensitive firm data gathered during the supervisory process.

In sum, limiting banks' use of and access to BOI in the Registry will not enhance the safeguarding of BOI, and would make banks' access to such information practically useless.

The FFIEC Manual recognizes the need to conduct enterprise-wide CDD:

> *The bank may choose to implement CDD policies, procedures, and processes on an enterprise-wide basis. To the extent permitted by law, this implementation may include sharing or obtaining customer information across business lines, separate legal entities within an enterprise, and affiliated support units. To encourage cost effectiveness, enhance efficiency, and increase availability of potentially relevant information, the bank may find it useful to cross-check for customer information in data systems maintained within the financial institution for other purposes, such as credit underwriting, marketing, or fraud detection.*

However, the proposal does not address whether and to what extent banks may share BOI with affiliates, independent auditors and third-party service providers, which would be integral to supporting enterprise-wide AML/CFT compliance. For example, independent auditors serve a critical role in ensuring that banks are compliant with all regulatory requirements, especially those that will be assessed by functional regulators. In addition, banks often work with third-party service providers who assist with AML/CFT compliance functions such as CDD. Especially in light of the new requirements that the proposal would create, banks should be allowed to share BOI with internal and outside auditors and third-party service providers, as needed, as long as the sharing of BOI complies with the law.

FinCEN should clarify that banks are not required to access the Registry.
The proposal notes that "in practice, entities may choose to access BOI only if the benefits to their operational needs, which includes cost savings and other nonquantifiable benefits, outweigh the costs associated with the requirements for accessing BOI." The proposal states further that "[u]nder the proposed rule accessing BOI is not mandatory; therefore, the proposed rule would not impose [compliance] requirements in the strictest sense." While it is

encouraging that FinCEN appears to recognize that banks' access to the Registry should be discretionary, the proposal fails to pass FinCEN's cost-benefit test. Therefore, many banks will choose not to access the Registry, and we strongly urge FinCEN to state explicitly in the text of the final rule that banks are not required to do so.

The proposal would not enhance banks' CDD processes but would impose additional compliance costs, resulting in an inefficient allocation of resources across bank AML compliance programs.

Even before FinCEN issued the CDD Rule, most banks collected and stored their customers' BOI, and kept this information updated to ensure that they maintained accurate customer risk profiles and appropriately monitored for, and reported, suspicious activity. Banks subsequently committed substantial resources to develop systems to comply with the CDD Rule, and it is likely that many banks will continue to rely on those systems, even after the Registry becomes operational.

Because banks already have well-developed and effective systems and processes to identify and verify the identities of their customers' beneficial owners, there is nothing to be gained by requiring banks to access the Registry. In fact, since banks already collect their customers' BOI through their own CDD processes, requiring banks to access the Registry—which in most cases will contain the same BOI as that collected by the bank—is unnecessarily duplicative.

Moreover, requiring banks to access the Registry will unnecessarily increase regulatory costs and result in an inefficient allocation of resources. For example, the proposal would require banks to obtain consent from reporting companies (their customers) to access the Registry; however, the proposal does not adequately consider the costs of this requirement. Banks would have to establish new, or amend existing, processes to obtain consent, which will require banks to increase staffing or task existing staff with additional responsibilities. Moreover, customers may not give or may revoke their consent, which, consequently, would require banks to expend additional resources to monitor on an ongoing basis (and document) which customers have consented. And the consent requirement not only applies to new customers, but also to the existing customers for which banks seek to access the Registry.

There are additional inefficiencies and burdens associated with the potential lack of reliability of the BOI and missing information in the Registry. Under the Final Beneficial Ownership Information Reporting Requirements Rule (BOI Rule), reporting companies are required to submit BOI to the Registry, but there are no mechanisms to verify the accuracy and reliability of such information. Additionally, the CTA and the BOI Rule set forth 23 exemptions from the definition of "reporting company." Given such a large number of exemptions—including the exemption for "large operating companies"—it seems clear that much of the BOI that banks would want to collect from the Registry simply will not be there, because their customers were not required to report it.

FinCEN's release of the proposed report that will be used to collect BOI, as required by the BOI Rule, compounded this problem. Notably, the proposed report would allow reporting companies to forgo identifying beneficial owners entirely or provide only certain information associated with beneficial owners by responding that it is "Unable to identify all Beneficial Owners" or "Unknown," with respect to the beneficial owner's identifying information.

