

FinCEN Proposes Rules to Enhance Customer Due Diligence Requirements for Financial Institutions

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The U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") has issued proposed amendments to existing Bank Secrecy Act ("BSA") regulations. The proposed amendments would add a new requirement to identify beneficial owners of legal entity customers, and would clarify and strengthen existing customer due diligence ("CDD") obligations. Comments on the proposal must be received by FinCEN on or before October 3, 2014.

FinCEN has determined that it is necessary to issue more explicit rules for covered financial institutions with respect to CDD. FinCEN has identified the four core elements of CDD to include: (i) identifying and verifying the identity of customers; (ii) identifying and verifying the identity of beneficial owners of legal entity customers (i.e., the natural persons who own or control legal entities); (iii) understanding the nature and purpose of customer relationships; and (iv) conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions. The first element is already included in the existing regulatory requirement for a financial institution to have a customer identification program ("CIP"). This proposal is intended to set forth explicit requirements with respect to the three remaining elements.

FinCEN is addressing the second element by proposing a new separate requirement that financial institutions identify the natural persons who are beneficial owners of legal entity customers in a standardized format, subject to certain exemptions. To specifically identify the beneficial owner, the proposal would require financial institutions to obtain a certification from the individual opening the account on behalf of the legal entity customer (at the time of account opening) in a form that is provided under the proposed rule. The required form describes the beneficial ownership requirement and the information sought from the individual opening the account on behalf of the legal entity customer. The form also requires the individual opening the account on behalf of the legal entity customer to certify that the information provided on the form is true and accurate to the best of his or her knowledge. The form is meant to provide consistent customer expectations and facilitate reliance by financial institutions.

Financial institutions will also be required to verify the identity of the beneficial owner using existing risk-based CIP practices; however, financial institutions will not be required to verify that the natural persons identified on the form are in fact the beneficial owners. This proposed beneficial ownership requirement would only apply with

respect to legal entity customers that open new accounts going forward from the date of implementation.

The proposed rule extends the reliance provisions of the CIP rules to the beneficial ownership requirement such that a financial institution may rely on a certification form that was obtained in compliance with the beneficial ownership requirement from another financial institution with whom the customer is shared. A financial institution that seeks to rely on a certification form of another financial institution must comply with the existing reliance provisions and guidance of the CIP rules.

The proposed rule exempts from the beneficial ownership requirement those types of entities that are exempt from the customer identification requirements under the CIP rules. Those types of entities include, but are not limited to, publicly held companies traded on certain U.S. stock exchanges, financial institutions regulated by a federal functional regulator, certain legal entities that exercise governmental authority, and domestic government agencies and instrumentalities.

Additionally the following entities would also be exempt from the beneficial ownership requirement when opening a new account because their beneficial ownership information is generally available from other credible sources: (i) an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 or that is required to file reports under Section 15(d) of that Act; (ii) any majority-owned domestic subsidiary of any entity whose securities are listed on a U.S. stock exchange; (iii) an investment company that is registered with the SEC under the Act; (iv) an investment adviser that is registered with the SEC under the Act; (v) an exchange or clearing agency that is registered under Section 6 or 17A of that Act; (vi) any other entity registered with the SEC under the Act; (vii) a registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant that is registered with the U.S. Commodity Futures Trading Commission; (viii) a public accounting firm registered under section 102 of the Sarbanes-Oxley Act; and (ix) a charity or nonprofit entity that has not been denied tax exempt status and that is required to and has filed the most recently required annual information return with the Internal Revenue Service.

As noted above, the third and fourth core elements of CDD are: understanding the nature and purpose of customer relationships, and conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions. FinCEN is addressing these two elements by amending its existing anti-money laundering (“AML”) program requirements to ensure alignment between existing AML requirements and the CDD minimum standards. FinCEN has stated that these third and fourth elements are core requirements under the BSA that are already included within existing regulations, and that this proposal is intended to “explicitly state already existing expectations for the purpose of codifying the baseline standard of due diligence that is fundamental to an effective AML program.”

As stated above, comments on the proposal must be received by FinCEN on or before October 3, 2014. Comments may be submitted electronically to FinCEN by going to <http://www.regulations.gov> and following the instructions on that site. Comments should include RIN 1506-AB25 in the submission and refer to Docket No. FINCEN-2014-001.

If you have any questions regarding these proposed amendments or the Bank Secrecy Act in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Elizabeth A. Murphy at 516-296-9154 or via

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