

# Customer Due Diligence and Beneficial Ownership

## PRESENTERS:

- Sarah Runge, Director of the **Office Of Strategic Policy for Terrorist Financing and Financial Crimes**
- Chip Poncy, Co-Founder, **Financial Integrity Network (FIN)**

## MODERATOR:

- John Byrne, Executive Vice President, **Association of Certified Anti-Money Laundering Specialists**

# Roadmap

- Background and Context (5 minutes).
- Overview of the Proposed Rule (5 minutes).
- Top 10 .
- Audience Q&A (15 minutes).

# Background and Context

- Rule in Context: Treasury's 3-prong policy approach to beneficial ownership and financial transparency
- Importance of the Rule
- US Process Review
- Global Context

# Overview of Proposed Rule

- **CDD Proposal – Elements of CDD**

- Identifying and verifying the identity of customers;
- Identifying and verifying the identity of beneficial owners of legal entity customers (i.e., the natural persons who own or control legal entities);
- Understanding the nature and purpose of customer relationships; and
- Conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions.

# Overview of Proposed Rule

## • Beneficial Ownership Definition

- Each individual who owns 25 percent or more of the equity interests in a *legal entity customer* **and** one individual who exercises significant managerial control over the legal entity customer.
- *Legal entity customers* include corporations, limited liability companies, and partnerships or other similar business entities, but not trusts.
- No requirement to pierce intermediated accounts.
- Standard beneficial ownership certification form.
- Verification of identity, not beneficial owner status.

# Overview of Proposed Rule

## Amendments to AML Program Requirements

- Fifth “Pillar” to require financial institutions to implement “appropriate risk-based procedures for conducting ongoing customer due diligence” including:
  - Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
  - Conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions.
  
- FinCEN believes this amendment codifies existing regulatory expectations.

# Top 10

- Beneficial Ownership should be an obligation of the States in the creation of legal entities and not of financial institutions in conducting CDD.
- US Treasury is pushing the Proposed CDD Rule in order to comply with FATF.
- The US Proposed CDD Rule is inconsistent with the risk-based approach.
- The US Proposed CDD Rule requires financial institutions to identify and verify the identity of an individual that owns more than 25% of a legal entity customer or an individual that substantially controls the legal entity customer.
- The 25% threshold is inconsistent with the international standard and FATCA.

# Top 10 (Cont.)

- Unless Treasury exempts trusts from the Proposed Rule, financial institutions will have to adapt existing CDD practice with respect to trust accounts in order to conform with the proposed requirements.
- The nature and purpose of the account and the ongoing monitoring elements of the Proposed Rule impose new requirements for financial institutions.
- The Proposed Rule will ultimately require financial institutions to do a look-back in order to identify and verify the identity of beneficial owners for their existing accounts.
- The Proposed Rule will create a new beneficial ownership obligation within the context of the CIP Rule.

# FinCEN's Request for Comments

## 1. *Definitions of Beneficial Owner and Legal Entity: (John)*

- Is the proposed definition of beneficial owner and the inclusion of two prongs sufficiently clear?
- How does this definition comport with existing definitions and practices regarding beneficial ownership?
- Does the definition of legal entity customer provide adequate clarity?

## 2. *Proposed Exemptions from the Beneficial Ownership Rule (Steve)*

- Are the exemptions from the definition of “legal entity customer” appropriate and are there other exemptions that should be included?

# FinCEN's Request for Comments

## 3. *Verification of Beneficial Owners (Meg)*

- Is the proposed rule's focus on verification of identity vs. status clear and appropriate?
- Is requiring financial institutions to utilize existing CIP procedures for verification and identity of beneficial owners sufficiently clear and an appropriate and effective means for achieving this objective?

## 4. *Existing Accounts (Meg)*

- Should the proposed requirements to collect beneficial ownership information be applied retroactively with respect to legal entity accounts established before the implementation date of the final rule?

# FinCEN's Request for Comments

## 5. *Intermediated Accounts and Pooled Investment Vehicles (Tom)*

- Is the proposed treatment of intermediated accounts sufficiently clear to address any issues that may be expected to arise?
- Should pooled investment vehicles that are not proposed to be exempt from the beneficial ownership requirements but are operated or advised by financial institutions that are proposed to be exempt, be exempt from the beneficial ownership requirements?
- If not, should covered financial institutions be required to identify beneficial owners of non-exempt pooled investment vehicles under only the control prong of the beneficial owner definition, as opposed to both the ownership and control prongs?

# FinCEN's Request for Comments

## 6. *Trusts*

- FinCEN seeks comments on procedures used by financial institutions to collect and record information on trusts during their CDD process and whether that information is readily searchable and retrievable and accessible to law enforcement.

# FinCEN's Request for Comments

## 7. *Certification Form (Meg)*

- Is the proposed certification form practical for financial institutions to incorporate into their account opening processes?

## 8. *Updating Beneficial Ownership Information (Meg)*

- Would setting a mandated timeframe for the updating of beneficial ownership information result in better information being available rather than relying on financial institutions to update the information in due course, consistent with a risk-based approach?

# FinCEN's Request for Comments

## 9. *Understanding the Nature and Purpose of Customer Relationships and Ongoing Monitoring:* (John)

- Are the proposed requirements for understanding the nature and purpose of customer relationships and ongoing monitoring sufficiently clear?
- Should FinCEN define the term “customer risk profile” or is this term sufficiently understood?
- Are there covered financial institutions that have been able to meet the existing AML program requirements and SAR requirements without understanding the nature and purpose of the customer relationships and conducting ongoing monitoring?

# FinCEN's Request for Comments

## 10. *Effective Date of the Rule: (John)*

- Is the proposed effective date of one year from the date of issuance sufficient to enable financial institutions to work any necessary changes into their systems or procedures in tandem with other cyclical updates?

# Other Issues

- Costs
- Changes to Existing Practice
- A Level Playing Field (global and sectoral)
- A Risk-Based Approach to Implementation

