

May 5, 2021

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



RE: Beneficial Ownership Information Reporting Requirement – Advanced Notice of Proposed Rulemaking

Dear Mr. Mosier:

The Institute of International Finance (“IIF”) is grateful for the opportunity to comment on the Financial Crimes Enforcement Network (“FinCEN”) Advanced Notice of Proposed Rulemaking (“ANPRM”) concerning the regulatory process for a new beneficial ownership reporting requirement (the “Consultation”)¹. We greatly appreciate FinCEN’s outreach to interested stakeholders in this important area and we have long supported its wider work in mitigating and preventing the effects of financial crime in the United States (“US”) and around the world.

The focus on beneficial ownership information reporting is critical. We are pleased that the Anti-Money Laundering Act of 2020 (the “AML Act”)² includes the Corporate Transparency Act (“CTA”) which requires certain US entities and entities doing business in the US to report beneficial ownership information to FinCEN. We have long called on governments around the world to enact beneficial ownership registers and to make them transparent and more effective. As we all know, identifying the true beneficial owner or individual exercising control in a business relationship is vital for both the public and the private sector in the fight against financial crime and entree by financial institutions to reliable, verified, and accessible beneficial ownership information remains a priority globally.

Though the concept of beneficial ownership registers is embedded in the Recommendations of the Financial Action Task Force (“FATF”)³, progress in implementation is uneven across the globe, and where it is made available, a common theme is that the data is held and maintained by a public body that lacks the financial and human resources to effectively police the quality of the data. This issue needs to be addressed through both policy change and investment.

As such, the framework set out by the CTA provides an important foundation for a beneficial ownership register in the US. However, additional standards should be considered as the register comes to fruition and as it matures. In this respect, we take the opportunity to reflect on elements of the Consultation which have common international implications for standardization and highlight areas to consider as both the rulemaking process at FinCEN advances and as the US engages with its partners at the FATF on

¹ FinCEN, 31 CFR Part 1010 RIN 1506–AB49, Beneficial Ownership Information Reporting Requirements.

² The Anti-Money Laundering Act of 2020 (AMLA 2020).

³ Please see FATF Recommendation 24: Transparency and beneficial ownership of legal persons.
<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

discussions currently underway concerning globally consistent reform in beneficial ownership information reporting.⁴

First, we believe the US has a significant opportunity create an effective register by ensuring high standards are upheld which include a regular review of the register to ensure weak spots are mitigated, including the use of false documentation or inaccurate identities to hide beneficial ownership interests. There should be further work to examine the role of interoperability and international cooperation with and across domestic and regional registers to identify where complex international corporate structures may be shielding criminal activity.

Second, authorities should not rely on financial institutions to verify the information in the register, act as gatekeepers, or to depend on discrepancy reporting as a means of validation. The US should place increased emphasis on requiring the legal entities *themselves* to be more forthcoming in a verifiable way to satisfy Customer Due Diligence (“CDD”) requirements. An independent and reliable register should be enforceable in terms of those required to provide information, actively policed and backed by the government as a reliable source of due diligence information.

Third, in order for the register to be reliable, the public sector should stand by the contextual reference data they provide, ensuring it is a source upon which the regulated sector can rely both practically and legally if the integrity of the verification information is appropriate for effective risk management. Financial institutions should not be expected to ensure the quality of information maintained at FinCEN or report inaccuracies in data.

This approach will support consistency of information available to both financial institutions and government authorities, as well as help contain compliance costs that are factored into the commercial decisions that can impact financial inclusion.⁵ Additionally, the time and resources spent on beneficial ownership collection and verification (particularly for new accounts of existing customers, which the financial institution already knows) can be reallocated to areas of higher risk mitigation value, in line with the risk based approach.

Fourth, the use of the Legal Entity Identifier (“LEI”) should be considered to enhance methods and tools for transparency.⁶ The LEI provides for the unambiguous identification of legal entities and could be effectively leveraged by law enforcement and regulators in identifying the actual entity that owns a structure or in monitoring. Incorporating the LEI into a register as a required field and encouraging its use would aid in securing further reliable information on overall control and enhancing customer due diligence generally.

Fifth, we believe the US should play a key role in ensuring the high standards outlined herein are enacted in a consistent fashion globally through ongoing coordination at the FATF in the context of the review of FATF Recommendation 24.⁷ Inconsistencies in national approaches to beneficial ownership information

⁴ We note that many of these issues were also raised in our recent letter to Deputy Secretary of the Treasury, Mr. Adewale Adeyemo, on priorities for AML/CFT effectiveness. IIF, *Priorities for Effectiveness in Financial Crime Risk Management*, April 22, 2021.

⁵ We note in our letter to Deputy Treasury Secretary Adeyemo, such issues should also be considered in terms of the AML Act’s provisions to further examine the causes of De-Risking and ways to address its consequences: *IBID*.

⁶ The LEI is a 20-character, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO). It connects to key reference information that enables clear and unique identification of legal entities participating in financial transactions.

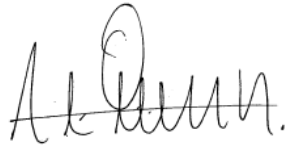
⁷ There is currently an ongoing review of Recommendation 24 at the FATF which concerns standards for transparency and beneficial ownership reporting and we believe the issues outlined in this letter would benefit from being reflected in those discussions to ensure a consistent approach globally.

accessibility create significant barriers to effectiveness. Operational burdens with little to no risk management value arise when countries implement different requirements that seek to yield the same results. Country coordination on common standards would improve effectiveness in risk mitigation by financial institutions and would also further protect the global financial system. This should also include efforts to address digitalization barriers, standards in documentation and issues concerning cross-border information sharing.⁸

Thank you very much for considering our feedback. The work of FinCEN in this area is vitally important and we note that the ultimate framework put in place for beneficial ownership reporting should be consistent with the overarching goals of the AML Act and the FATF, which is to enhance the effectiveness of the AML/CFT regime.

We look forward to engaging with you further as beneficial ownership reporting reform efforts continue in the US and at the FATF. If you have any questions, please do not hesitate to contact me or Matthew Ekberg (mekberg@iif.com).

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Portilla'.

Andrés Portilla
Managing Director, Regulatory Affairs
Institute of International Finance

⁸ For further information on issues concerning cross-border financial crime information sharing, please see: IIF Staff Paper, *Economic and Financial Crime Risk and the Sharing of Intelligence: Up-dating and Enabling International and Domestic Cooperation in Combat-ting Illicit Financial Flows*, October 2020: https://www.iif.com/Portals/0/Files/content/Regulatory/10_08_20_financial_crime.pdf