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May 5, 2021

Ms. Anna Lou Tirol
Deputy Director
Policy Division
Financial Crimes Enforcement Network
P.O. Box 39, Vienna, VA 22183

Re: Comments of The **Money Services Business Association** in Response to Advance Notice of Proposed Rulemaking: Docket Number FINCEN-2021-0005, RIN 1506-AB49

Dear Deputy Director Tirol:

This comment letter is submitted by The **Money Services Business Association** ("**MSBA**") in response to the Advanced Notice of Proposed Rulemaking, "Beneficial Ownership Information Reporting Requirements," published by the Financial Crimes Enforcement Network ("**FinCEN**") in the Federal Register on April 5, 2021 (the "**ANPRM**").¹ The ANPRM seeking information regarding the implementation of the Corporate Transparency Act (the "**CTA**"), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021. We welcome this opportunity to submit our comments.

The **MSBA** is a trade association focused on the non-bank money services industry. The MSBA was launched October 2015 by leading industry companies to support the non-bank financial services industry, legislation and regulation tracking, increasing awareness and understanding about the beneficial and secure services provided by the industry and to encourage and promote payments innovation. The MSBA currently has 80 members, which include providers of all products of "money services businesses" as defined by FinCEN regulations other than the United States Postal Service. MSBA's members thus include money transmitters, dealers in foreign exchange, check cashers, issuers or sellers of traveler's checks or money orders, providers of prepaid access, and sellers of prepaid access.

The following provides the MSBA's comments to certain of the specific Questions for Comments set forth in the ANPRM. We first quote the question that we are responding to, followed by our response. We have retained the numbering of each question as was provided in the ANPRM.

¹ 86 Fed. Reg. 17557-01 (April 5, 2021).

QUESTION (1) The CTA requires reporting of beneficial ownership information by “reporting companies,” which are defined, subject to certain exceptions, as including corporations, LLCs, or any “other similar entity” that is created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian tribe or formed under the law of a foreign country and registered to do business in the United States by the filing of such a document.

- a. How should FinCEN interpret the phrase “other similar entity,” and what factors should FinCEN consider in determining whether an entity qualifies as a similar entity?
- b. What types of entities other than corporations and LLCs should be considered similar entities that should be included or excluded from the reporting requirements?
- c. If possible, propose a definition of the type of “other similar entity” that should be included, and explain how that type of entity satisfies the statutory standard, as well as why that type of entity should be covered. For example, if a commenter thinks that state-chartered non-depository trust companies should be considered similar entities and required to report, the commenter should explain how, in the commenter’s opinion, such companies satisfy the requirement that they be formed by filing a document with a secretary of state or “similar office.”

ANSWER (1):

We believe the existing definition of a “legal entity customer” under FinCEN’s Customer Due Diligence (CDD) rules should be applied here. The CDD rules define such entities to include entities created by “*the filing of a document with a secretary of state or a similar office under the law of a U.S. State (including the District of Columbia, and U.S. territories) or Indian Tribe; or formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe*”.² In our view this existing definition is reasonably clear and does not require further clarification.

We also believe that a state chartered non-depository trust company, as referenced in sub-question (c) would be exempt under the exclusions for highly regulated entities. In this context we urge FinCEN to clarify that other highly regulated entities, such as state licensed money transmitters registered with FinCEN as money services businesses (MSBs), should also be exempt.

QUESTION (2) The CTA limits the definition of reporting companies to corporations, LLCs, and other similar entities that are “created by the filing of a document with a

² [31 CFR 101.230\(e\)\(1\)](#)

secretary of state or a similar office under the law of a State or Indian Tribe” or “registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe.”

a. Does this language describe corporate filing practices and the applicable law of the states and Indian tribes sufficiently clearly to avoid confusion about whether an entity does or does not meet this requirement?

b. If not, what additional clarifications could make it easier to determine whether this requirement applies to a particular entity?

ANSWER (2):

We believe the language is sufficiently clear and no further clarification is needed.

