

February 14, 2022

Mr. Himamauli Das  
Acting Director  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, Virginia  
22183  
United States



**RE: Modernization of the US AML/CFT System – Request for Information**

Dear Mr. Das:

The Institute of International Finance (“IIF”) is grateful for the opportunity to comment on the Financial Crimes Enforcement Network (“FinCEN”) Request for Information (“RFI”) on the modernization of the Anti-Money Laundering/Countering the Financing of Terrorism (“AML/CFT”) system in the United States (“US”) (the “Consultation”)<sup>1</sup>. We greatly appreciate FinCEN consulting with stakeholders in this important area, and we have long supported its wider work in mitigating and preventing the effects of financial crime in the US and around the world. We were also pleased to offer comments on the earlier, related discussions at FinCEN concerning AML program effectiveness.<sup>2</sup>

We believe the focus of the Consultation on ways to streamline, modernize, and update the AML/CFT regime is critical and timely. A clear focus on changes which help to tackle evolving financial crime threats and address risk-based compliance - while at the same time continuing to provide financial institutions with greater flexibility in the allocation of resources - will result in the enhanced efficacy and efficiency of financial crime risk management programs.

The IIF, in partnership with Deloitte, recently published a joint White Paper on the effectiveness of financial crime risk management globally (the “White Paper”).<sup>3</sup> This paper gauges current perspectives from within the financial services industry and the public sector on progress in the fight against financial crime and the continued challenges facing the international financial crime risk management regime. The IIF and Deloitte combined research with interviews of stakeholders at financial institutions and public authorities responsible for AML/CFT and the wider financial crime policy and enforcement environment across both developed and emerging markets. We believe several of the topics raised in the White Paper may prove helpful to FinCEN as it engages in the RFI process.

Specifically, we discuss the following issues where modernization and reform are most critical:

1. *The Use Financial Intelligence:* It is widely recognized that the management of economic and financial crime risk can be improved by facilitating the increased sharing of information on financial activity linked to crime and terrorism, both domestically and internationally.

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<sup>1</sup> FinCEN, *Review of Bank Secrecy Act Regulations and Guidance*, December 14, 2021.

<sup>2</sup> IIF, RE: Anti-Money Laundering Program Effectiveness, November 2020.

<sup>3</sup> IIF/Deloitte White Paper: *The Effectiveness of Financial Crime Risk Management Reform and Next Steps on a Global Basis*, November 2021. A link to the paper can be found as an attachment to this letter.

Section 1 of the White Paper discusses several areas pertinent to US discussions in this area. For example, the degree and scope of information exchange between the public and private sectors can specifically impact the effectiveness of AML/CFT and wider financial crime risk management frameworks (Section 1a). A crucial factor in improving the quality of Suspicious Activity Report (“SAR”) disclosures, for example, would be to increase general and/or specific feedback and information from law enforcement to the reporting institutions.

The US AML Act<sup>4</sup> helpfully calls for FinCEN to enact AML threat pattern and trend sharing with financial institutions. This is a particularly important initiative, as sharing the learning derived from analysis of complex cases along with efficacy indicators, in addition to wider threat and trend analysis, is critical so that the reporting sector can more effectively focus its resources informed by a better understanding of risk. Instituting this type of communication, and building upon it in more operational detail, would also be a mechanism through which risk can be conveyed to firms on an ad hoc basis rather than only through the risk assessment. If feedback was provided, it may offer indication of something of higher risk where more resources should be allocated.

At the international level, it will also still be increasingly important to tackle the underlying issues with cross-border data exchange. We are pleased that FinCEN has issued a Notice of Proposed Rulemaking (“NPRM”) to establish a pilot program that would allow institutions to share SARs and related information with foreign branches, subsidiaries, and affiliates<sup>5</sup>. This is an important step in facilitating increased international information sharing and helping financial institutions better detect cross-border criminal financial flows.

