
THE CONSUMER FINANCE PODCAST: RECENT DEVELOPMENTS IN ANTI-MONEY LAUNDERING**HOST: CHRIS WILLIS****GUEST: JORDI DE LLANO****POSTED: OCTOBER 27, 2022****Chris Willis:**

Welcome to the *Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper's Consumer Financial Services regulatory practice. And I'm really glad you've joined us for today's podcast, which is going to be about a very interesting recent development relating to anti-money laundering. But before we get into that topic, let me remind you to visit and subscribe to our blog, consumerfinancialserviceslawmonitor.com, where you'll get updates every day about everything that's going on in the consumer finance world, and don't forget to check out our other podcasts. We have several of them. We have [FCRA Focus](#) all about the Fair Credit Reporting Act, [The Crypto Exchange](#), which of course is about all things crypto and our privacy and data security podcast, [Unauthorized Access](#), all of which are available on all popular podcast platforms. And if you like this podcast, please let us know. Leave us a review on your podcast platform of choice and let us know how we're doing.

Now, as I said, today we're going to be talking about a recent development relating to anti-money laundering. And I know that's not the normal thing that we talk about on this podcast because it's not really a consumer financial services law, but it is something that financial institutions need to care deeply about. And here at Troutman Pepper, one of the strengths that we have is we have a group that can address all the needs of financial institutions. And so that's why I feel so lucky to have my partner, Jordi de Llano on the podcast today to talk about what's going on with a recent FinCEN final rule. Jordi, first of all, welcome to the podcast. Thanks for being here.

Jordi de Llano:

Hey. Thanks for having me, Chris. I'm really excited to be here.

Chris Willis:

Just to give you a little bit of background on Jordi, Jordi's, a partner in our firm and used to be a federal prosecutor and anti-money laundering was his special area of expertise when he was with the U.S. Attorney's Office. So he's the perfect person to talk to us today about what's going on with anti-money laundering, and I've asked him to be sort of a regular participant on our podcast so that our listeners can hear when anything interesting goes on with respect to anti-money laundering because it is such an important aspect of compliance for covered financial institutions. Jordi, with that background, I know just right at the end of September of 2022, FinCEN issued a final rule relating to beneficial ownership reporting under the Bank's Secrecy Act. So just give us a little bit of background. Tell us what FinCEN did.

Jordi de Llano:

That's right, Chris. Late last month, FinCEN issued a final rule issuing guidance on its new beneficial ownership rule. But let me back up just a bit to provide some context as to where this rule came from. Back in January of last year, 2021, the government enacted what is known as the Corporate Transparency Act. This is a law that was designed as a tool really to combat those bad actors who use shell companies or front companies as a means of evading

government sanctions or other anti-money laundering laws. The Corporate Transparency Act of CTA as it's known. What it did was it amended the Bank Secrecy Act and created this beneficial ownership rule under this new part of the BSA. Certain companies that are registered to do business in the U.S. are now required to accurately report to FinCEN all of the identities and certain identifying information about all of their beneficial owners.

And that's a bit of a departure from what we've seen in the past. FinCEN requiring, especially with other companies that are subject to the BSA. We know they've historically been required as part of their customer due diligence requirements to identify and maintain information on controlled persons. But now we really have a situation where FinCEN is going to require these companies, whether they're subject to the BSA or not, to report that information. The CTA also imposed other requirements on FinCEN itself to develop protocols on how that information can be used and who will have access to it. That'll come in additional rules that are expected to come down the line.

Chris Willis:

So is it fair to say, Jordi, that the basic thrust of the rule is to require sort of reporting deeper into corporate or trust ownership structure to get at the real people behind it rather than having entities in the way that may not mean much?

Jordi de Llano:

That's exactly right. And the need for this, Chris has always existed. It's nothing new. The use of front companies by bad actors or just by individuals who are seeking to hide assets, whether it's from the government or from other parties, has been around for quite some time. What has evolved? The complexity or the sophistication of these business entities and structures that are used. The government has always been searching for more information or for additional means on how to get that information on who truly owns or controls a business, and for the past few years, as I said, we've been kind of moving in that direction. That customer due diligence rule that I mentioned earlier, which was enacted back in May of 2018, is one of those examples.

