



February 14, 2022

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
2070 Chain Bridge Road
Vienna, VA 22182

Via: Federal E-Rulemaking Portal
Via email: frc@fincen.gov

Re: FinCEN Docket Number FINCEN-2021-0008, "Review of Bank Secrecy Act Regulations and Guidance"

Dear Acting Director Das,

The Chamber of Digital Commerce (the "Chamber") welcomes the opportunity to submit this letter for consideration by the Financial Crimes Enforcement Network ("FinCEN") with respect to its Request for Information regarding "Review of Bank Secrecy Act Regulations and Guidance" (the "RFI").¹

As the world's largest blockchain trade association, the Chamber's mission is to promote the acceptance and use of digital assets and blockchain technology through advocacy, education, and close coordination with policymakers, regulatory bodies, and industry—across borders and across jurisdictions. We represent global leaders in the blockchain ecosystem, including established industry leaders, vanguard startups, financial institutions, investment firms, insurance and software companies, global IT consultancies and law firms.

The Chamber is committed to leveraging the power of blockchain and digital asset technologies to facilitate innovation, job creation, and investment, while maintaining rigorous standards of compliance to combat money laundering, terrorist financing, and other financial crimes. We are encouraged to see that FinCEN, consistent with the mandates of the Anti-

¹ Review of Bank Secrecy Act Regulations and Guidance, 86 FR 71201 (Dec. 15, 2021) (the "[RFI](#)").

Money Laundering Act of 2020 ("AMLA"), has embarked on a process to modernize and streamline Bank Secrecy Act ("BSA") regulations and guidance.

The Chamber is further encouraged that FinCEN is continuing to foster trust with members of industry and seeking consultation and comments. For too long, outdated and unduly onerous regulations have hindered innovation and growth in digital asset and blockchain technology markets, and inconsistency across jurisdictions has made compliance with requirements challenging and, in some cases, impossible. By consolidating and refining required disclosures and submissions, engaging with new technologies to automate certain processes, and harmonizing U.S. requirements with those of other global standard-setting and regulatory bodies, FinCEN can create a newly fertile environment for collaboration with digital asset providers.

Consequently, the Chamber and its membership have substantial interest in the variety and depth of information collected by regulatory bodies and the processes by which it is collected. We share FinCEN's stated interest in "new and innovative approaches to BSA compliance that promote a risk-based approach to protecting the financial system [...and provide] for the reporting of information with a high degree of usefulness to government authorities."² We welcome FinCEN efforts to "clean house," modernize its regulations and to redouble efforts to base AML/CFT information collection on effective, efficient, and risk-based methods.

While near the end of this submission the Chamber responds to some of the questions posed in the RFI, it is important at the outset to share with FinCEN discussion of several broader themes that were raised among the Chamber's membership.

Blockchain Technology

Blockchain technology has the potential to revolutionize certain aspects of the US AML regime and BSA reporting and information sharing rubrics, and FinCEN should recognize and seize this opportunity.

The BSA framework currently requires banks and other Money Service Businesses ("MSBs") to register with FinCEN, to maintain an AML program, and to file suspicious activity reports ("SARs") when suspicious activity arises. This means that FinCEN must rely on intermediary financial institutions, with oversight only over the transactions they directly

² *Id.*

administer, to identify risky behaviors and to submit a report that is actionable and valuable to law enforcement officials.

Blockchain technology has the potential to disrupt the siloed, end-user generated, one-way communication of SARs that is the hallmark of the present regulatory scheme. Digital assets can exist on the "open ledger," the collection of timestamp, currency, address, and service information that allows one user to send a token of currency to another.³ Each transaction is verified and logged in this open, distributed ledger and marked with an immutable activity record. This data is public and accessible to anyone on the blockchain. Blockchain intelligence (also known as blockchain analytics) makes it possible to map trends and patterns of activity as they occur and to reveal links to off-chain data points and other attributes that could be indicative of risk. Depending on the circumstances, a transaction could even be blocked, or held in escrow, before it is carried out based on identity information provided by regulators.

