

# Client Update

## FinCEN Issues New Rule Requiring Identification of Beneficial Owners and Risk-Based Customer Due Diligence

### WASHINGTON, D.C.

Satish M. Kini  
smkini@debevoise.com

Robert T. Dura  
rdura@debevoise.com

### NEW YORK

Paul L. Lee  
plee@debevoise.com

Lee A. Schneider  
lschneider@debevoise.com

David G. Sewell  
dgsewell@debevoise.com

Zila Reyes Acosta-Grimes  
zracosta@debevoise.com

On May 11, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") published in the *Federal Register* a final rule expanding customer due diligence ("CDD") requirements for certain "covered financial institutions."<sup>1</sup> The final rule will impose two new, and significant, requirements on covered financial institutions:

- **First**, it will require covered financial institutions to establish procedures to identify, and verify the identity of, the beneficial owners of legal entity customers that open new accounts, unless there is an exception.
- **Second**, it will add a "fifth pillar" to existing anti-money laundering ("AML") program requirements. Currently, AML programs have four pillars – policies and procedures; a designated AML compliance officer; testing; and training. The final rule adds to these program requirements by mandating risk-based procedures for conducting on-going customer diligence to understand the nature and purpose of the customer relationship.

The final rule is part of a larger package of reforms introduced by the Obama Administration to respond to issues such as money laundering, tax evasion and foreign corruption, highlighted by the so-called Panama Papers. These efforts include proposed amendments to the Bank Secrecy Act ("BSA") that would require all U.S. companies to report beneficial ownership information to the federal government, and changes to Internal Revenue Service ("IRS") regulations to mandate that certain companies, particularly single-owner limited liability companies, receive an employer identification number ("EIN") and submit to tax assessments. In addition, the U.S. Justice Department has proposed amendments

---

<sup>1</sup> 81 Fed. Reg. 29398 (May 11, 2016).

to existing laws to enhance the ability of law enforcement to pursue money laundering and corruption cases.

Below, we first review the new final rule and its requirements. We then describe the other Obama Administration efforts.

## I. FINCEN'S NEW REQUIREMENTS

### Which Entities Must Comply with the Final Rule?

As noted, the final rule applies to “covered financial institutions,” which refers to:

- Banks, including insured depository institutions, federally regulated trust companies, the U.S. agencies and branches of foreign banks and Edge Act corporations;
- Securities broker-dealers;
- Mutual funds; and
- Futures commission merchants and introducing brokers in commodities.<sup>2</sup>

### What Is the Date by Which Covered Financial Institutions Need to Comply with the Final Rule?

The final rule takes effect on May 11, 2018 (the “Applicability Date”), and applies to new accounts opened by covered financial institutions on or after that date. FinCEN delayed the Applicability Date in response to public comments, which identified the wide range of systems and process changes required to comply with the new rule.

FinCEN also specifically declined to make the requirements retroactively applicable, acknowledging that such a mandate “would be unduly burdensome.” That said, FinCEN does not allow covered financial institutions to ignore pre-existing accounts and customer relationships entirely; rather, FinCEN cautions that covered financial institutions “should obtain beneficial ownership information from customers existing on the Applicability Date when, in the course of their normal monitoring, the financial institution detects information relevant to assessing or reevaluating the risk of such customer.”

---

<sup>2</sup> On September 1, 2015, FinCEN published a proposal in the *Federal Register* to require investment advisers registered with the Securities and Exchange Commission (the “SEC”) to adopt AML programs and report suspicious activities. See Debevoise Client Update, [FinCEN Proposes Anti-Money Laundering Rules for Investment Advisers](#) (Aug. 31, 2015). The proposal did not seek to apply customer identification program (“CIP”) requirements to SEC-registered investment advisers and, presumably, that would be a predicate step before FinCEN sought to extend this CDD requirement to advisers.