Consequently, if banks are required to access and rely on the Registry, the quality and reliability of information underlying customer risk profiles may be quite limited, unless banks establish duplicative systems to identify and correct discrepancies within the Registry. This would yet again require banks to hire additional staff and add resources to reconcile discrepancies and ensure that BOI obtained from the Registry is complete and accurate.

Overall, the proposed mechanism for accessing the BOI in the Registry seems highly inefficient and, frankly, dated. Under the proposal, banks that choose to access the Registry would only be allowed to submit to the Registry

identifying information specific to their reporting company customers, and would receive in return an electronic transcript with a specific entity's BOI. FinCEN should consider modern technological solutions—e.g., an application programming interface, secure portal, etc.—that would provide a secure and efficient process for banks that choose to access the Registry. However, to be clear, even if FinCEN implements a more efficient technological solution for accessing the Registry, it will still not address the significant issues with the proposal discussed herein.

In sum, the compliance costs associated with the proposal are not limited to reconciling data discrepancies. Compliance will necessarily require training relevant staff, making changes to bank policies and procedures, enhancing information security, and educating senior management and customers. These costs are significant, and FinCEN should not overlook or underestimate them.

Even if banks are not required to access the Registry, FinCEN should ensure banks are not liable for any discrepancies in BOI obtained from the Registry.
As described in the proposal, functional regulators will examine banks' use of BOI obtained from the Registry to discharge their responsibilities under the CDD Rule. Due to the appreciable risk that BOI obtained from the Registry could contradict or otherwise be inconsistent with BOI obtained directly from customers, banks should not be held liable for any discrepancies.

The requirement in the CDD Rule that banks collect and maintain BOI in all cases is redundant and unnecessary.
The U.S. did not maintain a national BOI Registry when FinCEN promulgated the CDD Rule and thus, one of the primary purposes of the CDD Rule was to establish a framework that would require banks, which serve as gatekeepers to the financial system, "to retain more useful customer information, which would significantly improve law enforcement's ability to pursue new leads with respect to legal entities under investigation." The proposal acknowledges this framework, stating, "the beneficial ownership data available to law enforcement and national security agencies are generally limited to the information collected by financial institutions . . . ." The Registry is a step forward in the U.S. AML regime, and will provide law enforcement broad, timely access to BOI, thereby eliminating the need for banks to continue to serve as conduits for law enforcement investigations.

The CTA requires FinCEN to revise the CDD Rule to, among other things, reduce unnecessary or duplicative burdens on financial institutions and legal entity customers. Indeed, "Congress intended only one [beneficial ownership] reporting regime . . . ." Accordingly, because the Registry would establish a new framework in which reporting companies would submit BOI to the Registry, which would be broadly accessible by law enforcement, FinCEN should amend the CDD rule to clarify that covered financial institutions may, but are not required to, identify and verify the beneficial owners of their legal entity customers. In the alternative, FinCEN should consider amending the CDD Rule to require banks only to identify and verify the beneficial owners of their legal entity customers on a risk basis. Moreover, to the extent necessary, FinCEN should also consider revisiting the proposal to ensure that it aligns with the revised CDD Rule.

Finally, while not the subject of the proposal, ABA would further recommend that FinCEN consider amending the CDD Rule to facilitate a more efficient CDD process. For example, the CDD Rule currently requires banks to identify and verify the beneficial owners for a particular customer for each account opened at the bank. In practice, a single bank customer may open numerous accounts, and requiring banks to collect or confirm information at account opening in each instance is a redundant process and forces banks to allocate valuable resources to CDD that could be used elsewhere throughout the bank's AML compliance program.

Conclusion

Chelsea Groton Bank remains committed to engaging with FinCEN to support and promote the goals of the CTA and fully supports the establishment of the Registry. However, the proposal does not align with the goals and purpose of the CTA and AMLA, would not enhance banks' CDD processes, would result in an inefficient allocation of resources, and would impose additional, unnecessary technical compliance requirements on banks.

In closing, while we appreciate FinCEN's considerable efforts to implement the CTA, we believe the proposal is fatally flawed and should be withdrawn. FinCEN should engage with key stakeholders to develop a new proposal that better meets the objectives of the CTA and AMLA.

We thank you again for the opportunity to respond.

Respectfully Submitted,

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