



## FinCEN Customer Due Diligence Requirements Will Affect Certain Securities Offerings

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Accordingly, selling security holders or issuers that are not excluded entities (see below) in block trades, bought deals or other underwritten securities offerings will want to plan in advance so that the necessary verification can be completed efficiently by all underwriters to avoid delaying otherwise rapid offerings. For example, to avoid delays in block trades if potential underwriters will be asked to submit bids for offering terms, sellers should consider collecting and including the required identification and verification information in the bid invitation package. As described below, this information includes a certification form and a copy of an identity document for each beneficial owner under the CDD Rule.

In particular, for each legal entity customer, a covered financial institution must identify, and verify the identity of, up to four individuals who satisfy the “Ownership” prong, and at least one individual who satisfies the “Control” prong, of the “beneficial owner” definition under the rule:

- each individual, if any, who directly or indirectly owns 25 percent or more of the equity interests of a legal entity customer (the “Ownership” prong); and
- a single individual with significant responsibility to control, manage or direct a legal entity customer (e.g., a CEO, CFO, COO, managing member, general partner, president, vice president or treasurer, or a person performing similar functions) (the “Control” prong).

For each such individual, covered financial institutions must identify the individual (e.g., by obtaining a completed certification in the [Form](#) provided by FinCEN under the CDD Rule or

otherwise collecting the name, date of birth, address and social security (or similar) number from such individual), and must take action to verify the identity of any beneficial owner by means of a copy of a valid identity document, such as a driver's license or passport.

Although the CDD Rule imposes additional burdens on securities and financial transactions, several categories of entities are excluded from the definition of "legal entity customer." Accordingly, covered financial institutions are not required to obtain beneficial ownership information about the following entities:

- any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Stock Exchange or NASDAQ stock exchange
- any entity organized under the laws of the United States or of any state at least 51 percent of whose common stock or analogous equity interests are held by a listed entity
- any issuer that has registered securities under Section 12 of the Securities Exchange Act of 1934 or that is required to file reports under Section 15(d) of that Act
- financial institutions subject to regulation by a federal functional regulator, banks regulated by a state bank regulator and insurance companies regulated by a state
- any pooled investment vehicle operated or advised by a financial institution excluded from the definition of legal entity customer
- any foreign financial institution established in a jurisdiction where the regulator of the institution maintains beneficial ownership information regarding the institution.

The foregoing is a summary of key implications of the CDD Rule for certain securities offerings. The CDD Rule imposes additional compliance obligations for covered financial institutions that are described in detail in the May 11, 2016, [Adopting Release](#), a June 19, 2016, [FAQ](#), an April 3, 2018, [FAQ](#) and a May 11, 2018, [press release](#) reminding financial institutions that the CDD Rule became effective on that date.

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