

October 4, 2024

Via Electronic Submission

Chief Counsel's Office  
Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7th Street SW, Suite 3E-218  
Washington, DC 20219

Ann E. Misback, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

James P. Sheesley, Assistant Executive Secretary  
Attention: Comments/Legal OES (RIN 3064-AF34),  
Federal Deposit Insurance Corporation  
550 17th Street NW, Washington, DC 20429

Melane Conyers-Ausbrooks, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428.

**Re: Comments Regarding AML/CFT Programs, Notice of Proposed Rulemaking (OCC Docket ID OCC-2024-0005, RIN 1557-AF14; RIN 7100-AG78; RIN 3064-AF34; RIN 3133-AF45)**

To Whom It May Concern:

HSBC appreciates the opportunity to respond to the above-titled Notice of Proposed Rulemaking (NPRM) issued by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the "Agencies") relating to the proposed amended Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Program Rule (Proposed Program Rule), published August 9, 2024, consistent with changes that are being concurrently proposed by the Financial Crimes Enforcement Network ("FinCEN") pursuant to the Anti-Money Laundering Act of 2020 (AML Act).

HSBC is committed to preventing our products and services from being exploited for criminal activity because it is the right thing to do to protect our customers, shareholders, staff, the communities in which we operate and the integrity of the financial system on which we all rely. We employ a risk-based approach to managing our financial crimes risk exposure by focusing our resources in a manner that is proportionate to the level of financial crime risk inherent in our business strategy and operating model.

The AML Act and the Proposed Program Rule have potential to bring about a substantial shift in the effectiveness of government and financial institutions' capabilities to detect and mitigate financial crime, illicit finance and terrorist financing risks and stem the flow of illicit finance through the financial system. To assist FinCEN in achieving these aims in its revised rule, HSBC submitted the attached letter to FinCEN on September 3, 2024, recommending several modifications to FinCEN's parallel proposed rule to better enable FinCEN to accomplish the aims of the AML Act. Because the two sets of proposed

program rules are identical in all material respects, HSBC believes these comments are equally applicable to the Agencies' Proposed Program Rule. In addition, HSBC wishes to highlight the following points for the Agencies' consideration and incorporation into their Final Program Rule.

**I. The Agencies Should Recognize the Importance of the AML/CFT Program Rule in Supporting the Significant Shift Congress Sought to Make in the Regulatory Framework to Ensure “Effective, Risk-Based, and Reasonably Designed” AML/CFT Programs**

Among the goals of the AML Act, Congress intended to require “more routine and systemic coordination, communication, and feedback among financial institutions, regulators, and law enforcement to identify suspicious financial activities, better focusing bank resources to the AML task, which will increase the likelihood for better law enforcement outcomes.”<sup>1</sup> In this spirit, the AML Act provides FinCEN and the Agencies with an opportunity to revise the requirements for AML/CFT programs as part of the broader initiative to “strengthen, modernize, and improve” the whole U.S. AML/CFT regime.<sup>2</sup> In section 6002, Congress specifically enumerates the purposes of the AML Act, which amongst others includes “to modernize [AML/CFT] laws to adapt the government and private sector response to new and emerging threats”; and “to reinforce that the [AML/CFT] policies, procedures, and controls of financial institutions shall be risk based.”<sup>3</sup> Section 6101, requiring establishment of National Exam and Supervision Priorities, expressly codifies the Declaration of Purpose into the statute, immediately followed by several factors that must be considered in revising the AML/CFT Program Rule. This section, and its requirement to revise FinCEN's AML/CFT Program Rule, create the foundation for the large shift Congress envisioned.

While HSBC supports the overarching goals of the Proposed Program Rule, we believe it is vital to the success of the congressional aims that the Agencies recognize that the required revised rule is intended to represent a significant shift from the existing framework. In the NPRM commentary, the Agencies state that the proposed rule is not intended to represent a substantive change for banks and that the “addition of the term ‘risk-based’ also reinforces the longstanding position of the Agencies.”<sup>4</sup> However, it is clear that the congressional intent as well as FinCEN's parallel proposed program rule see these rules as a significant shift to empower financial institutions to implement more fully a risk-based approach, which necessarily entails reallocation of AML/CFT resources from lower risk activities to higher risk activities.

