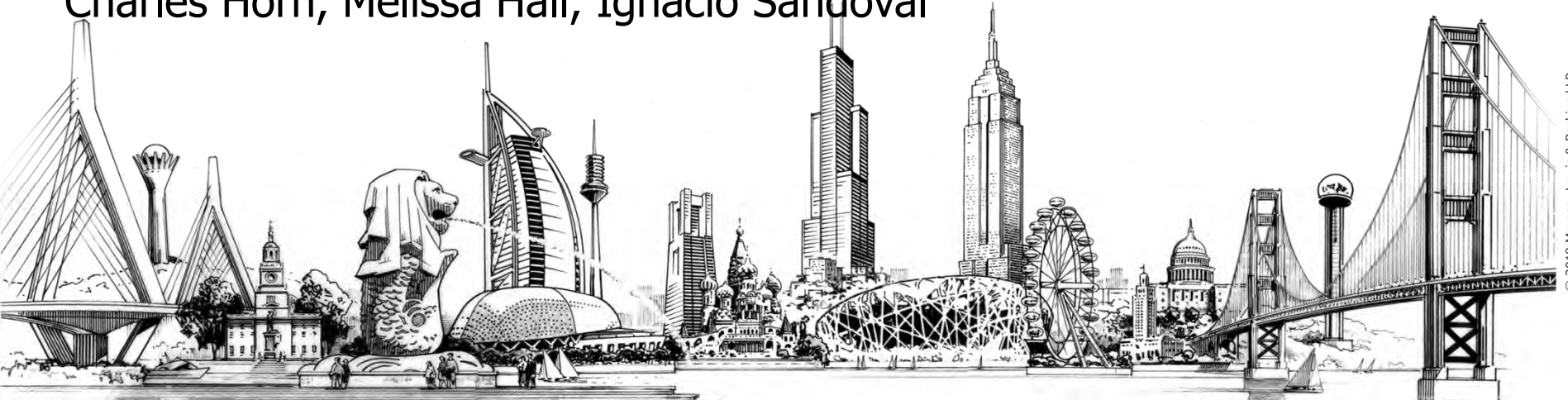


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# IMPLEMENTING THE BENEFICIAL OWNERSHIP RULES

**April 18, 2018**

Charles Horn, Melissa Hall, Ignacio Sandoval



# Overview

## Key Dates

- Adoption Date: May 2016
- Effective Date: July 11, 2016
- Compliance Date: May 11, 2018

## Who's In

- Banks
- SEC Broker-Dealers
- CFTC Futures Commission Merchants
- CFTC Introducing Brokers
- Mutual Funds

## Who's Out

- Investment Advisers
- Private Funds
- Commodity Pool Operators
- Commodity Trading Advisors
- Money Services Businesses
- Insurance Companies

# Rule Summary

## Beneficial Ownership Rule

- Identify and verify beneficial ownership information for **legal entity customers**

## AML Rule Changes

- Customer **Risk Profile**
- Ongoing **Monitoring** and **Updating** of Customer Information

# Beneficial Owners – Two-Prong Approach

## Ownership Prong

(0 to 4)

- A beneficial owner of a legal entity customer is each individual (if any) who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, owns 25% or more of the equity interests of the legal entity customer.

## Control Prong

(at least 1)

- A single individual with significant responsibility to control, manage, or direct a legal entity customer.
- Includes (i) an executive officer or senior manager or (ii) any other individual who regularly performs similar functions.

# Legal Entity Customer Definition; Exclusions

Financial Institutions (FI) Regulated by Federal Functional Regulator  
Federal and State Agencies/Departments  
Entities Exercising Federal or State Governmental Authority

Certain Exchange-Listed Entities and certain Entities at least 51% held by Listed Entity  
Registered Investment Companies  
SEC-Registered Exchanges, Clearing Agencies, Advisers and Others  
CFTC-Registered CPOs, CTA, Retail FX,  
Swap Dealers, MSPs

**Legal Entity Customers**  
**Corporations,**  
**LLCs and similar entities,**  
**General Partnership,**  
**Similar-type foreign entities,**  
**Statutory Trusts**

SOX-registered Public Accounting Firms  
Bank/Savings and Loan Holding Companies  
State-Regulated Insurance Companies  
FSOC-Designated Financial Market Utilities

