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May 5, 2021

Via Electronic Submission

Mr. Michael Mosier
Acting Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

**Re: ANPRM: Beneficial Ownership Information Reporting Requirements (April 5, 2021)
- RIN 1506-AB49, Docket Number FINCEN-2021-06922**

Dear Director Mosier:

The New York City Bar Association's Compliance Committee (the "Compliance Committee") submits this letter in response to the request of the Financial Crimes Enforcement Network ("FinCEN") for comment on its Advance Notice of Proposed Rulemaking published on April 5, 2021 (the "ANPRM"). The Compliance Committee has a diverse membership that includes attorneys from law firms, in-house counsel, compliance professionals at various financial institutions, as well as representatives of regulatory and government agencies. We believe the Compliance Committee's diverse membership enables it to provide a broad and thoughtful view on matters impacting the financial community.

The ANPRM seeks input on questions concerning the implementation of the Corporate Transparency Act (the "CTA"), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021. Specifically, the ANPRM seeks comment on procedures and standards for reporting companies to submit information to FinCEN about their beneficial owners as required by the CTA and on FinCEN's implementation of the related provisions of the CTA that govern FinCEN's maintenance and disclosure of the beneficial ownership information subject to appropriate protocols. This comment letter focuses on the ANPRM provisions related to

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disclosure of beneficial ownership information to financial institutions with customer due diligence (“CDD”) requirements.

I. SUMMARY

The CTA requires “reporting companies” – corporations, limited liability companies, and similar entities, subject to certain statutory exemptions – to submit to FinCEN specified information on, among other things, their beneficial owners. The CTA requires FinCEN to maintain this information in a confidential, secure, and non-public database, and it authorizes FinCEN to disclose this information to certain government agencies for certain purposes specified in the CTA, and to financial institutions to assist in meeting their CDD requirements.

This letter provides a response to Question 35 of the ANPRM, which requests comments on how FinCEN can make beneficial ownership information available to financial institutions with CDD obligations so as to make that information most useful to those financial institutions. Question 35 includes three subparts. Subpart (a) asks whether financial institutions should be able to use the beneficial ownership information for other customer identification purposes, including verification of Customer Identification Program (“CIP”) information, with the consent of the reporting company. Subpart (b) asks whether FinCEN should permit reporting companies to pre-authorize specific financial institutions to receive the information. Subpart (c) asks what would be a reasonable time period for FinCEN to provide a response to financial institutions who request beneficial ownership information, and what information should be provided. We address each subpart in order below.

In summary, the Compliance Committee supports FinCEN’s proposal to leverage beneficial ownership information that reporting companies provide under the CTA to improve the efficiency and accuracy of financial institutions’ fulfilling their CDD obligations. First, we recommend that FinCEN make the information available for use beyond CDD for customer verification purposes. The sharing of this information has the potential to provide financial institutions a more complete understanding of their customers that would expedite compliance with existing CIP and CDD requirements and enhance their Bank Secrecy Act functions.

Second, we recommend that FinCEN utilize a secure portal for registered points of contact (“POCs”) at financial institutions to access the information in real time, as this will allow for the most efficient use of the resources. It is assumed that FinCEN plans to store the information received from reporting companies electronically, in a secure database. Financial institutions should be able to upload standardized electronic forms signed by the reporting companies that pre-authorize the disclosure of the information to this database; however, the reporting companies should also be able to upload these same forms to the database on their own. FinCEN can leverage practices from existing Patriot Act section 314(a) and suspicious activity reporting (“SAR”) processes to ensure cybersecurity and fraud mitigation protocols are followed.

Finally, to allow for the most efficient process, we recommend that FinCEN approve the pre-authorization requests within forty-eight (48) business hours (i.e., excluding weekends and federal holidays). In addition, we recommend that the information provided to financial institutions include the information reporting companies are required to provide to FinCEN under

the CTA – full legal name; date of birth; current address; and identifying number from acceptable government-issued identification documentation¹ – plus a copy or copies of any government-issued nonexpired photo identification sufficient to satisfy a financial institution’s CIP requirements under 31 C.F.R. § 1020.220(a)(2)(ii)(A). We recommend that FinCEN use its authority under the CTA to issue regulations requiring each reporting company to provide the latter documentation, which would make the beneficial ownership information provided to FinCEN by reporting companies most useful to financial institutions.

