



February 14, 2023

VIA ELECTRONIC SUBMISSION

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

Re: FinCEN 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 Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to submit comments to the Financial Crimes Enforcement Network (“FinCEN”) on the notice of proposed rulemaking (“NPRM” or “Proposed Rule”) regarding access to beneficial ownership information (“BOI”) that will be reported pursuant to Section 6403 of the Corporate Transparency Act (“CTA”).²

SIFMA strongly supports the CTA’s objectives to protect U.S. national security interests and the U.S. financial system and to better enable efforts to counter money laundering, terrorism financing and other illicit activity by making it more difficult for malign actors to conceal their

¹ SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly one million employees, we advocate for legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. With offices in New York and Washington, D.C., SIFMA is the U.S. regional member of the Global Financial Markets Association (GFMA).

² FinCEN, Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 87 Fed. Reg. 77404 (Dec. 6, 2022), <https://www.federalregister.gov/documents/2022/12/16/2022-27031/beneficial-ownership-information-access-and-safeguards-and-use-of-fincen-identifiers-for-entities>.

ownership of corporations, limited liability companies, and other legal entities in the United States.

We know there are fervent opinions on the creation of a federal database that holds and provides access to sensitive corporate beneficial ownership information that FinCEN has had to navigate. SIFMA's members handle sensitive customer information on a daily basis and appreciate the privacy concerns here, but the members support a BOI database that enhances their ability to detect and prevent illicit financial activity in the U.S. financial system while reducing their operational burdens and risks.

SIFMA and its member financial institutions ("FI") appreciate FinCEN for engaging with private sector stakeholders as it considers how best to implement the CTA and for confirming that use of the database is not mandatory.³ However, even voluntary use of the database would likely be minimal because of the limited access and operational burdens associated with access to and use of BOI in the manner proposed by FinCEN.

In our comments to the advance notice of proposed rulemaking ("ANPRM") and subsequent engagement with FinCEN staff, we pointed to:

Congress's instruction to reduce any burdens on both financial institutions and reporting companies that are unnecessary or duplicative.⁴ To achieve the CTA's objectives, it is important that *FinCEN's database collect and maintain accurate and reliable beneficial ownership information, with sufficient access given to financial institutions to help them meet their customer due diligence and other anti-money laundering compliance obligations.*⁵ (emphasis added).

FinCEN's proposed rule also contrasts with the principles of the Anti-Money Laundering Act of 2020, the most significant piece of anti-money laundering ("AML") legislation since the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001, that heralded a shift in focus to effective risk management by reducing unnecessary burdens on FIs and other stakeholders so that they could

³ *Supra* note 2 at 77446. Confirming that access to the database is voluntary is important to ensuring that regulators do not create an expectation that FIs should use the database as a best practice.

⁴ CTA § 6403(d)(1)(C).

⁵ SIFMA Comment Letter on FinCEN Advance Notice of Proposed Rulemaking on Beneficial Ownership Information Reporting Requirements (May 5, 2021), <https://www.regulations.gov/comment/FINCEN-2021-0005-0167>.

direct limited resources to U.S. national priorities and other risks presented by their customer base, business model, and product lines.

The proposed rule is highly technical and would require FIs to devote significant resources to operationalize and maintain access to a database that, as proposed, would be of marginal benefit to them for the reasons set forth in the section below. To properly ensure that the database is a well-functioning tool that supports law enforcement and the financial industry's efforts to combat illicit financial activity while mitigating burdens on impacted stakeholders, FinCEN should:

- Allow FIs to access and use the database as envisioned by Congress;
- Allows FIs to share BOI within their organizational structure and with their auditors, and allow access to currently ineligible U.S. affiliates;
- Ensure that the database contains verified information for users to reasonably rely upon;
- Sanction-screen BOI reporters and alert users to prevent abuse of the U.S. financial system;
- Provide standardized consent language for BOI reporters to consent once and with the ability to consent to the broad use of their BOI;
- Educate BOI reporters that FIs may ask for additional information to comply with other regulatory requirements; and
- Clarify that BOI would be reported after submitting an FinCEN Identifier.

