

## CLIENT ALERT

### NEW ANTI-MONEY LAUNDERING (AML) RULES FOR US FINANCIAL INSTITUTION ACCOUNTS OF LEGAL ENTITIES ARE EFFECTIVE IN LESS THAN THREE (3) MONTHS (MAY 11, 2018)

#### *WILL THESE RULES EFFECT YOU?*

*FinCEN's Final AML Rule on Customer Due Diligence "(CDD)" for new "legal entity" customers of covered financial institutions is less than 3 months away from going into effect (May 11, 2018).*

#### Background

After a lengthy rulemaking process taking over four years to complete and including town hall meetings in Washington, DC, Chicago, Los Angeles, Miami and New York, the Financial Crime Enforcement Network of the U.S. Treasury Department ("FINCEN") has promulgated customer diligence rules for financial institutions opening new accounts for legal entities which depart dramatically from present requirements. *The date for final compliance with these Rules is less than three months away.*

By May 11, 2018, two new AML requirements must be met:

- 1) **Customer level:** Covered financial institutions must implement procedures to enhance due diligence (EDD) to identify each beneficial owner of and a control person for each new "legal entity" customer. This changes the financial institution's duty from knowing who the customer/client entity is to knowing who are its owners and designated control person.
- 2) **Programmatic:** Covered financial institutions must augment their AML programs to use the customer information developed for new legal entity customers (after verification) to understand the nature of the customer relationship, to: develop a risk profile; use the risk profile to update customer information; and enhance customer AML risk assessments, and AML monitoring and surveillance.

For financial institutions this is a fundamental shift from a duty to *Know Your Customer* (*know the entity*) to a deeper obligation *To Know the Entity's Owners and Control Person*. The purpose of these beneficial ownership identification and review rules is to help regulators and law enforcement authorities by enabling identification of individuals who may be “hiding” behind legal entities and legal entity accounts to disguise the origins and movement of criminal proceeds or assets of “politically exposed persons.” Because the EC and other jurisdictions already have stringent requirements, and the US has been criticized for years for having none, expect that this Rule will be taken very seriously by US regulators and criminal law enforcement authorities. ***DO NOT EXPECT IT TO BE POSTPONED.***

Accessible [HERE](#) is a detailed explanatory memorandum to help you see if and how these rules may apply to you. If you are a financial institution like a bank, trust company, broker-dealer, registered mutual fund or crowdfunding portal, you are likely covered but should also check further since the Rules have a host of exceptions. While unregistered investment advisors and funds and registered advisers are also generally excluded from coverage that does not end potential concerns for them. Although these entities will *not* be required to comply with the rules for *their* customers *they* will still be feel effected as customers or trading counterparties of other financial institutions that *are* covered.

Even if you are not a “covered financial institution,” if you own or use a “legal entity” (such as a corporation, partnership (general or limited) or limited liability corporation) and plan to or may open a new financial institution account or relationship be prepared for the dramatic changes in what will be expected of you. Even *existing* customers, especially at large institutions, will at some point feel the impact of these changes if *they* open an additional account as well as under other circumstances explained in our *Client Alert*.

If you are an existing client of EGS or have worked with us in the past, you may want to call or write the EGS attorney you work(ed) with. You can also contact EGS financial regulatory partner, William B. Peterson, [bpeterson@egsllp.com](mailto:bpeterson@egsllp.com), the author of this Client Alert and the Client Memorandum.

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