NEW BENEFICIAL OWNERSHIP RULE

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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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