I. The BOI Database Would Be of Marginal Benefit

The BOI database would be, at best, underutilized by FIs because of the limitations on access and use that FinCEN proposes. FinCEN proposes to limit FIs' access to the database exclusively for their customer due diligence (“CDD”) compliance obligations under 31 C.F.R. § 2010, which would restrict access to the database except to identify and verify the beneficial owners of legal entities at account opening only. FIs would be prevented from using BOI obtained from the database for other important AML compliance purposes, including investigations (that, for example, frequently extend to other legal entities or natural persons as a consequence of common ownership/control and/or transactional activity between other legal entities or natural persons, etc.) and ongoing risk-based monitoring that includes periodic reviews of, and updates to, customer information.

FinCEN also proposes a cumbersome and time-consuming process in which FI employees can only request BOI for a single entity at a time, which FinCEN estimates will take

an employee 15 minutes per query.⁶ FIs are thus prevented from accessing the database as seamlessly and in as close to real-time as possible, which is necessary to meet their pre-account opening and ongoing due diligence obligations. Permitting employees to run multiple queries and receive multiple search requests at a time would be faster and less resource intensive when screening thousands of customers.

The proposed rule also prohibits employees located outside the United States from requesting BOI through the database. This restriction is particularly challenging for many of our members that rely on and/or have entered into AML reliance agreements with their offshore affiliates or service providers to conduct certain elements of their CDD rule compliance.⁷ To comply with the proposed rule, FIs would have to restructure their programs, create new processes, and dedicate U.S. staff just to collect BOI from the database at account opening. This would result in FIs redirecting compliance resources away from other valuable AML functions to interface with the database, which seems entirely counterproductive.

Our members hoped that a readily accessible database would reduce their burdens and improve the customer experience for their reporting company customers. The unnecessary limits on access and use will result in FIs duplicating information collection efforts and not being able to avoid certain customer data collection steps in reliance on the database. While FIs could obtain the reporting company's BOI at account opening, any time an FI needs the same information for another equally valid purpose, it must obtain it again from the reporting company customer itself, and not the database, increasing the burden on both. At the very least and as we suggest below, customers should be able to consent at account opening to the broader use of BOI obtained from the database.

The proposed rule is inconsistent with Congress' intent. Congress specifically directed the Treasury Department to devise a database that facilitates FI compliance "with anti-money laundering, countering the financing of terrorism, *and* customer due diligence requirements under applicable law."⁸ Thus, FinCEN's narrow access proposal must be revised in way that allows the database to be utilized to its fullest potential and reduces the burdens on both FIs and reporting companies. We request that FinCEN adopt a broader reading that allows FIs to use the database for their ongoing AML due diligence obligations, to permit offshore affiliates to use the database to the extent such affiliates are tasked with relevant AML investigations and due diligence obligations, and for users to submit batches of inquiries.

⁶ *Supra* note 2 at 77435.

⁷ Sharing pursuant to reliance agreements is explicitly permitted under 31 CFR § 1010.230(j).

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

II. Additional Operational Impacts of Limitations on Access and Use

FinCEN's proposal to limit the use of BOI once accessed by our members poses additional and significant operational challenges. First, the proposal appears to restrict any director, officer, employee, or agent of an FI from sharing BOI with anyone other than another director, officer, employee or agent of the FI within the United States, for any purpose or activity other than "the particular purpose or activity for which such information was requested."⁹ This suggests a very narrow permission for internal access to and use of data gathered from the database, which would significantly hamper an FI's compliance, legal, and risk functions and those functions' interactions with regulators. For example, both internal and external auditors may need access to BOI to ensure that the FI's policies, procedures, and controls comply with regulatory requirements. In addition, legal and compliance personnel may need access to this information when performing periodic reviews, testing, and interfacing with regulators. Ring-fencing this information hampers both auditors and legal and compliance personnel from performing their necessary functions.

Second, the proposed rule appears to restrict FIs from sharing BOI of customers in common with affiliates who are, themselves, eligible to access the database. This would be particularly challenging for FIs that have enterprise-wide Know Your Customer ("KYC") programs and currently share information pursuant to an AML reliance agreement. The inability to share poses yet another challenge from an operational perspective, in which efforts to obtain BOI are unnecessarily duplicated.

We request that FinCEN clarify that FIs can share BOI within their organizations and with auditors and eligible affiliates. If FinCEN decides that BOI cannot be shared for other purposes, which we believe is contrary to Congress's intent, FIs should be able to share BOI, as necessary, with their auditors without consent from customers to assist their compliance efforts.

