Managed Funds Association
The Voice of the Global Alternative Investment Industry
Washington, D.C. | New York

February 7, 2022

VIA ELECTRONIC SUBMISSION

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

Re: Notice of Proposed Rulemaking on Beneficial Ownership Information Reporting Requirements, Docket Number FINCEN-2021-0005, RIN 1506-AB49

Dear Sir or Madam:

Managed Funds Association ("MFA")[1] appreciates the opportunity to provide comments on the notice of proposed rulemaking ("NPRM") issued by the Financial Crimes Enforcement Network ("FinCEN") regarding implementation of the beneficial ownership information ("BOI") reporting provisions of the Corporate Transparency Act ("CTA").[2] MFA appreciates FinCEN's efforts to engage with stakeholders and solicit input on the proposed reporting provisions to implement Section 6403 of the CTA. In doing so, FinCEN will help ensure the effectiveness of the provisions that govern beneficial ownership information reporting and the maintenance of that information in FinCEN's database.

I. Executive Summary

MFA supports the CTA's goal of combatting money laundering, tax fraud, terrorist financing and other illicit activity by ensuring that malign actors do not use corporations, limited liability companies and other similar entities in the United States to conceal their ownership and activities. The CTA properly directs FinCEN, in seeking to achieve this objective, to ensure that the information requested for the FinCEN database is necessary and highly useful for law enforcement while minimizing the burdens associated with the collection of the required information.

---

[1] MFA represents the global alternative investment industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, fair capital markets. MFA's more than 150 member firms collectively manage nearly $1.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, London, Brussels, and Asia.

[2] *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 69,920 (proposed Dec. 8, 2021).

MFA appreciates the consideration that FinCEN is taking concerning the BOI database and its decision to dedicate a separate rulemaking to the protocols for access to and disclosure of BOI. As noted below, appropriate safeguards of this highly confidential information are necessary to protect against cyber, identify theft and other security risks. MFA further supports FinCEN's inclusion of special rules for ownership by exempt entities and foreign pooled investment vehicles ("PIVs").

At the same time, MFA believes that the proposed rule could be clarified and enhanced to ensure that our members are not unnecessarily burdened with requirements that do not result in the reporting of "highly useful" information. In this regard, we recommend that FinCEN make the following clarifications and changes to the proposed rule:

- Clarify that the "reporting company" exemption for PIVs covers entities that are owned by one or more entities or accounts operated or advised by registered investment advisers ("RIAs"), *i.e.*, investment advisers registered with the Securities and Exchange Commission ("SEC"), and certain single investor funds;
- Clarify that the RIA exemption includes vehicles used by an RIA to serve as general partners or managing members for PIVs advised by the RIA;
- Exclude from the reporting company definition (a) any legal entity "up the chain" of an RIA or a PIV whose owners are disclosed in the Form ADV of the RIA, and (b) any commodity pool operated or advised by a commodity trading advisor or commodity pool operator ("CPO") registered with the Commodity Futures Trading Commission ("CFTC");
- Clarify which individuals should be identified as company applicants, as well as how far back a company should go to report such information;
- Provide reporting companies additional time to comply with the BOI reporting requirements; and
- Clarify that the statutory safe harbor for persons who inadvertently report inaccurate information to FinCEN is not exclusive, and that it applies if a corrected report is filed within 90 days from the date on which the reporting company becomes aware or has reason to know the required information contained in any report it filed was inaccurate when filed and remains inaccurate.

II. Security of the Beneficial Ownership Database

MFA supports the utmost level of protection and security with respect to the BOI database and strict limitations on access to the database. MFA recommends that FinCEN provide transparency with respect to the processes and protocols to be used for protecting and managing access to the information in the database. MFA welcomes FinCEN's decision to dedicate a separate rulemaking to the protocols for access to and disclosure of BOI and urges FinCEN to ensure appropriate safeguards will be put in place to protect the highly confidential information that will be collected and stored by FinCEN from cyber, identify theft and other security risks.

III. Special Rules for Ownership by Exempt Entities and Foreign Pooled Investment Vehicles

MFA supports the proposed special reporting rules for ownership interests held by exempt entities and for foreign PIVs, and recommends that FinCEN retain them in the final rule.