As noted in HSBC's comment letter to FinCEN, one of the AML Act's core mandates is that “risk-based” AML/CFT programs should “ensur[e] that ***more attention and resources of financial institutions should be directed toward higher-risk customers and activities***, consistent with the risk profile of a financial institution, ***rather than toward lower-risk customers and activities***.”<sup>5</sup> For this reason and to be faithful to the congressional intent, we believe it is critical for the Final Program Rule to expressly permit reallocation of resources away from lower-risk activities and lower-utility processes, focusing resources toward higher-risk activities and higher-utility processes where they will be most likely to influence positive outcomes and provide valuable information to law enforcement.

Without the Agencies' concurrence in making this important change in the rule text and updating their existing examination procedures and expectations accordingly, banks will not be able to reallocate

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<sup>1</sup> H.R. Rep. No. 6395 (2020) at pp. 731-732 (Joint Explanatory Statement of the Committee of Conference), available at <https://docs.house.gov/bills/thisweek/20201207/116hrpt617-JointExplanatoryStatement.pdf>.

<sup>2</sup> Joint Explanatory Statement of the Committee of Conference, at pp. 731-732.

<sup>3</sup> AML Act of 2020, Pub. L. 116-283, Jan. 1, 2021 (hereinafter AML Act), § 6002.

<sup>4</sup> Anti-Money Laundering and Countering the Financing of Terrorism Programs, Notice of Proposed Rulemaking, 89 Fed. Reg. 65242 (August 9, 2024) (hereinafter NPRM), at 65245.

<sup>5</sup> AML Act, § 6101(b)(2)(B)(ii), adding 31 U.S.C. § 5318(h)(2)(A)-(B)(i) and (B)(iv)(I)-(II)(emphasis added).

resources on a risk-based approach without fear of regulatory criticism. This is precisely the reluctance to change that the AML Act was specifically trying to disincentivize by adding the risk assessment requirement and requiring that the rule permit firms to reallocate resources in connection with their reasoned assessment of their unique risk profiles.

In addition, the Agencies' Final Program Rule should create open and transparent standards against which banks are assessed for the effectiveness of their risk-based and effective AML/CFT programs. Without such transparency and the resulting change in perspective for banks to be proactive in assessing risk, Congress's intent for the AML Act to be a true turning point in the partnership between banks, regulators, and law enforcement to address money laundering/terrorist financing risk in the U.S. and global financial system would be frustrated. To meet this goal, HSBC encourages the Agencies to establish standards for AML/CFT programs that would leverage industry proposals such as The Wolfsberg Group's Principles for Auditing for Effectiveness paper, which includes risk-based principles to apply in evaluating AML/CFT programs focusing on governance, control, and producing "highly useful information to relevant government agencies."<sup>6</sup>

Establishing such standards will create an incentive for firms to tailor their programs proactively to adhere to the new standards under the Final Program Rule prior to being examined for compliance with it, resulting in more efficient examinations that could lead to fewer deficiencies that require remediation or restructuring of AML/CFT programs. This approach could reduce the burden of examinations, create savings for the banks and the Agencies, as well as US taxpayers and the clients we serve.

To ensure maximum effectiveness of the implementation of AML/CFT program rules under the AML Act, HSBC encourages the Agencies to finalize their Proposed Program Rule in an identical manner to the parallel rule proposed by FinCEN and in line with the additional comments included in our attached comment letter to the FinCEN NRPM. This will allow for efficiencies across the entire financial industry, allowing banks and other covered financial institutions to have further consistency in regulatory standards.