## What Are the Beneficial Ownership Requirements of the Final Rule?

The final rule requires covered financial institutions to maintain written procedures to identify and verify the identity of each natural person who qualifies as a beneficial owner of a legal entity customer, subject to certain exceptions (as discussed below).

Legal Entity Customer. The final rule generally defines a legal entity customer as (i) a corporation, limited liability company or other entity created by the filing of a public document with a Secretary of State or similar office, (ii) a general partnership or (iii) any similar entity formed under the laws of a foreign jurisdiction. The preamble to the final rule notes that this definition includes limited partnerships and business trusts created by a filing with a state office, but it does not include sole proprietorships or unincorporated associations.<sup>3</sup>

Beneficial Owner. Individuals need to be identified as beneficial owners if they meet either of two tests established by the final rule.

- Ownership Prong: each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity customer; and
- Control Prong: a single individual with significant responsibility to control, manage or direct a legal entity customer, such as a CEO, CFO, managing partner or other individual who performs similar functions.

Accordingly, the maximum number of beneficial owners that the final rule requires to be collected for each legal entity customer is five; however, that number will vary from customer to customer. For legal entity customers with dispersed ownership, for example, there may be only one beneficial owner, under the Control Prong. We note some possible scenarios in [Appendix A](#).

In general, covered financial institutions may rely on information supplied by legal entity customers regarding their direct and indirect beneficial owners. To this end, FinCEN makes clear that covered financial institutions must verify the *identity* of beneficial owners (i.e., verify the individual's existence) but not his or her *status* as a beneficial owner of the legal entity customer. That said, the final rule also cautions that reliance may not be appropriate if a covered financial

---

<sup>3</sup> Trusts, with the exception of certain statutory trusts that require a filing with a state office, are not legal entity customers; regardless, FinCEN notes that existing supervisory guidance applicable to banking institutions and broker-dealers may require the institution to look through such trusts to obtain information about persons who control the trust in order to learn that the true identity of the customer.

institution “has knowledge of facts that would reasonably call into question the reliability” of beneficial ownership information provided by a legal entity customer. It therefore remains to be seen how examiners will apply this knowledge standard and whether this language, over time, will result in higher supervisory expectations than the rule arguably imposes.

One area of potential difficulty may be the determination of indirect, or ultimate, beneficial owners. For example, FinCEN reiterates, when discussing comments raised about the identification of indirect beneficial owners, that “financial institutions will generally be able to rely on the representations of the customer when it identifies its beneficial owners,” but FinCEN also notes that “the financial institution’s customer [must] identify its ultimate beneficial owner or owners as defined in the rule and not their nominees or ‘straw men.’” FinCEN declined to provide additional guidance on the responsibilities of covered financial institutions to identify indirect beneficial owners, nor did the agency offer guidance on what factors might trigger the knowledge standard described above such that a covered financial institution could not reasonably rely on a customer’s representations.

### **What Identification and Verification Steps Need Be Taken with Respect to Beneficial Owners of Legal Entity Customers?**

At the time of opening a new account for a legal entity customer, covered financial institutions must (a) collect information to identify each natural person who is a beneficial owner and then (b) verify the identity of that natural person.

To identify a beneficial owner, the final rule provides a choice between using a standard form, included as an appendix to the rule, or another means to obtain the same information required by the form, provided that the individual opening the legal entity customer’s account certifies, to the best of his or her knowledge, as to the accuracy of the information.<sup>4</sup> A corporate officer or other representative of the legal entity customer may complete this information on behalf of a beneficial owner.

The final rule also directs covered financial institutions to verify the identity of each beneficial owner “according to risk-based procedures to the extent reasonable and practicable.” The final rule states that, at a minimum, these

---

<sup>4</sup> FinCEN had originally proposed requiring the use of a standard certification form; in response to public comments, FinCEN has determined to allow (but not require) the use of a standard form. [Appendix B](#) provides a redline comparison of the final rule to the proposed rule.

verification procedures must contain the elements required under applicable CIP regulations, with an important distinction – a covered financial institution may use photocopies or other reproductions of original documents for documentary verification purposes.