For example, a known terrorist organization could be tagged by a blockchain intelligence tool as an entity related to terrorist financing. The digital asset exchange could then flag any transactions involving the organization and act as required by regulations. In the meantime, the blockchain can be used by law enforcement and regulators, subject to protocols consistent with due process, to be able to trace and track the movements of funds, helping investigators to follow the money.

Regulators are not restricted to accessing only transaction data, but could also access profiles on digital entities, custodians, and stablecoin issuers, among others. Oversight can be conducted across multiple blockchains, revealing the percentage of trade linked to high-risk activities. Collection of data directly from the blockchain is precisely the sort of risk-based and agile regulatory practice that would increase efficiency and effectiveness for both regulators and regulated entities.

In October 2021, the Financial Action Task Force ("FATF") issued guidance encouraging regulators to use blockchain analytics to identify persons operating without a license or

³ Not all blockchains are "open ledger" systems. It is possible to establish a permission-based system which limits read/write access to designated users. See Financial Stability Board, [Decentralised financial technologies: report on financial stability, regulatory and governance implications](#) 4 (2019). In establishing rules, regulations and norms applicable to the digital financial services sector, FinCEN may be able to treat these differences in a fashion analogous to the ways in which publicly traded companies are risk-rated differently from privately held companies.

registration.⁴ It further recommended enhanced due diligence with respect to certain virtual asset service providers, including those engaged in cross-border correspondent relationships, leading to more effective implementation of risk-based controls.⁵ FATF highlights the fact that certain jurisdictions, including the United States, already use blockchain analytics in their supervision of regulated entities. FinCEN should explore how this technology might be adopted in other industries to help enhance the AML framework.

A revised regulatory approach using blockchain analytics would benefit both regulators, digital asset providers, and, hopefully in the future, others. The availability of raw blockchain data, unprecedented both in quantity and quality, gives regulators the ability to instantly access relevant information without the lag time or filtering mechanism inherent in relying on intermediaries to submit SARs. In turn, providers would be freed from some of the burden of subjectively assessing if and when to submit an SAR. Automated monitoring combined with direct access for regulators reduces the inefficiencies of manual monitoring of low-risk transactions and entities and increases the likelihood that high-risk activities will be flagged, tracked, and easily investigated by the relevant authorities.

More Focus on Behavior Rather Than Identity

Inflexible rules for collecting identifying information upfront make less and less sense in AML/CFT regimes when new technologies allow for the identification of bad actors through focus on their behavior.

The purpose of an AML regime is to track and thwart the activities of bad actors, rather than to impede the use of the financial system by good actors. In updating its regulations, FinCEN can be more flexible in its requirements with respect to collection and verification of identification documentation in a financial institution's relationships with customers and others. Although this does not mean that identification information should not be gathered and shared, the emphasis in current rules of precise methods and timeframes for doing so may be relaxed to help allow for and indeed spur innovations with respect to use of digital identity and the use of the behavioral information to identify bad actors and their transactions. In addition, too onerous an approach fixated on certain documentary requirements leads to less transparency when it causes many legitimate actors to forgo involvement with financial institutions that are required to collect these materials.

⁴ Financial Action Task Force, [Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers](#) 45 (2021).

⁵ *Id.* at 53-4.

The use of mobile devices and other vehicles that may provide information rather than documentation to help confirm identity can enable easier access to the financial system, while also providing better information for FinCEN's stakeholders and making the financial sector more resilient to certain illicit activities. For example, consistent with FATF recommendations, incorporating multi-source, device-based geolocation data collection into a financial institution's onboarding or authentication process acts as a powerful deterrent to bad actors, facilitates the identification and prevention of suspicious activity in real-time, and has been proven to reduce fraud, particularly in novel industries, such as mobile sports wagering and internet gaming. Many financial institutions already collect multi-source, device-based geolocation data (e.g., GPS, WiFi Triangulation, GSM), and FinCEN's regulations should be designed to accommodate and encourage additional innovative approaches.