QUESTION (3) The CTA defines the “beneficial owner” of an entity, subject to certain exceptions, as “an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise” either “exercises substantial control over the entity” or “owns or controls not less than 25 percent of the ownership interests of the entity.” Is this definition, including the specified exceptions, sufficiently clear, or are there aspects of this definition and specified exceptions that FinCEN should clarify by regulation?

a. To what extent should FinCEN’s regulatory definition of beneficial owner in this context be the same as, or similar to, the current CDD rule’s definition or the standards used to determine who is a beneficial owner under 17 CFR 240.13d-3 adopted under the Securities Exchange Act of 1934?

b. Should FinCEN define either or both of the terms “own” and “control” with respect to the ownership interests of an entity? If so, should such a definition be drawn from or based on an existing definition in another area, such as securities law or tax law?

c. Should FinCEN define the term “substantial control”? If so, should FinCEN define “substantial control” to mean that no reporting company can have more than one beneficial owner who is considered to be in substantial control of the company, or should FinCEN define that term to make it possible that a reporting company may have more than one beneficial owner with “substantial control”?

ANSWER (3):

(a) We believe it makes sense to have the definition identical to the definition of beneficial owners under 17 CFR 240.13d-3 adopted under the Securities Exchange Act of 1934.

(b) We believe the concepts of ownership and control are sufficiently clear under existing case law and regulatory guidance.

(c) We would suggest considering basing the definition of “substantial control” as it is set forth under 34 C.F.R. § 668.174(c)(3), but with the addition of specific examples relevant to the CTA. We also believe it should be possible for a reporting company to have more than one beneficial owner with “substantial control”.

QUESTION (4) The CTA defines the term “applicant” as an individual who “files an application to form” or “registers or files an application to register” a reporting company under applicable state or tribal law. Is this language sufficiently clear, in light of current law and current filing and registration practices, or should FinCEN expand on this definition, and if so how?

ANSWER (4):

We believe this term is sufficiently clear. Of course, it should be noted that it is the individual *about whom* the application form is filed who is the applicant - - not that person’s lawyer or representative who may be doing the actual “filing.”

QUESTION (5) Are there any other terms used in the CTA, in addition to those the CTA defines, that should be defined in FinCEN’s regulations to provide additional clarity? If so, which terms, why should FinCEN define such terms by regulation, and how should any such terms be defined?

ANSWER (5):

No comment.

QUESTION (6) The CTA contains numerous defined exemptions from the definition of “reporting company.” Are these exemptions sufficiently clear, or are there aspects of any of these definitions that FinCEN should clarify by regulation?

ANSWER (6):

We believe that the exemptions could be clarified. In particular, the exemption that applies to “**a money transmitting business registered with the Secretary of the Treasury under section 5330.**”

We believe the intention with respect to the above exemption was to exempt *all regulated money services businesses (MSBs) registered with FinCEN*. In addition to the category of “money transmitting business” other regulated categories of MSBs listed in 31 C.F.R. 1010.100(ff)(1)-(7) which should be exempted include: (1) Dealers in foreign exchange; (2) Check cashers; (3) Issuers or sellers of traveler's checks or money orders; (4) Providers of prepaid access; (5) the US Postal Service; and (6) Sellers of Prepaid Access (to the extent registered as an MSB). These are all categories of regulated entities whose ownership data have already been filed with their applicable state regulators.

QUESTION (7) In addition to the statutory exemptions from the definition of “reporting company,” the CTA authorizes the Secretary, with the concurrence of the Attorney General and the Secretary of Homeland Security, to exempt any other entity or class of entities by regulation, upon making certain determinations. Are there any categories of entities that are not currently subject to an exemption from the definition of “reporting company” that FinCEN should consider for an exemption pursuant to this authority, and if so, why?

ANSWER (7): No comment.

QUESTION (8) If a trust or special purpose vehicle is formed by a filing with a secretary of state or a similar office, should it be included or excluded from the reporting requirements?

ANSWER (8): We believe they should be excluded; trusts and other special purpose vehicles are already highly regulated and require substantial identification verification.

QUESTION (9) How should a company's eligibility for any exemption from the reporting requirements, including any exemption from the definition of “reporting company,” be determined?