## **II. The Agencies Should Provide Flexibility in the Risk Assessment Process and Incorporation of the National AML/CFT Priorities**

The Agencies' NPRM commentary states that they foresee that under the Proposed Program Rule a bank "would retain flexibility in how it would document the results of its risk assessment process."<sup>7</sup> It also states that "banks would not be required to establish a single, consolidated risk assessment document solely to comply with the proposed rule. Rather, various methods and approaches could be used to ensure that a bank is appropriately documenting its particular risks."<sup>8</sup> The Agencies also recognize the need for banks to "maintain flexibility over the manner in which the AML/CFT Priorities are integrated into their risk assessment processes and the method of assessing the risk related to each of the AML/CFT Priorities."<sup>9</sup>

HSBC agrees with the need for flexibility and welcomes the Agencies' recognition that multiple risk assessment processes may be used rather than a singular consolidated process. We recommend that the

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<sup>6</sup> The Wolfsberg Group, *Principles for Auditing a Financial Crime Risk Management Programme for Effectiveness under the Wolfsberg Factors* (Mar. 26, 2024), at pp. 2-4.

<sup>7</sup> NPRM at 65246.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 65247.

concept of flexibility and the permissibility of using multiple risk assessment processes be expressly included in the text of the Final Program Rule. We encourage the Agencies to state explicitly in the Final Program Rule that each firm may make risk-based determinations about how to incorporate the Priorities into its risk assessment processes and that such judgments will be afforded a degree of deference by regulatory examiners. Providing banks express permission to tailor their risk management processes and the resources devoted to such processes aligns with Congress's intent for the AML Act to require banks to focus their resources in a way that will increase the likelihood of better law enforcement outcomes.

Finally, HSBC recommends the Final Program Rule expressly state that institutions have discretion in determining the frequency for updating their risk assessment processes, rather than requiring updates on a "periodic basis, including, at a minimum, when there are material changes" to the Bank's risk profile.<sup>10</sup>

### **III. The Agencies Should Provide At Least Two Full Years for Implementation**

Consistent with our comments to FinCEN on its parallel rulemaking and the recommendations above, HSBC observes that banks will be required to perform additional work, including on their risk assessment processes, to incorporate the Priorities. Financial institutions will also need to make judgments about reallocating resources to focus on customers and activities that are higher risk. In addition, the Agencies will be collaborating with FinCEN on updates to the FFIEC manual and coordinating examination principles for examining firms for effectiveness of their AML/CFT programs. It would not be feasible for banks, FinCEN or the Agencies to complete their respective tasks in six months and commence examinations for compliance under the Final Program Rule. For these reasons, HSBC supports an implementation period of at least 24 months following the issuance of the Final Program Rule. The additional time would allow banks to give the changes the requisite attention and serve the AML Act's goal of promoting better and more efficient outcomes for the industry and our government partners.

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HSBC appreciates the opportunity to submit feedback concerning the Proposed Program Rule and would like to reiterate the significance of this step forward in enhancing and significantly modernizing the U.S. AML/CFT regulatory framework. As a global financial institution operating in more than 60 countries and territories, HSBC believes that the opportunity for large, international financial institutions to embed effectiveness principles into their global financial crime risk management standards would significantly improve the overall safety and integrity of the financial system. We remain at the Agencies' disposal should there be an interest in discussing this further.

Respectfully submitted,

**Kevin J. Lampeter**

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[Attachments: Comment Letter to FinCEN NPRM]

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<sup>10</sup> *Id.*, Proposed Program Rule, 12 C.F.R. §§ 21.21(b)(2)(i)(B); 208.63(b)(2)(i)(B), 326.8(b)(2)(i)(B), and 748.2(b)(2)(i)(B).

September 3, 2024

Via Electronic Submission

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

**Re: Comments Regarding Notice of Proposed Rulemaking on AML/CFT Programs (RIN 1506–AB52)**

To Whom It May Concern:

HSBC appreciates the opportunity to respond to your above-titled Notice of Proposed Rulemaking relating to the proposed amended Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Program Rule (Proposed Program Rule), published July 3, 2024, pursuant to the Anti-Money Laundering Act of 2020 (AML Act).