Under proposed 31 CFR 1010.380(b)(3)(i), FinCEN sets forth a special rule providing that, if an exempt entity has or will have a direct or indirect ownership interest in a reporting company, and an individual is a beneficial owner of the reporting company by virtue of such ownership interest, the report of the reporting company shall include the name of the exempt entity rather than BOI with respect to such beneficial owner.

MFA commented on this point in response to the advance notice of proposed rulemaking ("**ANPRM**") and appreciates FinCEN's inclusion of this special rule in the proposal.[3] As FinCEN suggests in the NPRM, this special rule avoids a situation in which an exempt entity is required to disclose its beneficial owners as a result of its ownership of a reporting company. Such an outcome would frustrate the purpose of the statutory exemption and impose undue burden on the exempt entity and its beneficial owners.

Under proposed 31 CFR 1010.380(b)(3)(iii), FinCEN has clarified that a foreign PIV would be subject to the special reporting rule only if it is a legal entity formed under the laws of a foreign country and would be a "reporting company" but for the PIV exemption.[4] In MFA's comment letter on the ANPRM, MFA encouraged FinCEN to clarify that the CTA's requirements for foreign PIVs should apply only to entities that would qualify as "foreign reporting companies" but for the PIV exemption. MFA appreciates FinCEN's clarification on this point and encourages FinCEN to retain it in the final rule.

IV. Exemptions from the Definition of "Reporting Company"

a. Proposed Clarifications and Additions to Exemptions

Section 6403 of the CTA exempts many types of legal entities from the definition of "reporting company." The CTA includes these exemptions because in Congress's estimation, the exempted entities do not present risks of misuse and abuse that warrant inclusion of their ownership information in the BOI registry.

Of particular relevance to MFA members are the exemptions for RIAs and certain PIVs. MFA urges FinCEN (1) to clarify the exclusion from the definition of the term "reporting company" with respect to PIVs, RIAs and related entities, as well as (2) to extend exempt treatment to certain entities not currently covered by the exclusion, as explained below.

---

[3] On May 5, 2021, MFA submitted comments to FinCEN in response to the ANPRM published by FinCEN on April 5, 2021. *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 17,557 (proposed Apr. 5, 2021).

[4] A reporting company is defined as a U.S. or foreign company created or registered to do business in the United States by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe. Proposed 31 CFR 1010.380(c)(1).

i. Clarification Regarding Exemptions for PIVs and RIAs

The proposed rule excludes from the "reporting company" definition RIAs and PIVs that they "operate or advise." An exempt PIV includes any company that would be an investment company but for the 3(c)(1) or 3(c)(7) exclusion under the Investment Company Act of 1940 ("Investment Company Act") *and* is identified by its legal name in the Form ADV of its investment adviser.

MFA appreciates and supports FinCEN's inclusion of these exemptions, which have a strong policy rationale. In particular, the exemptions for RIAs and the PIVs they operate or advise are warranted because RIAs already must file public disclosures with the SEC on their Form ADVs at least annually and as needed whenever there are material changes. These disclosures include ownership information about the RIA and identifying and other information about many of the PIVs that the RIA manages. In addition, RIAs are subject to routine and special examinations by the SEC's Division of Examinations, which may obtain additional information regarding the RIAs or the PIVs an RIA operates. As such, the CTA recognizes that it would be unnecessary, costly and duplicative if FinCEN were to collect the same information for the beneficial ownership database.

To ensure that congressional intent is realized with respect to the PIV and RIA exemptions under the CTA, MFA urges FinCEN to clarify that: (a) the PIV exemption covers entities within the structure of an exempt PIV, including entities that are owned by one or more entities or accounts operated or advised by RIAs, (b) certain single investor funds are within the meaning of the "pooled investment vehicle" definition, and (c) vehicles used by an RIA to serve as general partners or managing members for PIVs advised by the RIA are within the meaning of the exemption for RIAs.

Entities within the structure of an exempt PIV. MFA urges FinCEN to clarify that the PIV exemption applies to all entities within the structure of a PIV to ensure the uninterrupted operation of the U.S. alternative investment industry. A PIV sponsor may establish the main PIV, which will accept investors, and various down-stream legal entities for various legal or business reasons. For example, it is common for booking and trading entities to be set up below a PIV to serve as vehicles that make specific acquisitions or effect certain securities or other financial instrument trading strategies. Some of these entities may exist only temporarily, to facilitate particular transactions, while others may be longer-term vehicles. These entities typically have no officers or employees and are managed by the manager of the main PIV.

