Customer onboarding and Beneficial Ownership - a review of the new (FinCEN, EU and OFAC) requirement

Description:

With the growth of the AML fines imposed by the Government (State and Federal) on banks, with settlements going up to $10 billion in the aggregate as well as the increased likelihood of personal fines being assessed on the compliance officer, financial institutions need to exercise greater care than ever to prevent inadvertent violations. One of the fundamental concepts in AML is KYC/CDD - Know Your Customer/Customer Due Diligence. FinCEN's new regulations require financial institutions as part of their KYC program, to know who ultimately owns or controls its legal entity customer (specified by FinCEN as "corporations, limited liability companies, partnerships or other similar business entities"). Until FinCEN finalized its regulations, there has been a little formal guidance in the United States with respect to beneficial ownership and the percentage needed to trigger the beneficial ownership requirements, although 25% was a widely used trigger.

Despite the fact that FinCEN recently codified the 25% threshold, the industry is still faced with FATCA’s 10% trigger for foreign entities to determine a “Substantial U.S. Owner”. In addition, in 2014 OFAC revised its guidance on “Shadow SDNs”, which deals with entities that are directly or indirectly owned by one or more blocked persons whose ownership percentage aggregates at least 50%. OFAC’s Q+A #401 Example 3 deals with a 40% owner and a 10% owner. That would seem to imply a 10% threshold, similar to FATCA, but the actual regulations do not specify a threshold. Thus, a literal reading of the regulations would seem to indicate that any ownership percentage counts when aggregating multiple owners for purposes of the 50% test. In addition, financial institutions doing business in the European Union have to deal with the implementation of AMLD IV by June 2017.

Course Objective:

This course will take a detailed look at the new FinCEN, EU and OFAC requirements. In addition, FinCen’s new rule on beneficial ownership (“Customer Due Diligence Requirements for Financial Institutions”), its recent Geographic Targeting Order on real estate and the EU’s Fourth Anti-Money Laundering Directive (“AMLD IV”) all set the ownership threshold at 25%. Yet, FATCA has a 10% threshold while OFAC’s threshold could be even lower. How should financial institutions and their compliance officers cope with these divergent requirements?

This session will explore the different requirements and provide specific suggestions to avoid non-compliance with these regulatory requirements.

Target Audience:

- Compliance and legal personnel
- Internal Auditors
- Consultants
- Operations (onboarding) personnel
- Management levels responsible for Internal Audit, Compliance or Onboarding
- External Auditors

Contents:

Course Outline:

1. Review which types of financial institutions are covered by FinCEN’s new CDD regulations
2. Analyze FinCEN definition of “Legal Entity” and implications of such definition
3. Overview of EU requirements and status of implementation
4. Assess FATCA requirements and relevance to AML practices
5. Evaluate OFAC requirements on “Shadow SDNs”, differences between regulations and Q+A
6. Compare and contrast different regulatory regimes (FinCEN, EU, FATCA, OFAC)
7. Evaluate exemptions in FinCEN regulations, compare to EU directive.
8. Review recommended “best practice” CDD procedures to be applied

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