II. THE COMPLIANCE COMMITTEE’S RESPONSE TO QUESTION 35 OF THE ANPRM

a. Please describe whether financial institutions should be able to use that information for other customer identification purposes, including verification of customer information program information, with the consent of the reporting company

Under FinCEN’s guidance, financial institutions must maintain a CIP that includes “risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.”² Under its CDD Rule, FinCEN also requires financial institutions to identify and verify beneficial owners of companies opening accounts (subject to certain exceptions).³

In the Compliance Committee’s view, financial institutions should be able to use the information provided by reporting companies under the CTA for verification of customer and beneficial owner information. As discussed in further detail below, the direct provision of beneficial ownership information for customer verification purposes could allow financial institutions to increase the efficiency and accuracy of their processes.

b. Please describe whether FinCEN should make financial institution access more efficient by permitting reporting companies to pre-authorize specific financial institutions to which such information should be made available.

In terms of how FinCEN can make this process more efficient, the Compliance Committee suggests that FinCEN utilize a secure shared database for registered points of contact (POCs) at financial institutions to access in real time with pre-authorization provided via a standardized, electronic form. Under the CTA, FinCEN is authorized to disclose beneficial ownership information to financial institutions, “with the consent of the reporting company, to facilitate the compliance of the financial institution with customer due diligence requirements under applicable

¹ 31 U.S.C. § 5336(a)-(b).

² FinCEN, “Interagency Interpretive Guidance on Customer Identification Program Requirements under Section 326 of the USA PATRIOT Act,” Apr. 28, 2005, *available at* <https://www.fincen.gov/resources/statutes-regulations/guidance/interagency-interpretive-guidance-customer-identification>.

³ See FinCEN, “Customer Due Diligence Requirements for Financial Institutions,” May 11, 2016, *available at* <https://www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions>.

law.”⁴ However, “[t]he Secretary of the Treasury shall, by regulation, prescribe the form and manner in which information shall be provided to a financial institution”⁵

In determining this form and manner, FinCEN should consider the most efficient format possible in order to make the process useful and consistent with financial institutions’ existing CIP and CDD obligations, along with providing adequate safeguards to protect the confidentiality and security of the information reporting companies provide. To accomplish this, the Compliance Committee recommends that FinCEN develop a standardized, electronic pre-authorization form that can be submitted by either financial institutions or reporting companies via a secure shared database. FinCEN’s utilization of a secure shared database to process pre-authorization requests and share the beneficial ownership information with authorized financial institutions will avoid unnecessary delays inherent in a siloed request and response process. This proposal would also allow for financial institutions to use the information collected efficiently without expending resources to track requests and responses that may be significantly delayed and difficult to monitor. Likewise, FinCEN could save resources that would otherwise have to be employed to receive and respond to such requests.

The Compliance Committee acknowledges the data privacy and cybersecurity concerns raised by certain commentors in response to the proposed legislation requiring the formation of a national registry of beneficial ownership information. To address these concerns, the Compliance Committee suggests that FinCEN account for cybersecurity risks when constructing its database and require financial institutions to implement appropriate procedures and controls to protect the confidentiality and security of the information they access from the database. For example, the database could strictly limit access to designated POCs of sufficient seniority who pre-register at each institution, require each institution to create procedures governing use of the information, and operate alongside periodic trainings and audits, similar to how FinCEN operates and monitors use of its SAR database by law enforcement. In addition, the database could maintain firewalls that restrict a POC’s access only to the beneficial ownership information for which the financial institution was granted permission to access.

The Compliance Committee also suggests that FinCEN consider examining the way it shares information with financial institutions under section 314(a) of The Patriot Act (“Section 314(a)”) for guidance. Under Section 314(a), upon receiving a qualified request from a law enforcement agency, FinCEN may require a financial institution to search its records to determine whether it maintains or has maintained accounts for, or has engaged in transactions with any, specified individual, entity, or organization.⁶ Under FinCEN’s rules, a financial institution must designate one point of contact for receiving Section 314(a) information requests.⁷ Each financial institution must provide “the name, title, mailing address, e-mail address, telephone number, and facsimile number of” the designated POC to FinCEN when requested.⁸ FinCEN posts its Section

⁴ 31 U.S.C. § 5336(c)(2)(B)(iii).

