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FINCEN REQUIRES FINANCIAL INSTITUTIONS TO OBTAIN BENEFICIAL OWNERSHIP INFORMATION

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FinCEN's new CIP beneficial owner rules may hinder the ability of shell and nominee companies to directly access the US financial system without disclosing the natural persons who own 25% or more of the company. Pooled investment vehicles and certain other legal entities, however, may have limited disclosure obligations regarding their beneficial owners.

On May 2, 2016, the Financial Crimes Enforcement Network (FinCEN), a bureau within the US Department of the Treasury responsible for implementing US anti-money laundering (AML) laws, finalized rules that enhance the customer due diligence (CDD) obligations of certain US financial institutions and that make related changes to each financial institution's AML program rule obligations (Final Rules).[1] The financial institutions subject to the Final Rules include (i) banks, (ii) broker-dealers in securities, (iii) mutual funds, and (iv) futures commission merchants (FCMs) and introducing brokers in commodities (IBCs) (collectively, the Covered Financial Institutions).[2] **The Final Rules become effective on July 11, 2016, but Covered Financial Institutions have until May 11, 2018 to bring themselves into compliance.**

The Final Rules, which (perhaps) incidentally come on the heels of the so-called Panama Paper disclosures, will impose beneficial ownership disclosure obligations on certain legal entities that wish to access the US financial system. The Final Rules are part of a series of steps US President Barack Obama's administration is taking to further combat money laundering, corruption, and tax evasion.[3] The Final Rules also contain a number of exclusions and exemptions, including some that appear to limit the amount of information that pooled investment vehicles such as hedge funds, private equity funds, and commodity pools must disclose about their investors. Whether the collection requirements for pooled investment vehicles actually are limited will depend on how certain definitional terms are interpreted.

In any event, given that regulatory examiners are likely to be aggressive in enforcing the new requirements, Covered Financial Institutions should begin to review their existing AML programs, catalogue any necessary changes, and consider creating the infrastructure to come into compliance with the Final Rules well before the compliance date in order to avoid regulatory scrutiny once regulators begin compliance examinations in this area.

BACKGROUND AND OVERVIEW

According to FinCEN, there are four core elements to CDD in the context of AML requirements:

1. Customer identification and verification.
2. Beneficial ownership identification and verification, which FinCEN is making explicit through the Beneficial Ownership Rule Requirements.
3. Understanding the nature and purpose of customer relationships to develop a customer risk profile.

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1 Customer Due Diligence Requirements for Financial Institutions; Final Rule, 81 Fed. Reg. 29398 (May 11, 2016)(Final Rule Release).

2 In particular, the Final Rules apply to "covered financial institutions" as defined in 31 CFR §1010.605(e)(1). That definition specifically includes the following: (i) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); (ii) a commercial bank; (iii) an agency or branch of a foreign bank in the United States; (iv) a federally insured credit union; (v) a savings association; (vi) a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.) (i.e., an Edge or Agreement corporation); (vii) a trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement; (viii) a broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934; (ix) a futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act (7 U.S.C. 1 et seq.), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act (CEA); and (x) a mutual fund.

3 Tanya Somanader, President Obama's Efforts on Financial Transparency and Anti-Corruption: What You Need to Know, White House Blog (May 6, 2016).

4. Ongoing monitoring for and reporting of suspicious transactions and, on a risk basis, maintaining and updating customer information.

The first core element listed above currently is explicitly required under the customer identification program (CIP) rule applicable to each Covered Financial Institution.[4] The Final Rules address the other three core elements in two ways: With respect to the second element listed above, the Final Rules add a new provision under the Bank Secrecy Act's (BSA's)[5] implementing regulations that requires Covered Financial Institutions to identify and verify beneficial ownership information for certain legal entity customers (Beneficial Ownership Rule).[6] With respect to the third and fourth elements listed above, FinCEN is making these elements explicit (although it has always viewed them as implicit requirements) through amendments to the AML program rule applicable to each Covered Financial Institution (AML Program Rule Changes).[7]

BENEFICIAL OWNERSHIP RULE

Although the Beneficial Ownership Rule requires Covered Financial Institutions to identify and verify the beneficial owners of legal entity customers (as defined below), the requirement to do so will largely depend on the nature of the legal entity customer. In this regard, the applicable requirements are relatively straightforward, but determining those customers to which the applicable requirements apply will be an exercise in definitional application.

General Requirements: Procedures for Identifying and Verifying Beneficial Owners—31 CFR §1010.230(a)

Under the Beneficial Ownership Rule, Covered Financial Institutions are required to establish and maintain written procedures reasonably designed to identify and verify the identities of beneficial owners of legal entity customers, and include such procedures in their AML programs. FinCEN indicated that it was not imposing this requirement retroactively because such an application would be "unduly burdensome," yet at the same time stated that "financial institutions should obtain beneficial ownership information from the existing customers on the Applicability Date [i.e., May 11, 2018] when, in the course of their normal monitoring, the financial institution detects information relevant to assessing or reevaluating the risk of such customer [as required by the AML Program Rule Changes discussed below]."[8]

The written procedures must enable a Covered Financial Institution to (i) identify the primary beneficial owners of each legal entity customer at the time a new account[9] is opened, subject to the customer or new account being excluded or exempt from the requirement;[10] and (ii) verify the identity of each beneficial owner identified by the legal entity customer to the extent reasonable and practicable.[11]

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4 *See* 31 CFR §1020.220(a)(2) for banks, 31 CFR §1023.220(a)(2) for broker-dealers in securities, 31 CFR §1024.220(a)(2) for mutual funds, and 31 CFR §1026.220(a)(2) for FCMs and IBCs.

5 Currency and Foreign Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001, which is commonly referred to as the BSA. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, 18 U.S.C. 1956, 1957, and 1960 and 31 U.S.C. 5311-5314 and 5316-5332 and notes. The BSA's implementing regulations are located at 31 CFR chapter X.

6 31 CFR §1010.230.

7 31 CFR §1020.210 (AML program rule for banks); 31 CFR §1023.210 (AML program rule for broker-dealers); 31 CFR §1024.210 (AML program rule for mutual funds); and 31 CFR §1026.210 (AML program rule for FCMs and ICBs).

8 Final Rule Release, 81 Fed. Reg. at 29404.

9 An account is defined in 31 CFR §1010.230(c) to have the same meaning as used in each respective Covered Financial Institution's respective CIP rule (31 CFR §1020.100(a) for banks, 31 CFR §1023.100(a) for brokers or dealers in securities, 31 CFR §1024.100(a) for mutual funds, and 31 CFR §1026.100(a) for FCMs or IBCs).

10 31 CFR §1010.230(a).

11 31 CFR §1010230(b).

Identification of Beneficial Owners and Certifications—31 CFR §1010.230(b)(1)

In order to facilitate a Covered Financial Institution's compliance efforts, the Beneficial Ownership Rule contains a certification form that can be used to obtain required information from legal entity customers.[12] The information to be collected on the form includes the following:

- The name and title of a natural person opening the account
- The name and address of the legal entity for which the account is being opened[13]
- For each individual who owns 25% or more of a legal entity customer and for one person with management responsibility for the legal entity customer, provide the following:
  - Name
  - Date of birth
  - Address (residential or business)
  - For US persons—social security number
  - For foreign persons—passport number and country of issuance or similar documentation

Covered Financial Institutions are not required to use the certification form as long as they obtain the same information required by the form through other means. This option will allow Covered Financial Institutions to integrate the information requirements of the Beneficial Ownership Rule into their existing procedures and processes, which presumably include the electronic collection and retention of such information. Regardless of the means by which the information is collected, the natural person at the legal entity customer who provides the information must certify the accuracy of the information to the best of his/her knowledge.[14]

Finally, while FinCEN is not requiring Covered Financial Institutions to obtain this information at specified intervals, it did state that the "opening of a new account is a relatively convenient and otherwise appropriate occasion to obtain current information regarding a customer's beneficial owners."[15]

Verification of Beneficial Owners—31 CFR §1010.230(b)(1)

At a minimum, a Covered Financial Institution's procedures must contain the elements required for verifying the identity of customers who are individuals under the CIP rule applicable to each Covered Financial Institution.[16] This would include verification through documentary and non-documentary means, procedures addressing when additional verification would be required, and procedures addressing measures to be taken when there is a lack of verification.

In the case of documentary methods, the Beneficial Ownership Rule permits Covered Financial Institutions to use photocopies of documentary materials and to rely on the information supplied by a legal entity customer regarding the identity of its beneficial owners if it has no knowledge that would call such reliance into question. To this end, FinCEN stated that there is no need to verify the beneficial ownership *status* of the persons identified by the Covered Financial Institution, only their *identities*.

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12 Appendix A to 31 CFR §1010.230.

13 At its option, a legal entity customer can also provide its Legal Entity Identifier (LEI), if it has one. An LEI is a global standardized unique identifier for legal entities engaged in financial transactions. FinCEN did not require legal entity customers to include an LEI because not all customers will have such identifiers.

14 Appendix A to 31 CFR §1010.230; Final Rule Release, 81 Fed. Reg. at 29405.

15 Final Rule Release, 81 Fed. Reg. at 29406.

16 *See* 31 CFR §1020.220(a)(2) for banks, 31 CFR §1023.220(a)(2) for broker-dealers in securities, 31 CFR §1024.220(a)(2) for mutual funds, and 31 CFR §1026.220(a)(2) for FCMs and IBCs.

In response to a comment regarding what Covered Financial Institutions should do with beneficial ownership information, FinCEN stated that it expects such information to be treated like other information collected under the respective CIP rules that could be used for compliance with other requirements, such as the sanctions programs administered by the US Treasury Department's Office of Foreign Asset Control (OFAC) and rules governing currency transaction reports (CTRs).[17]

Definition of "Beneficial Owner"—31 CFR §1010.230(d)

The Beneficial Ownership Rule uses a two-pronged approach in defining a "beneficial owner "—an Ownership Prong and a Control Prong.

Under the Ownership Prong, 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.

Under the Control Prong, a beneficial owner is a single individual with significant responsibility to control, manage, or direct a legal entity customer, including (i) an executive officer or senior manager (e.g., a chief executive officer, chief financial officer, chief operating officer, managing member, general partner, president, vice president, or treasurer); or (ii) any other individual who regularly performs similar functions.

Under the rule, at least one person has to be identified under the Control Prong, while zero to four individuals can be identified under the Ownership Prong. If a trust comes within the Ownership Prong, then the trustee should be named. If an entity that is excluded from the definition of a legal entity customer comes within the Ownership Prong (as discussed below), then no individual needs to be identified.

"Legal Entity Customer" Definition—31 CFR §1010.230(e)(1)

For purposes of the rule, a "legal entity customer" is defined as a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office; a general partnership; and any similar entity formed under the laws of a foreign jurisdiction that opens an account (Legal Entity Customer). As explained by FinCEN, the definition would include such entities as limited liability partnerships, business trusts created by a filing with a state office and similar entities, and general partners.[18]

Exclusions from Legal Entity Customer Definition—31 CFR §1010.230(e)(2)

Notwithstanding the broad definition of a Legal Entity Customer, the definition excludes the following:

- A financial institution regulated by a federal functional regulator or a bank regulated by a US state bank regulator.
- A department or agency of the United States, of any US state, or of any political subdivision of a US state.
- Any entity established under the laws of the United States, of any US state, or of any political subdivision of any US state, or under an interstate compact between two or more states, that exercises governmental authority on behalf of the United States or of any such state or political subdivision.

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[17] 13 CFR §1010.313.

[18] Final Rule Release, 81 Fed. Reg. at 29412.

- Any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York, American, or NASDAQ stock exchange.[19]
- Any entity organized under the laws of the United States or of any US state at least 51% of whose common stock or analogous equity interests are held by a listed entity.
- An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act) or that is required to file reports under section 15(d) of the Exchange Act.
- A registered investment company.
- An investment adviser registered with the SEC.[20]
- A securities exchange or clearing agency that is registered under the Exchange Act.
- Any other entity registered with the SEC under the Exchange Act (i.e., security-based swap dealers, major security-based swap participants).
- A registered entity, commodity pool operator (CPO), commodity trading advisor (CTA), retail foreign exchange dealer, swap dealer, or major swap participant—each as defined in section 1a of the CEA—that is registered with the CFTC.
- A public accounting firm registered under section 102 of the Sarbanes-Oxley Act.
- Bank holding companies, savings and loan holding companies.
- A pooled investment vehicle that is operated or advised by a financial institution that is excluded from the definition of Legal Entity Customer.
- An insurance company that is regulated by a US state.
- A financial market utility designated by the Financial Stability Oversight Council.
- A foreign financial institution established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution.
- A non-US governmental department, agency, or political subdivision that engages only in governmental rather than commercial activities.
- Any legal entity, only to the extent that it opens a private banking account subject to 31 CFR §1010.620.

Customers Subject to the Control Prong Only (Non-Excluded Investment Vehicles and Nonprofits)—31 CFR §1010.230(e)(3)

With respect to pooled investment vehicles that are operated or advised by a financial institution that is not excluded from the definition of a Legal Entity Customer, FinCEN is only requiring Covered Financial Institutions to collect information under the Control Prong and not the Ownership Prong. Likewise, entities that are established nonprofit corporations (or similar) and that have filed their organizational documents with the appropriate state authorities also are only subject to the Control Prong.

Intermediated Account Relationships—Omnibus Accounts

In the Final Rule Release, FinCEN states that "[t]o the extent that existing guidance provides that, for purposes of the CIP rules, a financial institution shall treat an intermediary (and not the intermediary's customers) as its customer, the financial institution similarly should treat the intermediary as its customer for purposes of the final rule. FinCEN also confirms that other guidance issued jointly by FinCEN and one

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[19] Interestingly, and perhaps as a matter of oversight, FinCEN failed to exclude companies listed on other securities exchanges that are registered with the SEC.

[20] As a practical matter, state registered investment advisers, exempt reporting advisers, and foreign private advisers would not be excluded as they are not registered with the SEC. Relying advisors, however, should be included as they are deemed registered.

or more Federal functional regulators relating to the application of the CIP rule will apply to the Final Rules, to the extent any such guidance is relevant."[21]

Additional Exemptions—31 CFR §1010.230(h)

In addition to the exclusions mentioned above, Covered Financial Institutions are exempt from the requirement to identify and verify beneficial ownership information for the account of a legal entity that is

- a point-of-sale retail credit card product, including a commercial private label credit card, that is used solely for the purchase of retail goods and services at retailers, up to a limit of $50,000;
- for the purpose of financing the purchase of postage and for which payments are remitted directly by the financial institution to the provider of the postage products;
- for the purpose of financing insurance premium payments and for which payments are remitted directly by the financial institution to the insurance provider or broker; or
- for the purpose of purchasing or leasing equipment for which payments are remitted directly by the financial institution to the vendor or lessor of equipment.

These exemptions, however, do not apply to transaction accounts through which a Legal Entity Customer can make payments to, or receive payments from, third parties. If there is the possibility of a cash refund on the account activity identified above, then beneficial ownership of the Legal Entity Customers must be identified and verified by the Covered Financial Institution, either at the time of initial remittance or at the time such refund occurs.

Recordkeeping and Reliance—31 CFR §1010.230(i) and (j)

Covered Financial Institutions are required to make and retain records related to their obligations under the Beneficial Ownership Rules. They also may rely on other financial institutions for certain obligations under circumstances that are substantively the same as those identified under each entity type's CIP rule.

CHANGES TO AML PROGRAM RULES

In addition to the requirements under the Beneficial Ownership Rule, FinCEN is also amending each Covered Financial Institution-specific AML rule to include a fifth element. This fifth element would require each Covered Financial Institution's AML program to include

> [a]ppropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to (i) [u]nderstanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and (ii) [c]onducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

The new requirement applies equally to direct customers and to beneficial owners of Legal Entity Customers. The only difference between the rules across Covered Financial Institutions is the additional requirement that the financial institution comply with the applicable AML rule of any other regulatory agency. In the case of banks, for example, the bank AML rule makes reference to regulations promulgated by a "Federal functional regulator." Similarly, the rules for broker-dealers in securities, FCMs, and IBCs make reference to rules of self-regulatory organizations (e.g., the Financial Industry Regulatory Authority (FINRA)).

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[21] Final Rule Release, 81 Fed. Reg. at 29416.

OBSERVATIONS

The Final Rules impact a number of financial institutions that will have to undergo policy, training, and systems changes to come into compliance. That said, even though compliance with the Final Rules is not required until 2018, Covered Financial Institutions may still encounter a number of interpretive and operational issues as they begin to implement the rules' requirements. Below are some of our observations in this regard.

Pooled Investment Vehicles. While FinCEN's approach to pooled investment vehicles would appear to be a welcome relief for the industry and investors, the rule's drafting raises some interpretive issues that call into question the extent to which a Covered Financial Institution is required to collect information from such vehicles. More specifically, under the Beneficial Ownership Rule, a pooled investment vehicle operated or advised by a *financial institution* that is excluded from the definition of a Legal Entity Customer is itself excluded from the definition of Legal Entity Customer, meaning that a Covered Financial Institution does not have to collect beneficial ownership information from such a vehicle (Pooled Investment Vehicle Exclusion).[22] If a pooled investment vehicle is operated or advised by a *financial institution* that is not excluded from the definition of a Legal Entity Customer, then a Covered Financial Institution only has to obtain information under the Control Prong of the Beneficial Ownership Rule (Investment Vehicle Control Prong Provision). Although SEC-registered investment advisers and commodity trading advisors are excluded from the definition of Legal Entity Customer, it is unclear whether they would be deemed financial institutions for purposes of the Pooled Investment Vehicle Exclusion or the Investment Vehicle Control Prong Provision. This is because the Beneficial Ownership Rule is codified at 31 CFR part 1010, and that subpart indicates that with respect to terms used in 31 CFR chapter X, "where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this subpart." FinCEN did not define what a "financial institution" is for the purposes of the Pooled Investment Vehicle Exclusion or the Investment Vehicle Control Prong Provision, and the definition of a financial institution in 31 CFR §1010.100(t) only includes

- a bank (except bank credit card systems);
- a broker or dealer in securities;
- a money services business as defined in 31 CFR part 1010;
- a telegraph company;
- a casino;
- a card club;
- a person subject to supervision by any state or federal bank supervisory authority;
- an FCM;
- an ICB; or
- a mutual fund.

If this definition applies, then neither the Pooled Investment Vehicle Exclusion nor the Investment Vehicle Control Prong Provision would apply to investment vehicles operated by SEC-registered investment advisers, CTAs, or any other financial institution not coming within the definition of a "financial institution" in 31 CFR §1010.100(t).

That said, the context around which the discussion regarding pooled investment vehicles occurs in the Final Rule Release suggests that this was a drafting oversight. This is particularly the case when one considers that pooled investment vehicles are generally operated or advised by investment advisers or CTAs and not by the entities that come within the definition of a financial institution in 31 CFR

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[22] 31 CFR §1010.230(e)(2)(xi).

§1010.100(t). Indeed, such a narrow reading would appear "manifestly incompatible with the intent" of the Beneficial Ownership Rules given FinCEN's statements that non-US managed mutual funds, hedge funds, and private equity funds would only be subject to the Investment Vehicle Control Prong Provision.

Registered Investment Advisers, Commodity Trading Advisers, and Commodity Pool Operators. Currently, SEC-registered investment advisers are not subject to the Final Rules. That said, FinCEN has already made clear its intent to impose a version of the Final Rules on them in the future.[23] Further, although SEC-registered investment advisers would be excluded from the definition of a Legal Entity Customer (including relying advisers), the exclusion does not extend to state-registered investment advisers, exempt reporting advisers, or foreign private advisers, because these advisers are not registered with the SEC.

In addition, we note that CTAs and CPOs are not currently subject to AML program rule requirements or the Final Rules.[24] It is unclear whether FinCEN will seek to impose obligations on CTAs and CPOs as it plans to do for SEC-registered investment advisers.

Reliance. As with the CIP rule, the Beneficial Ownership Rule permits Covered Financial Institutions to rely on the performance by another financial institution of requirements under the rule, provided that (i) such reliance is reasonable under the circumstances, (ii) the other financial institution is subject to an AML program rule and regulated by a federal functional regulator, and (iii) the other financial institution enters into a contract where it certifies annually that it has implemented an AML program and will perform the requirements under the Beneficial Ownership Rule.

At this time, we do not know whether FinCEN or the SEC will extend a no-action position that permits broker-dealers to rely on an SEC-registered investment adviser (currently not subject to AML program requirements, although rules have been proposed)[25] for its CIP rule obligations to rely on advisers with respect to the Beneficial Ownership Rule.[26] Ultimately, however, FinCEN or the SEC may not need to extend such relief if AML program rules applicable to SEC-registered investment advisers are adopted before May 11, 2018 (in our view, a reasonable possibility), when compliance with the Final Rules is required.

Omnibus Accounts. FinCEN has retained its approach to intermediated account relationships such that Covered Financial Institutions will only have to treat the intermediary as the customer for purposes of the Beneficial Ownership Rule. FinCEN clarified that existing guidance issued jointly by FinCEN or the US Treasury and any of the federal functional regulators for the Covered Financial Institutions will continue to apply. To this end, however, it is unclear how non-joint guidance or guidance issued by a self-regulatory organization impacts FinCEN's views. For example, through an enforcement settlement under Exchange Act Rule 17a-8 in the context of omnibus accounts held at a US broker-dealer by a foreign financial institution, the SEC effectively took the view that a US broker-dealer violated the CIP requirements because the foreign financial institution's clients had direct market access to the US financial system.[27] Similarly, FINRA, of which most US broker-dealers are members, issued Regulatory Notice 10-18 that effectively requires broker-dealers to look through certain types of accounts.[28] It is unclear how interpretive positions that are not jointly issued will impact this aspect of the Beneficial Ownership Rule.

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[23] Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers, 80 Fed. Reg. 52680, 52681 (Sept. 1, 2015). For a discussion of proposed AML rules for registered investment advisers, *see* our September 2015 White Paper, "AML Requirements Proposed for SEC Registered Advisers."

[24] 31 CFR §1010.205(b); *see also* Anti-Money Laundering Programs for Financial Institutions, 67 Fed. Reg. 67547 (Nov. 6, 2002).

[25] *See* supra note 23.

[26] *See* Securities Industry and Financial Markets Association, SEC Staff No-Action Letter (Jan. 9, 2015).

[27] *See* Pinnacle Capital Markets LLC and Michael A. Paciorek, Exchange Act Release No. 62811 (Sept. 1, 2010).

[28] FINRA, Master Accounts and Sub-Accounts, Regulatory Notice 10-18 (April 2010).

Electronic Data Collections and Signature. As mentioned above, with respect to collecting beneficial ownership information, FinCEN stated that it was giving Covered Financial Institutions flexibility in how they collect this information so that financial institutions can integrate these collections into their current practices. In our experience, financial institutions increasingly are collecting customer information and obtaining customer signatures through electronic means, as permitted under the Electronic Signatures in Global and National Commerce Act (E-SIGN)[29] and applicable state Uniform Electronic Transactions Act statutes. On this note, FinCEN stated that "in cases where the individual signing the documentation to open the account (and identifying the legal entity's beneficial owners) does not deliver such documentation to the financial institution, it may be appropriate that the individual's signature be notarized."[30] It is unclear whether this language will serve to limit a financial institution's ability to avail itself of E-SIGN and state statutes to collect electronic signatures in connection with the rule requirements

CONCLUSION

The Final Rules were long awaited and, along with other proposals expected to be made and finalized in 2016, may signal an effort to bring the United States into compliance with the recommendations made by the Financial Action Task Force (FATF) in 2006 regarding US efforts to combat money laundering and terrorist financing.[31] Among other things, in 2006, FATF stated that with respect to US AML requirements, "there are no measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities."[32] Given the number of exclusions and exemptions in the Final Rules, it will be interesting to see FATF's take on FinCEN's new rules once the United States' AML efforts are subject to FATF's mutual evaluation process.

CONTACTS

If you have any questions or would like more information on the issues discussed in this White Paper, please contact the authors, Ignacio A. Sandoval (+1.202.739.5201; ignacio.sandoval@morganlewis.com), Charles M. Horn (+1.202.739.5951; charles.horn@morganlewis.com), or Melissa R.H. Hall (+1.202.739.5883; melissa.hall@morganlewis.com) or any of the following Morgan Lewis lawyers:

Washington, DC

Thomas S. Harman	+1.202.373.6725	thomas.harman@morganlewis.com
Amy Natterson Kroll	+1.202.739.5746	amy.kroll@morganlewis.com
W. John McGuire	+1.202.373.6799	wjmcguire@morganlewis.com
Christopher Menconi	+1.202.373.6173	christopher.menconi@morganlewis.com
Monica Parry	+1.202.373.6179	monica.parry@morganlewis.com
Joshua B. Sterling	+1.202.739.5126	joshua.sterling@morganlewis.com
Steven W. Stone	+1.202.739.5453	steve.stone@morganlewis.com

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[29] Public Law 106-229, June 30, 2000.

[30] Final Rule Release, 81 Fed. Reg. at 29406, n. 38.

[31] FATF is the inter-governmental body that promotes international AML standards. *See* FATF, Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, United States (June 23, 2006).

[32] *Id.* at page 226-237.

Morgan Lewis

Boston

David Boch	+1.617.951.8485	david.boch@morganlewis.com
Roger Joseph	+1.617.951.8247	roger.joseph@morganlewis.com
Toby Serkin	+1.617.951.8760	toby.serkin@morganlewis.com
Carl Valenstein	+1.617.341.7501	carl.valenstein@morganlewis.com

Chicago

Peter K.M. Chan	+1.312.324.1179	peter.chan@morganlewis.com
Merri Jo Gillette	+1.312.324.1134	merrijo.gillette@morganlewis.com
Michael M. Philipp	+1.312.324.1905	michael.philipp@morganlewis.com
Sarah V. Riddell	+1.312.324.1154	sarah.riddell@morganlewis.com

Miami

Ivan P. Harris	+1.305.415.3398	ivan.harris@morganlewis.com
Ethan W. Johnson	+1.305.415.3394	ethan.johnson@morganlewis.com
Joy Crutcher Harrison	+1.305.415.3411	joy.charrison@morganlewis.com

New York

Jennifer L. Klass	+1.212.309.7105	jennifer.klass@morganlewis.com
Christine M. Lombardo	+1.212.309.6629	christine.lombardo@morganlewis.com
Louis H. Singer	+1.212.309.6603	louis.singer@morganlewis.com

Philadelphia

Sean Graber	+1.215.963.5598	sean.graber@morganlewis.com
Timothy W. Levin	+1.215.963.5037	timothy.levin@morganlewis.com
John “Jack” O’Brien	+1.215.963.4969	john.obrien@morganlewis.com

San Francisco

Paul C. McCoy	+1.415.442.1385	paul.mccoy@morganlewis.com

Morgan Lewis

Peter M. Phleger +1.415.442.1096 peter.phleger@morganlewis.com

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