Ensuring Focus on Assessment of Risk Based on Activity Rather than Entity

The risk assessment process should shift focus from associating risk with particular types of entities and instead focus on the activities being conducted.

FinCEN's current regulations (and guidance on the virtual currency sector) focus on activity-based tests to determine the scope of regulatory coverage, particularly with respect to money services businesses, rather than regulating based on the way an entity has labeled or categorized itself. With respect to compliance examinations, FinCEN, through guidance or regulation, should take steps to ensure that the same principles apply. This is particularly important to Chamber members that face unnecessary de-risking when actors in the traditional or legacy financial sector feel the need to characterize all actors in emerging financial sectors as risky. The perception arises, in part, because both legacy industry actors and regulators are still working to understand precisely how some of the new products and services should be regulated.

In the context of AML, FinCEN has made it clear that the same principles of transparency and resiliency against illicit activity that have applied for many years will apply to new entrants with new technologies. FinCEN guidance and regulations should be able to provide greater comfort to legacy financial sector actors in their engagements with new entrants where those new entrants demonstrate alignment with AML/CFT principles.

In addition, where a new industry demonstrates its willingness and ability to follow the general principles associated with anti-money laundering, the Chamber counts on FinCEN

to recognize that such an industry need not be, and in fact should not be, regulated, precisely the same way as every other regulated entity. FinCEN accepts that there are differences between banks, broker dealers, money services businesses, casinos, and the other industries it regulates. In the same fashion, the emerging digital financial sector presents its own unique opportunities and challenges with respect to combating money laundering and terrorist financing. While applying the legacy principles of transparency and resiliency to an emerging sector is appropriate, applying business models found in the traditional financial world has the potential to stifle development and damage the ability of the United States to maintain its stature as a jurisdiction of choice for financial system innovation. The Chamber has expressed this view in other contexts in light of recent U.S. legislative initiatives.⁶

Effectiveness Means Greater Alignment with Goals

For the AML/CFT regime to be effective, FinCEN needs to ensure that rules, implementation, compliance, and enforcement are checked for alignment with goals.

The Chamber applauds FinCEN's promulgation of AML priorities last year and looks forward to engaging on behalf of its members, and it anticipates rulemaking that will help clarify how industry implementation and compliance examinations will be aligned with such priorities.

In addition, some Chamber members suggest that FinCEN focus on criminal activity, rather than all potentially illicit activity. FATF Recommendation 20 pertains to the reporting of suspicious transaction reporting with respect to criminal activity, by which it means "criminal acts that would constitute a predicate offense for money laundering."⁷ Although the list of specified unlawful activities ("SUAs") that may trigger a money laundering offence is quite long, it does not include all illegal activity.⁸ Nevertheless, FinCEN's regulations require suspicious activity reporting with respect to transactions over the triggering thresholds that

⁶ See, e.g., Senate Banking Committee Ranking Member Pat Toomey's August 26, [2021 Request for Feedback on Clarifying Laws Around Cryptocurrency and Blockchain Technologies](#); Chamber Of Digital Commerce [Response Letter to Senator Toomey](#), September 27, 2021. See also, Senator Toomey, December 14, 2021 [Principles to Guide Future Legislation](#).

⁷ Financial Action Task Force, [The FATF Recommendations](#), Updated October 2021, Interpretive Note to Recommendation 20 (Reporting of Suspicious Transactions).

