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Re: Docket Number FINCEN-2021-0005 and RIN 1506-AB49
(Beneficial Ownership Information Reporting Requirements)

I am the Fellow for Malign Finance at the German Marshall Fund’s Alliance for Securing Democracy.¹ With 16 years of experience at the intersection of finance and national security, my research—which has ranged from the most comprehensive study of ways authoritarian regimes funnel money into elections to a strategy for Treasury to combat corruption and kleptocracy—focuses on the financial channels that enable autocratic efforts to undermine and interfere in democratic institutions.² In an issue advocacy capacity, I was also intimately involved in the beneficial ownership reform legislative process.³ This comment offers recommendations about how to make the regulations implementing beneficial ownership reform fit for the national security purpose called for in the Corporate Transparency Act (CTA).

National security is the first justification for beneficial ownership reform—listed even before crime fighting—identified in the CTA, which warns that “malign actors seek to conceal their ownership ... to facilitate illicit activity, ... harming the national security interests of the United States and allies of the United States.”⁴

Thus, it was quite fitting that the CTA was included in a National Defense Authorization Act. Even though beneficial ownership reform was recommended for nearly two decades by law enforcement, anti-money laundering authorities, and anti-corruption watchdogs, with limited interest during that period

¹ See Alliance for Securing Democracy, [About Josh Rudolph](#), Washington, D.C., 2021.

² See Josh Rudolph and Thomas Morley, [Covert Foreign Money: Financial Loopholes Exploited by Authoritarians to Fund Political Interference in Democracies](#), Washington: The Alliance for Securing Democracy, August 18, 2020; Josh Rudolph, [Treasury’s War on Corruption: A U.S. Treasury Department Strategy to Fight Kleptocracy and Root Dirty Money Out of the U.S. Financial System](#), Washington: The Alliance for Securing Democracy, December 22, 2020.

³ See Josh Rudolph, [Congress can defend against Russia by outlawing anonymous shell companies](#), *The Hill*, June 13, 2019; Josh Rudolph, [The One Place Congress Works](#), *The American Interest*, October 2, 2019; [Morley and Rudolph](#), pp. 29-30.

⁴ See United States Congress, H.R.6395 - [National Defense Authorization Act for Fiscal Year 2021](#), December 2020, Section 6402(3).

from the national security community, it repeatedly failed to move through Congress. That started to change around 2016, a year that brought the Panama Papers and Russian interference in the U.S. election, revelations that underscored the national security threat posed by aggressive authoritarian kleptocracies that exploit U.S.-enabled financial anonymity.

The top threat actors now identified by the U.S. intelligence community extensively abuse anonymous shell companies to carry out malign activities around the world.⁵ Chinese state companies, party elites, and criminal organizations use shell companies to facilitate sanctions evasion, fentanyl trade, exploitation of forced labor, and corruption throughout the Belt and Road Initiative.⁶ The Kremlin uses shell companies both as safe havens to hide and store the vast proceeds of kleptocracy and as geopolitical weapons to funnel secret donations meant to interfere in the elections of the United States and at least six other countries.⁷ Transnational threat actors use shell companies to fund terrorism and to traffic in drugs, weapons, humans, and blood diamonds.

To meet these national security challenges, implementation of the CTA should prioritize six principles to establish a strong registry that covers a broad range of reporting companies and their beneficial owners, while providing law enforcement and national security agencies with timely access to high-quality data.

1. **Adopt the law’s broad definition of “beneficial owner” and list activities that indicate control:** Adopt into regulations without any alternations the statutory definition of a beneficial owner in the CTA, which meets international best practices and should replace the more limited definition in the Customer Due Diligence (CDD) rule. The CTA defines a beneficial owner as anyone who directly or indirectly (via any contract, arrangement, understanding, relationship, or otherwise) owns or controls at least 25 percent of an entity or exercises substantial control, and it cannot be the owner’s employee, child, heir, nominee, intermediary, custodian, agent, or creditor. Unlike the CDD rule and some foreign registries, this approach should stop companies from pretending nobody is in control and only identifying a manager or official (*see* question 3a) or just naming a single beneficial owner with substantial control (*see* question 3c). To ensure meaningful disclosures of “substantial control,” FinCEN should provide a checkbox list of key indicators, making companies identify anyone with the power to vote on or direct the voting of company shares or other ownership interests, appoint or remove board members or senior officers, decide on the sale or termination of the company, or take possession or direct the disposition of funds and assets (*see* question 3c).
2. **Broadly define an entity that must report, including an “other similar entity”:** In addition to corporations and LLCs, reporting entities should include partnerships, trusts, foundations, sole proprietorships, special purpose vehicles, and business associations (*see* question 1b). Include entities filing documents with secretaries of state or other similar offices, not only as part of the original formation process per se, but also in order to “create” their authority to do business, operate under a fictitious name, buy property, or engage in other activities that could facilitate financial secrecy (*see* question 1c).
3. **Limit exemptions to companies that already disclose ownership:** Every exemption should be narrowly interpreted, even those that seem small and inconsequential today, because they could

⁵ See Office of the Director of National Intelligence, [Annual Threat Assessment of the US Intelligence Community](#), April 9, 2021.