For those of you listening that don't know about that rule, FinCEN created this rule again as part of the BSA and as part of the requirements under the BSA for covered institutions to collect beneficial ownership information on their legal entity customers, corporations, LLCs, any other legal entity that will maintain an account at a financial institution or a covered financial institution. The government historically was able to access that information in different ways, mostly through the use of a subpoena. Now with this new requirement, the government will have that direct report from the legal entities themselves, which cuts down on time, but it also gives the investigators additional data, which can be compared to the customer due diligence information that they obtain from the BSA required reporting. So it is a benefit for the government and it's going to create an additional, a significant additional hurdle on all companies that will have to now maintain and report this information.

Chris Willis:

Speaking of hurdles, let's say I'm a financial institution that's covered by the anti-money laundering laws like the BSA. What does this rule change mean to me from the standpoint of my obligations as a financial institution?

Jordi de Llano:

From the standpoint of the financial institution, your obligations are not going to change at the moment based on the final rule that was issued. This is directed less to the financial institution that's covered and already gathering information on its customers and more so toward any other legal entity that is not already required to furnish that information to FinCEN. What the CTA and the new beneficial ownership rule did do is it also requires FinCEN to make changes to the customer due diligence rule to come in line with the requirements of the new beneficial ownership rule. That has not been released yet. That's additional rule making that we expect is going to come in the next few months. But for example, there are differences in what is required by FinCEN's new beneficial ownership rule and what was historically required under the customer due diligence rule.

One of those differences is under the customer due diligence rule, banks were required to report on at least one control person that may have access to an account or may control a particular account. Under this new rule, legal entities are required to report identifying information on all beneficial ownership that would fall under that rule. And Chris, we could talk more about what is in the rule, specifically whose information will be reported. Because I think that really gets to the heart of where we're going to see the differences between the rules that are already in effect and the specifics of the new rule.

Chris Willis:

Sure. I would love for you to talk about that. So tell me what's different in terms of who's sort of in the dragnet of information reporting now that wasn't there before.

Jordi de Llano:

Under the new rule, FinCEN now requires what are known as reporting companies to file reports that identify themselves and provide information on the identities of all of their beneficial owners and all company applicants. Beneficial owner and company applicant are also defined terms. So the types of companies that are now subject to the rule include any domestic LLC, corporation, or frankly any legal entity that is organized or formed by filing with a Secretary of State. That's the first category that falls under reporting companies. The next category is any foreign corporation, LLC or foreign formed entity that is registered to do business in a state by filing with a Secretary of State. That pretty much covers everything other than a sole proprietorship. I mean, there are a number of exemptions, banks, for example, not included under this requirement. Tax exempt entities not included, issuers as defined by the SEC, not included.

There are 23 separate categories of exemptions that would not fall under this rule, but the breadth of it is already very significant. The rule also requires companies to report on their beneficial owners. That would mean anybody that has a 25% or more interest or control of the ownership shares of a company and that is directly or indirectly are covered as beneficial owners. The category also covers anybody who otherwise exercises substantial control over that company. Again, a new category that was not previously included under the customer due diligence rules under the BSA. Substantial control can mean many things, and it's also specifically defined within the rule, but it can mean things like the authority to appoint senior officers of a company. A person can exercise substantial control if they are in fact senior officers of our company or have influence over how information is reported. That really broadens the category and the scope of the folks who can be included as beneficial owners.

The last piece that this new rule covers, Chris concerns company applicants, which means any individual who directly or indirectly files documents to create or form the legal entity in the first place. This is to avoid concealing the identity of beneficial owners by using intermediary companies to file with the secretaries of state. And the information that has to be reported is significant. It's not just identifying a name of another company or a holding company. As far as the information that is required for the reporting companies its name, address, jurisdiction of formation, tax identification numbers. For beneficial owners themselves, it's dates of birth, actual current residential addresses, unique identifying numbers such as passport, social security, or driver's license numbers and pictures of those documents. So the government is really making a concerted effort to get all of the details it needs to be able to identify anybody who plays a role within these companies.

