Banking and Finance Law Daily Wrap Up, TOP STORY—FinCEN finalizes customer due diligence requirements for financial institutions, (May 6, 2016)

Banking and Finance Law Daily Wrap Up

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The Financial Crimes Enforcement Network has issued final rules under the Bank Secrecy Act to clarify and strengthen customer due diligence requirements for: banks; brokers or dealers in securities; mutual funds; and futures commission merchants and introducing brokers in commodities. The rules contain explicit customer due diligence requirements and include a new requirement to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions. The final rules become effective on July 11, 2016.

According to the notice of final rules, FinCEN believes that there are four core elements of customer due diligence (CDD), and that there should be explicit requirements in the anti-money laundering (AML) program for all covered financial institutions, in order to ensure clarity and consistency across sectors:

1. customer identification and verification;
2. beneficial ownership identification and verification;
3. understanding the nature and purpose of customer relationships to develop a customer risk profile; and
4. ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information.

Covered financial institutions must identify and verify the identity of the beneficial owners of all legal entity customers at the time a new account is opened. The financial institution may comply either by obtaining the required information on a standard certification form or by any other means that comply with the substantive requirements of this obligation. Financial institutions are then required to maintain records of the beneficial ownership information they obtain, and may rely on another financial institution for the performance of these requirements, in each case to the same extent as under their customer identification program rule.

Customer due diligence. The AML program requirement for each category of covered financial institutions is being amended to explicitly include risk-based procedures for conducting ongoing customer due diligence.

In addition, customer due diligence also includes conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. When a financial institution detects information (including a change in beneficial ownership information) about the customer in the course of its normal monitoring that is relevant to assessing or reevaluating the risk posed by the customer, it must update the customer information, including beneficial ownership information. Such information could include a significant and unexplained change in the customer's activity, such as executing cross-border wire transfers for no apparent reason, or a significant change in the volume of activity without explanation. It could also include information indicating a possible change in the customer's beneficial ownership, because such information could also be relevant to assessing the risk posed by the customer.

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