UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Bureau of Economics

October 3, 2014

Ms. Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Re: Docket Number FINCEN-2014-0001; RIN 1506-AB25:
Customer Due Diligence Requirements for Financial Institutions

Dear Director Shasky Calvery:

The staffs of the Federal Trade Commission's Bureau of Consumer Protection and Bureau of Economics (collectively, "FTC staff")[1] appreciate the opportunity to comment on the Financial Crimes Enforcement Network's ("FinCEN") proposed Customer Due Diligence Rule ("CDD Rule" or "Rule").[2] FTC staff offers the following comments on the potential impact of the proposed changes to improve the Commission's ability to gather financial intelligence to track down the perpetrators of fraud.[3]

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[1] These comments represent the views of the staff of the Federal Trade Commission's Bureau of Economics and Bureau of Consumer Protection. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

[2] Notice of Proposed Rulemaking Customer Due Diligence Requirements for Financial Institutions ("NPRM"), 79 Fed. Reg. 45151 (Aug. 4, 2014). In 2012, FinCEN published an Advanced Notice of Proposed Rulemaking ("ANPRM") requesting public comment on whether it should implement a rule to codify and strengthen CDD requirements for financial institutions. 77 Fed. Reg. 13046 (Mar. 5, 2012).

[3] This comment serves to explain how the proposed Rule would assist the FTC's law enforcement efforts aimed at fighting fraud in the marketplace. As discussed below, the FTC lacks jurisdiction over banks and does not have access to information about the full impact of the proposed Rule on consumers.

I. Introduction

On August 4, 2014, FinCEN published a Notice of Proposed Rulemaking ("NPRM") requesting public comment on the proposed CDD Rule pursuant to its authority to implement, administer, and enforce compliance with the Bank Secrecy Act ("BSA") and associated laws and regulations.[4] The proposed Rule is aimed at clarifying and strengthening the customer due diligence requirements for U.S. financial institutions. As the NPRM describes, the proposed CDD Rule would make explicit certain existing customer due diligence requirements for covered financial institutions: identifying and verifying the identity of customers; understanding the nature and purpose of customer relationships; and performing ongoing monitoring to maintain and update customer information.[5] The Rule also proposes additional CDD requirements with respect to the collection of beneficial ownership information on the natural persons behind certain defined legal entity customers.[6]

II. FTC's Law Enforcement Experience

The Federal Trade Commission ("FTC" or "Commission") is an independent agency responsible for safeguarding consumers throughout nearly all segments of the economy.[7] To fulfill its consumer protection mandate, the Commission enforces the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, and other laws that prohibit businesses from engaging in practices that are deceptive or unfair to consumers. In addition, the Commission engages in policy research and advocacy, public education outreach, and rulemaking.

Promoting consistent standards and practices for robust CDD is critical to detecting money laundering in the U.S. financial system. By establishing consistent minimum CDD standards, the proposed Rule will likely reduce the ability of perpetrators of fraud from exploiting financial institutions to conduct illicit financial activity.

The proposed Rule would include a new requirement to collect beneficial ownership information for legal entity customers. The NPRM notes that the beneficial ownership information requirement does not represent a significant departure from

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[4] The BSA is codified at 12 U.S.C. § 1892b, 12 U.S.C. §§ 1951-1959, 18 U.S.C. §§ 1956-1957 & 1960, 31 U.S.C. §§ 5311-5314 and 5316-5332, with implementing regulations at 31 C.F.R. Ch. X. *See* 31 C.F.R. § 1010.100(e).

[5] The proposed rule would apply to banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities. NPRM, 77 Fed. Reg. 45152.

[6] *Id.* at 45156. The proposed rule defines a "legal entity customer" to mean a corporation, limited liability company, partnership or other similar business entity that opens a new account. *Id.* at 45170.

[7] The Commission has authority over most nonbank entities. *See* 15 U.S.C. 44, 45(a)(2) (excluding from the Commission's jurisdiction several types of banking entities, including, banks, thrifts, and federally chartered credit unions).

existing guidance for financial institutions. This existing guidance, issued jointly by FinCEN and other bank regulators in 2010, suggested a risk-based approach for identifying and verifying beneficial owners of all customers, not just legal entities, and recognized the heightened risks that may be associated with the use of legal entities.[8] Moreover, in response to comments by financial institutions, FinCEN has significantly narrowed the scope of the proposed Rule. The Rule would no longer require a financial institution to verify that the natural persons identified as the beneficial owners are, in fact, the beneficial owners, as the ANPRM suggested in one proposed approach to verifying beneficial ownership information.[9] Instead, a financial institution would need to obtain a completed Certification of Beneficial Owner(s) form, a standardized disclosure document specified in the Rule, in the course of performing existing routine customer identification procedures.[10]

The availability of information on beneficial ownership and control of legal entity customers would significantly enhance law enforcement's ability to track down individuals behind shell corporations used for illicit financial transactions. As a consequence, the FTC could shut down fraudulent operations more quickly, which would mean that fewer consumers would be victims.