Records of identification information must be maintained for at least five years after the account is closed, and records collected for verification purposes must be maintained for five years after the record is made.

### **Are There Exceptions to the Look-Through Requirements?**

Yes; 16 categories of legal entity customers are wholly excluded from the requirement to identify beneficial owners, and two categories of customers are partially excluded.<sup>5</sup>

The following are among those categories of legal entity customers wholly excluded from the rule's requirements:

- *Financial institutions* regulated by a federal functional regulator or a bank regulated by a state bank regulator;
- *Certain U.S. and non-U.S. governmental entities*;
- *Public companies* with stock listed on the New York, American or NASDAQ stock exchange;
- *Investment companies, investment advisers* and other entities registered with the SEC;
- *Certain entities* registered with the Commodity Futures Trading Commission;
- *Pooled investment vehicles*, including private funds, operated or advised by an entity excluded under the final rule, such as an SEC-registered investment adviser;
- *Insurance companies* subject to state regulation;
- *Financial market utilities* designated by the Financial Stability Oversight Council; and
- *Foreign financial institutions* established in a jurisdiction where the home-country regulator maintains beneficial ownership information on the institution.

---

<sup>5</sup> In addition, certain types of account relationships are excluded because FinCEN believes that they present low risks for money laundering. For example, FinCEN exempts from the beneficial ownership requirements private-label credit card accounts established at the retail point of sale.

Certain legal entity customers are partially excluded. Those customers are subject only to the Control Prong of the final rule.

- *Pooled investment vehicles* operated or advised by a financial institution not excluded under the final rule, such as certain foreign funds; and
- *Nonprofit corporations* or similar entities that have filed organizational documents with the appropriate U.S. state authority.

### **What Are Covered Financial Institutions Expected to Do with Beneficial Ownership Information?**

FinCEN expects covered financial institutions to use the beneficial ownership information to ensure compliance with other requirements. For example, FinCEN directs covered financial institutions to use beneficial ownership information to screen against the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury's Office of Foreign Assets Control ("OFAC"). FinCEN also recommends covered financial institutions develop risk-based procedures to determine whether beneficial owners should be screened through negative news searches as well as to consider whether the information is relevant to Currency Transaction Reporting requirements.

As a result, covered financial institutions will be expected to integrate beneficial ownership information into their AML, sanctions and other compliance-oriented systems and processes. Thus, the costs to covered financial institutions will not only be the development of new procedures and systems to capture and store beneficial ownership information but also costs necessary to ensure integration with other policies and systems.

### **What Are the New Risk-Based Due Diligence Requirements, Established as the "Fifth Pillar" of AML Programs?**

In addition to requiring covered financial institutions to collect beneficial ownership information about legal entity customers, FinCEN also expanded the AML program requirement for covered financial institutions. Specifically, as noted above, FinCEN adds a new "fifth pillar" to existing AML program requirements and mandates "risk-based procedures for conducting ongoing customer due diligence," including:

- Customer Risk Profile: to understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
- Monitor and Update: to maintain and update customer information, including beneficial ownership information for legal entity customers, on a risk basis as part of identifying and reporting suspicious activities.

With respect to the customer risk profile, FinCEN states that the requirement is to gather information about a customer at account opening to develop “a baseline against which customer activity is assessed for suspicious activity reporting.” FinCEN states that the obligation to update customer information generally would only be triggered when a covered financial institution, in the course of normal account monitoring, discovers information relevant to assessing the risk posed by the customer; FinCEN notes that it does not intend “to impose a categorical requirement to update customer or beneficial ownership information on a continuous or ongoing basis.”

FinCEN emphasizes that this fifth pillar reflects “nothing more than an explicit codification of existing expectations” rather than creating new obligations. To this end, FinCEN indicates the rule is designed merely to make explicit existing regulatory expectations regarding customer due diligence and to harmonize requirements across the financial sector.