Pooled Investment Vehicles Operated by Excluded FI  
Foreign FI in Jurisdictions That Collect Beneficial Ownership of FI  
Non-US Gov. Entity Not Engaged in Commercial Activities  
Legal Entities That Open Private Banking Accounts

# Additional Carve-Outs

## Control Prong Only

- **Pooled Investment Vehicles operated or advised by financial institutions that are excluded from Legal Entity Customer Definition**
- **Established Nonprofit Corporations**

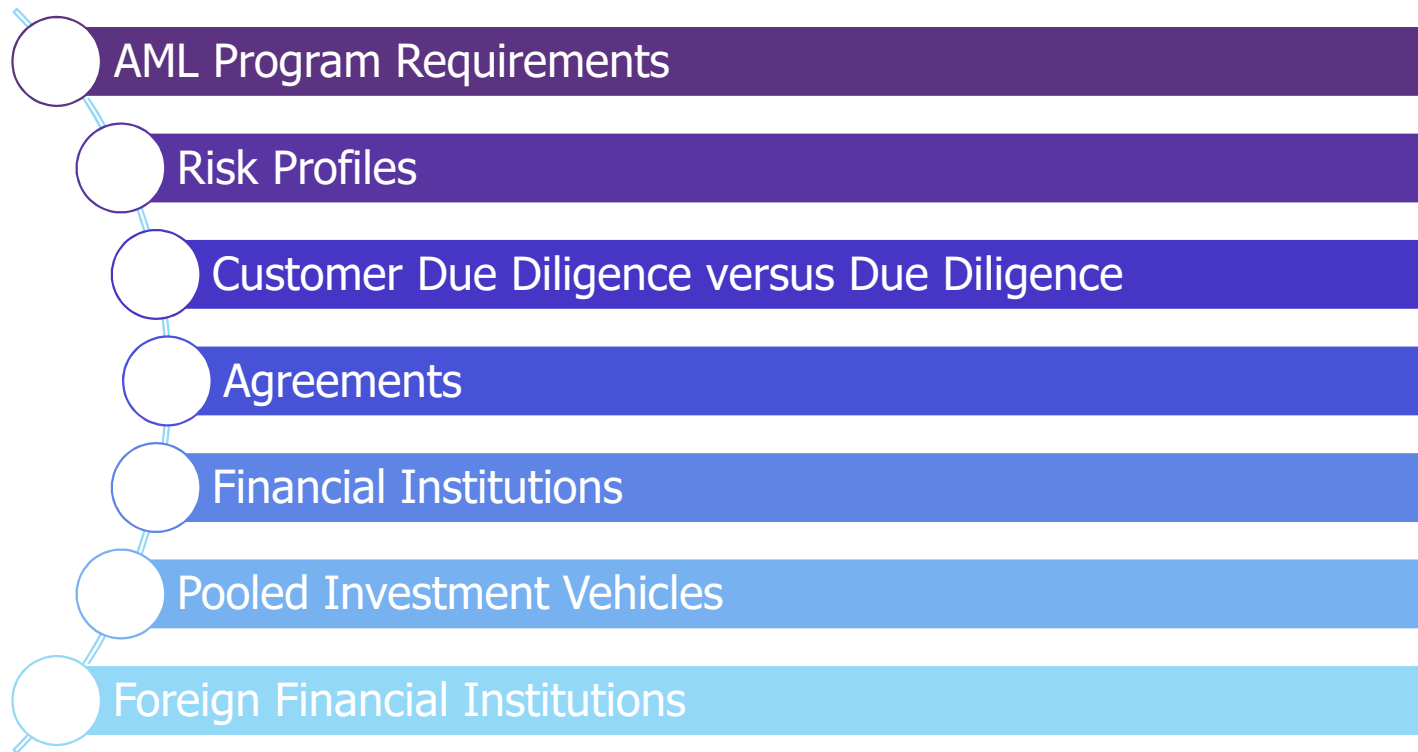
## Intermediated Accounts

- **If CIP Rule guidance lets a financial institution treat an intermediary (and not the intermediary's customers) as its customer, the financial institution can treat the intermediary as its customer for purposes of the CDD rule**
- **Includes guidance issued jointly by FinCEN and other federal functional regulators**

## Others

- **Certain point-of-sale retail credit cards**
- **Certain postage-product financings**
- **Certain insurance premium financings**
- **Certain equipment purchases and leases**

# Perspectives and Issues



# Anti-Money Laundering Program Requirements

## Risk-Based

- Understanding the nature and purpose of customer relationships
- Intended to “reflect existing practices to satisfy SAR reporting obligations”
- Level of monitoring to vary across accounts based on risk
- Includes beneficial ownership information

## Ongoing Monitoring and Updating of Customer Information

- Event-driven monitoring, not a categorical requirement for continuous updating
- Triggered when financial institution becomes aware of information about the customer in the course of normal monitoring relevant to assessing the risk posed by a customer



# Risk Profiles

## Appendix J: Quantity of Risk Matrix

Banks and examiners may use the following matrix to formulate summary conclusions. Prior to using this matrix, they should complete the identification and quantification steps detailed in the BSA/AML Risk Assessment Overview section at page 18 of this manual.

Low	Moderate	High
Stable, known customer base.	Customer base increasing due to branching, merger, or acquisition.	A large and growing customer base in a wide and diverse geographic area.
No electronic banking (e-banking) or the Web site is informational or nontransactional.	The bank is beginning e-banking and offers limited products and services.	The bank offers a wide array of e-banking products and services (e.g., account transfers, e-bill payment, or accounts opened via the Internet).
On the basis of information received from the BSA-reporting database, there are few or no large currency or structured transactions.	On the basis of information received from the BSA-reporting database, there is a moderate volume of large currency or structured transactions.	On the basis of information received from the BSA-reporting database, there is a significant volume of large currency or structured transactions.
Identified a few higher-risk customers and businesses.	Identified a moderate number of higher-risk customers and businesses.	Identified a large number of higher-risk customers and businesses.
No foreign correspondent financial institution accounts. The bank does not engage in pouch activities, offer special-use accounts, or offer payable through accounts (PTA), or provide U.S. dollar draft services.	The bank has a few foreign correspondent financial institution accounts, but typically with financial institutions with adequate AML policies and procedures from lower-risk countries, and minimal pouch activities, special-use accounts, PTAs, or U.S. dollar draft services.	The bank maintains a large number of foreign correspondent financial institution accounts with financial institutions with inadequate AML policies and procedures, particularly those located in higher-risk jurisdictions, or offers substantial pouch activities, special-use accounts, PTAs, or U.S. dollar draft services.
The bank offers limited or no private banking services or trust and asset management products or services.	The bank offers limited domestic private banking services or trust and asset management products or services over which the bank has investment discretion. Strategic plan may be to increase trust business.	The bank offers significant domestic and international private banking or trust and asset management products or services. Private banking or trust and asset management services are growing. Products offered include investment management services, and trust accounts are predominantly nondiscretionary versus where the bank has full investment discretion.
Few international accounts or very low volume of currency activity in the accounts.	Moderate level of international accounts with unexplained currency activity.	Large number of international accounts with unexplained currency activity.

Covered Financial Institutions must have Customer Risk Profiles

FFIEC Manual Risk Matrixes as Guides

## Appendix M: Quantity of Risk Matrix — OFAC Procedures

Examiners should use the following matrix, as appropriate, when assessing a bank's risk of encountering an OFAC issue.

Low	Moderate	High
Stable, well-known customer base in a localized environment.	Customer base changing due to branching, merger, or acquisition in the domestic market.	A large, fluctuating client base in an international environment.
Few higher-risk customers; these may include nonresident aliens, foreign individuals (including accounts with U.S. powers of attorney), and foreign commercial customers.	A moderate number of higher-risk customers.	A large number of higher-risk customers.
No overseas branches and no correspondent accounts with foreign banks.	Overseas branches or correspondent accounts with foreign banks.	Overseas branches or multiple correspondent accounts with foreign banks.
No electronic banking (e-banking) services offered, or products available are purely informational or nontransactional.	The bank offers limited e-banking products and services.	The bank offers a wide array of e-banking products and services (e.g., account transfers, e-bill payment, or accounts opened via the Internet).
Limited number of funds transfers for customers and noncustomers, limited third-party transactions, and no international funds transfers.	A moderate number of funds transfers, mostly for customers. Possibly, a few international funds transfers from personal or business accounts.	A high number of customer and noncustomer funds transfers, including international funds transfers.
No other types of international transactions, such as trade finance, cross-border ACH, and management of sovereign debt.	Limited other types of international transactions.	A high number of other types of international transactions.
No history of OFAC actions. No evidence of apparent violation or circumstances that might lead to a violation.	A small number of recent actions (e.g., actions within the last five years) by OFAC, including notice letters, or civil money penalties, with evidence that the bank addressed the issues and is not at risk of similar violations in the future.	Multiple recent actions by OFAC, where the bank has not addressed the issues, thus leading to an increased risk of the bank undertaking similar violations in the future.

# When Does the Rule Apply?

## Beneficial Ownership Rule

- At account opening
- When becoming aware of information during the course of normal risk-based monitoring
- At the discretion of the financial institution

## Due Diligence Rule

- For all accounts
- When becoming aware of information during the course of normal risk-based monitoring
- At the discretion of the financial institution

# Agreements

Customer-Facing Agreements

Reliance Agreements

Contractual Delegation to Service Providers

Clearing Agreements

Subscription/Private Placements Agreements

# Financial Institution Definition – Potential Ambiguity

## General Definition of “Financial Institutions”

- Only specifically includes certain banks, broker-dealers, money services businesses, telegraph companies, casinos, card clubs, certain entities supervised by a state or federal banking regulator, FCM, IBM, and mutual funds.
- This definition does not appear to include registered investment advisers, CFTC CPOs and CTAs, or foreign financial institutions.

## Preamble to Definition

- When used in this chapter and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this subpart.

# Pooled Investment Vehicles

Excluded from  
Definition of  
Legal Entity  
Customer

- A pooled investment vehicle operated or advised by a financial institution excluded from the definition of a Legal Entity Customer

Subject to  
Control Prong

- A pooled investment vehicle operated or advised by a financial institution that is not excluded from the definition of a Legal Entity Customer

# Foreign Financial Institutions

Is the foreign financial institution established in a jurisdiction where its regulator maintains beneficial ownership information about it?

- Resource: Financial Action Task Force (FATF)
  - <http://www.fatf-gafi.org/>
- Home Country Regulators



# ATTORNEY BIOGRAPHIES

# Charles Horn



## Washington, DC

T +1.202.739.5951

F +1.202.739.3001

charles.horn@morganlewis.com

Charles M. Horn counsels US and international banks and other financial institutions on corporate, regulatory, supervisory, enforcement, and compliance matters before all major federal and state financial regulatory agencies. He advises clients on major federal financial services statutes and regulations, as well as on US and international financial reform developments. Charles also counsels banks and other financial services firms on issues affecting their governance, structure, management, and operations.

Charles represents clients before the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board of Governors, and the Consumer Financial Protection Bureau (CFPB), among other agencies.

He also counsels clients on financial institution laws that include the National Bank Act, the Bank Holding Company Act, the Federal Reserve Act, the Federal Deposit Insurance Act, the International Banking Act, and the Dodd–Frank Wall Street Reform and Consumer Protection Act. Additionally, he guides clients on global regulatory capital requirements and key state banking law requirements.

Clients seek Charles’s advice on matters relating to their corporate, institutional, and retail business activities, as well as their asset management, fiduciary, and asset administration products and services. He has experience developing new capital markets, treasury and cash management, asset and wealth management, asset allocation, and other financial products and services.





# Melissa Hall



## Washington, DC

T +1.202.739.5883

F +1.202.739.3001

[melissa.hall@morganlewis.com](mailto:melissa.hall@morganlewis.com)

Melissa R. H. Hall represents US and overseas banks, nonbank financial services companies, investors in financial services, and technology companies in regulatory and corporate matters. She advises them on a wide range of state and federal financial regulatory laws and regulations. She provides counsel on financial regulatory compliance and enforcement, including state and federal licensing requirements, consumer financial products and compliance, payment systems, corporate and transactional matters, financial institution investment and acquisition, and the development of new financial services products.

Melissa provides counsel on complex, cross-discipline financial regulatory matters that require in-depth knowledge of regulations and business lines. Melissa focuses on a full range of more traditional federal and state bank regulatory matters, as well as emerging regulatory issues in connection with payment systems rules, credit cards and stored value cards, money services businesses, and consumer financial regulatory requirements.

Melissa advises banks and financial services companies, as well as their directors and officers, in connection with a range of corporate matters, including governance, management, business and operational, investment, and merger and acquisition matters, as well as bank securities and fiduciary activities. Melissa also represents nonbank financial institutions and their investors regarding regulatory compliance and due diligence of state and federal bank and consumer financial laws.



# Ignacio Sandoval



## Washington, DC

T +1.202.739.5201

F +1.202.739.3001

[ignacio.sandoval@morganlewis.com](mailto:ignacio.sandoval@morganlewis.com)

A member of the firm's securities industry practice, Ignacio A. Sandoval advises broker-dealers on matters relating to their obligations under federal securities laws and self-regulatory organization rules. Prior to joining Morgan Lewis, he was a special counsel in the Office of Chief Counsel in the SEC's Division of Trading and Markets. Ignacio's SEC experience includes matters involving domestic and foreign broker-dealer registration matters, anti-money laundering obligations, alternative trading systems, and high-frequency traders.

Additional experience at the SEC includes matters relating to the safe harbor from broker status for an issuer's personnel, statutory disqualifications, transaction confirmations, and the outsourcing of broker-dealer technology and platforms. Ignacio also has experience with issuer listing standards, alternative trading system registrations, and enforcement matters involving broker-dealers, clearing agencies, transfer agents, and derivatives.

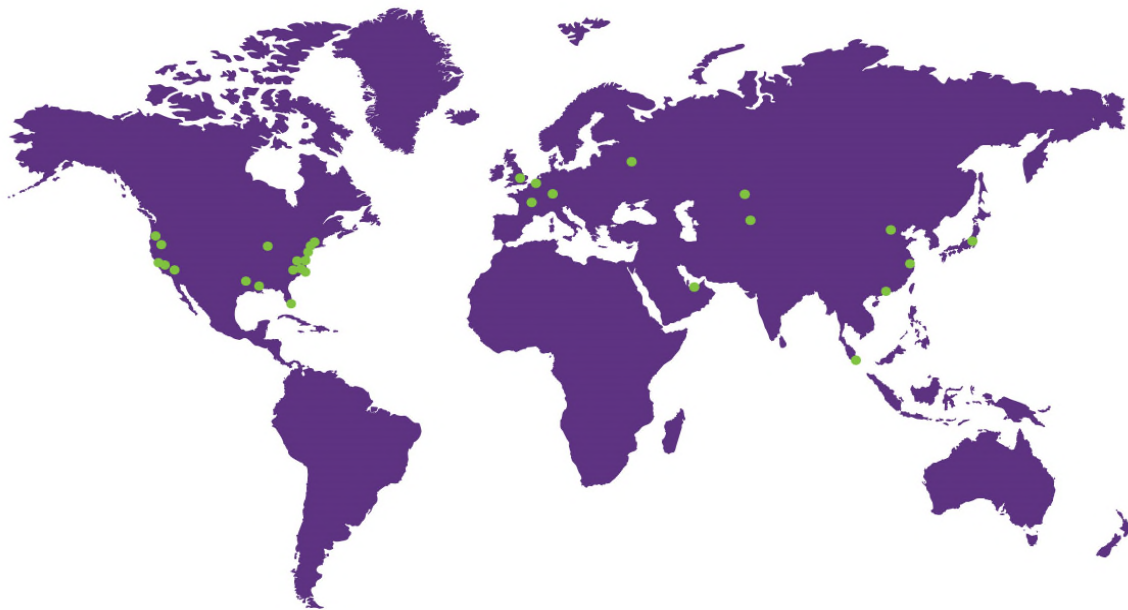


## Our Global Reach

Africa  
Asia Pacific  
Europe  
Latin America  
Middle East  
North America

## Our Locations

Almaty	Chicago	Houston	Orange County	Shanghai*
Astana	Dallas	London	Paris	Silicon Valley
Beijing*	Dubai	Los Angeles	Philadelphia	Singapore
Boston	Frankfurt	Miami	Pittsburgh	Tokyo
Brussels	Hartford	Moscow	Princeton	Washington, DC
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