- a. What information should FinCEN require companies to provide to qualify for these exemptions, and what verification process should that information undergo?
- b. Should there be different information requirements for operating companies and holding companies, for active companies and dormant companies, or are there other bases for distinguishing between types of companies?
- c. Should exempt entities be required to file periodic reports to support the continued application of the relevant exemption (e.g., annually)?

ANSWER (9)

- (a) Companies should be able to qualify by providing a copy of their license, and their MSB registration.
- (b) Holding or operating companies should provide in addition to the applicable license, an organizational chart certified by an officer showing that the corporate relationship exists.
- (c) We believe exempt companies should be able to periodically report the status of their continued exemption every 2 years, at the same time they renew their MSB registration with FinCEN.

QUESTION (10) What information should FinCEN require a reporting company to provide about the reporting company itself to ensure the beneficial ownership database is highly useful to authorized users?

ANSWER (10)

We believe it would be best if the reporting companies must provide all of the information that would normally be required for performance by a bank of its own CDD.

QUESTION (11) What information should FinCEN require a reporting company to provide about the reporting company's corporate affiliates, parents, and subsidiaries, particularly given that in some cases multiple companies can be layered on top of one another in complex ownership structures?

ANSWER (11)

We would suggest that only information needed to allow for OFAC screening of the indirect owners with at least 25% ownership should be required. In addition, we suggest that FinCEN consider defining indirect ownership in a manner that is consistent with state "money transmitter" licensing laws.

QUESTION (12) Should a reporting company be required to provide information about the reporting company's corporate affiliates, parents, and subsidiaries as a matter of course, or only when that information has a bearing on the reporting company's ultimate beneficial owner(s)?

ANSWER (12):

Such information should only be required when it has a bearing on their reporting company's ultimate beneficial owners.

QUESTION (13) What information, if any, should FinCEN require a reporting company to provide about the nature of a reporting company's relationship to its beneficial owners (including any corporate intermediaries or any other contract, arrangement, understanding, or relationship), to ensure that the beneficial ownership database is highly useful to authorized users?

ANSWER (13)

We would suggest a copy of the reporting company's organizational chart, certified by an officer of the company, should be sufficient.

QUESTION: (14) Persons currently obligated to file reports with FinCEN overwhelmingly do so electronically, either on a form-by-form basis or in batches using proprietary software developed by private-sector technology service providers.

- a. Should FinCEN allow electronic filing of required information about reporting companies (including the termination of such companies), beneficial owners, and applicants under the CTA?
- b. Should FinCEN allow or support any mechanisms other than direct electronic filing?
- c. Should FinCEN allow or support direct batch filing of required information?
- d. Should there be any differences among the mechanisms used for different types of information or different types of filers?
- e. Should any additional or alternative reporting system involve the collection of information from the states and Indian tribes, and if so how?
- f. Should the filing mechanisms for reporting companies be different for entities that were previously exempt for one reason or another (including exempt subsidiaries and exempt grandfathered entities under section 5336(b)(2)(D) and (E)) and lose that exemption? If so how?

ANSWER (14):

We would urge FinCEN to keep the reporting mechanism as easy and convenient as possible, with electronic filing, similar to other filing requirements.

This includes measures such as specifically allowing beneficial ownership automated registry checks to be done over an Application Programming Interface (API) to ensure firms are automatically accessible for our members who use API.

QUESTION (15) Section 5336(b)(2)(C) requires written certifications to be filed with FinCEN by exempt pooled investment vehicles described in section 5336(a)(11)(B)(xviii) that are formed under the laws of a foreign country.

- a. By what method should these certifications be filed?
- b. What information should be included in these certifications?
- c. Should there be a mechanism through which such filings could be made to foreign authorities and forwarded to FinCEN, or should such filings have to be made directly to FinCEN?
- d. What information should be included in these certifications (e.g., what information would allow authorities to follow up on certifications containing false information)?
- e. Should these certifications be accessible to database users, and if so, should they be accessible on the same terms as beneficial ownership information of reporting companies?

ANSWER (15):

No comment.

