Director Andrea Gacki

Department of Treasury

Policy Division, Financial Crimes Enforcement Network

P.O. Box 39

Vienna, VA 22183

April 15, 2024

Re: FINCEN-2024-0006/RIN 1506-AB58; Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers

Director Gacki,

The Americans for Financial Reform Education Fund (AFREF) appreciates this opportunity to comment on the Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) proposal to require greater anti-money laundering (AML) controls on both registered investment advisers (RIAs) and exempt reporting advisers (ERAs).

Basic, sensible anti-money laundering standards are long overdue for investors in private funds (hedge funds, private equity, and venture capital) and FinCEN’s proposals are the first critical step in ensuring that those funds are required to know their investors and their sources of funding.

AFREF supports FinCEN’s proposals to:

* Amend the definition of covered “financial institution” to include investment advisers such as RIAs and ERAs to align their reporting requirements with those that banks, broker-dealers, futures commission merchants, and mutual funds are currently subject to;
* Delegate examination authority to the Securities and Exchange Commission while FinCEN retains the authority to coordinate the broader examination process;
* Require the filing of Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs) with FinCEN on transactions greater than $10,000; and
* Require RIAs and ERAs to establish risk-based Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) policies and procedures.

AFREF also urges FinCEN to extend these proposals to include family offices and to collaborate with the SEC to propose joint rulemaking on establishing a Customer Identification Program (CIP) for investors in these funds and require these funds to collect the beneficial ownership of their investors.

**The private fund industry is now larger than the banking system, but without the same AML/Know Your Customer (KYC) standards**

We strongly support FinCEN’s proposal to expand Anti-Money Laundering and Countering the Financing of Terrorism requirements to Registered Investment Advisers who are predominantly made up of private funds. Private funds should not be exempt from the anti-money laundering compliance requirements that banks, broker-dealers, mutual funds, and payment services are subject to under the Bank Secrecy Act.[[1]](#footnote-0)

The private fund industry has more than doubled in size from $8 trillion[[2]](#footnote-1) in 2013 to $20 trillion in assets in 2023.[[3]](#footnote-2) Private fund assets are now are now nearly as large as the $23 trillion in the banking system[[4]](#footnote-3). Given that private funds have grown to become such a significant pool of capital in our financial system, and that they are the process of buying up companies across critical sectors of our economy, it is outrageous for them to be allowed to operate on a different standard than other financial market participants.

Illicit and other questionable activity in private funds have grown at an even faster pace than the funds themselves, as measured by the number of Suspicious Activity Reports (SARs) for Registered Investment Advisers and Exempt Reporting Advisers rising 400% between 2013 to 2021, compared to a 140% growth in all filers during that time frame.

Such rising illicit activity in the $22 trillion private fund industry has already alarmed the Federal Bureau of Investigation (FBI). The agency noted in an internal bulletin that criminals and foreign adversaries are able to reintegrate “dirty money” into the legitimate global financial system due to a lack of anti-money laundering programs in this space.[[5]](#footnote-4) Press reports indicate that some international groups, aware of these loopholes, have been recruiting people in Los Angeles and Orange County, California to open accounts at hedge funds on their behalf.[[6]](#footnote-5)

Some examples of recent criminal and national security incidents stemming from the lack of proper anti-money laundering reporting requirements in the private fund industry include:

* An international law firm partner in 2015 used a number of fake private equity investment funds located in the British Virgin Islands, Ireland, and the Cayman Islands to raise $4 billion from 3.5 million victims. The partner was sentenced earlier this year to a decade in prison for fraud as a result of a Department of Justice case.[[7]](#footnote-6)
* In 2022, Concord Management’s largest client, Russian oligarch Roman Abramovich, had his assets frozen under sanctions following the Russian invasion of Ukraine. Tarrytown, New York-based Concord Management was found to be investing $7.2 billion of Abramovich’s money across 112 different private funds.[[8]](#footnote-7) Several U.S. investors were suddenly put in a precarious position

FinCEN’s additional scrutiny of AML and CFT in private funds is also critical to the Internal Revenue Service’s efforts to crack down on the widespread, systemic tax evasion conducted through private funds.[[9]](#footnote-8) Private funds often rely on complex and opaque tiered partnership structures that allow the funds to inappropriately charge portfolio companies fees and enable both the firms’ General Partners and their investors to pay much lower rates of taxes than they otherwise should.

