

## Financial Services Alert

July 2012

### Customer Due Diligence and Beneficial Ownership: New Requirements for Financial Institutions?

#### AUTHORS

D. E. Wilson, Jr.

#### RELATED PRACTICES

Banking and Financial Services Regulation  
Consumer Finance  
Regulatory

#### RELATED INDUSTRIES

Financial Services

#### ARCHIVES

2012 2008 2004  
2011 2007 2003  
2010 2006 2002  
2009 2005

Coming soon to a financial institution near you: the requirement that all financial institutions identify individuals who own, control or benefit from a legal arrangement (corporations, etc.) and verify their identities before opening an account, dealing in securities, selling a used car or originating a mortgage.

This will be a burdensome, time-consuming and expensive requirement, no matter the final definition of “beneficial owner,” or the types of “legal arrangements” to which it applies. Given that approval of this obligation is being orchestrated outside of the normal bank regulatory channels, unless financial institutions (“FI”s) act in concert, adoption of this rule is a matter of when, not whether, in order to satisfy law enforcement and international regulatory pressure.

On March 5, 2012, the Financial Crimes Enforcement Network (“FinCEN”), part of the U.S. Treasury exercising regulatory authority over the U.S. anti-money laundering (“AML”) laws, published an Advanced Notice of Proposed Rulemaking (“ANPRM”).<sup>1</sup> It has one principal objective: to write into AML regulations a requirement that Customer Due Diligence (“CDD”) programs include identifying beneficial owners before a legal relationship is established.

FinCEN paints with a broad brush why beneficial ownership information is necessary. It bases its rationale on improving cross-border tax reporting, compliance with the Foreign Account Tax Compliance Act (“FATCA”), and promoting the “integrity of the international financial system as a whole.” The upshot of FinCEN’s far-reaching – and not very quantifiable – justification for obtaining beneficial ownership information is that the requirement will probably apply to almost all FI customers, not just those considered “high risk.”<sup>2</sup>

The ANPRM is part of an orchestrated set of actions among FinCEN, the Financial Action Task Force (“FATF”) (an inter-governmental body, including the U.S., established to set AML standards), and the G20, which includes the U.S. and the E.U. and is known as “the premier forum for international cooperation on the most important aspects of the international economic and financial agenda.” As FinCEN has been building its case for beneficial ownership identification, FATF has been revising its “FATF Standards” in time for presentation to, and adoption by, the most recent G20 meeting. These standards include:

- Customer due diligence, meaning the identification of customers and verification of their identities; and
- Beneficial ownership, meaning the identification of the individual(s) who truly own or control legal persons or legal arrangements (such as trusts) and verification of their identities.

While FATF identifies several potential sources for beneficial ownership information, FinCEN identifies and promotes only one – financial institutions. In view of the G20’s declaration of support for the FATF standards, and the leading role of the U.S. in establishing AML standards, obtaining “beneficial ownership” information is coming to your bank, broker or dealer, mutual fund, futures commission merchant, introducing broker in commodities, and, thereafter, to MSBs (including prepaid access providers), insurance companies, casinos, dealers in precious metals, dealers in stones and jewels, non-bank mortgage lenders or originators and any other entity eventually defined as a “financial institution” by FinCEN.

On Friday, July 13, 2012, FinCEN noticed a public hearing for July 31, 2012, at the Treasury Department.<sup>3</sup> This is apparently the first of “an intended series of public hearings,” but FinCEN will control the agenda and choose the speakers. If your FI has an interest in this rule – and all FIs should –

now is the time to impact the scope and application of the CDD beneficial ownership rule that is currently under consideration.

Please contact any of the attorneys in our **Banking and Financial Services Regulation Group** if you have questions regarding this alert.

---

1. *Customer Due Diligence Requirements for Financial Institutions*. 77 Fed. Reg. 13046.
2. *Compare Guidance on Obtaining and Retaining Beneficial Ownership Information*. FIN-2010-G001. There FinCEN defined obtaining beneficial ownership information as necessary to meet an FI's "comprehensive" CDD responsibilities, particularly as to "high risk customers." FinCEN focused on private banking and foreign correspondent accounts as examples of high risk customers.
3. 77 Fed Reg. 41334 (July 13, 2012).