It remains to be seen whether supervisory expectations will vary from FinCEN’s assurances and whether this fifth pillar will create new sources of enforcement risk. It seems highly likely that the new fifth pillar will create new compliance burdens: in designing and implementing procedures and controls to give effect to the final rule, covered financial institutions will be required, *in many cases for the first time*, to consider what circumstances should be the target of ongoing monitoring systems and which events should spur the collection of updated customer and beneficial ownership information.

Moreover, while (as noted above) the beneficial ownership requirement will apply to new accounts opened on or after May 11, 2018, the fifth pillar effectively may require covered financial institutions to conduct additional diligence on current accounts as well. Without doing so, institutions may not have adequate customer risk profiles for their existing customers.

## II. RELATED DEVELOPMENTS

As noted above, the final rule represents one aspect of a multi-pronged effort on the part of the Administration to address money laundering and related issues. As part of this effort, both the U.S. Treasury and Justice Departments announced new measures.

### *U.S. Treasury Department*

Contemporaneous to announcing the final CDD rule, the U.S. Treasury Department announced that it would submit new beneficial ownership

legislation to Congress. The legislation would require all U.S. companies, at the time of their creation, to file beneficial ownership information with the Treasury Department or face penalties for failure to comply.

The Treasury Department also has proposed new regulations to require certain foreign-owned entities, such as single-member limit liability companies, to obtain an employer identification number (“EIN”) from the IRS. This requirement would permit the IRS to determine whether these entities are being used to evade U.S. taxes. The Treasury Department also intends to use this requirement to gather information to share with non-U.S. tax authorities in furtherance of the United States’ commitments to foreign governments related to the Foreign Account Tax Compliance Act (“FATCA”). To that end, Treasury Secretary Lew called on Congress to approve tax treaties that have been under consideration for years and bring the United States into line with international standards on tax information sharing.

Additionally, the U.S. Treasury, through FinCEN, is reviewing information gained from Geographic Targeting Orders (“GTOs”) requiring the collection of beneficial ownership information for legal entities making cash purchases of high-value residential property in Miami and New York City. Based on this data, FinCEN may broaden the GTOs to other areas or propose a more comprehensive rulemaking.

#### *U.S. Justice Department*

The Justice Department also announced proposed legislation to expand its capacity to focus law enforcement resources on money laundering and corruption issues. Among these proposals are a call to revise federal money laundering and corruption offenses to complement the ability of federal prosecutors to charge international money launderers and fight international corruption.

Also announced or proposed are changes to obtaining bank and other records in money laundering investigations. The Justice Department has requested amendments to current law that would allow administrative, rather than grand jury, subpoenas to obtain records in money laundering investigations and changes to the BSA to increase the utility of subpoenaing U.S. branches of foreign banks in order to obtain foreign bank records.

\* \* \*

Please contact any of the authors for additional information. In addition, for e-mail updates on sanctions and related money laundering developments, please subscribe to the Debevoise & Plimpton Sanctions Alert, a monthly summary of developments in economic and trade sanctions. To subscribe, please e-mail [sanctions@debevoise.com](mailto:sanctions@debevoise.com) or sign up at the [Insights Subscribe Page](#) on our website. The Firm's sanctions-related publications may also be found at [The Sanctions Resource](#) page on our website.

## Appendix A – Application of the Beneficial Ownership Rule

*Scenario 1* – Four individuals own 25% each of a legal entity customer

- Five beneficial owners - The covered financial institution must collect beneficial ownership for the four owners AND a control person (assuming that the control person is different from the owners).

*Scenario 2* – No individual owns 25% or more of a legal entity customer

- One beneficial owner. The covered financial institution must collect beneficial ownership information for ONLY a control person.

