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March First Half Developments

Overview

FinCEN is thinking about requiring banks to do substantially more than they currently do when doing due diligence on their customers. The KYC concept may be extended further to the beneficial owners of companies that do business with banks. This of course can be complicated given the varied business structures and ownership chains. Nonetheless, clever bad guys have a penchant for covering their tracks and complicated ownership structure can be the best way to conceal the true drivers of a business. We did a detailed memorandum on this idea and distributed to compliance professionals. We would be glad to send additional copies to interested parties. Identity theft continues to receive regulatory scrutiny and the SEC and CFTC have proposed detailed procedures to protect customer information.

Enhanced Due Diligence on Beneficial Ownership

On March 5, 2012, FinCEN published a notice of proposed rulemaking on new rules pertaining to the development of a customer due diligence regulation that would codify and strengthen existing regulatory requirements and supervisory expectations, and require financial institutions to identify beneficial ownership of their accountholders. See the ANPR at: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-05/html/2012-5187.htm>

Identity Theft Red Flag Rules

On March 6, 2012, the SEC and the CFTC published proposed rules and guidelines would require financial institutions and creditors to develop and implement a written identity theft prevention program that is designed to detect, prevent, and mitigate identity theft in connection with certain existing accounts or the opening of new accounts. The Commissions also are proposing guidelines to assist entities in the formulation and maintenance of a program that would satisfy the requirements of the proposed rules. Second, the proposed rules would establish special requirements for any credit and debit card issuers to assess the validity of notifications of changes of address under certain circumstances. See the proposed rules at: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-06/html/2012-5157.htm>

Comment Period on Early Remediation

On March 7, 2012, the Fed published a notice to extend the public comment period from March 31, 2012, until April 30, 2012. On January 5, 2012, the Board published proposed rules to implement the enhanced prudential standards and the early remediation requirements. Due to the range and complexity of the issues addressed in the rulemaking, the Board has determined that an extension of the comment period is appropriate. See the Fed's announcement at: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-07/html/2012-5522.htm>

Block Trading for Swap Transactions

On March 15, the CFTC published proposed rules to implement certain statutory provisions enacted by Title VII of the Dodd-Frank Act. The Commission is proposing regulations that would define the criteria for grouping swaps into separate swap categories and would establish methodologies for setting appropriate minimum block sizes for each swap category. In addition, the Commission is proposing to prevent the public disclosure of the identities, business transactions and market positions of swap market participants. See the Commission's proposed rule at: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/html/2012-5950.htm>

First Meeting of Federal Insurance Advisory

The first meeting of the Federal Advisory Committee on Insurance is scheduled for March 30, 2012. In this meeting Committee members will discuss topics of interest to the Committee and the work of the Committee in relation to any topic of interest or focus. The Committee will also receive a report on the work to date of the Federal Insurance Office. See the Committee's notice of its meeting at: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-12/html/2012-5935.htm>

Streamlining Consumer Finance Regulations

The BCFP had on December 5, 2011, requested suggestions from the public on how to streamline its regulations. On March 13, 2012, the BCFP extended the comment reply period for the Streamlining Notice to June 4, 2012. See the notice at: <http://www.gpo.gov/fdsys/pkg/FR-2012-03-13/html/2012-5933.htm>

Protecting Confidential Information Submitted to BCFP

On March 15, 2012, the CFPB published proposed rules relating to the confidential treatment of

information obtained from persons. These rules provide that the submission of any information to the Bureau will not waive as to any other person or entity. In addition, the Bureau's provision of privileged information to another Federal or State agency does not waive any applicable privilege. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/html/2012-6254.htm>

This advisory is a service of Connell & Andersen LLP for our clients and friends. It is not a full recitation of all developments. The descriptions are summaries of complex and detailed laws and regulations and may be incomplete or misleading. We invite any of our readers to contact us to discuss any items contained herein for further elaboration.