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## FINCEN PUBLISHES BENEFICIAL OWNER RULE UNDER BSA

The Financial Crimes Enforcement Network (FinCEN) of the U.S. Treasury Department published a rule under the Bank Secrecy Act that requires certain financial institutions to identify and verify the identity of beneficial owners of a legal entity customer before opening an account. Under the rule, a financial institution must also consider beneficial owner information as a part of its ongoing customer due diligence.

“Covered financial institutions” means (i) banks, (ii) brokers or dealers in securities, (iii) mutual funds and (iv) future commission merchants and introducing brokers in commodities. “Legal entity customers” means a corporation, limited liability company or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership or any similar entity formed under the laws of a foreign jurisdiction. “Legal entity customers” does not include sole proprietorships, unincorporated associations or natural persons opening accounts on their own behalf.

Covered financial institutions must establish and maintain written customer due diligence procedures in their anti-money laundering compliance programs that are reasonably designed to identify and verify beneficial owners of legal entity customers. “Beneficial owners” includes each of the following:

- Each individual that owns, directly or indirectly, 25% or more of the equity interests of the customer;
- A single individual with significant responsibilities to control, manage or direct the customer, including an executive officer or senior manager; and
- The trustee of a trust that owns, directly or indirectly, 25% or more of the equity interests of the customer.

If one legal entity customer owns 25% or more of the equity interests of another legal entity customer, then no individual needs to be identified with respect to that ownership stake. The number of “beneficial owners” of a legal entity customer could vary. If no owner of a legal entity customer holds at least a 25% ownership stake, only one individual, an executive officer or senior manager, must be identified.

A covered financial institution may identify beneficial owners

through (i) a certification developed by FinCEN or (ii) another means that collects the information specified in the model certification, provided that the information is certified. At a minimum, covered financial institutions must verify the provided beneficial owners’ information in the manner set forth in the applicable customer identification program provision, except that photocopies of certain documents may be used for documentary verification. The rule sets forth recordkeeping requirements related to the identification and verification requirements.

The identification and verification requirements do not apply to financial institutions that open certain kinds of accounts, including, but not limited to, (i) at point-of-sale to provide credit products, including commercial private label credit cards, solely for the purchase of goods or services up to a limit of \$50,000 and (ii) to finance the purchase or leasing of equipment for which payments are remitted by the financial institution directly to the vendor or lessor of the equipment.

In addition to new identification and verification requirements, FinCEN’s rule expands the scope of customer information that must be maintained and updated as part of a financial institution’s risk-based ongoing customer due diligence to include information regarding the beneficial owner of legal entity customers.

Covered financial institutions must comply with the rule by May 11, 2018. The rule applies only to accounts opened on or after that date. Bank lenders that extend credit for business purposes should update their anti-money laundering programs appropriately. □

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