**Exempt Reporting Advisers should be be included as Investment Advisers**

We strongly urge FinCEN to treat Exempt Reporting Advisers, such as venture capital (VC) firms, as investment advisers under FinCEN’s proposal. This is needed to address the industry’s widespread practice of failing to conduct due diligence on their investors and the increasing frequency with which investors with known potential issues have later been sanctioned.[[10]](#footnote-9)

Examples include a VC fund that raised most of its money from Russian investors, including the children of Suleyman Kerimov who was sanctioned in 2018 for being an official in the Russian Federation Council.[[11]](#footnote-10) VC partners in April 2022 were still insufficiently screening their investors as some still could not account for whether money from Russia subject to sanctions were directly or indirectly being managed. Other VC firms have bragged about taking in Russian money including from individuals who were later sanctioned.

In 2011, Russian banks VTB and Gazprom Investholding, which both have close ties to Russian president Vladimir Putin, invested in U.S. venture capital fund DST Global that in turn invested sizable stakes in social media companies Facebook and Twitter before they listed their shares publicly.[[12]](#footnote-11)

The lack of any widespread reporting requirements and safeguards has led VCs, startup founders, and national security agencies to struggle to assess how much the Kremlin and its affiliates are invested in American startups, especially those involved with sensitive technology. Greater AML requirements in venture capital are especially important because of growing concerns about foreign investors in VCs being able to access sensitive technology from startups through their role as board observers. Board observers are not subject to the same scrutiny by the Committee on Foreign Investment in the United States (CFIUS) that covers direct investment in a startup.[[13]](#footnote-12)

**The financial institution definition should include family offices**

FinCEN’s proposed expansion of the definition of “financial institution” to cover RIAs and ERAs should also include family offices.

Family offices that meet certain criteria are exempt under Dodd-Frank from being considered RIAs or ERAs[[14]](#footnote-13) but functionally operate very similarly to RIAs. The sources of capital for a number of family offices has been problematic.

Russian aluminum magnate Viktor Vekselberg, through an affiliate of his family office called Columbus Nova, was a majority owner of a U.S. private equity firm that grew to $14 billion in assets before he sold the firm in 2016.[[15]](#footnote-14) He was sanctioned for his close association with the Kremlin in 2018 due to his critical role in the Russian energy industry.[[16]](#footnote-15)

**Conclusion**

We applaud FinCEN for proposing to require Registered Investment Advisers and Exempt Reporting Advisers to comply with the same Anti-Money Laundering and Countering the Financing of Terrorism requirements that have prevented “dirty money” from being transacted through banks, broker-dealers, and mutual funds.

We strongly urge FinCEN work with the Securities and Exchange Commission (SEC) as soon as possible to propose joint rulemaking around the creation of a Customer Identification Program (CIP) as well rules requiring RIAs and ERAs to collect beneficial ownership information in order to obtain much greater visibility into the ultimate sources of capital in private and venture funds.

We appreciate this opportunity to comment on this important proposal. For questions please do not hesitate to reach out to Andrew Park at [andrew@ourfinancialsecurity.org](mailto:andrew@ourfinancialsecurity.org)