At the same time, it will be important to address the wider areas of data protection, security and privacy when dealing with the concept of sharing information. While the protection of customer/personal data and the right to privacy are of unquestioned importance, the upholding of such principles is not mutually exclusive with sharing information on illicit financial activity where necessary to limit its furtherance. Section 1.e of the White Paper discusses issues where international cooperation on these matters would be of assistance in furthering data exchange. Although the US privacy regime currently is relatively less restrictive than in many other jurisdictions, FinCEN can play an important role on the international stage to support further reconciliation of privacy requirements and the ability to share information to combat financial crime.

Lastly, the White Paper also discusses the importance of modernizing public/private partnerships (Section 1.d) and facilitating access to beneficial ownership information and broader beneficial ownership transparency (Section 1.b). The commentary on both these topics will hopefully provide useful information when considering next steps for FinCEN Exchange and implementation of the Corporate Transparency Act (“CTA”) in the United States.<sup>6</sup>

2. *Risk Prioritization*: It is acknowledged in the White Paper that the relative maturity of financial crime frameworks across different jurisdictions will vary, however, in countries with more mature frameworks there is a growing consensus that establishing national priorities - which are the money laundering and terrorist financing risks that a country is exposed to - will help shift the

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<sup>4</sup> The Anti-Money Laundering Act of 2020 (AMLA 2020).

<sup>5</sup> FinCEN, NPRM, *Suspicious Activity Report Sharing Pilot Program to Combat Illicit Finance Risks*, January 2022.

<sup>6</sup> Please see: IIF, *RE: Beneficial Ownership Information Reporting Requirement – Notice of Proposed Rulemaking*, February 2022.

primary focus for AML/CFT programs from maintaining technical compliance to a more risk-based, outcomes-oriented methodology.

FinCEN has been a recognized leader in this approach, with the publication of national priorities<sup>7</sup> that are composed from longstanding threats (*e.g.*, international terrorism) and emerging threats (*e.g.*, cybercrime) and are helpfully supplemented by strategic documents.<sup>8</sup> Section 2 of the White Paper considers how the concept of risk prioritization can be advanced to tackle the most pressing issues in AML/CFT risk management and compliance and will hopefully assist in discussions around how such a process can help modernize the AML/CFT framework in the US further.

For example, measuring effectiveness and enhancing the supervisory approach, including establishing clear guidance and expectations, will be critical. Although the risk-based, priorities-focused approach is a welcomed reform, nothing will actually change until the supervisory and examination approach changes to reflect that policy. It is critical that law enforcement, examiners, auditors, and other program evaluators, including financial institutions themselves, are on the same page in terms of how to measure and evaluate AML/CFT program effectiveness and compliance with regulatory requirements.

There is also a need to ensure supervisors examine FIs by using a risk-based approach focused on the priorities rather than solely on technical requirements. Strengthening the feedback loop and information sharing on the priorities, including both what is of higher priority and what is of lower priority, between the private sector and law enforcement needs to continue to be a focus of national and regional reform efforts and there needs to be an adjustment of risk assessment processes to concentrate more on threats associated with the higher priorities. Lastly, there is a need to develop a shared understanding with the public sector on how AML/CFT programs will be evaluated based on the priorities and there should be a way to provide a platform to pilot, evaluate and refine the implementation of priorities into AML/CFT programs. Taken together, these efforts will assist in ensuring risk prioritization can lead to a modernized and more effective AML/CFT system.

3. *Technology and Innovation:* The use of innovation to improve the overall effectiveness of financial crime risk management programs and disrupt illicit flows in high-risk areas has continued apace globally and there has been a shift in some jurisdictions - and at the international level - in issuing guidance, statements of support, and, in some cases, passing legislation around emerging technology, with an overall goal of supporting such innovation in enhancing systemic AML/CFT effectiveness.