*Scenario 3* – Company A owns 25% of the legal entity customer

- At least one beneficial owner. The covered financial institution must collect beneficial ownership information for a control person AND any natural person who owns, directly or indirectly, 25% or more of Company A (*i.e.*, the covered financial institution must look through the company to determine whether there is a natural person who indirectly owns 25% or more of the legal entity customer).

*Scenario 4* – A covered financial institution opens an intermediated account, such as an omnibus account, for a legal entity customer

- In accordance with existing guidance under the CIP requirements, the covered financial institution would identify and verify the beneficial owners of the customer opening the intermediated account but would not be obligated to look through an intermediated account (*i.e.*, the covered financial institution would not be required to seek beneficial ownership information on its customer's customer in these circumstances).

*Scenario 5* – The legal entity customer is a non-U.S. investment fund

- If the non-U.S. investment fund is not operated or advised by an excluded entity, such as an SEC-registered investment adviser, the covered financial institution must collect beneficial ownership information only for a control person (*i.e.*, a partial exclusion from the final rule).

## Appendix B – Redline of Proposed and Final Rule

### PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314 Pub. L. 107-56, 115 Stat. 307.

2. Add § 1010.230 ~~in subpart B~~ to read as follows:

§ 1010.230 Beneficial ownership requirements for legal entity customers.

(a) In general. Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compliance program required under 31 U.S.C. 5318(h) and its implementing regulations.

(b) Identification and verification. With respect to legal entity customers, the covered financial institution's customer due diligence procedures ~~should~~shall enable the institution to:

(1) Identify the beneficial owner(s) of each legal entity customer, ~~unless otherwise exempt pursuant to paragraph (d) of this section. To identify the beneficial owner(s), a covered financial institution must obtain~~ at the time a new account is opened, unless the customer is otherwise excluded pursuant to paragraph (e) of this section or the account is exempted pursuant to paragraph (h) of this section. A covered financial institution may accomplish this either by obtaining a certification in the form of Appendix appendix A of this section from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information; and

(2) Verify the identity of each beneficial owner identified to the covered financial institution, according to risk-based procedures to the extent reasonable and practicable. At a minimum, these procedures must ~~be identical to the covered financial institution's Customer Identification Program procedures~~ contain the elements required for verifying the identity of customers that are individuals under §1020.220(a)(2) of this chapter (for banks); §1023.220(a)(2) of this chapter (for brokers or dealers in securities); §1024.220(a)(2) of this chapter (for mutual funds); or §1026.220(a)(2) of this chapter (for futures commission merchants or introducing brokers in commodities); provided, that in the case of documentary verification, the financial institution may use photocopies or other reproductions of the documents listed in paragraph (a)(2)(ii)(A)(1) of §1020.220 of this chapter (for banks); §1023.220 of this chapter (for brokers or dealers in securities); §1024.220 of this chapter (for mutual funds); or §1026.220 of this chapter (for futures

commission merchants or introducing brokers in commodities). A covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.

(c) Account. For purposes of this section, account has the meaning set forth in §1020.100(a) of this chapter (for banks); §1023.100(a) of this chapter (for brokers or dealers in securities); §1024.100(a) of this chapter (for mutual funds); and §1026.100(a) of this chapter (for futures commission merchants or introducing brokers in commodities).

~~(ed)~~ Beneficial owner. For purposes of this section, ~~Beneficial Owner~~ beneficial owner means each of the following:

(1) Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25% percent or more of the equity interests of a legal entity customer; and

(2) 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.

(3) If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner for purposes of paragraph (d)(1) of this section shall mean the trustee. If an entity listed in paragraph (e)(2) of this section owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, no individual need be identified for purposes of paragraph (d)(1) of this section with respect to that entity's interests.