A down-stream legal entity may be owned solely by the main PIV or by multiple PIVs. In addition, investment portfolios or vehicles owned by an investor and managed by an RIA may own interests in a PIV's down-stream entities. The SEC has acknowledged the legitimate use of such down-stream entities to facilitate investments in certain securities, including in scenarios involving one or more RIA-advised vehicles holding interests in down-stream entities that, in turn, hold one or multiple investments.[5]

[5] *See*, *e.g.*, SEC, Division of Investment Management, Guidance Update No. 2014-07, Private Funds and the Application of the Custody Rule to Special Purpose Vehicles and Escrows (June 2014), https://www.sec.gov/investment/im-guidance-2014-07.pdf.

As noted above, RIAs that operate PIVs and related entities in the PIV structure are already subject to disclosure requirements, as well as regulation and examination, under existing regulatory regimes. Requiring PIV-related entities to report BOI to FinCEN would pose significant burdens to the RIAs that manage them, while not resulting in any reporting that would aid national security or law enforcement efforts. If PIV-related entities were required to file BOI reports with FinCEN, such entities would report the names of the exempt entities that own them, under the special rule in proposed section 31 CFR 1010.380(b)(3)(iii), instead of any individuals owning or controlling 25% of the ownership interests. In addition, because these PIV-related entities do not have their own officers or employees and are controlled by an RIA, they would presumably report the RIA as having "substantial control." (The alternative, of requiring a PIV-related entity to report information on those individuals with "substantial control" over the RIA, would create the same type of situation that the special reporting rule for ownership interests held by exempt entities is designed to avoid.) Because the information a PIV-related entity would report is already publicly available, BOI reporting by PIV-related entities would contribute nothing of value to national security or law enforcement efforts and would impose a burden that would be contrary to the public interest.

We believe this clarification could be made by FinCEN in the preamble to the final rule or through the addition of clarifying language in the text of the PIV exclusion, as follows (suggested addition to FinCEN's proposed rule text in bold, italicized text):

> (xviii) *Pooled investment vehicle.* Any pooled investment vehicle that is operated or advised by a person described in paragraph (c)(2)(iii), (iv), (vii), (x), or (xi) of this section***, including any related entity that is operated or advised by such a person***.

Single investor funds. MFA also urges FinCEN to clarify in the preamble to the final rule that the "pooled investment vehicle" definition includes single investor funds. Single investor funds, often called funds-of-one, deploy capital on behalf of a sole investor or a group of affiliated investors. A single investor fund could be used, for example, by an institutional investor seeking more favorable terms with the RIA or a more customized investment portfolio. Although single investor vehicles are not customarily referred to as "pooled" vehicles, they satisfy the proposed definition of a "pooled investment vehicle" when they are companies that would be investment companies as defined in section 3(a) of the Investment Company Act "but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c)" of that act and are identified in their RIAs' Form ADVs.[6] Clarification that such single investor funds are within the meaning and intent of the "pooled investment vehicle" definition will be necessary to avoid confusion once the final rule takes effect.

Vehicles created by RIAs to serve as PIV general partners/managing members. Finally, MFA urges FinCEN to clarify in the preamble to the final rule that vehicles created and used by an RIA to serve as general partners or managing members of PIVs advised by the RIA are within the meaning and intent of the RIA exemption. In some fund structures, an RIA may establish a separate vehicle to serve as the general manager of a PIV (or managing member, in the case of a PIV structured as a limited liability company (**"LLC"**)). This is typically done to comply with local legal or regulatory requirements, for tax reasons or to facilitate the RIA's creation of later funds.

---

6 *See* proposed 31 CFR 1010.380(f)(7).

The SEC has long recognized that RIAs use such related persons in structuring funds[7] and has provided guidance pursuant to which, and in accordance with the conditions of which, such related persons do not separately register as RIAs.[8] Thus, these entities related to an RIA, created to act as general partners or managing members of PIVs advised by that RIA, should be covered by the exemption for RIAs to the same extent and in the same manner as the RIA for the PIV, and we urge FinCEN to clarify this point in the final rule.