III. Expand Access to U.S. Affiliates of FIs

To further avoid duplicative efforts and operational burdens, FIs should be able to share BOI with ineligible U.S. affiliates, and those U.S. affiliates that use BOI for AML due diligence should have access to the database for the purposes of complying with an enterprise-wide KYC program. While these affiliates are not covered FIs because they do not have a CDD rule requirement, they may nevertheless be subject to certain AML requirements, have Suspicious Activity Report ("SAR") filing obligations, or be required to voluntarily comply with the CDD

⁹ *Supra* note 2 at 77455.

rule by virtue of their affiliation with an FI, and therefore become subject to oversight by a federal functional regulator. As part of an enterprise-wide program, they use BOI for the same purposes. We do not believe that these U.S. affiliates, if they choose to access the database, pose a security risk if they have the same or equivalent security and confidentiality protocols. Access would relieve operational burdens, increase utilization of the database, and further support the anti-money laundering and counter terrorist financing objectives of the CTA. We request that FinCEN allow FIs to share BOI with ineligible U.S. affiliates and grant them access to the database.

IV. Verified BOI Would Increase the Database's Utilization

FinCEN defers verification of BOI for another day, citing a study that it must conduct pursuant to the CTA "...no later than two years after the effective date of the BOI reporting rule, to evaluate the costs associated with imposing any new verification requirements on FinCEN and the resources necessary to implement any such changes."¹⁰ SIFMA reiterates that the reliability of BOI, and a method of resolving inaccuracies, is crucial to the database's utilization. We encourage FinCEN to make every effort to ensure information in the database is accurate and reliable for FIs to reasonably rely on the information contained therein when they access the database voluntarily.

In addition to reliable information, FinCEN could increase the usefulness of the database for voluntary users if it sanction-screened BOI reporters against the Specially Designated Nationals And Blocked Persons ("SDN") list and alerted users when they receive BOI. This is part and parcel of a database as envisioned by Congress. Not doing so could legitimize access to the U.S. financial system for criminals to conduct activity involving money laundering, terrorism financing, or proliferation financing.

V. Conduct Essential Educational Outreach

As we requested in our prior letter, FinCEN must conduct educational outreach to reporting companies about the requirements of BOI reporting, the CDD rule, and how FIs commonly collect information beyond what is regulatorily or statutorily prescribed to fulfill the requirements of risk-based AML policies and procedures and to determine the risk profile of specific customers. FinCEN's communications and outreach should emphasize that FIs have their own regulatory and statutory requirements and risk-based standards that the CTA supplements but does not replace. We also suggest that FinCEN create a webpage or written

¹⁰ *Supra* note 2 at 77410.

communication to which SIFMA's members can refer when customers question why they must provide information beyond what is required by the BOI reporting rule.

VI. Provide Standardized Consent Language for Multiple Reporters and Broader Use of BOI

SIFMA also requests that FinCEN create standardized consent language that FIs can use to obtain consent from a reporting company to access their BOI. We further request that the language provides a person with authority over multiple reporting companies or accounts to provide one consent, relieving the burden on them to provide, and for FIs to manage, more consents than necessary. The language should also allow reporting companies to consent to a broader use of BOI to reduce the number of requests made upon them.

VII. BOI Behind FinCEN Identifiers

SIFMA further requests that FinCEN provide clarity on what information FIs would receive from the database when presented with a FinCEN Identifier from a customer. Right now, it is unclear if, upon submitting a FinCEN Identifier, the database would return the underlying BOI of the FinCEN Identifier holder. If this is not the case, it will make the database even less useful to FIs because critical information would be missing with no way to compare and verify the database's information with customer information on file at the FI.

VIII. Impact on CDD Rule

As FinCEN knows, the usefulness and operational impact of the database is contingent upon the revisions to the CDD rule that FinCEN will propose later this year. We respectfully reserve the right to provide additional comments on access and use of the database once the CDD rule revisions are proposed.

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We appreciate your consideration of our comments and look forward to engaging with FinCEN on these critical issues. Feel free to contact me at 202-962-7300 or bcanepa@sifma.org with any questions.

Respectfully submitted,

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