Note to paragraph ~~(ed)~~: The number of individuals that satisfy the definition of "beneficial owner," and therefore must be identified and verified pursuant to this 208 section, may vary. Under paragraph ~~(ed)~~(1) of this section, depending on the factual circumstances, up to four individuals may need to be identified. Under paragraph ~~(ed)~~(2) of this section, only one individual must be identified. It is possible that in some circumstances the same person or persons might be identified pursuant to paragraphs ~~(ed)~~(1) and (2) of this section. A covered financial institution may also identify additional individuals as part of its customer due diligence if it deems appropriate on the basis of risk.

~~(de)~~ Legal entity customer. For the purposes of this section;

- (1) Legal entity customer means: ~~A~~ a corporation, limited liability company, partnership or other similar business entity (whether 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 ~~state or of the United States or a~~ foreign jurisdiction) that opens a ~~new~~ an account.
- (2) Legal entity customer does not include:
- (i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;
  - (ii) A person described in § 1020.315(b)(2) through (5) of this chapter;
  - (iii) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of that Act;
  - (iv) An investment company, as defined in section 3 of the Investment Company Act of 1940, that is registered with the Securities and Exchange Commission under that Act;
  - (v) An investment adviser, as defined in section 202(a)(11) of the Investment Advisers Act of 1940, that is registered with the Securities and Exchange Commission under that Act;
  - (vi) An exchange or clearing agency, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 6 or 17A of ~~the Securities Exchange Act of~~ that Act;
  - (vii) Any other entity registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;
  - (viii) A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, each as defined in section 1a of the Commodity Exchange Act, that is registered with the Commodity Futures Trading Commission;
  - (ix) A public accounting firm registered under section 102 of the Sarbanes-Oxley Act; ~~and~~
  - (x) A ~~charity or nonprofit entity that is described in sections 501(c), 527, or 4947(a)(1) of the Internal Revenue Code of 1986, has not been denied tax exempt status, and is required to and has filed the most recently due annual information return with the Internal Revenue Service.~~ bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) or savings and loan holding company, as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n));
  - (xi) A pooled investment vehicle that is operated or advised by a financial institution excluded under paragraph (e)(2) of this section;

- (xii) An insurance company that is regulated by a State;
- (xiii) A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;
- (xiv) A foreign financial institution established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution;
- (xv) A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities; and
- (xvi) Any legal entity only to the extent that it opens a private banking account subject to §1010.620 of this chapter.
- (3) The following legal entity customers are subject only to the control prong of the beneficial ownership requirement:

  - (i) A pooled investment vehicle that is operated or advised by a financial institution not excluded under paragraph (e)(2) of this section; and
  - (ii) Any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate State authority as necessary.
- (ef)** Covered financial institution. For the purposes of this section, covered financial institution has the meaning set forth in § 1010.605(e)(1) of this chapter.
- (g)** New account. For the purposes of this section, new account means each account opened at a covered financial institution by a legal entity customer on or after the applicability date.
- (h)** Exemptions. (1) Covered financial institutions are exempt from the requirements to identify and verify the identity of the beneficial owner(s) set forth in paragraphs (a) and (b)(1) and (2) of this section only to the extent the financial institution opens an account for a legal entity customer that is:

  - (i) At the point-of-sale to provide credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at these retailers, up to a limit of \$50,000;
  - (ii) To finance the purchase of postage and for which payments are remitted directly by the financial institution to the provider of the postage products;
  - (iii) To finance insurance premiums and for which payments are remitted directly by the financial institution to the insurance provider or broker;

(iv) To finance the purchase or leasing of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of this equipment.

(2) Limitations on Exemptions. (i) The exemptions identified in paragraphs (h)(1)(ii) through (iv) of this section do not apply to transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties.

(ii) If there is the possibility of a cash refund on the account activity identified in paragraphs (h)(1)(ii) through (iv) of this section, then beneficial ownership of the legal entity customer must be identified and verified by the financial institution as required by this section, either at the time of initial remittance, or at the time such refund occurs.