The US, again, has been a leader in this space, The US AML Act, for example, makes innovation and the adoption of innovative approaches a regulatory imperative, such as using emerging technology (*e.g.*, “NextGen” Models that leverage behavioral analytics and machine learning) to improve the effectiveness of financial crime monitoring and investigations. As discussed further

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<sup>7</sup> Financial Crimes Enforcement Network, [“FinCEN Issues First National AML/CFT Priorities and Accompanying Statements,”](#)

<sup>8</sup> Such as the Department of the Treasury’s 2020 Illicit Finance Strategy, 2018 National Risk Assessment and various FinCEN Advisories. Starting from priorities instead of risks specific to the FI, FIs can align their AML/CFT programs and resources to identify and mitigate risks of primary concern to the local government.

in Section 3 of the White Paper, other jurisdictions, along with the Financial Action Task Force (“FATF”), have also prioritized advancements in this area.

In order to go further in making effective use of technology, the White Paper discusses a few areas of focus. Specifically, there is importance in clarifying how the effectiveness of new approaches will be evaluated by examiners (including how technology can provide improved investigative value to law enforcement). Facilitating the ability of financial institutions to make changes to their risk coverage models to align to new risks and national priorities in order to realize the benefits associated with emerging technologies will also be crucial, along with addressing the challenges concerning information sharing which may inhibit the effectiveness of new technology. This area also requires an alignment of FinCEN policy with regulatory examinations.

The White Paper also raises the issues of international cooperation and capacity building in tackling illicit flows (Section 4), both areas which we know FinCEN and its counterparts in the US government consider critical. We note in the paper that reform to enhance effectiveness in financial crime risk management is currently being pursued in other jurisdictions as well, and many of the same concepts discussed in the Consultation reflect the international focus of both the public and private sectors on improving outcomes when tackling cross-border financial crime.

As discussions around modernization of the system continue, we encourage FinCEN and other agencies of the US government to work collaboratively with their international partners to develop a common understanding of a modern and effective cross-border financial crime risk management and compliance system in line with the standards and objectives of the FATF, where a clear emphasis on delivery of effective outcomes is deemed essential.<sup>9</sup> Leveraging sound practices across jurisdictions - and ensuring consistency in implementation of international requirements - will make it harder for criminals to exploit gaps in AML/CFT protections in one jurisdiction. This will help eliminate one of the incentives criminals have to channel their operations through jurisdictions they know are less resilient than others.

Lastly, in addition to the overall issues raised in the White Paper, we believe FinCEN should take the opportunity to address specific areas where requirements are duplicative and do not promote risk-based compliance. An example of this would include revising the Customer Due Diligence Rule (“CDD Rule”) to be applied at a customer versus account level. Overall, the account-based trigger requirement within the CDD Rule can be redundant and excessively burdensome without adding risk management value. Other areas where FinCEN’s focus would be helpful concern the removal of expectations for understanding customers’ anticipated activity (as activity can be best understood through the customer relationship lifecycle) and the removal of continuing activity report requirements. The storage of guidance and advisories in a centralized location, where they can be routinely reviewed for necessary updates and retired once outdated, would also be useful to the modernization of the system. Consideration of these changes would help reinforce the risk-based concepts of effectiveness outlined in the White Paper.

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<sup>9</sup> FATF, *An effective system to combat money laundering and terrorist financing* :<https://www.fatf-gafi.org/publications/mutualevaluations/documents/effectiveness.html>

We believe close attention to these issues will make a positive difference in combatting economic and financial criminal activity. Thank you very much for considering our feedback through this letter and the attached link to the White Paper. If you have any questions, please do not hesitate to contact me or Matthew Ekberg at ([mekberg@iif.com](mailto:mekberg@iif.com)).

Very truly yours,

A handwritten signature in black ink, appearing to read 'Matthew Ekberg', with a stylized flourish at the end.

**Attachment:** IIF/Deloitte White Paper: *The Effectiveness of Financial Crime Risk Management Reform and Next Steps on a Global Basis*, November 2021:

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