⁶ See Nate Sibley, [How to fight China’s financial abuses: Crack down on anonymous companies](#), *Washington Examiner*, February 5, 2019.

⁷ See [Rudolph](#), June 2019; [Morley and Rudolph](#), pp. 25-27, 83-84.

develop into cottage industries of financial secrecy tomorrow. Pooled investment vehicles—the most troubling of the 23 exemptions in the CTA—should only be exempt if they are operated or advised by regulated financial institutions, and FinCEN should urge regulators to scrutinize financial institutions choosing to operate or advise them given the heightened risk of money laundering. Unregistered private equity and hedge fund advisors should only be exempt if they already disclose their beneficial ownership to the SEC. Subsidiaries of reporting companies should only be exempt if they are wholly owned. Dormant companies should only be exempt if they already existed at least one year before CTA enactment and continue to not conduct any activity, meaning this exemption narrowly grandfathered unused pre-CTA companies. Money transfer companies should have to list a beneficial owner (not a legal entity) on their Treasury registration forms and link to that information in exemption notification forms (*see* question 6).

4. **Require information about parent companies, subsidiaries, and affiliates:** Collect data needed to paint a full picture of ownership structures by requiring reporting companies to identify the official legal name and legal entity identifier (LEI) of any parent organizations, subsidiaries, and affiliates, as well as the full ownership chain tied to any indirect beneficial owner. FinCEN should input that information into integrated data analytics—potentially making use of existing software packages such as those developed by OpenOwnership—to automatically map detailed schematics depicting corporate ownership structures (*see* questions 11-12).
5. **Verify the accuracy of data immediately at the point of entry:** Avoid the biggest problem with the UK’s Companies House registry by spotting and prohibiting data inaccuracies when reporting companies try to enter information online, like how credit card information is instantly verified before completing a purchase. FinCEN should do this by investing in automated techniques to instantly verify data by checking passport information against the State Department’s Consular Consolidated Database and comparing driver’s license information to databases maintained by the National Law Enforcement Telecommunications System (Nlets)—official data sources that already have partnerships granting access to nine other federal government departments, including Defense, Justice, Homeland Security, and Commerce. Addresses should be checked to ensure they exist and comply with U.S. Postal Service standards. If data entries fail these verification checks, FinCEN should immediately push out a pop-up message alerting the reporting company that the information does not match and must be corrected before proceeding. This would both enhance the usefulness of the data (*see* question 24) and reduce the burden on businesses (who will need accurate data to open bank accounts and get loans; *see* question 16).
6. **Ensure broad, timely, and easy access to the database:** Address the problem of governments being perpetually outmatched by more nimble and speedy malign actors by allowing and enabling quick access to the beneficial ownership database by a broad cross-section of law enforcement and national security agencies personnel. This will require several careful regulatory definitions, given that opponents of beneficial ownership reform repeatedly tried to insert statutory provisions meant to make the registry inaccessible, efforts that mostly failed but left some textual vestiges for FinCEN to clean up. Rather than limiting access to a specific list of federal agencies that conduct criminal investigations, FinCEN should rule that access may be granted for criminal, civil, national security, intelligence, tax, and administrative matters that are not limited to open investigations but also include initial inquiries, preliminary investigations, grand jury proceedings, financial analyses, intelligence reviews, national security inquiries, and related activities. Federal agency heads should be allowed to delegate approval authority to many subordinates. Rather than introducing red tape to authenticate that state and local law enforcement really got a court authorization, investigators should be allowed to self-certify authorization by checking a box and naming the court that authorized access. To prevent judicial bottlenecks, courts (around the country) and court officers (more than just judges) that may grant such access should be broadly defined and equipped with simple forms and flexible rules (not subpoenas).

However, as for sharing data with foreign countries, careful protocols should be developed in consultation with State, particularly for non-allied countries (*see* question 32).

Today's most threatening malign actors are backed by kleptocracies that often launder, hide, and store their ill-gotten gains in the names of U.S. corporations, LLCs, trusts, foundations, partnerships, and other similar entities. That strategy also presents an Achilles' heel, because their deep financial pools—which support both their grips on power in their home countries and their geopolitical aggression abroad—are sitting within reach of U.S. authorities.

However, this is not a threat that would be addressed by just any beneficial ownership registry. Funded by the practically unlimited resources of kleptocracy, malign actors employ some of the world's most talented lawyers, bankers, and accountants to keep their dirty money hidden. They will scour the details of the implementing regulations, looking for loopholes that will allow them to continue harming U.S. national security interests. FinCEN has a historic opportunity and solemn duty to build resilience against malign finance by writing strong regulations that broadly define reporting companies and beneficial ownership, strictly limit exemptions, clearly require ample and accurate information, and broadly ensure timely and easy access to the database.

Comments Numbered by Question

- 1a) *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?*

FinCEN should interpret “other similar entity” broadly to include any legal entity that could potentially be used by malign actors to harm U.S. national security (as described in Section 6402(3) of the CTA), used by money launderers and others evading detection through layering (as described in Section 6402(4) of the CTA), or otherwise relevant to the needs set forth in Section 6402(5) of the CTA.

