**Listening Session Regarding Proposed Rules “Anti-Money Laundering Regulations for Residential Real Estate Transfers”**

**and**

**“Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers”**

This document summarizes a listening session that the U.S. Department of the Treasury (Treasury) and its Financial Crimes Enforcement Network (FinCEN) held with representatives of the investment adviser industry about two notices of proposed rulemaking: (1) notice of proposed rulemaking titled *Anti-Money Laundering Regulations for Residential Real Estate Transfers* issued on February 6, 2024 (Docket Number 2024-02565) (RRE NPRM); and (2) notice of proposed rulemaking titled *Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting* issued on February 13, 2024 (Docket Number 2024-02854) (IA NPRM). FinCEN is adding this summary of the listening session to the docket for the RRE NPRM and the IA NPRM to help ensure that the public is aware of the listening session and understands the information that was provided to Treasury and FinCEN in this session. Treasury and FinCEN did not provide any new substantive information about either proposed rules or substantively respond to any comments during the listening session.

DATE: April 11, 2024

TIME: 4 p.m. – 5 p.m., Eastern Time

LOCATION: Virtual

TREASURY ATTENDEES:

* Treasury Undersecretary for Terrorism and Financial Intelligence Brian Nelson
* FinCEN Deputy Director Jimmy Kirby
* Staff from FinCEN, Office of Terrorist Financing and Financial Crimes staff, and Treasury’s Office of the General Counsel

OTHER ATTENDEES:

* Gabe Lezra, Citizens for Responsibility and Ethics in Washington (CREW)
* Ginny Canter, CREW
* Andrew Park, Americans for Financial Reform (AFR)
* Caroline Nagy (AFR)
* Ian Gary, FACT Coalition (FACT)
* Luke Rowe, FACT
* Shayna Olesiuk, Better Markets
* Gary Kalman, Transparency International

SUMMARY:

The first half of the session pertained to the RRE NPRM, while the second half of the session pertained to the IA NPRM.

*RRE NPRM Discussion*

FACT listed positives as including: nationwide coverage; the lack of a purchase price threshold, which reduces the chance of reporting evasion; the cascading reporting hierarchy for reporting persons; and the range of legal entities and arrangements included. FACT believes the RRE NPRM was well-calibrated between costs and benefits. FACT suggested clarifying how the rules as set out in the RRE NPRM would be enforced, including by articulating penalties for failure to file and for filing inaccurate information. FACT encouraged FinCEN to require reporting persons to verify beneficial ownership information to ensure the proposed rule would be effective. FACT also urged FinCEN to cover commercial real estate transactions, describing commercial real estate as a vulnerable sector currently eager for funds in the post-pandemic market downturn. Finally, FACT suggested that the final rule cover partially financed transfers, particularly due to the increase in the use of private funds (which FACT said participate in 30% of residential real estate sales) and joint ventures to purchase residential real estate.

Transparency International supported FACT’s comments and stated the RRE NPRM is well-structured, captures risks in the market, and uses mechanisms, such as the cascading reporting hierarchy, that are practical and would be unlikely to disrupt the market. Transparency International did not believe the real estate industry would respond to the proposed rule with a kneejerk “no” and stated that FinCEN may have done something rare that industry will recognize is well-calibrated.

CREW agreed with FACT’s and Transparency International’s comments and encouraged FinCEN to address money laundering through commercial real estate as well due to its high vulnerability. CREW also noted that the ability to buy a home is the key for many Americans to accumulating generational wealth and moving into the middle class. Therefore, the U.S. government should only take steps that encourage residents to buy and maintain homes.

*IA NPRM Discussion*

The AFR stated that private funds are under-regulated compared to the traditional banking sector, even though the two sectors are of similar overall size. There are examples of unregulated private funds blatantly raising money from investors that are clearly sketchy. AFR asked that the final rule cover family offices and foreign private advisors to avoid leaving loopholes. AFR is seeing hedge funds convert to family offices while continuing to function as hedge funds. AFR advised FinCEN to look into feeder funds for funds controlled by registered investment advisers.

Transparency International echoed AFR’s comments and asked Treasury to ensure it thinks about the rule comprehensively to avoid creating loopholes, citing an example of when the United Kingdom created its beneficial ownership registry without requiring Scottish limited partnerships to register. As a result, the number of Scottish limited partnerships formed skyrocketed and later came back down when Scottish limited partnerships were required to report beneficial ownership. Transparency International also stated that the investment industry is familiar with regulation similar to the proposed rule, and that similar costs of regulations imposed on broker-dealers did not cause the industry to collapse. Transparency International asked that Treasury consider including customer identification and beneficial ownership verification requirements in the proposed rule.

Better Markets echoed the comments of other attendees and highlighted the need for regulation of private funds. Better Markets suggested that Treasury could build in inflation adjustments to the firm size cut offs, as has been done in similar rules for the banking sector. Better Markets noted that the proposed rule is vital and that the benefits to the country will outweigh the costs. Better Markets also highlighted that similar reporting is already done voluntarily by some firms, indicating the cost cannot be too onerous. Better Markets applauded holding boards of directors and sole proprietors accountable for implementation of anti-money laundering measures.

Finally, FACT echoed the comments of other attendees and stated that Treasury should remind the public and stakeholders that the IA NPRM serves a different purpose (i.e. anti-money laundering) from SEC obligations meant to protect investors and that the obligations would not be duplicative. FACT asked Treasury to consider covering foreign private investors that provide access to the U.S. financial system to avoid creating loopholes and chasing illicit activity toward those types of advisers.