⁸ 18 USC § 1956(c)(7)(B).

are "relevant to a possible violation of law or regulation" and further provide quite broad criteria for what is relevant to a possible violation.⁹

As more SARs in the crypto industry are filed, this will result in FinCEN unnecessarily using its limited resources on SAR's that are not focused on criminal activity. In addition to listing priorities as focus areas for suspicious activity reporting, FinCEN should work with its delegated examiners and law enforcement to ensure that the breadth of the language in FinCEN's regulations for reporting suspicious transactions does not lead to a dilution of the purpose of the BSA – that is, to focus on criminal activity. Further, this will give FinCEN and its law enforcement stakeholders a better ability to use limited resources.

The increasing ability to use new types of information and technology to provide reports to FinCEN, particularly with respect to the emerging actors that the Chamber represents, makes recalibration of what should be reported even more important.

Collaboration with Other Jurisdictions

As other jurisdictions and regions focus on the treatment of innovative methods for conducting financial transactions, FinCEN has an opportunity to coordinate more with counterparts outside the United States on best regulatory practices.

Although commerce is now mostly borderless, industry still must deal with different regulators in different regions applying different rules with different perspectives on enforcement. Where these differences continue to exist, not only does it make it more complicated for industry to achieve compliance, but it also makes it easier for bad actors to leverage the differences for illicit purposes. As part of FinCEN's reform of the US regulatory system, it should be aware of and open to collaborating with its foreign counterparts and considering some of the AML approaches that other jurisdictions are now employing.

FinCEN has the opportunity to collaborate with the European Union in its development of a new centralized AML regulator, and there are other areas where FinCEN may consider new practices tested by its counterparts. For example, the Monetary Authority of Singapore is moving forward with a new model for centralized information sharing among financial institutions under the auspices of the authority.¹⁰ This model could be adopted in other contexts, and quite easily in the context of sharing government and industry analysis of the

⁹ 31 CFR 1020.320(a).

¹⁰ Monetary Authority of Singapore [Media Release](#), October 1, 2021.

blockchain in combined efforts to track bad actors. The Chamber views this as an example of targeted public-private partnership to achieve greater effectiveness in comparison with the dominant model of siloed, one-way reporting to government financial intelligence units.

Given rapid developments, particularly in the digital financial sector, FinCEN might also explore ways in which it could benefit from secondments to and from the private sector as has been adopted in Australia and the Netherlands.¹¹ In Section 6104 of AMLA, Congress required the Treasury Department to enhance cross-fertilization within government through enhancement of personnel exchanges. The same goals should be considered with respect to enhancing public-private partnerships in the United States by creating opportunities for government and industry to work side-by-side.

Practicality and Accountability

The US AML regime should be practical and workable, avoiding lack of clarity, cumbersome regulations, and delays in regulatory developments that may push legitimate financial sector innovators offshore.

As FinCEN modernizes its regulatory approaches, it needs to consider the importance of making compliance easier – not in terms of reducing the responsibility of addressing money laundering and terrorist financing risks, but in terms of dealing with regulations that may have become unclear over time when applied to new circumstances, such as those that relate to new payment processes, or because of inconsistent direction from various regulators at the federal and state level. FinCEN has demonstrated its ability to coordinate with its partner regulators on many issues in the past and increasing its efforts to do so in the context of rapid developments in the digital sector is critically important.

In addition, FinCEN needs to hold itself, other regulators, and law enforcement accountable with respect to the mandate of AMLA in terms of reforming rules and working with industry. In this regard, FinCEN should be providing substantial notice and comment periods with respect to the development of any new rules. Moreover, FinCEN should be consistently transparent with respect to its development of rules and guidance. The Chamber views the clarity with which FinCEN has explained its rulemaking process in connection with implementation of the Corporate Transparency Act as a best practice, in comparison with some of the frustration that Chamber members have encountered with respect to FinCEN's

¹¹ See, e.g., Royal United Services Institute, [Future of Financial Intelligence Sharing](#), August 2020.

guidance and proposed regulatory amendments particular to virtual currencies and digital assets.

