



February 14, 2022

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network
Policy Division, Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Docket Number FINCEN/2021/0005 and RIN 1506-AB49/AB59

Dear Acting Director Das:

National Futures Association (NFA)¹ appreciates the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN) proposed regulations regarding access by authorized recipients to beneficial ownership information (BOI) that will be reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the Anti-Money Laundering Act of 2020 (AML Act). NFA fully supports the important goals behind the CTA and the implementing regulations, and we understand the need for strict protocols on security and confidentiality in order to protect sensitive personally identifiable information such as BOI.

FinCEN notes in the preamble to the proposed regulations the crucial role that self-regulatory organizations (SROs), including NFA, play in overseeing financial institutions (FIs), which may use the BOI collected by FinCEN to comply with customer due diligence (CDD) under the regulations implementing the BSA². Given this critical

¹ NFA is the industry-wide SRO for the U.S. derivatives industry, including exchange traded futures, retail off-exchange foreign currency (forex) and OTC derivatives (swaps). NFA's membership includes swap dealers, futures commission merchants, commodity pool operators, commodity trading advisors, introducing brokers, retail foreign exchange dealers and the registered associated persons of those entities. NFA's primary mission is to safeguard market integrity and provide investor protection through efficient and effective regulation of the derivatives industry. NFA's responsibilities are broad and among other things include, registering all firms and industry professionals on behalf of the CFTC, passing rules to implement federal AML requirements and impose business conduct standards including those that are designed to ensure fair dealing with customers, examining and investigating Members for compliance with those rules and taking enforcement actions against Members that violate NFA's Rules. Every aspect of NFA's regulatory authority is overseen and monitored by the Commodity Futures Trading Commission (CFTC), the Congressionally authorized federal derivatives regulator and a federal functional regulator for purposes of the Bank Secrecy Act (BSA).

² One of NFA's key regulatory responsibilities is to monitor NFA Member futures commission merchants (FCMs) and introducing brokers in commodities (IBs), which are FIs under the BSA, for compliance with

role, the proposed regulations permit FIs to re-disclose the BOI they receive from FinCEN to qualifying SROs. NFA is concerned, however, that the proposed limitations on NFA's use of the information may inadvertently interfere with NFA's ability to carry out its SRO oversight responsibilities under the Commodity Exchange Act.

As we understand the proposed rules, FinCEN will make available the BOI it collects from reporting companies to FCMs and IBs, under specified conditions, including the consent of the reporting company, for the purpose of the FCM or IB meeting its CDD requirements of identifying and verifying beneficial owners under applicable law. FCMs and IBs may not use the information provided by FinCEN for any other purpose but may share the information with NFA. NFA in turn may only use the information provided by the FCM or IB for the purposes of determining that the FCM or IB complied with its CDD requirements, which we understand to mean to determine if the FCM or IB identified and verified the beneficial owners of a legal entity customer.

Currently, NFA obtains BOI and similar information directly from its Members, which obtain it from their customers—some of which may qualify as "reporting companies" under the proposed regulations. Although NFA uses this information to verify that FCMs and IBs fulfilled their CDD requirements, we may also use it for other regulatory purposes related to examinations and investigations of Members, including issues involving fraud and other illicit activity.

In its proposal, FinCEN has indicated that it intends to rescind paragraphs (b) through (j) of 31 CFR 1010.230, which are the provisions that currently require FIs to collect and maintain BOI. NFA is concerned that deleting these provisions may result in the proposed regulations being interpreted to prohibit an FI under the BSA, including an FCM or IB, from independently collecting BOI or similar information. If FCMs and IBs only obtain BOI through FinCEN's database, then NFA's use of the information will be strictly limited, which may have a negative impact on NFA's ability to carry out its regulatory responsibilities. Therefore, NFA requests that the preamble to the final regulations indicate that nothing in the proposed regulations prohibits an FI from independently collecting BOI and similar information and providing that information to its regulator, including an SRO, in accordance with the rules of the regulator. Moreover, although the information independently obtained by an FI may be nearly identical to the information that FinCEN provides the FI for CDD purposes, the regulator would not be limited in the use of the information independently collected by the FI.

In the request for comment, FinCEN specifically requests whether the phrase "customer due diligence under applicable law" should include more than

their obligations under the BSA. We accomplish this through enforcement of our comprehensive rulebook, including NFA Compliance Rule 2-9(c) and its related Interpretive Notice, which require FCMs and IBs to adopt and implement an AML program (AML) that meets the requirements of the BSA.

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identifying and verifying beneficial owners of legal entity customers. NFA believes that FinCEN should consider expanding that definition, for example for FCMs and IBs, to specifically permit these FIs to use this information for conducting ongoing CDD required by 31 CFR 1026.210(b)(5)(i) and (ii).

FinCEN also specifically requests comments on whether SROs should be considered "other appropriate regulatory agencies" and obtain BOI directly from FinCEN rather than from the FI. Given the limitations on the use of this information, NFA believes that it is sufficient to permit NFA to obtain it from an FI when necessary. NFA also suggests that given the sensitive nature of the underlying information and its limited use by an SRO, FinCEN consider providing FIs with some type of confirmation that it obtained the necessary BOI from FinCEN for purposes of demonstrating to the SRO that it met its identification and verification CDD requirements.

In closing, we reiterate our support for the goals of the CTA and FinCEN's implementing regulations. We ask, however, that FinCEN consider the key role that SROs play in regulating the financial industry and that the limitations on the use of BOI received from FinCEN may hamper an SRO's ability to fully carry out its other regulatory obligations as discussed above.

If you have any questions on this letter or otherwise, please do not hesitate to contact Elizabeth Sheridan, Assistant General Counsel at esheridan@nfa.futures.org.

Respectfully Submitted,



Carol A. Wooding
Senior Vice President and General Counsel