MFA believes strongly that the clarifications requested in this section are necessary to realize fully the legislative purpose and intent of the PIV and RIA exemptions under the CTA, and we would welcome the opportunity to discuss these matters with FinCEN staff if additional information would be helpful.

ii. Additional Exemptions

The CTA authorizes FinCEN to exempt from the BOI reporting requirements "any entity or class of entities" for which requiring reporting "would not serve the public interest" or "be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute" money laundering, terrorism financing or other crimes.[9] MFA believes strongly that FinCEN should exclude from the "reporting company" definition (a) any legal entity "up the chain" of an RIA or a PIV whose owners are disclosed in the Form ADV of the RIA, and (b) any commodity pool operated or advised by a commodity trading advisor or CPO registered with the CFTC.

"Up the chain" entities. RIAs organized as LLCs or partnerships publicly disclose their owners and control persons, including the owners of their managing members and general partners, in their Form ADVs filed with the SEC. For example, an RIA organized as a partnership must disclose all general partners and those limited and special partners that have the right to receive upon dissolution, or that have contributed, 5% or more of the RIA's capital. An RIA that is organized as an LLC must disclose those members of the LLC that have the right to receive upon dissolution, or that have contributed, 5% or more of the RIA's capital and all elected managers.

---

7 *See Custody of Funds or Securities of Clients by Investment Advisers*, 75 Fed. Reg. 1455, 1466 (Jan. 11, 2010) (noting that investment advisers may use different fund structures to facilitate investments by one or more PIVs, and that these fund structures are typically established or controlled by the investment adviser or its related persons serving as general partners of vehicles structured as limited partnerships (or managing members of vehicles structured as LLCs)). Under the Investment Advisers Act of 1940 ("**Advisers Act**"), the term "related person" for this purpose refers to "any person, directly or indirectly, controlling or controlled by [an RIA], and any person that is under common control with [the RIA]." *See* Advisers Act Rule 206(4)-2(d)(7), 17 CFR 275.206(4)-2(d)(7).

8 An existing SEC staff position permits such related entities to forego registration as investment advisers with the SEC, provided that their investment advisory activities are subject to the Advisers Act and the rules thereunder and they are subject to examination by the SEC. *See* American Bar Association's Subcommittee on Private Investment Entities, SEC Staff No-Action Letter (Dec. 8, 2005), https://www.sec.gov/divisions/investment/noaction/aba120805.htm; American Bar Association, Business Law Section, SEC Staff No-Action Letter (Jan. 18, 2012), https://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm.

9 31 U.S.C. 5336(a)(11)(B)(xxiv).

With respect to each direct owner, an RIA must continue "up the chain" to list all 25% owners at each level until a public reporting company (a company subject to Section 12 or 15(d) of the Securities Exchange Act of 1934) is reached.[10]

Requiring entities that may otherwise meet the "reporting company" definition but that are already publicly disclosed in a Form ADV to file BOI reports with FinCEN would be duplicative and burdensome, without adding any benefit to law enforcement since the information is already available. In other words, subjecting such entities to the BOI reporting requirements would neither serve the public interest nor be highly useful in national security, intelligence, or law enforcement efforts. To address this issue, we respectfully suggest that FinCEN add the following exemption from the "reporting company" definition in proposed 31 CFR 1010.380(c)(2):

> *Investment adviser related party*. Any reporting company that is identified by its legal name as a direct or indirect owner or control person in the Form ADV (or successor form) of an investment adviser filed with the U.S. Securities and Exchange Commission.

Commodity pools. MFA further urges FinCEN to exclude from the BOI reporting requirements commodity pools that are operated or advised by CPOs or commodity trading advisors registered with the CFTC. The CTA already exempts such CPOs and commodity trading advisors, but there is no express exclusion for the commodity pools they manage, which appears to us to be a legislative oversight. Commodity pools are pooled vehicles that invest in and trade commodity interests and are analogs to PIVs managed by RIAs. Information on commodity pools operated by CFTC-registered CPOs is available on Form CPO-PQR, and information on commodity pools advised by CFTC-registered commodity trading advisors is available on Form CTA-PR.