Attached is the Chamber's response to specific questions articulated in the RFI. Questions which are not relevant to the Chamber's Members have been omitted, but the order and numbering of the remaining questions has been retained for clarity. Thank you for your consideration.

We appreciate the opportunity to share our views and our members' experiences as FinCEN assesses the modernization of its regulations. We look forward to continuing to engage with you to foster collaboration with digital asset providers and this dynamic, growing industry.

Very truly yours,

A handwritten signature in black ink that reads "Teana Baker-Taylor". The signature is written in a cursive, flowing style.

Teana Baker-Taylor
Chief Policy Officer

Responses to Specific RFI Questions

B. Reports and Records That Are Highly Useful in Countering Financial Crime.

Questions 3, 4 and 5

FinCEN asks whether there is some BSA reporting that is not useful and how such reporting might be improved and measured for effectiveness. As noted earlier, some Chamber members are concerned that the breadth of the criteria for filing a SAR has led to the potential dilution of the intended focus on criminal activity. This could be addressed through FinCEN's further development of its AML priorities and follow-up regulations and guidance. Additionally, FinCEN has unique visibility into industry-wide SAR reporting that can be further leveraged and shared back with industry, for example in the form of macro trends and actionable feedback.¹² FinCEN might also consider undertaking analysis of filed SARs for their relevance to the list of specified unlawful activities that serve as predicates for money laundering as a way of tracking useful metrics in this regard.

Questions 6, 7 and 8

FinCEN asks about regular or automatic updates to SAR fields or filing thresholds as a means of keeping reporting relevant and reducing burden to industry. Although the idea may have appeal in some respects, some Chamber members expressed concern with respect to potentially unintended consequences of increased burdens for industry in terms of frequent system updates needed to meet new requirements. The present system for adjusting reporting requirements provides some opportunity for industry comment and outreach on new requirements prior to their effective dates. That interaction with the industry is welcome and should not be discarded. In fact, collaboration on potential changes to FinCEN's databases, particularly with respect to making necessary changes to reporting formats, can be increased. FinCEN should consider ways to involve appropriate members from the private sector at appropriate times in deliberations of FinCEN's interagency Data Management Council. Short of that, FinCEN can also enable some private sector review of changes that FinCEN may propose prior to formal notice and comment processes. FinCEN could explore more use of Bank Secrecy Act Advisory Group ("BSAAG") (of which the Chamber is a member) for such a process to gain the benefits of such collaborations. Earlier collaboration could improve both the quality and speed of database updates.

¹² The Chamber appreciates FinCEN's recent analysis with respect to trends in ransomware attack payments and encourages more such efforts.

With respect to specific changes in SAR fields, some Chamber members noted that they could be improved by incorporating additional geolocation data indicators as additional SAR fields. Currently, SAR filings only have an “IP address” field available. To increase the effectiveness of AML programs, expanding SAR data fields to enable better inclusion of additional geolocation fields when such information is available would assist in ensuring that SARs provide the most accurate, highly useful and relevant data, as IP addresses are often deficient sources of information considering their dynamic and occasionally inaccurate nature, as well as their ability to be spoofed and anonymized.¹³

FinCEN also needs to update fields via which information on virtual currencies can be reported. Presently when completing a SAR filing, a virtual currency is identified as "other" in the field that requests information on the type of instrument used in the transaction. FinCEN needs to adjust the fields to keep up with the new digital economy. In addition to having a specific check box for virtual currency, FinCEN should also consider additional formatting for identifying specific virtual currencies. While it would be impossible for FinCEN to have a dropdown box to enable precision in naming every virtual currency, it might benefit from including such a dropdown box for the most dominant virtual currencies, with the flexibility for changes in those dropdown boxes over time. In the interim, FinCEN should provide clear guidance on how to identify specific virtual currencies in the text fields currently being used.