QUESTION (16) What burdens do you anticipate in connection with the new reporting requirements? Please identify any burdens with specificity and estimate the dollar costs of these burdens if possible. How could FinCEN minimize any such burdens on reporting companies associated with the collection of beneficial ownership information in a manner that ensures the information is highly useful in facilitating important national security, intelligence, and law enforcement activities and confirming beneficial ownership information provided to financial institutions, consistent with its statutory obligations under the CTA?

ANSWER (16):

We believe that the new reporting requirements will certainly impose additional burdens. For example, our members believe that it would be a significant burden if, as a result of the CTA and implementing regulations, a company would not be able to use a popular application interface (API) which is relied on heavily by many companies working

internationally. However, given the short time frame for a response and the ambiguity of some requirements, it is difficult to assess the extent of the financial burden.

QUESTION (17) Section 5336(e)(1) requires the Secretary to take reasonable steps to provide notice to persons of their reporting obligations.

- a. What steps should be taken to provide such notice?
- b. Should those steps include direct communications such as mailed notices, and if so to whom should notices be mailed?
- c. What type of information should be included in such a notice, for example, the purposes and uses of the data, and how to access and correct the information?
- d. Should the notice be followed by an explicit acknowledgement of the reporting company, or consent of the beneficial owner or applicant if the owner or applicant is submitting the information, to the handling of beneficial ownership information as stated in the notice and applicable law?

ANSWER (17)

No comment.

QUESTION (18) Section 5336(e)(2) requires states and Indian tribes, as a condition of receiving certain funds, to have their Secretary of State or a similar office in each state or Indian tribe periodically provide notice of reporting obligations and a copy of, or internet link to, the reporting company form created by FinCEN.

- a. How should this requirement be implemented?
- b. What form should the notice take?
- c. Should this notice be provided yearly, or on some other periodic schedule?

ANSWER (18):

No comment.

QUESTION (19) What should reporting companies or individuals holding FinCEN identifiers be required to do to satisfy the requirement of section 5336(b)(1)(D) that they update in a timely manner the information they have submitted when it changes, such as when beneficial owners or holders of FinCEN identifiers (i) transfer substantial control to other individuals; (ii) change their legal names or their reported residential or business street addresses; or (iii) die; or (iv) when a previously acceptable identification document

expires? For example, should the reporting companies or individuals be required to file a new report, or provide notice only of the information that has changed?

ANSWER (19):

No comment.

QUESTION (20)

Should reporting companies be required to affirmatively confirm the continuing accuracy of previously submitted beneficial ownership information on a periodic basis (e.g., annually)? How should such confirmation be communicated to FinCEN?

ANSWER (20):

We would support an approach that only requires reporting companies to update their beneficial ownership report/statement if there is a change with respect to any information previously reported in the beneficial ownership report/statement within 1 year after such change.

QUESTION (21) For those reporting companies without FinCEN identifiers, what should be considered a “timely manner” for updating a change in beneficial ownership?

- a. Should this period differ based on the type of reporting company?
- b. What factors should be taken into account in determining this period?
- c. How much time should reporting companies be given to update beneficial owner information upon a change of ownership?
- d. What are the benefits or drawbacks of allowing a longer period to report a change of beneficial ownership?

ANSWER (21):

No comment.

QUESTION (22) Section 5336(h)(3)(C) contains a safe harbor for persons who seek to correct previously submitted but inaccurate beneficial ownership information pursuant to FinCEN regulations. How should FinCEN’s regulations define the scope of this safe harbor? Should the nature of the inaccuracy (e.g., a misspelled address versus the complete omission of a beneficial owner) be relevant to the availability of the safe harbor?

ANSWER (22):

We do not believe the safe harbor should depend on the nature of the inaccuracy, so long as the reporting company (i) has no actual knowledge that any information contained in the report is inaccurate; (ii) is not trying to evade the reporting requirement; and (iii) submits a report correcting the information promptly (30 days) after discovering the error.

QUESTION (23) What steps should reporting companies be required to take to support and confirm the accuracy of beneficial ownership information?

- a. Should reporting companies be required to certify the accuracy of their information when they submit it?
- b. If so, what should this certification cover?
- c. Should reporting companies be required to submit copies of a beneficial owner's acceptable identification document?

