

April 19, 2024

VIA ELECTRONIC SUBMISSION

U.S. Department of Justice  
National Security Division  
Foreign Investment Review Section  
175 N Street NE, 12<sup>th</sup> Floor  
Washington, D.C. 20002

Re: Docket No. NSD 104: Provisions Regarding Access to Americans' Bulk Sensitive Personal Data and Government-Related Data by Countries of Concern

Ladies and Gentlemen:

The Investment Company Institute and ICI Global<sup>1</sup> appreciate the opportunity to submit this letter to the U.S. Department of Justice (DOJ) on its advance notice of proposed rulemaking (ANPRM), which seeks comment regarding the contemplated establishment of a program that would prohibit or restrict the transfer of U.S. Government-related data or bulk U.S. sensitive personal data to countries of concern.<sup>2</sup> The ANPRM is an initial step in implementing regulations under Executive Order 14117 of February 28, 2024, “Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern” (the Order).<sup>3</sup>

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<sup>1</sup> The [Investment Company Institute](https://www.ici.org) (ICI) is the leading association representing regulated investment funds. ICI’s mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$34.4 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.2 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London and carries out its international work through [ICI Global](https://www.ici.org).

<sup>2</sup> See National Security Division; Provisions Regarding Access to Americans’ Bulk Sensitive Personal Data and Government-Related Data by Countries of Concern, 89 Fed. Reg. 15780 (Mar. 5, 2024), *available at* <https://www.federalregister.gov/documents/2024/03/05/2024-04594/national-security-division-provisions-regarding-access-to-americans-bulk-sensitive-personal-data-and#addresses>.

<sup>3</sup> See Executive Order 14117, Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern (Feb. 28, 2024), *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/02/28/executive-order-on-preventing-access-to-americans-bulk-sensitive-personal-data-and-united-states-government-related-data-by-countries-of-concern/>.

ICI and ICI Global appreciate DOJ's efforts to tailor the contemplated program appropriately to address national security concerns without unnecessarily burdening U.S. persons and while mitigating unintended consequences. To this end, we strongly support the exemption for financial services contained in the Order and discussed in the ANPRM, which DOJ contemplates would include "exempting data transactions to the extent that they are ordinarily incident to and part of the provision of financial services."<sup>4</sup> In our view, it is imperative that this exemption is implemented in a sufficiently broad and robust manner that avoids unnecessarily impinging on ordinary course financial services transactions that enable Americans to access financial products and services necessary to meet their savings, investment, transactional and other goals and needs. We strongly support each of the specific exemptions DOJ contemplates for financial services, payment processing and regulatory compliance-related transactions.

We recommend that DOJ clarify the financial services exemption to ensure that it captures all relevant financial activities, and particularly activities by regulated investment managers and funds.<sup>5</sup> In particular, we recommend that, for the avoidance of any doubt, "investment management services" be specifically included among the enumerated exemptions for "financial services, including banking, capital markets, and financial insurance services."<sup>6</sup> A robust and fulsome financial services exemption that covers investment management activities is crucial to ensure global financial markets are not obstructed, which could entail serious consequences for the global economy. Specifically listing investment management services would emphasize that such activity is within scope of the exemption.

Similarly, we strongly support the exemption for intra-entity transactions incident to business operations.<sup>7</sup> We recommend, however, that DOJ ensure that the intra-entity transactions is broad enough to allow data transactions among and between an investment manager and the manager's affiliates, funds and service providers (whether affiliated or unaffiliated) that are used for compliance, risk management, investment management and related purposes. We also specifically recommend that DOJ broadly construe the term "affiliate" to include entities that are treated as affiliates under a variety of legal regimes, as the definition may vary depending on the statutory or regulatory context.

We respectfully submit that clarifying these points would help ensure that these exemptions appropriately cover the activities undertaken by regulated investment managers and funds and are not ultimately too narrow to be useful or to support market functioning. Consistent with the

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<sup>4</sup> 89 Fed. Reg. at 15794.

<sup>5</sup> This discussion is responsive to Questions 43 and 44.

<sup>6</sup> 89 Fed. Reg. at 15794.

<sup>7</sup> 89 Fed. Reg. at 15794-95.

purposes of these two exemptions, we recommend that the financial services exemption not be limited only to certain financial services activities but, instead, apply to all data transactions undertaken by financial services entities, including regulated investment managers and funds. We believe that requiring an activity-by-activity analysis would be an unnecessary and undue burden that could impede capital flows and harm the global and domestic economies. Moreover, the exemptions should be broad enough to ensure that financial services and investment management activities that may use evolving technology would still be within scope. Defining the exemptions too narrowly at this stage could inadvertently prevent innovation that would otherwise benefit the U.S. economy and allow individual Americans to access the financial services that they require to meet their personal and family needs.

We encourage DOJ to continue to engage with stakeholders, including the investment management industry, to discuss the contemplated program and the proposed exemption to ensure that it appropriately encompasses the important activities of regulated investment managers and investment funds and other financial companies, and does not impede the capital market or investment and savings activity that is crucial to a strong and prosperous global economy.

We appreciate your consideration of our comments and look forward to continued engagement with DOJ on these important matters. If you have any questions or would like additional information, please contact me (at +1 202 876 5352 or [michael.pedroni@ici.org](mailto:michael.pedroni@ici.org)) or Eva Mykolenko (at +202 326 5837 or [emykolenko@ici.org](mailto:emykolenko@ici.org)).

Sincerely,

/s/ Michael N. Pedroni

Michael N. Pedroni  
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and Head of ICI Global