HSBC is committed to preventing our products and services from being exploited for criminal activity. We do this because it is the right thing to do to protect our customers, shareholders, staff, the communities in which we operate and the integrity of the financial system on which we all rely. We recognize that financial institutions are inherently exposed to financial crime risk, which cannot be mitigated in its entirety. We employ a risk-based approach to managing our exposure by focusing our resources in a manner that is proportionate to the level of financial crime risk inherent in our business strategy and operating model.

The AML Act and the Proposed Program Rule have the potential to increase the effectiveness of financial institutions' detection and mitigation of financial crime, illicit finance and terrorist financing risks, enhance the usefulness of information provided to our U.S. government partners, and produce better outcomes for the industry and law enforcement. Enabling financial institutions to allocate their resources to focus on the highest priority areas and in alignment with their risk profile to achieve the greatest impact will be a crucial component to the successful implementation of the AML Act. This letter recommends several modifications to the Proposed Program Rule that if incorporated into the final rule (Final Program Rule) will better enable FinCEN to accomplish the aims of the AML Act.

**I. FinCEN Should Clarify What is Meant by “Effective, Risk-Based, and Reasonably Designed” AML/CFT Programs and Expressly Permit Reallocation of Resources**

HSBC applauds FinCEN for proposing that a financial institution's AML/CFT program, and its policies, procedures and internal controls, must be “effective, risk-based, and reasonably designed.”<sup>1</sup> This provision would be further strengthened by articulating principles for what constitutes an effective, risk-based, and reasonably designed, AML/CFT program. Such principles were previously proposed by FinCEN in its Advance Notice of Proposed Rulemaking on Anti-Money Laundering Program Effectiveness from 2020 (Effectiveness ANPRM), which focused on outcomes for markets and law enforcement, while allocating private industry resources to drive such outcomes. We recommend that FinCEN expressly incorporate into the Final Program Rule language similar to that in the Effectiveness

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<sup>1</sup> FinCEN, *Anti-Money Laundering and Countering the Financing of Terrorism Programs, Notice of Proposed Rulemaking*, 89 Fed. Reg. 55428 (July 3, 2024) (hereinafter NPRM), Proposed 31 C.F.R. § 1020.210.



ANPRM.<sup>2</sup> Specifically, we recommend that FinCEN expressly articulate that an “effective, risk-based and reasonably designed” AML/CFT program is one that:

1. identifies, assesses and reasonably mitigates the risks resulting from illicit financial activity consistent with the institution’s risk profile and the risks identified as National AML/CFT Priorities;
2. is reasonably designed to promote compliance with the recordkeeping and reporting requirements of the BSA; and
3. provides information with a high degree of usefulness to government authorities consistent with both the institution’s risk assessment and the national AML priorities.

The Proposed Program Rule states that an “effective, risk-based and reasonably designed” AML/CFT program “focuses attention and resources in a manner consistent with the bank’s risk profile that takes into account higher risk and lower risk customers and activities...”<sup>3</sup> However, one of the core mandates of the AML Act is that “risk-based” AML/CFT programs should “ensur[e] that **more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower-risk customers and activities.**”<sup>4</sup> In furtherance of Congress’s intent, it is important that the Final Program Rule explicitly permit reallocation of resources toward higher-risk activities and higher-utility processes and away from lower-risk activities and lower-utility processes. Because financial institutions have tailored their current AML/CFT programs to existing examination procedures and expectations, it may be difficult for firms to reallocate resources without being subject to regulatory exam findings that challenge such determinations in the absence of explicit language in the Final Program Rule permitting these changes. Accordingly, we recommend that FinCEN incorporate language into the Final Program Rule that explicitly provides such permission. Specifically, we urge FinCEN to revise Section 1020.210(a) of the proposed rule as follows:

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the bank’s risk profile **and allocates more resources toward higher-risk customers and activities and reallocates resources away from lower-risk customers and activities ...**

In order to provide additional clarity, we recommend that the Final Program Rule state that effective, risk-based, and reasonably designed programs are not expected to detect, prevent or mitigate all financial crime risk, but rather to mitigate financial crime risk in a *reasonable* manner. Furthermore, financial institutions should be permitted to adopt policies, procedures, and controls that are “*reasonably designed* to promote compliance with AML/CFT laws and regulations.” Finally, HSBC recommends that the Final Program Rule promote the ceasing of activity that is less effective or does not meaningfully mitigate risk, including practices that (i) are not required by law or regulation; (ii) do not lead to the production of highly useful information for law enforcement; or (iii) have less value in managing financial crime risk. This will enable financial institutions to redeploy resources to activities with more impactful and effective financial crime risk mitigation outcomes.

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<sup>2</sup> See FinCEN, *Anti-Money Laundering Program Effectiveness, Advance Notice of Proposed Rulemaking*, 85 Fed. Reg. 58023, 58026 (Sept. 17, 2020) (hereinafter ANPRM). This language is consistent with The Wolfsberg Group’s December 2019 *Statement on Effectiveness* that introduced the Wolfsberg Factors (as well as its other more recent publications on the subject of effectiveness), which HSBC supports.

<sup>3</sup> NPRM, Proposed 31 C.F.R. § 1020.210(a).

<sup>4</sup> AML Act of 2020, Pub. L. 116-283, Jan. 1, 2021 (hereinafter AML Act), § 6101(b)(2)(B)(ii), adding 31 U.S.C. § 5318(h)(2)(A)-(B)(i) and (B)(iv)(I)-(II)(emphasis added).

## **II. FinCEN Should Provide Flexibility in the Risk Assessment Process and Incorporation of the National AML/CFT Priorities**

The Proposed Program Rule states that the risk assessment process must consider FinCEN's National AML/CFT Priorities (Priorities) "as appropriate."<sup>5</sup> Given the breadth of the subject matter covered by the Priorities, financial institutions will need to make judgments about how to assess each Priority, how much emphasis to apply to each Priority, and how to allocate resources to each Priority. Financial institutions should be afforded maximum flexibility and discretion to determine the scope of the assessment and the degree to which each Priority is relevant to its unique business and risk profile. We encourage FinCEN to state explicitly in the Final Program Rule that each financial institution is expected to make risk-based determinations about how to incorporate the Priorities into its risk assessment processes and that such judgments will be afforded a degree of deference by regulatory examiners. Financial institutions may find it more effective and impactful to incorporate the Priorities as part of one or more different risk assessment processes, and such flexibility should be expressly permitted by the Final Program Rule.

In the NPRM preamble, FinCEN suggests that applying a flexible, risk-based approach to risk assessment processes "should ensure that financial institutions direct more attention and resources to higher-risk customers and activities."<sup>6</sup> Given that the requirement to perform a risk assessment and incorporate the Priorities is a new, additional requirement, and that reallocation of resources is a critical element of the statutory directive, we believe it is essential for FinCEN to be explicit in permitting risk assessments to be leveraged to enable a risk-based reallocation of resources in the Final Program Rule. Providing financial institutions express permission to tailor their risk management processes and the resources devoted to such processes aligns with Congress's intent for the AML Act to require financial institutions to focus bank resources in a way that will increase the likelihood of better law enforcement outcomes.