ANSWER (23)

- (a) Yes.
- (b) The data provided by the reporting company.
- (c) No.

QUESTION (24) What steps should FinCEN take to ensure that beneficial ownership information being reported is accurate and complete?

- a. With respect to other BSA reports, FinCEN e-filing protocols prohibit filings from being made with certain blank fields, and automatically format certain fields to ensure that letters are not entered for numbers and vice versa, etc. The filing protocols, however, do not involve independent FinCEN verification of information filed. Should FinCEN take similar or additional steps in connection with the filing of beneficial ownership information?
- b. If so, what similar or additional steps should FinCEN take?

ANSWER (24):

No comment.

QUESTION (25) Should a reporting company be required to report information about a company's "applicant" or "applicants" (the individual or individuals who file the application to form or register a reporting company) in any report after the reporting company's initial report to FinCEN? Why or why not?

ANSWER (25):

No. If the person who has performed the filing function is not a beneficial owner, then we do not see the relevance.

QUESTION (26) In what situations will an individual or entity wish to use the FinCEN identifier? How can FinCEN best protect both the privacy interests underlying an individual's or entity's desire to use the FinCEN identifier, and the identifying information that must be provided to FinCEN by an individual or entity wishing to obtain and use the FinCEN identifier?

ANSWER (26):

No comment.

QUESTION (27) What form should the FinCEN identifier take?

- a. How long should it be?
- b. Should it be alphabetical, numeric, or alphanumeric?
- c. Should it contain embedded information such as a filing year, a geographic code, a sequential number, or numbers shared among related persons or entities, or should it be generated independently for each individual or entity?
- d. Should it resemble or be derived from another identifier provided by another authority?
- e. Should it resemble the document numbers of other reports filed with FinCEN under the BSA?
- f. Should the form of FinCEN identifiers for individuals and legal entities be different? If so, how and why?

ANSWER (27):

No comment.

QUESTION (28) How can FinCEN best ensure a one-to-one relationship between individuals or entities and their FinCEN identifiers, in light of the possibility that individuals and entities may mistakenly or intentionally attempt to apply for more than one FinCEN identifier?

ANSWER (28):

No comment.

QUESTION (29) How can FinCEN best protect FinCEN identifiers from being used without individuals' and entities' authorization? Should protections include specific regulatory requirements or prohibitions?

ANSWER (29):

No comment.

QUESTION (30) As noted in the CTA, in some cases multiple companies can be layered on top of one another in complex ownership structures. Given that there may be multiple entities within an ownership structure of a reporting company that are identified by FinCEN identifiers, how can FinCEN implement the FinCEN identifier in a way that reduces the burden to financial institutions of using the FinCEN database when reporting companies with complex ownership structures seek to open an account?

ANSWER (30):

Since many of these complex business structures involve businesses owned by companies located in other countries, FinCEN should continue to work closely with FATF to encourage other countries to implement beneficial ownership requirements to alleviate the burden on businesses to track down this information.

This will assist in coordinating the identification and access to the database.

QUESTION (31) What should the process be to obtain a FinCEN identifier?

- a) Should the FinCEN identifier be secured by an applicant or beneficial owner prior to filing an application to form a corporation, LLC, or other similar entity under the laws of a state or Indian tribe?
- b) How, if at all, should FinCEN verify an individual's identity before providing a FinCEN identifier?
- c) If an applicant or beneficial owner chooses not to apply for a FinCEN identifier, should FinCEN create any limitations—in addition to those in the statutory definition of “acceptable identification document”—on the types of unique identifying numbers that can be submitted?

ANSWER (31):

No comment.

QUESTION (32) When a state, local, or tribal law enforcement agency requests beneficial ownership information pursuant to an authorization from a court of competent jurisdiction to seek the information in a criminal or civil investigation, how, if at all, should FinCEN authenticate or confirm such authorization?

ANSWER (32):

We would suggest a telephonic contact with the requesting party and confirmation that the person submitting the request is a current employee of the agency.

QUESTION (33) Should FinCEN provide a definition or criteria for determining whether a court has “competent jurisdiction” or has “authorized” such an order? If so, what definition or criteria would be appropriate?