The Commission's law enforcement experience amply demonstrates the abuse of legal entities to launder the proceeds of fraud and conceal the identities of the individuals behind fraudulent operations. Recent cases brought by the Commission have included the following allegations and relevant facts:

- Individual defendants utilized a foreign company to cloak their personal involvement in a telemarketing scheme that used deceptive prerecorded messages on behalf of clients selling a variety of dubious products, including extended auto warranties and credit card interest rate reduction programs.[11]

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[8] Fin. Crimes Enforcement Network et al., *Guidance on Obtaining and Retaining Beneficial Ownership Information,* FIN-2010-G001 (Mar. 5, 2010) (Joint Release) (noting legal entities can be used "to conceal the identity of the true owner of assets or property derived from or associated with criminal activity . . . . [or] the nature and purpose of illicit transactions and the identities of the persons associated with them").

[9] *See* ANPRM, 77 Fed. Reg. 13053.

[10] NPRM, 77 Fed. Reg. 45170-72. The standardized disclosure form would require that the person opening a new account on behalf of a legal entity provide the name, address, date of birth and social security number (or passport number or similar information, in the case of foreign persons) for the following individuals (i.e., the beneficial owners): each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer, and one individual with significant responsibility for managing the legal entity customer. *Id.*

[11] Pl.'s Mem. in Supp. of Its Ex Parte Mot. for a TRO at 2, *FTC v. Asia Pacific Telecom, Inc.,* Civ. No. 10-3168 (N.D. Ill. May 24, 2010).

- Individual defendant enlisted nominees to create dozens of legal entities used to hold and conceal from authorities millions of dollars in assets, including assets connected to illegal online poker payment processing.[12]

- Fourteen individuals, acting as "money mules," set up sixteen corporate entities that they used to open bank accounts and funnel the proceeds of a massive unauthorized charging scheme to the masterminds of the scheme – John Doe defendants located abroad.[13]

- Individual defendant subject to $4.43 million FTC judgment used a shell corporation and nominal officer to conceal his beneficial ownership of $4 million in the corporation's bank account. Among other evidence, the Commission used photographs of the individual defendant accessing the bank account in support of garnishment of the account.[14]

- Individual defendants enlisted friends and relatives to form and organize more than 240 shell companies created to open approximately 400 bank accounts into which the proceeds of the defendants' deceptive coaching scheme were transferred.[15]

The collection of beneficial ownership information is merely one element of a financial institution's risk assessment of legal entity customers. As these cases illustrate, however, the addition of such information can be critical in identifying and thwarting the use of nominal officers and shell corporations to impede law enforcement and commit financial fraud. Some perpetrators of fraud and illicit financial transactions seeking anonymity could be deterred by the disclosure of identifying information, including the name, date of birth, and social security number of a natural person. Even false information provided to financial institutions can be useful to prove an individual's knowledge of unlawful activity or intention to conceal assets.

In addition, the collection of beneficial ownership information by U.S. financial institutions will bring the U.S. in line with the requirements adopted by many participants

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[12] Order Granting Mot. for Clarifying Prelim. Inj. and for Further Instructions Regarding Scope of Receivership Defendants Under Prelim. Inj. ¶ 3, *FTC v. Jeremy Johnson*, Civ. No. 10-2203-MMD-GWF (D. Nev. Mar. 25, 2013).

[13] Pl.'s Mem. in Supp. of Its Ex Parte Mot. for a TRO at 4, *FTC v. API Trade, LLC*, Civ. No. 10-1543 (N.D. Ill. Mar. 9, 2010).

[14] Pl.'s Mem. in Opp. To Mot. to Quash Writ of Continuing Garnishment at 1 and 7, *FTC v. Khalilian, et al.*, Civ. No. 10-21788-COOKE/TURNOFF (M.D. Fla. Jan. 17, 2013). The court found the FTC established a *prima facie* case supporting continued garnishment of the account. Omnibus Order at 2 (dated Jan. 28, 2013).

[15] Report of Temporary Receiver of Apply Knowledge LLC at 7, *FTC v. Apply Knowledge LLC*, Civ. No. 0088-DB (D. Utah Mar. 7, 2014).

in the global financial system. As the Department of Justice comment noted in response to the ANPRM, many countries already require beneficial ownership information at the time of account opening.[16]

III. Conclusion

FTC staff appreciates the opportunity to provide examples of its encounters with the use of shell corporations and nominal owners. We hope these comments will assist FinCEN in evaluating whether the proposed CDD Rule will improve law enforcement's ability to investigate and uncover financial transactions in which perpetrators funnel the proceeds of fraud through the U.S. financial system.

Respectfully submitted,

Jessica L. Rich, Director
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Michael G. Vita, Acting Director
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[16] U.S. Dep't of Justice, Asset Forfeiture and Money Laundering Section Comment 2 (June 11, 2012).