⁵ 31 U.S.C. § 5336(c)(2)(C).

⁶ 31 C.F.R. § 1010.520(b)(1).

⁷ 31 C.F.R. § 1010.520(b)(3)(iii).

⁸ *Id.*

314(a) subject lists through its web-based “Secure Information Sharing System.” At certain intervals, the POC is prompted to access the current Section 314(a) subject list from FinCEN’s web portal and download the files for searching.

Under FinCEN’s rules, financial institutions receiving Section 314(a) information must limit use of the information and maintain adequate procedures to protect its security and confidentiality.⁹ While not an exact analogy because financial institution POCs in the Section 314(a) context are granted access to the entire Section 314(a) subject list, not just to a particular subject on the list, FinCEN could consider issuing similar rules to ensure the confidentiality and security of the information shared with financial institutions under the CTA.

c. In response to requests from financial institutions for beneficial ownership information, pursuant to 31 U.S.C. 5336(c)(2)(A), what is a reasonable period within which FinCEN should provide a response? Please also describe what specific information should be provided.

In response to the submission of the standardized pre-authorization form, FinCEN should process these requests within forty-eight (48) business hours. With the requests submitted electronically, and the review consisting largely of authentication between the standardized pre-authorization form and the documentary evidence from the secure shared database, there would be few steps necessary for FinCEN to complete a review and process a request. Responses should be processed instantaneously within the database, so that the financial institution POCs and the reporting companies are simultaneously notified of the approval or disapproval. If the financial institution POCs already have access to the database, they should be able to view and download the specific information provided by the reporting companies. By adopting processes to review the standardized pre-authorization form in the shared database and grant access to the financial institution POCs within forty-eight (48) business hours, FinCEN would make the customer verification process most efficient without substantial impact to the resources of any party involved.

The specific information provided should consist of the beneficial ownership information required by the CTA, that is, the contents of the beneficial ownership information reports referenced in 31 U.S.C. § 5336(a)-(b) – full legal name; date of birth; current address; and identifying number from acceptable government-issued identification documentation – plus a copy or copies of any nonexpired government-issued photo identification sufficient to satisfy a financial institution’s CIP requirements under 31 C.F.R. § 1020.220(a)(2)(ii)(A).

We recommend the latter requirement because FinCEN’s existing regulations require financial institutions to conduct customer verification through documentary and non-documentary methods.¹⁰ The documentary requirements for individuals consist of an “unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver’s license or passport.”¹¹ The non-documentary methods consist of a

⁹ 31 C.F.R. § 1010.520(b)(3)(iv).

¹⁰ 31 C.F.R. § 1020.220(a)(2)(ii)(A)-(B).

¹¹ 31 C.F.R. § 1020.220(a)(2)(ii)(A)(1).

range of options, which include “contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.”¹² Further, financial institutions’ non-documentary methods “must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.”¹³ Given these circumstances, and the lack of any current requirement for FinCEN to conduct verification of the reporting companies, it is unlikely that FinCEN would be well-positioned to perform non-documentary verification, as these processes and circumstances described in the regulations are unique to financial institutions.

It would not be unreasonable to expect reporting companies to produce an “unexpired government-issued identification evidencing nationality or residence and bearing a photograph,” for each reported beneficial owner, particularly because the CTA already requires reporting companies to provide a unique identifying number from an unexpired government-issued identification document. By requiring such documentation, FinCEN would strengthen financial institutions’ compliance with customer and beneficial owner identification and verification requirements and avoid undue cost burdens or delays with collecting the information by non-documentary means. Broadening the scope to include the collection of a photo ID will improve the accuracy of the information provided and reduce the potential for fraud. Furthermore, information sharing between financial institutions and FinCEN will foster a transparency between the public and private sectors, which is necessary to facilitate an improved and efficient Anti-Money Laundering program.

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The Compliance Committee appreciates the opportunity to comment on the ANPRM. If we can be of any further assistance in this regard, please feel free to contact us.

Respectfully submitted,



Patrick T. Campbell
Chair, Compliance Committee

¹² 31 C.F.R. § 1020.220(a)(2)(ii)(B)(1).

¹³ 31 C.F.R. § 1020.220(a)(2)(ii)(B)(2).

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