ANSWER (33):

If the request comes from a US federal, state or local court, we would not require any further determination as to competent jurisdiction.

QUESTION (34) As a U.S. Government agency, FinCEN is subject to strict security and privacy laws, regulations, and other requirements that will protect the security and confidentiality of beneficial ownership and applicant information. What additional security and privacy measures should FinCEN implement to protect this information and limit its

use to authorized purposes, which includes facilitating important national security, intelligence, and law enforcement activities as well as financial institutions' compliance with AML, CFT, and CDD requirements under applicable law? Would it be sufficient to make misuse of such information subject to existing penalties for violations of the BSA and FinCEN regulations, or should other protections be put in place, and if so, what should they be?

ANSWER (34):

We believe that existing penalties for violations of the BSA and FinCEN regulations should be sufficient.

QUESTION (35) How can FinCEN make beneficial ownership information available to financial institutions with CDD obligations so as to make that information most useful to those financial institutions?

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?

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?

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.

ANSWER (35):

We believe that FinCEN should establish a process that allows financial institutions INCLUDING REGISTERED MONEY SERVICES BUSINESSES to access the beneficial ownership data in order to comply with CDD obligations, with the consent of the reporting company. If the reporting company has provided its consent, there is no reason whatsoever not to provide the same access to registered MSBs.

(a) Yes. Provided the reporting company has consented.

(b) Yes. Provided that access should be granted to financial institutions including MSBs.

(c) 5 (five) business days; the same data provided by the reporting company, with the consent of the reporting company.

QUESTION (36) How should FinCEN handle updated reporting for changes in beneficial ownership when beneficial ownership information has been previously requested by financial institutions, federal functional regulators, law enforcement, or other appropriate regulatory agencies?

- a. If a requestor has previously requested and received beneficial ownership information concerning a particular legal entity, should the requester automatically receive notification from FinCEN that an update to the beneficial ownership information was subsequently submitted by the legal entity customer?
- b. If so, how should this notification be provided?
- c. Should a requesting entity have to opt in to receive such notification of updated reporting?

ANSWER (36):

We do not believe FinCEN should have to take on the task of updating all requesting entities whenever changes occur in the beneficial ownership information. However, to the extent it might be necessary for law enforcement and other government agencies, perhaps an arrangement allowing for opting in would make sense.

QUESTION (37) One category of authorized access to beneficial ownership information from the FinCEN database involves “a request made by a Federal functional regulator or other appropriate regulatory agency.” How should the term “appropriate regulatory agency” be interpreted? Should it be defined by regulation? If so, why and how?

ANSWER 37:

We believe that existing laws and regulations should provide enough clarity on what an “appropriate regulatory agency” would be.

QUESTION (38) In what circumstances should applicant information be accessible on the same terms as beneficial ownership information (i.e., to agencies engaged in national security, intelligence, or law enforcement; to non-federal law enforcement agencies; to federal agencies, on behalf of certain foreign requestors; to federal functional regulators or other agencies; and to financial institutions subject to CDD requirements). If financial institutions are not required to consider applicant information in connection with due diligence on a reporting company opening an account, for example, should a financial institution’s terms of access to applicant information differ from the terms of its access to beneficial ownership information?

ANSWER (38):

We do not believe information about the person or persons who file an application on behalf of a reporting company should be accessible, unless such persons have beneficial ownership with respect to the reporting company.

QUESTION (39) What specific costs would CTA requirements impose—in terms of time, money, and human resources—on small businesses? Are those costs greater for certain types of small businesses than others? What specifically can FinCEN do to minimize those costs, for all small businesses or for some types in particular?

ANSWER (39):

We would suggest that compliance with CTA requirements should be made easy and efficient, with electronic filings and uploaded scanned documents.

QUESTION (40) Are there alternatives to a single reporting requirement for all reporting companies that could create a less costly alternative for small businesses?

ANSWER (40):

No comment.

QUESTION (41) How can FinCEN best reach out to members of the small business community to ensure the efficiency and effectiveness of the filing process for entities subject to the requirements of the CTA?

