

Financial Services Update: FinCEN Beneficial Owner Rule Takes Effect

July 29, 2016

The FinCEN (Financial Crimes Enforcement Network) Customer Due Diligence (CDD) rule regarding beneficial ownership in certain entities went into effect on July 11, 2016. The rule requires "covered financial institutions" (e.g., banks, credit unions, mutual funds, brokers, and dealers in securities and similar institutions) to begin collecting information about the beneficial owners of "legal entity" customers at the time they open new accounts. Specifically, a covered financial institution is required to establish and maintain procedures reasonably designed to obtain, verify and record the beneficial owners of legal entity customers. The term "legal entity" includes corporations, LLCs and other entities formed by filing with a Secretary of State (or similar government officer), together with general partnerships, limited partnerships, and foreign entities, but excludes trusts other than business trusts.

The CDD procedures are to be risk-based and should gather information consistent with the customer identification program applicable to individual customers (including name, date of birth, address, and social security number or other government identification number (passport number or other similar information in the case of foreign persons)). This information must be obtained for each individual who (a) owns 25 percent or more of the equity interest of the entity or (b) has significant responsibility to control or manage the entity (e.g., an executive officer or senior manager such as a CEO, CFO, COO, managing member, general partner, president, vice president, or treasurer) at the time a new account is opened. Although it has long been a practice for some lawyers to use nominees to obscure the principals of an entity, the use of a nominee cannot be used to defeat the rule.

In addition to obtaining beneficial owner information at the time the account is opened, covered financial institutions are required to conduct ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. Very limited exemptions are permitted for certain accounts (1) of less than \$50,000 established at the point-of-sale, (2) established to finance the purchase of postage, (3) for financing insurance premiums, and (4) established to finance the purchase or lease of equipment.

The rule was effective on July 11, 2016, but financial institutions have until May 11, 2018 to fully implement their program. You should plan to start your implementation effort well in advance of the deadline in order to ensure time to work out any bugs. Your implementation plan should include consideration of adopting



covenants for your credit agreements specifically requiring an entity borrower to provide ongoing information about changes in the beneficial ownership of the borrower.

For further information, please contact George Mainz.