- 1b) *What types of entities other than corporations and LLCs should be considered similar entities that should be included or excluded from the reporting requirements?*

To ensure that dirty money concealed through corporations and LLCs does not simply shift over to other entities that serve similar purposes, “other similar entity” should be defined to include **partnerships, trusts, foundations, sole proprietorships, special purpose vehicles, and business associations** (such as cooperatives or joint ventures). This has important national security implications, because malign actors and their enablers are adept at moving their dirty money from one vehicle to another to avoid new disclosure requirements.

The Panama Papers were famous for showing how shell companies are abused by Russian oligarchs, Chinese princelings, African strongmen, Middle Eastern royals, and other corrupt figures. Importantly though, the revelations also showed how law firm Mossack Fonseca helped these beneficial owners arrange trusts, foundations, partnerships, and other secrecy vehicles, often layered on top of each other for extra protection.

Trusts are the most natural next line of defense to structure financial secrecy, because unlike companies they do not usually have the same formalities of incorporation and share ownership. The Wall Street Journal has already advised owners of mansions that they might be able to “use a trust”

to avoid the requirements of the CTA.⁸ And this market segment was booming even before the CTA passed, with assets held in South Dakotan trusts alone having jumped over the past decade from \$57 billion to \$355 billion.⁹ An example of a typical case involved four Chinese tycoons wanting to spirit \$17 billion out of China at the end of 2018 before Beijing toughened up its tax regime, so they all transferred shares to family trusts such as South Dakota Trusts.¹⁰

Foundations can also be more attractive than companies to obscure ownership and funding because they often do not require members, shares, or financial records. For example, the lobbying effort against Russia sanctions in the United States led by Kremlin-connected lawyer Natalia Veselnitskaya was organized as a Delaware foundation purportedly advocating for Russian adoptions.¹¹ This legal structure helped conceal the sources of funding from Moscow, which, if revealed, might have required registering as a foreign agent.¹² The Kremlin has used foundations in other covert influence operations too, pretending to be environmental groups opposing U.S. hydraulic fracking and civil rights groups stoking racial discord ahead of U.S. elections.¹³

Partnerships are also financial secrecy entities that can be defanged by inclusion in beneficial ownership registries. Over much of the last decade, for example, Scottish Limited Partnerships were a secrecy vehicle of choice among organized criminals in the former Soviet Union and proxies of Russian intelligence services, who used them to fund disinformation against Kremlin opponents, operate unregulated trading and gambling websites, ship asbestos to poor countries, and launder the proceeds of corruption in Russia, Ukraine, Moldova, Azerbaijan, and Uzbekistan.¹⁴ Scottish Limited Partnerships only fell out of favor in 2017 when the United Kingdom imposed upon them beneficial ownership reporting obligations—arguably the single greatest success achieved by Britain’s Companies House registry.¹⁵

- 1c) *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*

⁸ See Robyn A. Friedman, [Buying a Home Through an LLC Is Not as Anonymous as It Used to Be](#), *The Wall Street Journal*, March 31, 2021.

⁹ See Oliver Bullough, [“The great American tax haven: why the super-rich love South Dakota,”](#) *The Guardian*, November 14, 2019.

¹⁰ See Bloomberg, [“Four Chinese tycoons just transferred US\\$17 billion of their wealth to trusts as government toughens up tax regime,”](#) *South China Morning Post*, January 16, 2019.

¹¹ See Emma Loop, et al., [“A Lobbyist At The Trump Tower Meeting Received Half A Million Dollars In Suspicious Payments,”](#) *Buzzfeed*, February 4, 2019.

¹² See Stephanie Baker and Irina Reznik, [“Mueller Is Looking Into a U.S. Foundation Backed by Russian Money,”](#) *Bloomberg*, December 21, 2017.

¹³ See James Freeman, [“What Did Hillary Know about Russian Interference?”](#) *The Wall Street Journal*, July 10, 2017; Clarissa Ward, et al., [“Russian election meddling is back -- via Ghana and Nigeria -- and in your feeds,”](#) *CNN*, April 11, 2020.

¹⁴ See Bellingcat Investigation Team, [“Smash and Grab - The UK’s Money Laundering Machine,”](#) October 1, 2019; Marc Horne, [“Criminals used Scottish Limited Partnerships’ loophole to launder billions,”](#) *The Times*, October 4, 2019; Carlos Alba and Jordan Ryan, [“British firms ‘linked to dirty money used against Putin opponents’,”](#) *The Times*, April 21, 2019.

¹⁵ See Global Witness, [“Three ways the UK’s register of the real owners of companies is already proving its worth,”](#) July 24, 2018.

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."

While filing requirements vary across the 50 states, most require partnerships, foundations, sole proprietorships, special purpose vehicles, and business associations to submit some form of articles of incorporation, business name registration, or other documentation with offices such as the secretary of state. Trusts and sole proprietorships are often subject to these regulations or other requirements for registration to do business or buy property, even if only ten states have protocols for actually registering trusts with local courts.¹⁶ FinCEN should use any and all of those document filings to satisfy the statutory requirement, including by broadly interpreting the word "create" to mean not only the original formation process but also the creation of an entity permitted to do business, operate under a fictitious name, buy property, or conduct any other activities that require the filing of documentation with the secretary of state or similar office. FinCEN should also consider defining "similar office" to include state-appointed notary publics in their capacity to verify the execution of trust agreements. Unless any legal entity (including partnerships, trusts, foundations, sole proprietorships, special purpose vehicles, and business associations) qualifies for one of the 23 exemptions enumerated in the CTA or is not created by the filing of a document with a secretary of state or a similar office, it should be presumed to be subject to the CTA's disclosure obligations.