~~(f)~~ Recordkeeping. A covered financial institution must establish procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(1) Required records. At a minimum the record must include:

(i) For identification, ~~the certification form described in paragraph (b) of this section, and any other~~any identifying information obtained by the covered financial institution pursuant to paragraph (b) of this section, including without limitation the certification (if obtained); and

(ii) For verification, a description of any document relied on (noting the type, any identification number, place of issuance and, if any, date of issuance and expiration), of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy.

(2) Retention of records. A covered financial institution must retain the records made under paragraph ~~(f)~~(1)(i) of this section for five years after the date the account is closed, and the records made under paragraph ~~(f)~~(1)(ii) of this section for five years after the record is made.

~~(g)~~ Reliance on another financial institution. A covered financial institution may rely on the performance by another financial institution (including an affiliate) of the requirements of this section with respect to any legal entity customer of the covered financial institution that is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(1) Such reliance is reasonable under the circumstances;

(2) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(3) The other financial institution enters into a contract requiring it to certify annually to the covered financial institution that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the covered financial institution's procedures to comply with the requirements of this section.

APPENDIX ~~A—CERTIFICATION~~ A to § 1010.230 — CERTIFICATION  
REGARDING BENEFICIAL OWNERS OF LEGAL ENTITY CUSTOMERS

I. GENERAL INSTRUCTIONS

What is this form?

To help the government fight financial crime, ~~federal~~ Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who ~~ultimately~~ own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

Who has to complete this form?

This form must be completed by the person opening a new account on behalf of a legal entity with any of the following U.S. financial institutions: (i) ~~A~~ a bank or credit union; (ii) a broker or dealer in securities; (iii) a mutual fund; (iv) a futures commission merchant; or (v) an introducing broker in commodities.

For the purposes of this form, a legal entity includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any ~~other~~ similar business entity formed in the United States or a foreign country. Legal entity does not include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

What information do I have to provide?

This form requires you to provide the name, address, date of birth and ~~social security~~ Social Security number (or passport number or other similar information, in the case of foreign persons) for the following individuals (i.e., the beneficial owners):

- (i) Each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (e.g., each natural person that owns 25 percent or more of the shares of a corporation); and
- (ii) An individual with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of “beneficial owner” may vary. Under section (i), depending on the factual circumstances, up to four individuals (but as few as zero) may need to be identified. Regardless of the number of individuals identified under section (i), you must provide the identifying information of one individual under section (ii). It is possible that in some circumstances the same individual might be identified under both sections (e.g., the President of Acme, Inc. who also holds a 30% equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (ii)), and up to five individuals (i.e., one individual under section (ii) and four 25 percent equity holders under section (i)).

The financial institution may also ask to see a copy of a driver’s license or other identifying document for each beneficial owner listed on this form.

**BILLING CODE 4810-02-P**

II. CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

- a. Name and Title of Natural Person Opening Account:
- b. Name and Address of Legal Entity for Which the Account is Being Opened:
- c. The following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:

~~(If no individual meets this definition, please write “Not Applicable.”)~~

Name	Date of Birth	Address <u>(Residential or Business Street Address)</u>	For U.S. Persons: Social Security Number	For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number <sup>1</sup>

--	--	--	--	--

(If no individual meets this definition, please write “Not Applicable.”)

d. The following information for one individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under section (c) above may also be listed in this section (d)).

Name/ <u>Title</u>	Date of Birth	Address <u>(Residential or Business Street Address)</u>	For U.S. Persons: Social Security Number	For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number <sup>1</sup>

I, \_\_\_\_\_ (name of natural person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature:      Date:

<sup>1</sup>In lieu of a passport number, foreign persons may also provide an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Legal Entity Identifier (Optional)

## PART 1020—RULES FOR BANKS

3. The authority citation for part 1020 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314 Pub. L. 107-56, 115 Stat. 307.

4. Revise § 1020.210 ~~in subpart B~~ to read as follows:

§1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.