ANSWER (41):

Working with trade associations, such as the MSBA, is one effective way to reach out to the small business community. Also providing notifications to banks, news media and business-oriented social media, such as LinkedIn.

QUESTION (42) Are there other business constituencies to which FinCEN should reach out, and if so, who are they?

ANSWER (42):

No comment.

QUESTION (43) How can FinCEN best reach out to financial institutions to ensure the efficiency and effectiveness of the process by which financial institutions could potentially access the beneficial ownership information held by FinCEN?

ANSWER (43):

We would suggest that financial institutions (including money services businesses) can be contacted through their supervisory regulators, such as the OCC, Federal Reserve Board, FDIC, CFPB, State banking departments and State groups such as Conference of State Bank Supervisors and the Money Transmitter Regulators Association.

QUESTION (44) What burdens would CTA requirements impose on state, local, and tribal governmental agencies? In particular, what additional time, money, and human resources would state, local, and tribal governments have to secure and expend—or reallocate from other duties, and if the latter what duties would be compromised or services impaired? How, if at all, would any of these burdens or allocations of time or money vary according to the size or other characteristics of a jurisdiction—would smaller jurisdictions find it easier or harder to handle the costs associated with CTA requirements?

ANSWER (44):

No comment.

QUESTION (45) How should FinCEN minimize any burdens on state, local, and tribal governmental agencies associated with the collection of beneficial ownership information, while still achieving the purposes of the CTA?

ANSWER (45):

No comment.

QUESTION (46) How can FinCEN best partner with state, local, and tribal governmental agencies to achieve the purposes of the CTA?

ANSWER (46):

With respect to state governmental agencies, we would recommend working with State banking departments and State regulatory groups such as Conference of State Bank Supervisors and the Money Transmitter Regulators Association.

QUESTION (47) How can FinCEN collect the identity information of beneficial owners through existing Federal, state, local, and tribal processes and procedures?

- a. Would FinCEN use of such processes or procedures be practicable and appropriate?
- b. Would FinCEN use of or reliance on existing processes and procedures help to lessen the costs to state, local, and tribal government agencies, or would it increase those costs?
- c. Would FinCEN use of existing Federal, state, local, and tribal processes and procedures help to lessen the costs to small businesses affected by CTA requirements, or would it increase those costs?

ANSWER (47):

We would suggest that FinCEN uses a well-established, familiar process similar to BSA Registration and SAR filing to collect beneficial ownership information.

QUESTION (48) The process of forming legal entities may have ramifications that extend beyond the legal and economic consequences for legal entities themselves, and the reporting of beneficial ownership information about legal entities may have ramifications that extend beyond the effect of mobilizing such information for AML/CFT purposes. How can FinCEN best engage representatives of civil society stakeholders that may not be directly affected by a beneficial ownership information reporting rule but that are concerned for such larger ramifications?

ANSWER (48):

Our members do not believe that the ramifications will be all that significant – especially since the data is kept confidential (unless the reporting company consent to sharing it).

We suspect that it will become a routine part of any new customer on-boarding process



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for financial institutions and money services businesses to ask for consent to access the beneficial ownership data as part of their onboarding procedures.

However, one concern would be that the Financial Institutions that are covered under this proposal will see the requirement as an additive process to on-boarding an MSB company, and thus it might cause further de-risking of the remittance Industry.

As a final thought, the MSBA and its members believe that, as regulated entities, MSBA members should be fully exempt from reporting, since this is data the MSBA members already routinely provide in their licensing applications and renewals. However, our members are also required to obtain this information to identify our customers under many state licensing laws; we therefore respectfully request full access to the Beneficial Ownership data base, in the same manner as other regulated financial institutions receive.

We hope our thoughts and comments have been helpful. We look forward to continuing to work with FinCEN. Please feel free to contact us if you have any follow-up questions or would like to schedule a call or meeting.

Sincerely,

A handwritten signature in black ink, which appears to read "Kathy Tomasofofsky". The signature is fluid and cursive.

Kathy Tomasofofsky,

Executive Director

Money Services Business Association, Inc.

Cc: Judith Rinearson, Partner, K&L Gates LLP