- 3a) *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?*

There are several ways in which the CTA statutory definition of a beneficial owner is stronger than the regulatory definition under the CDD rule. For example, the CDD rule allows companies to name officers or managers as beneficial owners, whereas the CTA explicitly forbids naming an employee (or minor children, nominees, intermediaries, custodians, agents, inheritors, or creditors). The CDD rule allows naming a "single individual" with "significant responsibility to control, manage, or direct" the entity, whereas the CTA does not encourage naming a single individual.

With these and other differences, the CTA definition meets international best practices, from standards set by the Financial Action Task Force to definitions used by the UK and EU. As such, FinCEN's regulations implementing beneficial ownership reporting should adopt the CTA definition verbatim without any additions or alternations, and then the separate rulemaking process FinCEN will be undertaking to bring the CDD rule into conformity with the CTA should replace the CDD definition with the CTA definition. Separately, the SEC definition of a beneficial owner is meant to inform the investing public, not to support law enforcement and national security agencies, so it should not be adopted by FinCEN for usage in a non-public registry that explicitly excludes publicly traded companies.

- 3b) *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?*

No. "Own" and "control" are basic, irreducible legal concepts that were intentionally left plain by Congress and should not be further defined by FinCEN or linked by reference to any other federal definition.

¹⁶ See NOLO, [Signing, Storing, and Registering Your Trust](#).

- 3c) *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”?*

No. “Substantial control” has an irreducible meaning. The authors of the CTA considered defining this term with a more detailed, numerical, or mechanical test, but they rejected the possibility to deliberately give the term more breadth and flexibility, not with an expectation that it would be whittled down through a regulatory definition. As Senator Sherrod Brown explained on the Senate floor ahead of the vote to approve the CTA, “To determine whether an individual exercises ‘substantial control’ over an entity, FinCEN is not intended to devise a numerical, narrow, or rigid test. Instead, the standard is intended to function with flexibility to take into account the myriad ways that an individual may exercise control over an entity while holding minimal or even no formal ownership interest.”¹⁷

However, to ensure that companies provide meaningful ownership disclosures in accordance with the international best practice of covering a broad set of controlling activities, FinCEN’s implementing rule should provide a list of key control indicators. When naming all individuals with substantial control, reporting companies should have to select from a checkbox list of options whether the individual has the **power to vote on or direct the voting of company shares or other ownership interests, appoint or remove board members or senior officers, decide on the sale or termination of the company, or take possession or direct the disposition of funds and assets.**¹⁸

FinCEN’s rule should require companies to name every individual who meets the definition of a beneficial owner, including multiple individuals with substantial control, and state plainly that the statute makes no reference to only naming a single beneficial owner of any kind. The CTA clearly states that beneficial ownership reporting shall “identify *each* beneficial owner of the applicable reporting company,” not just one. While some may have argued when developing the CDD rule in 2016 that the single individual approach made sense for providing financial institutions with the name of an officer or manager, allowing persons with substantial control over a company the flexibility to secretly choose which one of their identities to disclose would offer a major loophole to malign actors intent on remaining hidden from law enforcement and national security agencies.

- 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?*

One of the most important priorities in the regulatory approach to beneficial ownership should be a general principle that every exemption should be narrowly interpreted and limited to entities that are already required to report beneficial ownership elsewhere (such as to the SEC). As Senator Sherrod Brown said on the Senate floor before the CTA vote, the “exemptions are intended to be narrowly interpreted to prevent their use by entities that otherwise fail to disclose their beneficial owners to the federal government.”¹⁹ Even if a financial secrecy vehicle seems small and inconsequential now, it could get noticed by enterprising crooks and then mushroom into a widely abused pathway to financial secrecy.

¹⁷ Sherrod Brown, “[Congressional Record—Senate](#),” December 9, 2022, pp. S7296.

¹⁸ See Transparency International U.S. Office, “[U.S. Beneficial Ownership Implementation Factsheet](#),” March 2021.

¹⁹ Sherrod Brown, “[Congressional Record—Senate](#),” December 9, 2022, pp. S7311.

Take the example of Scottish Limited Partnerships, which were created in 1890 to help farmers and not used very often until they were abused in the infamous 2010-2014 “laundromat” scheme to funnel \$20 billion of dirty money out of Russia. Over the seven years that followed, more Scottish Limited Partnerships were created than in the first 100 years of this instrument’s history.²⁰ They became a secrecy vehicle of choice among organized criminals in the former Soviet Union and proxies of Russian intelligence services, who used them to fund disinformation against Kremlin opponents, operate unregulated trading and gambling websites, ship asbestos to poor countries, and launder the proceeds of corruption in Russia, Ukraine, Moldova, Azerbaijan, and Uzbekistan.²¹ Because regulatory processes are slow to catch up with malign actors, by the time Britain and the EU added Scottish Limited Partnerships to their beneficial ownership registries in 2017, hundreds of billions of dollars had already been moved by secret owners to unknown destinations and money launderers were starting to move on to new exemptions.