A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the financial institution implements and maintains an anti-money laundering program that:

- (a) Complies with the requirements of §§ 1010.610 and 1010.620 of this chapter;
- (b) Includes, at a minimum:
  - (1) A system of internal controls to assure ongoing compliance;
  - (2) Independent testing for compliance to be conducted by bank personnel or by an outside party;
  - (3) Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance;
  - (4) Training for appropriate personnel; and
  - (5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:
    - (i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
    - (ii) Conducting ongoing monitoring to ~~maintain and update customer information and to~~ identify and report suspicious transactions; ~~and~~ and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in §1010.230 of this chapter); and
- (c) Complies with the regulation of its Federal functional regulator governing such programs.

## PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

5. The authority citation for part 1023 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314 Pub. L. 107-56, 115 Stat. 307.

6. Revise § 1023.210 ~~in subpart B~~ to read as follows:

§1023.210 Anti-money laundering program requirements for brokers or dealers in securities.

A broker or dealer in securities shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the broker-dealer implements and maintains a written anti-money laundering program approved by senior management that:

- (a) Complies with the requirements of §§ 1010.610 and 1010.620 of this chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs;
- (b) Includes, at a minimum:
  - (1) The establishment and implementation of policies, procedures, and internal controls reasonably designed to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;
  - (2) Independent testing for compliance to be conducted by the broker-dealer's personnel or by a qualified outside party;
  - (3) Designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the program;
  - (4) Ongoing training for appropriate persons; and
  - (5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:
    - (i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
    - (ii) Conducting ongoing monitoring to ~~maintain and update customer information and to~~ identify and report suspicious transactions; ~~and~~ and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in §1010.230 of this chapter); and
- (c) Complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; provided that the rules, regulations, or requirements of the self-regulatory organization governing such

programs have been made effective under the Securities Exchange Act of 1934 by the appropriate Federal functional regulator in consultation with FinCEN.

PART 1024—RULES FOR MUTUAL FUNDS

7. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314 Pub. L. 107-56, 115 Stat. 307.

8. Revise § 1024.210 ~~in subpart B~~ to read as follows:

§1024.210 Anti-money laundering program requirements for mutual funds.

(a) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the U.S. Securities and Exchange Commission.

(b) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program;

~~(4) Provide ongoing training for appropriate personnel; and~~

~~(5)~~ Implement appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) ~~conducting~~ Conducting ongoing monitoring ~~to maintain and update customer information and~~ to identify and report suspicious transactions. and, on a risk basis, to maintain and update customer information. For purposes of this

[paragraph \(b\)\(4\)\(ii\), customer information shall include information regarding the beneficial owners of legal entity customers \(as defined in §1010.230 of this chapter\).](#)

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

9. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314 Pub. L. 107-56, 115 Stat. 307.

10. Revise § 1026.210 ~~in subpart B~~ to read as follows:

§1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.

A futures commission merchant and an introducing broker in commodities shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the futures commission merchant or introducing broker in commodities implements and maintains a written anti-money laundering program approved by senior management that:

- (a) Complies with the requirements of §§ 1010.610 and 1010.620 of this chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs;
- (b) Includes, at a minimum:
  - (1) The establishment and implementation of policies, procedures, and internal controls reasonably designed to prevent the financial institution from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;
  - (2) Independent testing for compliance to be conducted by the futures commission merchant or introducing broker in commodities' personnel or by a qualified outside party;
  - (3) Designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the program;
  - (4) Ongoing training for appropriate persons;
  - (5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

- (i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
- (ii) Conducting ongoing monitoring to ~~maintain and update customer information and to~~ identify and report suspicious transactions; ~~and~~ and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in §1010.230 of this chapter); and
- (c) Complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs have been made effective under the Commodity Exchange Act by the appropriate Federal functional regulator in consultation with FinCEN.

Dated: ~~July 23~~ May 2, 2014 ~~2016~~.