Sincerely,

Americans for Financial Reform Education Fund

1. Cruz, Leslie S. et al. Mayer Brown. Third Time’s the Charm? Anti-Money Laundering Compliance Requirements Proposed for Registered and Exempt Reporting Investment Advisers. Feb 16, 2024. <https://www.mayerbrown.com/en/insights/publications/2024/02/third-times-the-charm-antimoney-laundering-compliance-requirements-proposed-for-registered-and-exempt-reporting-investment-advisers> [↑](#footnote-ref-0)
2. Securities and Exchange Commission Division of Investment Management. Private Fund Statistics Fourth Calendar Quarter 2014. Dec 30, 2015. [Private Funds Statistics, Fourth Calendar Quarter 2014 (sec.gov)](https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2014-q4.pdf) [↑](#footnote-ref-1)
3. Securities and Exchange Commission Division of Investment Management. Private Fund Statistics First Calendar Quarter 2023. Oct 16, 2023. [Private Funds Statistics, First Calendar Quarter 2023 (sec.gov)](https://www.sec.gov/files/investment/private-funds-statistics-2023-q1.pdf) [↑](#footnote-ref-2)
4. Board of Governors of the Federal Reserve System. Total Assets, All Commercial Banks. Accessed on Apr 8, 2024. [Total Assets, All Commercial Banks (TLAACBW027SBOG) | FRED | St. Louis Fed (stlouisfed.org)](https://fred.stlouisfed.org/series/TLAACBW027SBOG) [↑](#footnote-ref-3)
5. Lloyd, Timothy. Reuters. FBI concerned over laundering risks in private equity, hedge funds - leaked document. Jul 14, 2020. <https://www.reuters.com/article/idUSKCN24F1TE/> [↑](#footnote-ref-4)
6. Id. [↑](#footnote-ref-5)
7. United States Attorney’s Office Southern District of New York. Former Law Firm Partner Sentenced to 10 Years In Prison For Laundering $400 Million of OnceCoin Fraud Proceeds. Jan 25, 2024. <https://www.justice.gov/usao-sdny/pr/former-law-firm-partner-sentenced-10-years-prison-laundering-400-million-onecoin-fraud> [↑](#footnote-ref-6)
8. Securities and Exchange Commission. SEC Charges New York Firm Concord Management and Owner with Acting as Unregistered Investment Advisers to Billionaire Former Russian Official. Sep 19, 2023. [SEC.gov | SEC Charges New York Firm Concord Management and Owner with Acting as Unregistered Investment Advisers to Billionaire Former Russian Official](https://www.sec.gov/news/press-release/2023-186) [↑](#footnote-ref-7)
9. Americans for Financial Reform Education Fund. Letter to the IRS and Treasury on Tackling Systemic Tax Abuses by the Private Equity Industry. May 12, 2021. <https://ourfinancialsecurity.org/2021/05/letter-to-regulators-letter-to-the-irs-and-treasury-on-tackling-systemic-tax-abuses-by-the-private-equity-industry/> [↑](#footnote-ref-8)
10. Menn, Joseph and Dwoskin, Elizabeth and MacMillan, Douglas and Zakrzewski, Cat. Washington Post. From Russia with money: Silicon Valley distances itself from oligarchs. Apr 1, 2022. <https://www.washingtonpost.com/technology/2022/03/26/silicon-valley-russia-oligarchs/> [↑](#footnote-ref-9)
11. Id. [↑](#footnote-ref-10)
12. Swaine, Jon and Harding, Luke. Guardian. Russia funded Facebook and Twitter investments through Kushner investor. Nov 5, 2017. <https://www.theguardian.com/news/2017/nov/05/russia-funded-facebook-twitter-investments-kushner-investor> [↑](#footnote-ref-11)
13. Packin, Nizan Geslevich and Alon-Beck, Anat. Board Observers. Mar 1, 2024. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4745278> [↑](#footnote-ref-12)
14. Squire Patton Boggs. The Family Office Rule Under the Investment Advisers Act. Jun 13, 2017. <https://www.squirepattonboggs.com/-/media/files/insights/publications/2017/06/family-office-insights-the-family-office-rule-under-the-investment-advisers-act/26895-2017_june_family-office-insight_-family-office-exemption.pdf> [↑](#footnote-ref-13)
15. PR Newswire. CIFC to be Acquired by F.A.B. Partners for $333 million in cash. Aug 19, 2016. [CIFC To Be Acquired By F.A.B. Partners For $333 Million In Cash (prnewswire.com)](https://www.prnewswire.com/news-releases/cifc-to-be-acquired-by-fab-partners-for-333-million-in-cash-300316081.html) [↑](#footnote-ref-14)
16. U.S. Department of Treasury. Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity. Apr 6, 2018. [Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity | U.S. Department of the Treasury](https://home.treasury.gov/news/press-releases/sm0338) [↑](#footnote-ref-15)