Five exemptions in the CTA present a particularly heightened risk of being abused as secrecy vehicles for malign actors if the rules are not stringently limited in the following ways, which would keep with the intentions of the CTA authors:

- **Pooled investment vehicles:** Should only be exempt if they (i) are operated or advised by a regulated financial institution, (ii) provide the vehicle’s full legal name (not just numeric code generated by the SEC) on the SEC’s Form ADV, and (iii) in cases of foreign vehicles they file detailed certifications with the CTA registry. FinCEN should also warn regulators about the growing risk of criminal proceeds being laundered through pooled investment vehicles and suggest scrutinizing financial institutions choosing to operate or advise them.
- **Unregistered private equity and hedge fund advisors:** Should only be exempt if they disclose their beneficial owners (as defined in the CTA) to the SEC as part of Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto.
- **Subsidiaries of reporting companies:** Should only be exempt if they are wholly owned or controlled—nothing less than 100 percent—by a reporting company.²²
- **Dormant companies** Should only be exempt if they already existed at least one year before January 1, 2021—the CTA enactment date—and continue to not do any business, hold any other assets, experience financial flows exceeding \$1,000 annually, or have any foreign ownership or changes in ownership. This would keep with the intent of the CTA authors by narrowly scoping this exemption to merely grandfather unused pre-CTA companies.
- **Money transfer companies:** Should have to list a true beneficial owner or at least a natural person on Treasury registration forms (which currently permit identifying only a legal entity) and file an exemption notification form with links to their Treasury registration.

²⁰ See Oliver Bullough, “[How super-rich used Scotland to subvert democracy](#),” *The Scotsman*, September 5, 2018.

²¹ See Bellingcat Investigation Team, “[Smash and Grab - The UK’s Money Laundering Machine](#),” October 1, 2019; Marc Horne, “[Criminals used Scottish Limited Partnerships’ loophole to launder billions](#),” *The Times*, October 4, 2019.

²² The Chinese government has been known to controversially fund interference in elections through legal loopholes involving corporate subsidiaries that are owned partly by Chinese billionaires and partly by regional governments in China, so they are not wholly owned by the parent company. See [Morley and Rudolph](#), pp. 28.

- 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?*

No. The 23 exemptions in the statute are more than enough. Other potential exemptions that special interest groups lobbied aggressively for were left out by Congress for good reasons and they may well now try again with Treasury. The Secretary should not add more exemptions.

- 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?*

Yes, absolutely. See response to question 1 above. Leaving trusts and special purpose vehicles out of the reporting requirement would undermine the objectives of the CTA.

- 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? What information should FinCEN require companies to provide to qualify for these exemptions, and what verification process should that information undergo?*

As a general matter, eligibility for exemptions should be narrowly interpreted and subject to significant application and strict verification processes. To see how permissive and non-transparent application processes for exemptions have been abused by malign actors to harm national security (and thus undermine the intent of Congress expressed in Section 6402(3-5) of the CTA), consider the example of AQUIND LIMITED, a company registered in the U.K. and donating £242,000 to the Conservative Party while seeking approval to build a sensitive electrical connector from Britain to France. Investigative reporting and Luxembourg public records revealed that AQUIND LIMITED is secretly run by former executives of major Kremlin-connected companies in Moscow. However, that beneficial ownership information is not revealed in Companies House, because the Russians’ lawyers successfully argued behind closed doors that the owners could be at risk of “serious violence or intimidation,” a claim that is not seen as credible by U.K. security and law enforcement agencies.²³ To fulfil the intent of the CTA, any exemption eligibility should be strictly limited to protect against malign actors.

- 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?*

FinCEN should require a reporting company to provide a full picture of its ownership structure, including the official legal name and LEI of any parent organizations, direct subsidiaries, and direct affiliates. And if any beneficial owner holds ownership in a reporting company indirectly, the reporting company should have to disclose the full ownership chain related to that beneficial owner. Such chains could be reported through the provision of FinCEN identifiers.

FinCEN should input that information into integrated data analytics and other automated techniques to facilitate mapping of corporate capital structures. The goal should be for law enforcement or other

²³ See [Morley and Rudolph](#), pp. 25.

users to be able to search for a beneficial owner, reporting company, or other entity and instantly see detailed schematics and hidden connections between all persons and entities involved.

To get those systems up and running quickly, cheaply, and reliably, FinCEN should consider making use of existing beneficial ownership registry software, such as the battle-tested and interoperable models developed by OpenOwnership. FinCEN could always transition over time to its own customized system, like the software Belgium made for its own purposes to convert information about specific beneficial owners, parent organizations, and subsidiaries into ownership diagrams.