Finally, HSBC recommends the Final Program Rule expressly state that institutions have discretion in determining the frequency with which risk assessments are expected to be updated, rather than requiring updates on a "periodic basis, including, at a minimum, when there are material changes" to the financial institution's risk profile.<sup>7</sup>

## **III. FinCEN Should Identify Clear Principles for Regulatory Examinations and Evaluation of AML/CFT Programs**

In the NPRM preamble, FinCEN underscores the AML Act's recognition of the importance of supervision and examination of financial institutions in the success of AML/CFT programs and the integrity of the U.S. financial system and expresses its intent to establish annual federal examiner training, as provided for in the AML Act. FinCEN asserts that "this training can help examiners evaluate whether AML/CFT programs are appropriately tailored to address ML/TF risk rather than focused on perceived check-the-box exercises. Examiner training on the high-level context for the purpose of AML/CFT programs would also focus on the overall effectiveness of AML/CFT programs and consider the highly useful quality of their outputs...."<sup>8</sup> HSBC supports FinCEN's plans to conduct examiner training and its recognition that financial institutions must focus their resources against their risk profile and not to expend resources on "check-the-box" exercises. As drafted, the Proposed Program Rule does not currently incorporate any principles for examination of AML/CFT programs by the federal banking

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<sup>5</sup> NPRM, Proposed Program Rule, 31 C.F.R. § 1020.210(a)(1)(i)(A).

<sup>6</sup> *Id.*, at 55431.

<sup>7</sup> *Id.*, Proposed Program Rule, 31 C.F.R. § 1020.210(a)(1)(ii).

<sup>8</sup> *Id.*, at 55433.

agencies. Examiner training will not, on its own, change the way that financial institutions are supervised and examined; it is also necessary to provide clear and unambiguous written examination standards. To support the establishment of written examination standards for an effective, risk-based AML/CTF program, HSBC encourages FinCEN to adopt risk-based principles for how evaluations should be performed.

We recommend incorporating principles for the federal banking agencies for examinations of AML/CFT programs that would leverage industry proposals such as The Wolfsberg Group's Principles for Auditing for Effectiveness paper, which sets out the following three risk-based principles to apply in evaluating AML/CFT programs:

- "...whether the FI can demonstrate that its governance documents address the requirements of all relevant local laws and regulations and assess that the FI has an effective set of controls to ensure adherence to these requirements";
- "...whether the FI has a well-designed, reasonable and risk-based set of controls and then assess the effectiveness of the controls"; and
- any "...quantitative and/or qualitative indicators relating to the sharing of highly useful information to relevant government agencies" the FI chooses to establish.<sup>9</sup>

It would be most effective for the Final Program Rule to include the standards by which FinCEN expects AML/CFT programs, their risk assessment processes, and incorporation of the Priorities to be examined, or to promulgate a rule addressing these requirements contemporaneously with the Proposed Program Rule. If this cannot be accomplished within the allotted timeline, we encourage FinCEN to state at least an expectation that AML/CFT programs be evaluated following a risk-based approach. This will allow financial institutions to tailor their programs proactively to adhere to the new standards under the Final Program Rule prior to being examined for compliance with it.

We encourage FinCEN, in its future training of the federal banking agencies, to emphasize that the risk-based approach required by the AML Act explicitly permits a financial institution to shift resources away from areas and processes that pose lower financial crime risk, to focus on those areas and processes that can pose higher financial crime risk. This will support the Congressional goal of focusing resources where they will be most likely to influence good outcomes and provide useful information to law enforcement.

#### **IV. FinCEN Should Expressly Promote the Use of Innovative Technology**

At HSBC, we pride ourselves on being leaders in innovative technology for the detection of suspicious activity built on evolving artificial intelligence (AI) techniques, machine learning, and cloud capabilities. These technologies allow us to detect more financial crime in a dynamic and faster manner, providing more useful information to law enforcement and supporting more effective outcomes.

FinCEN recognizes that one of the AML Act's purposes is to "encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism."<sup>10</sup> It also acknowledges that one of the purposes of the Proposed Program Rule is to provide firms "regulatory flexibility to consider innovative approaches to comply with BSA requirements, including determining not only the total amount of resources, but also the nature of those

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<sup>9</sup> The Wolfsberg Group, *Principles for Auditing a Financial Crime Risk Management Programme for Effectiveness under the Wolfsberg Factors* (Mar. 26, 2024), at pp. 2-4.