An exemption for commodity pools operated by CFTC-registered CPOs and advised by CFTC-registered commodity trading advisors is necessary to parallel the treatment of PIVs and to meet the CTA's direction to FinCEN to "collect information . . . through existing Federal, State, and local processes and procedures" and "minimize burdens on reporting companies associated with the collection of the information." In fact, under the proposed rule, there could be a PIV advised by a commodity trading advisor with the same investors and investments as a PIV advised by an RIA, but the latter would qualify for the PIV exclusion while the entity advised by the commodity trading advisor would not. Both are advised by exempt entities and are subject to robust federal regulatory and disclosure requirements, and excluding one type of vehicle but not the other based on the agency that supervises and regulates its adviser would not achieve any purpose. Given the availability of information about the vehicles operated by CPOs and advised by commodity trading advisors, and the disparity in treatment of comparable investment vehicles that would otherwise result, our requested exclusion for commodity pools meets the statutory standard. In other words, requiring these commodity pools to report BOI to FinCEN would neither serve the public interest nor provide additional information of use to law enforcement beyond what is already publicly available.

To effectuate this exemption, we respectfully suggest that FinCEN add the following exemption from the "reporting company" definition:

---

[10] *See* Form ADV, Part 1A, Schedule A, pp. 28-32, https://www.sec.gov/about/forms/formadv-part1a.pdf.

Commodity pool. Any commodity pool, as defined by the Commodity Futures Trading Commission, that is operated or advised by a person described in paragraph (c)(2)(xiv) of this section.

b. Eligibility for Exemptions

FinCEN has not proposed to require exempt entities to file a report in order to claim an exemption, and MFA urges FinCEN not to do so in the final rule.

As MFA commented with respect to the ANPRM, such a requirement would unnecessarily burden entities that Congress decided in the CTA need not be subject to reporting requirements. Moreover, filing such a report with FinCEN to support the application, and continued application, of an exemption would negate the benefit of the exemption. Civil and criminal penalties for failures to report provide an adequate incentive for companies to comply with the BOI reporting rule and, thus, there is no need to subject exempt entities to a reporting requirement.

V. Company Applicants

With respect to entities in the alternative investment industry that may be subject to the BOI reporting provisions, MFA has significant concerns regarding the proposed requirements with respect to company applicants.

Under proposed 31 CFR 1010.380(e), a company applicant is the individual who files, including by directing or controlling the filing, the document that created the reporting company. MFA urges FinCEN to clarify its intent with respect to the individuals to be identified as company applicants, as well as how far back a company should go to report such information. Many individuals can be involved in the decision to form an entity, including in-house lawyers, legal assistants, outside counsel and formation agents. To the extent that a company applicant is associated with an entity outside of the reporting company, the reporting company may be unsure which individuals to identify and would likely be unable to access their personal identifying information for reporting purposes.

For reporting companies that have been in existence prior to the effective date, obtaining the current contact information of a "company applicant" could be unduly burdensome and in some cases practically impossible. Even in the event that records are available for entities that have been in existence for a long period of time, individuals who fall under the proposed definition of a company applicant may no longer be associated with or employed by the company and the company may not be able to reach them to obtain the required information. Weighing the significant burden this requirement would place on reporting companies, it does not appear that the inclusion of information on individuals who fall within the definition of a company applicant from decades ago would further FinCEN's purpose of maintaining an updated and accurate database.

Finally, proposed 31 CFR 1010.380(a)(2) requires a reporting company to report to FinCEN on any changes in information that has previously been submitted, including "any change with respect to information reported for any particular … applicant." It would be very burdensome, if not impossible, for a reporting company to keep up to date on the BOI (*e.g.*, address) for each company applicant, especially any such person who is not, or is no longer, associated with or

employed by the company. We therefore strongly urge FinCEN to reconsider its proposed reporting requirements related to company applicants.

VI. Requirements to Report and Update Beneficial Ownership Information

MFA acknowledges the importance of an updated and accurate database but believes some of the proposed reporting timeframes are too short. MFA believes that slightly extended reporting deadlines would appropriately balance the accuracy of the database with the burden imposed on reporting companies. To this end, MFA urges FinCEN to consider increasing the proposed initial reporting deadline and the deadline for the correction of errors to 30 days.

Under the proposed rule, FinCEN outlines the initial reporting requirements for both reporting companies in existence prior to the effective date of the regulations and those formed or registered to do business after the effective date. Existing entities created before the effective date of the final regulation have one year after the effective date to file an initial BOI report.[11] Newly formed domestic reporting companies or newly registered foreign reporting companies on or after the effective date of the final rule must file a report within 14 calendar days of the date of formation or registration to do business as a foreign company.[12]

In addition, FinCEN proposes to require all reporting companies to file updated reports within 14 calendar days to correct any inaccurate information filed with FinCEN.[13]

MFA believes that 14 calendar days after an entity is newly formed or registered to file a report in compliance with the regulation is not sufficient. At formation, there may be several key management positions that are not filled or are likely to change within the first year of operations. Thus, if a newly formed or registered reporting company is required to submit a filing within 14 days of formation or registration, it is likely that information submitted may need to be updated frequently within the first few months of operation, leading to an inaccurate database and increased compliance burdens on the reporting company.