A notorious case of a malign actor using a web of corporate affiliates, parents, and subsidiaries to obscure beneficial ownership and harm the national security of the United States and its allies first came onto the radar of U.S. authorities as an international mystery. In 2004, associates of Putin created a Swiss company called RosUkrEnergo, which soon started reaping billions in profits by buying gas well below market prices from Russian government-owned Gazprom and selling it expensively to Ukrainians and other customers in Europe.²⁴ The intermediary was owned half by Gazprom and half by an unknown owner whose shares were held in custody by a subsidiary of Vienna-based Raiffeisen Bank.²⁵ The U.S. Justice Department began investigating RosUkrEnergo for links to Russian mafia boss of bosses Semion Mogilevich.²⁶ The secret beneficial owner turned out to be Kremlin-connected oligarch Dmytro Firtash, whose stake was owned by a subsidiary of his holding company, Group DF.²⁷ According to an indictment issued in 2012 as part of a major U.S. criminal investigation, Group DF is an international conglomerate comprised of hundreds of subsidiary companies controlled by Firtash.²⁸ This octopus of corporate affiliates, parents, and subsidiaries functions as a sprawling machine of malign foreign influence, having reportedly underwritten Kremlin-aligned political parties and television channels in Ukraine, maintained ties with Mogilevich, bought influence with several British elites, bribed Indian public officials to obtain mining licenses, and resisted Firtash's extradition to the United States (which is how he entered the corrupt dealings featured in Trump's first impeachment).²⁹ While Firtash's companies are organized outside the United States, some of them do business with U.S. companies and the overall portrait they paint of corporate complexity demonstrates the need for beneficial ownership registries to fully capture affiliates, parents, and subsidiaries and to be packaged for law enforcement through data analytics that integrate domestic and international sources.

- 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)?*

²⁴ See Stephen Grey, et al., "[SPECIAL REPORT-Putin's allies channelled billions to Ukraine oligarch](#)," Reuters, November 26, 2014.

²⁵ See Glenn R. Simpson and David Crawford, "[U.S. Investigates Critical Supplier Of Russian Gas](#)," *Wall Street Journal*, April 21, 2006.

²⁶ See Benoît Faucon and James Marson, "[Ukrainian Billionaire, Wanted by U.S., Builds Ties in Britain](#)," *The Wall Street Journal*, December 2, 2014.

²⁷ See Anders Åslund, *How Ukraine Became a Market Economy and Democracy*, Washington: Peterson, 2009, pp. 170; Reuters, "[FACTBOX: RUE: A mystery player in Russia-Ukraine gas row](#)," January 3, 2009.

²⁸ See Indictment, *United States v. Dmitry Firtash, et al.*, U.S. District Court Northern District of Illinois Eastern Division, January 2012, pp. A1-A5 ("Firtash Indictment").

²⁹ See Sergii Leshchenko, *The Firtash octopus: Agents of influence in the West*, Vienna: Eurozine, September 25, 2015; [Faucon and Marson](#), 2014; [Firtash Indictment](#); Amy Mackinnon, "[Giuliani's Claims Spread to Another Ukraine Corruption Case](#)," *Foreign Policy*, October 3, 2019.

As a matter of course, because even when such information does not have a bearing on the reporting company's ultimate beneficial owner(s), it could provide law enforcement and national security agencies with critical details about affiliates, parents, and subsidiaries that link to other entities or persons about which the reporting company may not be aware. That is one of the main reasons for having a centralized beneficial ownership database—because no single reporting company, financial institution, or regulator has visibility into all connections that could potentially be relevant to protect national security, spot money laundering schemes, or otherwise meet the needs set forth in the CTA.

- 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?*

FinCEN should require reporting companies to identify how the beneficial owner is tied to the company, including any details around the ownership or control, substantial control, and the nature of how such ownership is governed through any contract, arrangement, understanding, relationship, or otherwise, as well as any and all intermediaries, layers, or chains of owners.

- 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?*

FinCEN should minimize burdens on reporting companies by investing in automated techniques to instantly verify data by checking it against official sources of passport, driver's license, and address information—described more fully in response to question 24—to help companies catch mistakes when entering information online. That way, if a name is misspelled or number seems to have been typed incorrectly, the reporting company would have to try again or perhaps place a phone call to a dedicated call center to figure out why the information they are trying to enter does not match information already on file with the U.S. government. Without such an instantaneous data verification process, the reporting company would only find out about the mistake sometime later when they try to open a bank account or get a loan, at which point they may need to go home, figure out what they did wrong, re-file with FinCEN to correct their information, and make another appointment to return to the bank in the future, all of which could be far more burdensome and disruptive to their business activity than simply reentering their information in the first place because FinCEN automatically caught a mistake.

- 23) *What steps should reporting companies be required to take to support and confirm the accuracy of beneficial ownership information? Should reporting companies be required to certify the accuracy of their information when they submit it?*

Yes, reporting companies should have to certify or attest to the accuracy of all their information when they submit it, which would serve as a deterrent for submitting false, misleading, incomplete, or otherwise inaccurate information because it would make it easier to impose penalties.

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

The biggest problem with Companies House in the United Kingdom is that it lacks effective data verification, so whoever sets up a company can just make up false information with impunity. As journalist Oliver Bullough has reported, the registry is littered with endless entries like Mr. Mmmmmm XXXXXXXXXXXX, who lists his address as Mmmmmmm, Mmmmmmm, Mmm, MMM.³⁰ Mr. Mmmmmmm Yyyyyyyyyyyyyyyyyyy just left the address field blank. A company that called itself XXXXXXXXXXXX for some reason changed its name to XXXXXXXXXXXX, but still resides at X, X, X, X, X. There are multiple companies called NONE OF YOUR BUSINESS LIMITED and ANONYMOUS LIMITED, as well as company directors with last names like NONE and ANONYMOUS. There are plenty of curse words. Shockingly, the only person the British government ever convicted of falsifying data entered into Companies House was a whistleblower who named a couple fake companies after variants of the names of government ministers responsible for the issue and told them about the stunt to demonstrate how easy it would be to commit fraud.³¹

The more dangerous cases involve companies that sound like they could be real. POMPOLO LIMITED only existed in Companies House for 19 months, just enough time for Paul Manafort to launder some dirty money to Florida and Virginia.³² LANTANA TRADE LLP lied to Companies House by saying it was dormant and owned by companies in the Marshall Islands and Seychelles, while it was in fact laundering millions of euros daily—part of the Danske bank scandal—on behalf of people linked to Putin’s family and the FSB.³³ LANTANA TRADE LLP was also one of hundreds or perhaps thousands of different companies using the exact same signature supposedly belonging to a dentist in Belgium—who says it is a forgery—but whose name in the database throws off investigators because it is spelled many different ways, including Ali Moulaye, Alli Moulaye, Aly Moulaye, Ali Moyllae, Ali Moulae, Ali Moullaye, and Aly Moullaye.³⁴

More than just prohibiting blank fields or letters entered for numbers, FinCEN’s filing protocols should operate more like the authentication process of making purchases with a credit card. After swiping a credit card or entering information online, the acquiring bank forwards the details to the credit card network, which instantly pings the issuing bank, which immediately uses fraud protection tools such as the Address Verification Service to validate the customer’s credit card, check the amount of funds available, and match to addresses on file and the CVV number, before finally transmitting an approval or declination back to the merchant within a matter of seconds, all in time for the customer to try again in case they made a mistake (which as noted in response to question 16, eases the burden on the customer by providing them a quick opportunity to cure the error without any penalty or disruption to their business activity).

Similarly, FinCEN should invest in automated techniques to instantly verify data by checking passport information against the State Department’s Consular Consolidated Database and comparing

³⁰ See Oliver Bullough, [“How Britain can help you get away with stealing millions: a five-step guide,”](#) The Guardian, July 5, 2019.

³¹ Ibid.

³² See Oliver Bullough. [Moneyland: The Inside Story of the Crooks and Kleptocrats Who Rule the World.](#) United States, St. Martin’s Publishing Group, 2019.

³³ See Luke Harding, [“Russian millions laundered via UK firms, leaked report says,”](#) The Guardian, February 26, 2018.

³⁴ See [Bullough](#), 2019.

driver's license information to databases maintained by the National Law Enforcement Telecommunications System (Nlets)—official data sources that already have partnerships granting access to other federal government agencies, including Homeland Security, Commerce, Defense, Justice, Personnel Management, Interior, Veterans Affairs, Immigration and Customs Enforcement, and the Postal Inspection Service. Addresses should be checked to ensure they exist and comply with U.S. Postal Service standards.

If data entries fail these verification checks, FinCEN should immediately push out a pop-up message alerting the reporting company that the information does not match and must be corrected before proceeding. This would serve two purposes: reducing the burden on businesses (as noted in question 16) and enhancing the usefulness of the data for law enforcement.

- 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?*

One of the most important priorities in the regulatory approach to beneficial ownership should be a general principle to allow and enable easy and timely access to the database by law enforcement and national security agencies, regulators, financial institutions, and legitimate foreign requests. A key reason why governments are outmatched by malign actors posing national security threats (as noted in Section 6402(3) of the CTA) is the difference in timeliness.

Take the example of the Magnitsky affair, which among other malign behaviors, involved Kremlin cronies stealing and laundering a \$230 million fraudulent tax refund. The illicit money moved from the Russian treasury to two small Russian banks, then through a series of bank accounts held by shell companies and intermediaries across 24 transfers, flowing through Moldova and then into the Western financial system, ultimately ending up in high-end real estate such as luxury condominiums at 20 Pine Street in Manhattan. Most of the money moved in a rapid time span ranging from 10 days to two months. By contrast, the scheme took 10 years for enforcement authorities to unravel, and even that only happened because activist Bill Browder started dedicating his life to the mission by hearing from whistleblowers, making complaints to governments, and sharing law enforcement findings across governments (the type of global coordination FinCEN should promote through the Egmont Group). Far more often, kleptocrats, terrorists, drug cartels, human traffickers, arms dealers, and other malign actors are long gone by the time law enforcement catches up with them, or more likely, governments do not have the resources to complete the investigations at all or within statutes of limitations.

The CTA's answer to this challenge is broad, timely, and easy access to beneficial ownership information, which is also key to international standards set by the Financial Action Task Force. Opponents of beneficial ownership reform tried and failed at every turn to insert poison-pill provisions meant to make the registry useless by limiting access to it through narrow language or requirements to get subpoenas or other procedural roadblocks. FinCEN should promulgate regulations that recognize how the CTA calls for broad, timely, and easy access to the database.