Another specific area where the Chamber identified a need for improvement was in the context of outsourcing and reliance arrangements in the crypto space for onboarding and ongoing surveillance for AML purposes. As the crypto space continues to grow, there is a need to be able to outsource certain obligations. FinCEN should allow outsourcing and provide clear guidance on the criteria. Outsourcing should be permitted to any qualified third party such as a non-regulated entity or an entity in another jurisdiction. The outsourcing agreements should not have to be renewed in writing, or by another means, so long as the arrangement is working and there are no red flags. In other industry contexts, there are requirements to renew reliance agreements on a yearly basis. The Chamber questions the utility of such requirements.

¹³ Updating SAR fields to include specific reference to geolocation data would be consistent with FATF guidance recommending that virtual asset services providers incorporate use of new techniques for identifying location as part of their customer due diligence obligations. See *e.g.*, Virtual Asset and Virtual Asset Service Providers - [Updated Guidance for a Risk-Based Approach](#) (October 2021).

C. BSA Regulations and Guidance That May Be Outdated, Redundant or Do Not Promote a Risk-Based AML/CFT Regime for Financial Institutions

Question 12

FinCEN asks whether its regulations and guidance sufficiently allow financial institutions to incorporate innovative and technological approaches to BSA compliance. The Chamber believes that when regulations set forth specific criteria for complying with information collection requirements, FinCEN should anticipate that advances in technology may provide for alternate means of providing information, and should include reference to such in the regulations. Much the same way statutes, rules and guidance often include "catch-all" language to ensure that the scope of the regulations can keep up with new developments in industry or addressing previously unidentified problems, regulations that specify means to comply with requirements could have similar "catch-all" language to support compliance innovations.

In addition, FinCEN's information ingestion capacities need to be structured to ensure that evolving forms of data that can be used to meet FinCEN requirements can be received by FinCEN and compared with existing forms of data. Support for FinCEN's development of its own capacity in this regard is critical to FinCEN being more open to allow the financial sector to pursue innovative approaches to combat money laundering.

D. BSA Regulations and Guidance That Do Not Conform with International Standards to Combat Financial Crime

Question 21

The Chamber notes that FinCEN's proposed rulemaking with respect to Certain Transactions Involving Convertible Virtual Currency or Digital Assets¹⁴ remains pending with a target date for some form of final action in September 2022.¹⁵ Among other measures, FinCEN proposes reporting and recordkeeping requirements with respect to transactions involving self-hosted wallets in a manner that -- while attempting to be a risk-based regulation -- fails to take into consideration that not all self-hosted wallets are the same, and that different risks may be associated with them. This broad treatment of all self-hosted wallets is inconsistent with

¹⁴ Notice of Proposed Rulemaking, [Requirements for Certain Transactions Involving Convertible Virtual Currencies](#), 85 FR 83840 (December 23, 2020).

¹⁵ Department of the Treasury, [Semiannual Agenda and Regulatory Plan](#), 87 FR 5278 (January 31, 2022).

current guidance from FATF which calls for regulators to understand that different entities within the virtual asset sector may pose higher or lower risks depending on a variety of circumstances. The Chamber refers again to its comment letters on this rule¹⁶ in hopes that FinCEN will make appropriate adjustments.

E. Changes to BSA Regulations and Guidance to Improve Efficiency

Question 26

FinCEN asks in what ways BSA regulations or guidance could be more efficient in light of innovative approaches and new technologies. The Chamber welcomes FinCEN's innovation hours and its attempts to participate in tech sprints and other "sandbox" type situations to spur innovation. In addition to this, Chamber members hope that FinCEN can accelerate pilot programs whereby willing industry participants might be able to forgo following particular rules in order to test new methods of collecting and reporting information to FinCEN.

¹⁶ [Letter from Chamber of Digital Commerce to Financial Crimes Enforcement Network \(Jan. 4, 2021\)](#). [Letter from Chamber of Digital Commerce to Financial Crimes Enforcement Network \(March 29, 2021\)](#).