Similarly, the proposed 14-day period to correct errors made in filings should be extended. Once a reporting company realizes it has made an error, it may take longer than 14 days to obtain

---

[11] Proposed 31 CFR 1010.380(a)(1)(iii) would require any domestic reporting company created before the effective date of the regulation and any entity that became a foreign reporting company before the effective date of the regulation to file a report not later than one year after the effective date of the regulation.

[12] For newly formed or registered companies, proposed 31 CFR 1010.380(a)(1)(i) specifies that a domestic reporting company formed on or after the effective date of the regulation shall file a report within 14 calendar days of the date it was formed as specified by a secretary of state or similar office. Proposed 31 CFR 1010.380(a)(1)(ii) specifies that any entity that becomes a foreign reporting company on or after the effective date of the regulation shall file a report within 14 calendar days of the date it first became a foreign reporting company.

[13] Proposed 31 CFR 1010.380(a)(3) would require reporting companies to file a report to correct inaccurately filed information within 14 calendar days after the date on which the reporting company becomes aware or has reason to know that any required information contained in any report that the reporting company filed with FinCEN was inaccurate when filed and remains inaccurate.

the information needed to correct the inaccuracies. Further, if a reporting company rushes to comply with the 14-day deadline, additional errors may be made due to the short timeframe for the corrected report.

MFA therefore urges FinCEN to increase the proposed 14-day deadlines for initial reports and corrected reports to 30 days. For RIAs, this is the timeframe applicable to certain other-than-annual amendments to Form ADV, which are required, for example, when previously filed information becomes materially inaccurate. We believe FinCEN's establishment of a 30-day time period for initial and corrected BOI reports would mitigate the burdens to reporting companies while not materially diminishing the accuracy of the database. In fact, additional time could allow a reporting company to collect more accurate and complete data for such report, which would enhance the robustness of the database.

VII. Availability of Safe Harbor

The CTA in 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) provides a safe harbor for persons who inadvertently report inaccurate information to FinCEN, provided they promptly file a corrected report no later than 90 days after the submission of the inaccurate report. Under FinCEN's proposed 31 CFR 1010.380(a)(3), a corrected report filed within the 14-day period described above will be deemed to satisfy the statutory safe harbor *only* if filed within 90 calendar days after the date on which the inaccurate report was filed. MFA supports the availability of a safe harbor for inadvertent errors in BOI reports but disagrees with FinCEN's proposed view of how the statutory safe harbor should be applied.

The 14-day period to correct an inaccurate report under FinCEN's proposed rule is triggered by a company becoming aware or having reason to know that the information it submitted is inaccurate. However, FinCEN would deem the safe harbor satisfied only if the corrected filing is made within 90 days after the original report. Thus, as proposed, it appears that a late-identified error reported to FinCEN later than 90 days after the original filing would not qualify for the safe harbor. We question whether this limitation on the availability of the safe harbor is consistent with the legislative intent.

In the process of filing a report and collecting information from various individuals, companies may not be aware of errors until some time has passed. When a reporting company makes a correction to a filing within the timeframe and in compliance with the requirements specified by FinCEN in the final rule, the company should be able to benefit from the safe harbor. We therefore urge FinCEN to amend its proposed approach and clarify that the safe harbor applies if a corrected report is filed within 90 days from the date on which the reporting company becomes aware or has reason to know that required information contained in any report it filed was inaccurate when filed and remains inaccurate.

MFA also requests clarification that the statutory safe harbor is not exclusive, meaning that a reporting company should not be liable for non-willful violations of the CTA and implementing regulations even if the safe harbor is inapplicable or not available. Our concern, as described above, with FinCEN's interpretation of the relationship between the safe harbor and the proposed requirement to correct inaccurate reports underscores the need for such clarification, and we urge FinCEN to provide it in the final rule.

* * * * *

MFA appreciates the opportunity to provide these comments to FinCEN in response to the NPRM. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Matthew Daigler, Vice President & Senior Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs