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SUBJECT

THE FINANCIAL CRIMES ENFORCEMENT NETWORK ("FINCEN") ISSUES A CORRECTING AMENDMENT TO THE CUSTOMER DUE DILIGENCE FINAL RULE

SUMMARY

FinCEN issued the Customer Due Diligence Rule ("CDD" Rule, the "Final Rule" or the "Rule") to amend the existing Bank Secrecy Act ("BSA") regulations on May 11, 2016. The Rule outlined CDD requirements and imposed a new requirement for certain covered financial institutions to identify the ultimate beneficial owner(s) for legal entity customers. Certain technical corrections were made to the Final Rule and published in the [Federal Register Notice](#) on September 28, 2017. These corrections are effective immediately.

Learn more about the amendments to the final CDD Rule issued on the Federal Reserve by FinCEN and how to comply with regulatory requirements and expectations.

DETAILS

Background

The CDD Rule was published in the Federal Register on May 11, 2016 – with the final rule going into effect on July 11, 2016; and, must be applied by covered financial institutions by May 11, 2018. FinCEN issued the final rules under the BSA to define and toughen customer due diligence requirements for financial institutions such as banks, brokers or dealers in securities; mutual funds; and futures commission merchants and introducing brokers in commodities. The rules include a new requirement to identify and verify beneficial owners of legal entity customers and also include other explicit customer due diligence requirements.

The CDD Rule requires that the covered financial institution have a written procedure soundly designed to identify and verify the ultimate beneficial owners of legal entity customers at the time of new account opening, unless otherwise excluded or exempted. The procedures must also include a risk-based practice for verifying the identity of each beneficial owner identified, as practicable. In addition, the AML program requirements were amended for covered financial institutions to implement and maintain suitable risk-based procedures for conducting ongoing customer due diligence.

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In order to implement the final rule of identifying a beneficial owner, covered financial institutions must first understand who is considered a beneficial owner. According to the Rule, a beneficial owner is each person who, directly or indirectly, owns 25% or more of the equity interest of a legal entity customer; and a person who has significant responsibility to control, manage, or direct a legal entity. The financial institution can obtain the required information through the use of Appendix A (Certification Form) to comply with this obligation.

The amendment published on September 28, 2017, makes technical corrections to the final rule. The final rule had a few technical errors which could cause confusion, and in order to mitigate this, FinCEN has made technical corrections to the Certification Form located in Appendix A to § 1010.230, *Beneficial Ownership Requirements For Legal Entity Customers*, and has included a paragraph to [31 CFR 1024.210](#), *Code of Federal Regulations*, which was mistakenly omitted in the final rule published in the Federal Register.

The areas of change to the final CDD Rule are as follows:

Technical Corrections

- ▶ Correction to Appendix A to § 1010.230 – Appendix A (Certification Form) did not include the words, "Type," after "Name" in the heading of Section II.b. The Certification Form also included the term "foreign persons" instead of "non-U.S. persons" on several occasions and omitted the term "Social Security number". These and other technical changes can be viewed on the Federal Register.
- ▶ Correction to § 1024.210 – The training element of the AML program requirements for mutual funds was inadvertently omitted from the final rule and has been reinserted in the technical correction in [31 CFR 1024.210](#).

As the changes to the final rule are non-substantive, minor and technical, FinCEN determined that the regular notice of proposed rulemaking or collection of information and other administrative requirements are not applicable. The corrections referenced above have immediate effect.

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