

CLIENT ALERT

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FINANCIAL INSTITUTIONS ADVISORY: FINCEN ISSUES FINAL RULE ON BENEFICIAL OWNERSHIP REPORTING

by Joseph E. Silvia

On Friday, September 30, 2022, the Financial Crimes Enforcement Network issued its much-anticipated final rule on *Beneficial Ownership Information Reporting Requirements* (the “Rule”).¹ The Rule implements Section 6403 of the Corporate Transparency Act, which was enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021.² The Rule becomes effective January 1, 2024.

The Rule requires certain entities to file reports directly with FinCEN that identify two categories of individuals: (1) the beneficial owners of the entity and (2) individuals who have filed an application with specified governmental authorities to create the entity or register it to do business. Financial institutions welcome the Rule because it removes an added layer of information collection and validation they are currently required to perform under their anti-money laundering compliance programs.

Since May 11, 2018, certain financial institutions (e.g., banks; brokers or dealers in securities; mutual funds; and futures commission merchants and introducing brokers in commodities) opening accounts for their legal entity customers are required to identify and verify the identity of *beneficial owners* of such customers, subject to limited exclusions and exemptions (the “CDD Rule”).³ This requirement to identify and verify beneficial owners was outlined by FinCEN in the CDD Rule as an *explicit* requirement of customer due diligence under FinCEN’s regulations. Prior to the CDD Rule, FinCEN’s regulations *implicitly* required a financial institution’s customer due diligence program to include: (1) customer identification and verification; (2) understanding the nature and purpose of customer relationships to develop a customer risk profile, and (3) ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information. Each of these elements, as well as the new beneficial ownership requirement, became *explicit* requirements under the CDD Rule.

Therefore, with the issuance of this Rule by FinCEN, FinCEN will be playing more of a direct role with beneficial owner information collection and verification. *However*, financial institutions must continue under the current framework until FinCEN revises its regulations issued under the CDD Rule, which, pursuant to the Corporate Transparency Act, FinCEN must do within one year of the effective date of this Rule (January 1, 2025).

¹ See 87 Fed. Reg. 59498 (September 30, 2022).

² See Public Law 116-283 (January 1, 2021).

³ See 81 Fed. Reg. 29398 (May 11, 2016).

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