<sup>10</sup> NPRM, at 55434 (*quoting* AML Act, section 6002(3) (Purposes)).



resources.”<sup>11</sup> However, the only reference to innovation in the Proposed Program Rule (other than the statement of purpose) is in the provision that allows for a firm’s policies, procedures and controls to include “implementation of innovative approaches to meet compliance obligations.”<sup>12</sup> In order to achieve this laudable goal, we believe there should be additional language in the Final Program Rule that promotes innovation and, where possible, removes obstacles to adoption of innovative technology.

Specifically, we recommend that the Final Program Rule expressly state that financial institutions may leverage new technologies such as machine learning, AI, and cloud computing. In addition, we recommend that FinCEN continue to collaborate with the federal banking agencies to solicit and adapt feedback from the financial industry into their guidance on model risk management, (i) to support the rapidly evolving technical environment involving AI and machine learning and other innovative technologies, and (ii) to embrace flexible application of model risk management principles to AML/CFT solutions.<sup>13</sup>

Finally, we encourage FinCEN to remove barriers to the adoption of innovative technology which may arise from any potential perceived inconsistency between regulatory support of innovative technology and challenges raised by examiners. We believe it is a necessary consequence of innovation that, while we may identify more serious or a greater volume of certain types of previously undetected financial crime risk faster and better, there may be other, less risky activity that may not be caught, or not caught as quickly. This should not result in a financial institution’s AML/CFT program, or its policies, procedures or controls, being deemed ineffective; nor should it hinder firms from adopting such technologies.

#### **V. FinCEN Should Provide At Least Two Full Years for Implementation**

FinCEN seeks input on its recommended six-month implementation period following the issuance of the Final Program Rule. In our view, financial institutions will be required to perform additional work, including on their risk assessment processes, to incorporate the Priorities. At the same time, firms will need to make judgments about reallocating resources to focus their time and attention on customers and activities that are higher risk. In addition, FinCEN will be collaborating with the federal banking agencies on updates to the FFIEC manual and conducting training to cover principles for examining firms for effectiveness of their AML/CFT programs. It will also presumably be working on other required rulemakings such as those related to law enforcement feedback loops and technology testing standards. It would not be feasible for firms, FinCEN or the federal banking agencies to complete their respective tasks in six months and commence examinations for compliance under the Final Program Rule. For these reasons, HSBC supports an implementation period of at least 24 months following the issuance of the Final Program Rule. The additional time would not only allow financial institutions to give the proposed changes the attention they deserve; it would serve the AML Act’s goal of promoting better and more efficient outcomes for the industry and our government partners.

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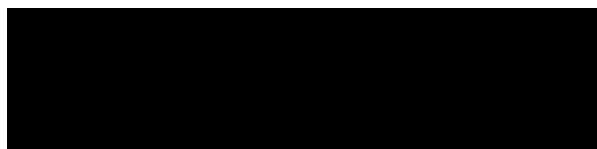
<sup>11</sup> *Id.*, at 55440.

<sup>12</sup> *Id.*, Proposed Program Rule, 31 C.F.R. § 1020.210(a)(2).

<sup>13</sup> Furthermore, in the required rulemaking relating to new technology testing standards under Section 6209(a) of the AML Act, we encourage FinCEN to provide flexibility to financial institutions to apply their expertise regarding reasonable, risk-based processes for testing such new technologies.

HSBC appreciates the opportunity to submit feedback concerning the Proposed Program Rule and would like to reiterate the significance of this step forward in enhancing and significantly modernizing the U.S. AML/CFT regulatory framework. As a global financial institution operating in more than 60 countries and territories, HSBC believes that the opportunity for large, international financial institutions to embed effectiveness principles into their global financial crime risk management standards would significantly improve the overall safety and integrity of the financial system. We remain at FinCEN's disposal should there be an interest in discussing this further.

Respectfully submitted,



**Kevin J. Lampeter**

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