



July 19, 2024

By Electronic Transmission

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

Re: Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers; Docket Number FINCEN-2024-0011

Dear Sir or Madam:

The National Venture Capital Association (“NVCA”)¹ is pleased to comment on the Financial Crimes Enforcement Network’s (“FinCEN”) proposal (the “Proposed Rule”) to require certain investment advisers to implement customer identification programs (“CIPs”) in connection with the broader FinCEN proposal from February 2024 (the “Proposed AML Rule”) requiring such advisers to implement anti-money laundering/countering the financing of terrorism (AML/CFT) programs, file suspicious activity reports, and comply with certain other regulations under the Bank Secrecy Act (“BSA”).²

In our previous communications with government officials from FinCEN, the Department of Treasury (“Treasury”), the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Federal Reserve Board, NVCA has consistently supported regulatory efforts to reduce, detect, and deter incidents of money laundering and terrorist financing by requiring financial institutions to take precautions against their occurrence. We reiterate that support in this letter and appreciate the opportunity to comment on the Proposed Rule.

¹ The National Venture Capital Association (NVCA) represents the U.S. venture capital and startup community, advocating for public policies that support America’s entrepreneurial system. Venture capitalists create partnerships with institutional investors to combine the capital held by pension funds, endowments, foundations, and others with the talent and expertise of the venture capital fund adviser in order to make high-risk, long-term equity investments in innovative young companies. Venture capital funds are generally partnerships that last ten to fifteen years, building investments far longer than any other asset class.

² FinCEN: *Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers*, 89 Fed. Reg. 44571 (May 21, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-05-21/pdf/2024-10738.pdf>; see also FinCEN: *Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers*, 89 Fed. Reg. 12,108 (Feb. 15, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2002-09-26/pdf/02-24145.pdf>.

In comments submitted by NVCA regarding the Proposed AML Rule, we noted that the requirements of the February Proposed Rule were unsuitable and unnecessary for advisers to venture capital (“VC”) funds.³ We reiterate our strong opposition to those requirements as well as the application to VC advisers of the additional CIP requirements contemplated under Proposed Rule. To avoid burdening VC advisers and funds that present a low risk for facilitating money laundering, we urge FinCEN to re-propose the Proposed Rule to exclude VC advisers.

Tailoring the Proposed Rule to meet its stated policy goals more clearly will, we believe, further our common objective of reducing, detecting, and deterring incidents of money laundering and terrorist financing. It is toward that common objective that we offer the following comments for FinCEN’s consideration.

1. The Proposed Rule and Related Materials Provide No Justification for Imposing CIP Requirements for Advisers to VC Funds and Other Long-Term Funds.

None of the Proposed Rule, the Proposed AML Rule, the U.S. Treasury Department’s 2024 National Money Laundering Risk Assessment, or other studies cited by FinCEN in support of its proposals provide justification for imposing CIP requirements to address supposed money laundering risks posed by VC funds and other private funds with longer-term maturities. As discussed at length in our comments to the Proposed AML Rule, VC funds are inherently illiquid and have a long-term focus, making them unsuitable targets for money laundering.

VC funds typically involve partnerships that last at least five to eight years and prohibit redemption of investments within this time. In practice this timeline is even longer – the standard VC partnership agreement generally lasts for ten years with extensions that result in the partnerships running even longer. These long-term maturity periods are designed to permit portfolio companies sufficient time to grow and receive guidance and support from the VC funds, and to allow the injection of additional capital through follow-on rounds of financing.

Prior FinCEN proposals to extend CIP and broader AML requirements to other entities outside the BSA’s definition of a “financial institution” subject to AML requirements recognized that funds with long lock-up periods do not pose material AML risks and therefore should not be included within scope of the proposals. For example, in a September 2002 proposal to require “unregistered investment companies” to establish AML programs,⁴ FinCEN proposed to exclude funds that did not give an investor an opportunity to redeem any portion of its ownership interest within two years after that interest was purchased. FinCEN specifically stated that:

³ In this comment letter, unless the context clearly indicates otherwise, we refer to VC advisers to include both registered investment advisers as well as exempt reporting advisers.