Chris Willis:

So is the idea that now that the beneficial ownership reporting rule has come out right at the end of September, your thinking is that the customer due diligence rule will be updated to basically require financial institutions to collect all of this information from business customers?

Jordi de Llano:

Absolutely. To the extent the definitions of the legal entities are not already aligned, my expectation is they will be, and financial institutions will have to be collecting this information. I mean, the good thing is most have already gone down this road because they have four years operating under the customer due diligence rules. But for companies that are not already in the habit of reporting to FinCEN, companies should start thinking about when they will be subject to this rule, when they will begin to have to collect this information for filing because the penalties for violating it can be significant. Civil penalties of up to 500 bucks a day until the filing is completed and criminal penalties of up to 10,000 per violation and some prison time as well. So companies should identify the relevant timeframes that they need to start collecting this information for.

Chris Willis:

Got it. Do you have any other parting thoughts for covered financial institutions about either what they may need to do to start getting ready for these anticipated rule change or anything else that might be going on that you want to sort of alert them to?

Jordi de Llano:

Putting my old prosecutor hat on, I think this is going to be significant as far as how much information is now available to the government and the fact that they now will have multiple sources of information. I think what historically may have been just one inquiry with a covered financial institution via subpoena for customer information for KYC type information. Now that they are going to have multiple sources of information, this may lead to additional inquiries from the government to cover financial institutions. And as a part of that inquiry, financial institutions will want to make sure that they're collecting and reporting this information accurately because now the government will have a basis to compare what the financial institution has with another separate filing requirement. Right.

The last piece, Chris, that I think folks should understand is that this rule isn't really scheduled to go into effect until January of 2024. So we still have about a year and a half until companies

have to start abiding by it. For any company that was already in existence as of January 2024, they will have a year to make their filings. For companies created after that point, it will be 30 days. It's a ways out, but still fast approaching.

Chris Willis:

Well, that's right, and particularly when you think about if financial institutions need to make changes to their systems of record to gather and report this information, as you anticipate may happen, those system builds don't happen overnight in large financial institutions. So having a long time in terms of lead time is necessary actually to allow them to get their systems ready to do it, at least in my experience.

Jordi de Llano:

That's exactly right. And we'll keep you posted. We'll come back when we have more information and the additional rule making comes down in the next couple months and provide updates to your listeners.

Chris Willis:

That's great, Jordi and I really appreciate you being here to be on the podcast today to tell us about what's happened and what's coming. And I really want to take you up on your offer to continue being on the podcast periodically to keep our listeners up to speed on everything that's going on that's newsworthy with respect to AML. And it's a great resource for us to have at the firm and for our listeners to have you on the podcast. So thank you for being on today. And thank you to our listeners of course, for tuning into today's episode. Don't forget to visit our blog, consumerfinancialserviceslawmonitor.com and hit that subscribe button so that you can get our daily updates about what's going on in the consumer finance world. And also head on over to troutman.com and add yourself to our Consumer Financial Services email list so you can get copies of our alerts and webinar invitations. And of course, stay tuned for a great new episode of this podcast every Thursday afternoon. Thank you all for listening.

Copyright, Troutman Pepper Hamilton Sanders LLP. These recorded materials are designed for educational purposes only. This podcast is not legal advice and does not create an attorney-client relationship. The views and opinions expressed in this podcast are solely those of the individual participants. Troutman Pepper does not make any representations or warranties, express or implied, regarding the contents of this podcast. Information on previous case results does not guarantee a similar future result. Users of this podcast may save and use the podcast only for personal or other non-commercial, educational purposes. No other use, including, without limitation, reproduction, retransmission or editing of this podcast may be made without the prior written permission of Troutman Pepper. If you have any questions, please contact us at troutman.com.