



# Aldrich & Bonnefin, PLC

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# NEW BENEFICIAL OWNERSHIP RULE

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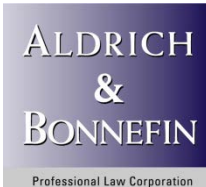
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# Beneficial Ownership Rule

- On May 11, 2016, FinCEN published the Beneficial Ownership Rule
  - Adds specific CDD requirements
    - Understanding a customer's nature and purpose
    - Conducting ongoing monitoring
  - Contains explicit requirements to identify the beneficial owners and the individual who controls the customer
- Applicability Date: Financial institutions must comply with the new Rule by May 11, 2018



# “Fifth Pillar” of Compliance

- The Rule adds a new Fifth Pillar of Compliance
  - Understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile
  - Conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information



# Minimum Elements of Customer Due Diligence

- Identifying and verifying the identity of customers
- Identifying and verifying the identity of beneficial owners
- Understanding the nature and purpose of customer relationships
- Ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions



# Nature and Purpose of Customer Relationship

- General requirements of the CDD Rule
  - Understand the customer relationship for purposes of identifying transactions in which the customer would not normally be expected to engage
  - Should already be satisfying by complying with requirements to report suspicious activity



# Ongoing Monitoring Based on CDD

- Establish monitoring systems for identifying inconsistent activity
  - Ongoing monitoring and update customer information
  - Monitoring systems for routine customers
  - Determine level of continued monitoring needed for heightened risk
  - Monitoring systems to report suspicious activity
  - Additional monitoring procedures for EDD customers
  - Sufficient monitoring to determine discrepancies



# Identifying Beneficial Owners

- The Rule contains explicit requirements for financial institutions to apply a Two-Prong Test
  - Ownership Prong: The equity owners of a legal entity customer
  - Control Prong: The individual who controls the customer





# Ownership Prong

- Each individual who owns 25 percent or more of the equity interests of a legal entity customer
  - Equity interests:
    - Generally will be able to rely upon information provided by the person opening the account
    - Will not have to affirmatively investigate whether equity holders are attempting to avoid the reporting threshold
  - Directly or indirectly: Ultimately required to look through other legal entities



# Control Prong

- An individual with significant responsibility to control, manage, or direct a legal entity customer, including:
  - Chief executive officer
  - Chief financial officer
  - Chief operating officer
  - Managing member
  - General partner
  - President
  - Vice president
  - Treasurer
  - Any other individual who performs similar functions



# Legal Entity Customer

- Includes the following:
  - A corporation
  - A limited liability company
  - Other entity created by filing with a Secretary of State
  - A general partnership
  - Any similar entity under a foreign jurisdiction



# Legal Entity Customer

- Does not include the following:
  - Sole proprietorship
  - Unincorporated association
  - Trusts
    - Does not require action by the state
    - Institutions already taking a risk-based approach to collecting information
  - Entities excluded under the CDD Rule (Similar to those under CIP)



# Obtaining Beneficial Owner Information

- Standard certification form
- Obtain from the individual the information required by the certification form using a different means, provided the individual still certifies the accuracy of the information



# Verification of Beneficial Owners

- At a minimum, these procedures must contain the elements required for verifying the identity of customers who are individuals under the CIP rule but are not required to be identical
  - Identification of the customer
  - Verification of the customer's identity
  - Procedures for when the institution cannot form a reasonable belief that it knows the true identity



# Verification of Beneficial Owners

- May rely on information supplied by the authorized person opening the account regarding the identity of the beneficial owner or owners
- Institution must have no knowledge of facts that would reasonably call into question the reliability of that information
- May use photocopies or other reproductions of identification documents in the case of documentary verification



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