⁴ FinCEN: *Anti-Money Laundering Programs for Unregistered Investment Companies*, 67 Fed. Reg. 60617 (Sep. 26, 2002), available at <https://www.federalregister.gov/documents/2002/09/26/02-24145/financial-crimes-enforcement-network-anti-money-laundering-programs-for-unregistered-investment>.

Because these investment vehicles rarely receive from or disburse to investors significant amounts of currency, they are not as likely as other types of financial institutions (e.g., banks) to be used during the initial or “placement” stage of the money laundering process. Money laundering is more likely to occur through these entities at the “layering” stage of the money laundering process, which generally requires the money launderer to be able to redeem his or her interests in the company. Moreover, companies that offer interests that are not redeemable or that are redeemable only after a lengthy holding or “lock-up” period lack the liquidity that makes certain financial institutions attractive to money launderers in the first place.⁵

This reasoning remains true today – illiquid funds such as VC funds with long lock-up periods do not pose material money laundering risks, and imposing CIP requirements on VC advisers is unnecessary. We therefore strongly encourage FinCEN to exclude VC advisers from the scope of the Proposed Rule.

2. Imposing CIP Requirements on VC Advisers is Unnecessarily Duplicative Given Existing CIP Requirements for Other Financial Institutions.

Investments in VC funds are usually already subject to CIP requirements, as well as other AML-related requirements. Subscriptions in VC funds typically originate from jurisdictions that are subject to extensive CIP controls conducted by the bank or other financial institution in the jurisdiction from which the funds originate. Advisers to VC funds (and other private funds) must use qualified custodians for fund assets which require using accounts held at financial institutions that already maintain extensive CIPs. These broad CIP controls are also applied to funds transmitted to investors as a result of redemptions or transfers as well as by the U.S. bank or broker-dealer receiving the funds on behalf of the VC fund, its general partner, or its adviser. We also note that VC funds already collect information regarding investors related to their securities law exemptions and tax status.

The VC fund investment landscape therefore already appears to include significant CIP controls, including verifying the identity of the investor and screening against U.S. and other sanctions lists. Adding another layer of costly and seemingly redundant CIP requirements to these functioning and well-established processes would add confusion and administrative burdens on family offices or similarly situated firms with limited resources.

3. VC Advisers Already Screen Investors Against Sanctions Lists.

The Proposed Rule notes that one of the key elements of the proposed CIP requirements is to screen potential accounts against lists of known terrorists and terrorist organizations. As noted in the Proposed Rule, investment advisers to VC funds and other funds already are legally required

⁵ *Id.* At 60619

to screen investors against lists maintained by the U.S. Treasury Department's Office of Foreign Assets Control, which include not only terrorists and terrorist organizations but also other persons of concern to the U.S. Government for foreign policy, drug trafficking, and other reasons contrary to U.S. policy. Imposing the additional CIP requirements of the Proposed Rule on VC advisers to address supposed gaps that do not exist in reality would be unnecessary and overly burdensome.

4. FinCEN Should Allow Additional Opportunity for Comments Once the February Proposed Rule is Finalized

We note that it is difficult to offer constructive comments on the Proposed Rule when the broader AML/CFT and SAR requirements from the Proposed AML Rule have not been finalized. As noted above, NVCA provided comments on that proposal regarding why VC advisers should not be within scope of the potential requirements. Numerous other interested parties, including other industry associations, also provided comments. The ultimate scope of the finalized version of the Proposed AML Rule will impact comments from NVCA and other interested parties on the Proposed Rule related to CIP requirements. We therefore request that FinCEN reopen the comment period for the Proposed Rule once the Proposed AML Rule is finalized as there may well be additional comments to the proposed CIP requirements depending on the final version of the Proposed AML Rule.

* * * *

NVCA is in strong opposition to the application of the Proposed Rule to VC advisers — the Proposed Rule, if applied in its current form, will likely have a significant and adverse impact on the venture capital ecosystem, particularly on VC advisers and the innovative startups they fund and advise. We urge FinCEN to re-propose the Proposed Rule to avoid burdening VC advisers and funds that present low risk for facilitating money laundering.

We appreciate the opportunity to provide comments and FinCEN's consideration of our feedback. We would be pleased to provide any additional information that would be helpful.

Sincerely,



Bobby Franklin
President and CEO
National Venture Capital Association (NVCA)