

CLIENT MEMORANDUM

FinCEN Publishes Frequently Asked Questions for AML Due Diligence on Beneficial Owners

August 2, 2016

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On July 19, 2016, the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) published a set of frequently asked questions¹ (“FAQs”) pertaining to the final version of its anti-money laundering (“AML”) regulations requiring certain financial institutions to identify the “beneficial owners” of each “legal entity customer” and to verify the identities of such owners.² FinCEN intends for this identification and verification process to become part of the covered financial institutions’ customer due diligence (“CDD”) procedures. For a description of the regulations in their final form, please see Willkie Farr & Gallagher LLP, “FinCEN Issues Long-Anticipated Requirements for AML Due Diligence on Beneficial Owners” (May 24, 2016), available [here](#).

The new rules took effect on July 11, 2016, but covered financial institutions have until May 11, 2018 to comply. FinCEN issued these FAQs to assist covered financial institutions in both understanding the scope of the regulations and providing

¹ The “Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions” are available on FinCEN’s website and are linked [here](#).

² The final rule was published at 81 Fed. Reg. 29398-29458 (May 11, 2016) and adds a new section to the AML regulations at 31 C.F.R. § 1010.230. The Federal Register notice is available [here](#).

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interpretive guidance with respect to the final rule. Although the FAQs as a whole serve as a useful guidance on the key points of the final CDD rule, two questions and answers are particularly helpful.

Question 9 addresses the new rule's definition of a beneficial owner, which includes both any individual who owns 25% or more of the equity interest of the legal entity customer ("ownership prong"), *and* a single individual with significant responsibility to control, manage or direct the legal entity customer ("control prong"). The FAQs explain that "a legal entity will have a total of between one and five beneficial owners (*i.e.*, one person under the control prong *and* zero to four persons under the ownership prong). This is a simple but instructive illustration that can help explain CDD procedures to employees.

In Question 18, FinCEN notes that there may not be a single individual who owns 25% or more of the equity interest. In that case, only the control prong would apply and CDD must be conducted with respect to the one individual who controls, manages, or directs the legal entity customer, such as an executive officer or senior manager.

FinCEN provides additional guidance on the control prong in Question 13 by stating that the control person must be a senior official in the legal entity with access to a range of information concerning the day-to-day operations of the company. This guidance expands on the rule's original description of a control person having "significant responsibility to control, manage, or direct the company," with a list of positions that could qualify, *e.g.*, Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer. The FAQs indicate that the list is merely illustrative. An individual holding another title in a legal entity may qualify as a control person, as long as that individual's responsibilities fall within the regulatory definition.

As covered financial institutions have nearly two years to implement the required procedures, FinCEN indicates that it will continue to issue additional FAQs and guidance as appropriate.

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August 2, 2016

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