Rather than limiting access to a list of specific federal agencies that conduct criminal investigations, FinCEN should provide guidance that the CTA provides access to a wide range of federal personnel engaged in criminal, civil, national security, intelligence, tax, and administrative matters. Moreover, access should be permitted not only for officially opened cases but also to support initial inquiries, preliminary investigations, grand jury proceedings, financial analyses, intelligence reviews, national security inquiries, and related activities.

FinCEN should not introduce additional bureaucratic procedures to authenticate or confirm that state and local law enforcement agencies really have the authorization they say they do from a court of competent jurisdiction. Such a process would certainly slow down the work of law enforcement, potentially with considerable delays given resource constraints at FinCEN. Moreover, it lacks any statutory foundation in the CTA, which already stipulates extensive protocols that state and local law enforcement must institute in order to have access to the database. If anything, FinCEN should just require state and local personnel to check a box when accessing the registry to certify that they have obtained appropriate authorization from a court of competent jurisdiction and identify the name of the court and court order who provided authorization, fields that the state or local agency could help automatically populate in the event that a given investigation has an ongoing serial authorization.

Agency heads should be allowed to delegate approval authority to multiple subordinate designees or even delegate certification-making authority to entire agency departments, subgroups, or classes of employees. Moreover, the request for approval can be embedded within the process of requesting registry information, rather than having to be a separate document or process.

The CTA says a federal agency can request access on behalf of a foreign government under an international treaty or on behalf of “trusted foreign countries” when no treaty exists. FinCEN should consider defining a “trusted foreign country” as “a member of the North Atlantic Treaty Organization or a major non-NATO ally or strategic partner as such is defined by section 2321k of title 22 United States Code.” FinCEN should also work with the State Department’s Office of the Legal Adviser for Law Enforcement and Intelligence to develop careful protocols for scrutinizing requests from countries that have mutual legal assistance treaties with the United States but fall outside the scope of trusted companies, such as Russia (probably developing a presumption of denying such requests on the grounds that “the execution of the request would prejudice the security or other essential interests of the Requested Party,” a permissible treaty exception).

- 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?*

In order to prevent federal court bottlenecks, (i) a “court of competent jurisdiction” should include any federal, regional, state, local, municipal, tribal, or territorial court that has actual or potential jurisdiction over the matter being examined by the law enforcement agency seeking authorization; (ii) “any officer” should include any person involved with court administration, including a judge, magistrate, clerk, bailiff, sheriff, or other full or part time court personnel who can expedite issuance of the authorizations; (iii) “authorized” should not be limited to getting court orders or subpoenas but should instead refer to a standard form FinCEN should create to facilitate quick and informal authorizations that should be posted online, treated by court officers as procedural matters to be granted in the absence of any reason to believe they are improper, and permitted to be skipped in favor of less formal written or verbal communications when time is of the essence; and (iv) law enforcement should not be required to obtain a separate authorization each time the agency wants to access the registry for activities involving the same matter.

- 39-42) *On the cost burden facing small businesses and how FinCEN can best reach out to members of the small business community.*

FinCEN should be careful to ensure it knows where responses to these questions come from. During the legislative process, some users of financial secrecy instruments such as anonymous shell companies used front organizations purporting to champion small businesses interests to fuel a

commonly held misconception that small business owners oppose beneficial ownership reform.³⁵ In fact, polls consistently show that more than three quarters of small business owners support beneficial ownership reform because crooks and swindlers can stand behind shell companies to secretly raid law-abiding businesses through contract fraud, employee embezzlement, surreptitious lawsuits, and the exploitation of subsidies meant for small businesses.³⁶ To hear perspectives genuinely coming from the small business community, FinCEN should reach out to Small Business Majority, Main Street Alliance, and American Sustainable Business Council.

- 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?*

Beneficial ownership reform is of particular interest to civil society stakeholders working on anti-corruption. Several experts in this community have been advocating for this for decades and worked closely with Congress to develop the CTA. For example, more than 700 experts from around the world are connected through the Anti-Corruption Advocacy Network (ACAN). Even though ACAN is based on Washington, D.C., and holds monthly meetings that often include presentations by government officials, I have never seen a representative from FinCEN at an ACAN meeting. Regularly attending ACAN meetings and hearing feedback on the implementation process would be an excellent way for FinCEN to start ramping up its engagement with the anti-corruption civil society. FinCEN should similarly be in close contact with the Financial Accountability and Corporate Transparency (FACT) Coalition, the leading advocate for beneficial ownership reform.

Acknowledgements

While this comment solely reflects the views of the author, it was prepared in consultation with members of the FACT Coalition and Transparency International, and in several cases where the national security interests overlap with transparency interests, the substantive language herein mirrors the work of those organizations.

³⁵ See [Morley and Rudolph](#), pp. 30; Jane Mayer, *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right*, New York: Knopf Doubleday, 2017, pp. 432-433 and 518.

³⁶ See The Main Street Alliance, [New Poll: Overwhelming Majority of Small Business Owners Support Corporate Transparency to Protect Against Fraud](#), October 13, 2020; Small Business Majority, [Small Business Owners Support Legislation Requiring Transparency in Business Formation](#), April 4, 2018.