

# BSA/AML COMPLIANCE

## Recent and Proposed Changes to the Current Enforcement Regime

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# Customer Due Diligence Requirements for Financial Institutions Rule (The Beneficial Ownership Rule)

# Added a New “Fifth Pillar”

- Requires FIs to:
  - Understand the nature and purpose of relationships to develop a customer risk profile
  - Conduct ongoing monitoring for reporting suspicious transactions
  - Using a risk-based approach, maintain and update customer information



# Beneficial Ownership (BO) Identification and Verification

- Must identify and verify identity of beneficial owners of legal entity customers for each new account at time account is opened
  - Must obtain information for each BO, and person opening account must certify accuracy of information
  - Must verify the *identity* of BOs
  - Not required to verify their *status* as BOs



# Who is a Beneficial Owner?

- A natural person
  - Two “prongs” – “ownership” and “control”
    - **Ownership Prong:** Any individual who, directly or indirectly, owns 25% or more of the legal entity customer
- AND**
- **Control Prong:** One individual who has “significant responsibility to control, manage, or direct the legal entity” (the “Control Prong”)



# Corporate Transparency Act of 2019

# Overview

- Would compel Secretary of Treasury to set minimum standards for state incorporation practices
- Applicants forming a corporation or LLC would be required to:
  - Report beneficial ownership information directly to FinCEN and
  - Continuously update such information



# Who is a Beneficial Owner?

- Defines “beneficial owner” as a natural person who:
  - “exercises substantial control over a corporation or limited liability company” or
  - “has a substantial interest in or receives substantial economic benefits from the assets of a corporation or limited liability company”
- Fails to define the terms “exercises substantial control” or “substantial interest”



Cannabis

# Hemp and the 2018 Farm Bill



- Agricultural Improvement Act of 2018
  - Provides for Federal licensing of industrial hemp producers through state programs approved by Dept. of Agriculture
  - Hemp produced under these programs is excluded from CSA definition of marijuana (must have less than .3% THC)
  - Federal government has 60 days after state applications are submitted to approve or deny state programs
  - Do current operators' activities comply with new regime?
    - *Big Sky Scientific, LLC v. Idaho State Police*, No. 1:19-cv-00040 (D. Idaho).

# STATES Act of 2019

- Initially issued in 2018 in reaction to rescinding of the Cole Memo
- Reintroduced April 5, 2019
- Amends CSA so it no longer applies to any person acting in compliance with State or tribal laws relating to the manufacture, production, possession, distribution, dispensation, administration, or delivery of marijuana
- For FI's – provides that compliant transactions are not trafficking and monies related to them do not constitute proceeds of unlawful activity



# SAFE Banking Act of 2019

- Secure and Fair Enforcement Banking Act of 2019 introduced on March 7, 2019.
- Prohibits a federal banking regulator from:
  - (1) terminating or limiting the deposit insurance or share insurance of a FI for providing financial services to a MRB
  - (2) prohibiting or discouraging a FI from offering financial services to a MRB
  - (3) recommending, incentivizing, or encouraging a FI not to offer financial services to an account holder solely because the account holder is affiliated with a MRB
  - (4) taking any adverse or corrective supervisory action on a loan made to a person because the person either owns a MRB or owns real estate or equipment leased or sold to a MRB
- Removes liability/forfeiture exposure for depository institution providing loan or other services to MRB



A Bill:

“To Make Reforms to the Federal Bank  
Secrecy Act and Anti-Money  
Laundering Laws, and for Other  
Purposes”

# Overview

- Creates BSA Whistleblower Incentives
- Three Sections:
  - Strengthening the Treasury
  - Improving AML/CFT oversight
  - Modernizing the AML system
- Common Themes
  - BSA/AML regulation as a matter of national security
  - Need for cooperation among public/private sectors and the international community
  - Need to encourage innovation as the technological conduits for financial crimes evolve



# Creation of BSA Whistleblower Incentives

- Would provide awards for “any judicial or administrative action brought by FinCEN under the BSA that results in monetary sanctions exceeding \$1,000,000”
- Whistleblower must provide “original information” leading to a successful action
  - Information derived from the independent knowledge or analysis of the whistleblower
  - Not known to FinCEN from any other source, and
  - Not exclusively derived from allegations made in judicial or administrative hearings, government reports or other government sources, or the news media, unless the whistleblower was the source of that information
- Whistleblowers would receive between 10%-30%



# Strengthening the Treasury

- Seeks “to protect our national and collective security, [and] to safeguard the integrity of the international financial system”
- Would create Privacy and Civil Liberties Officers within each financial regulator, FinCEN, and IRS
  - To be consulted regarding regulation developments and review, information sharing activities, and evaluation and regulation of new technologies
  - Would form a Privacy and Civil Liberties Council
- Emphasizes the need for international coordination
  - Creates Treasury Attaché Program
- Would create FinCEN domestic liaisons tasked with specific geographic regions of the U.S.

# Improving AML/CFT oversight

- Would amend BSA to allow FIs to share SARs with their foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks
- Would allow banks to share resources to manage BSA/AML obligations more efficiently and effectively
  - Directs the Secretary of Treasury and appropriate supervising agencies to conduct an outreach program to provide financial institutions with best practices for sharing resources



# Modernizing the AML System

- Would encourage “financial institutions to consider, evaluate, and where appropriate, responsibly implement innovative approaches” to BSA/AML compliance
- Would create an Innovation Lab within each applicable financial agency to:
  - Provide outreach to law enforcement, financial intuitions, and other persons (including vendors and technology) and
  - Support the implementation of innovation and new technologies



# Kleptocracy Asset Recovery Rewards Act

# Overview

- Creates a reward program for whistleblowers who help identify persons who receive and retain stolen assets linked to foreign government corruption
- Defines “foreign government corruption” as the “bribery of a foreign public official, or the misappropriation, theft or embezzlement of public funds or property by or for the benefit of a foreign public official”



# The Whistleblower Program

- Whistleblowers who provide information leading to restraint, seizure, forfeiture, or repatriation of “stolen assets” linked to foreign government corruption may be entitled to a reward of up to \$5 million
  - “Stolen assets” are “any ‘financial assets’ within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from foreign government corruption.”
- Whistleblower and any immediate family may be offered asylum or other protection measures to mitigate the risk of retaliation



# Questions??

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