PRESENT:
Navigating Your Way Through the Beneficial Ownership Maze

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Customer Due Diligence & Enhance Due Diligence
Customer Due Diligence

➢ In what concerns the prevention of money laundering and/or terrorist financing, the knowledge of the customer from the market’s and the social point of view is useful but not sufficient.

➢ Adhering to industry best practices, your organization’s KYC policies are an organized effort to collect significant information that allows your organization to detect and analyze suspicious operations as well as maintain relevant data that will support law enforcement investigations, while building sound internal control mechanisms that protect your interests.
From the standpoint of “compliance” the effort in getting to know our customers has two main purposes:

- To act as a **dissuasive measure** in order to drive money launderers and financiers of terrorist activities away from your entity, and

- To **allow the detection of unusual operations** and determine if there are suspicious operations that may warrant reporting to pertinent authorities
FinCEN & Beneficial Ownership Identification

➢ Up until May 11th, 2016, when FinCEN issued the CDD Final Rule, it was its position that Customer Due Diligence (CDD) consists of 4 basic elements:

1. **Identifying** and **Verifying** the Identity of Customers (*this is basic “CIP”)*

2. Identifying and Verifying the identity of **Beneficial Owners** of legal entity customers;

3. Understanding the **nature and purpose** of customer relationships; and

4. Conducting **ongoing monitoring** to maintain and update customer information.
Now that FinCEN announced its Final CDD Rule, it included a fifth pillar – RISK BASED PROCEDURES - So CDD must:

- Include *risk-based procedures* for conducting ongoing customer due diligence, and

- Include understanding the nature and purpose of customer relationships for the purpose of developing a **customer risk profile** when a client is opening an account.
In addition to the CDD Final Rule, to avoid and combat scandals like the Panama Papers published a few weeks ago, the Government of the United States has announced that it is in the process of developing regulatory initiatives such as a new legislation to avoid tax evasion.
The CDD Final Rule defines two different definitions of beneficial owners that must both be identified at the moment when an account is opened: the “ownership prong” and the “control prong”:

- The **ownership prong** refers to anyone who “owns 25 percent or more of the equity interests of a legal entity”; AND

- The **control prong** refers to “a single individual with significant responsibility to control, manage, or direct a legal entity” (CEO, CFO COO, Managing Member, General Partner, President, Vice President, or Treasurer and any other person who performs similar duties.)
Mainly, in the control prong, you will be expected to identify the individual with greater responsibility than any other individual in managing or directing the regular affairs of the entity.

FinCEN says the covered financial institutions could establish a threshold below 25 percent based on their risk-policy, but it is not mandatory.
FATF-GAFI Defines Ultimate Beneficial Owner (UBO) as:

The **natural person(s)** who **ultimately owns or controls** a client and/or the natural person in whose name a **transaction** is conducted. It also includes the persons that have **effective final control over** a legal person or any other legal structure or arrangement.

The Word “ultimate” is key in the identification of a beneficial owner.
FATF-GAFI recommends that countries:

1. Maintain and keep current **public records** of the ultimate beneficial owners and of anyone who maintains **control** of the legal structures or arrangements, **including trusts** (Recommendation 24 y 25); and

2. Issue explicit **laws requiring the identification of the “ultimate” beneficial owner** (the “natural person”) of all legal structures or arrangements, and that said requirements are rigorously implemented (Recommendation 10)

**Note:** The EU Fourth Directive already requires the public registry. The U.S. is moving toward that with the new CDD Final Rule
Navigating your Way through the UBO Maze
In Summary, scandals such as the ‘Panama Papers’ episode are a wake up call to organizations. In the same way that financial institutions must meet KYC requirements, it is fundamental and imperative for companies that enter into business relationships with third parties and bid on procurement projects know the background to the entities and beneficial owners behind these businesses.

Not knowing who you are “really” dealing with opens the door to dealing with shell companies for terrorists, corrupt politicians, money launderers and tax evaders.
So how do we do it?

- We peel and peel until we reach heart........
Mechanisms Used to Identify the UBO

- Use the internet as an investigation tool:
  - You don’t really need a lot of information to find information;
  - Use the most amount of information available to guarantee that the person identified is the ultimate beneficiary
  - If your client does not have an internet footprint, consider that an alert
Why the Internet?

- The internet is a free open source tool that is accessible to most and it should be used smartly.
- Today there are more than 1 billion websites in the Internet of which, more than 45% are hosted in the EE.UU.
- Each year, approximately 50 million pages are added to the internet.
- The most common browsers used are:
  - Chrome (70.4% of all users)
  - Internet Explorer (5.8% of all users)
  - Firefox (17.5% of all users)
  - Safari (3.7% of all users)
  - The rest are distributed among Opera and others.
The most complete and respected search engines are:

- Yahoo
- Google
- Bing

There are mega-search engines that allow you to perform a search in multiple engines in a single search (simultaneously):

- www.Ask.com
- www.dogpile.com
• When you are searching:

✓ If you use **words in English** you will reach a greater amount of information and better results

✓ Enclose the words in your search in **“quotes”** to obtain results with all the words in the sequence that you are looking for

✓ Use “operators” such as **AND, OR, and NOT** to perfect your search and not waste too much time trying page by page

✓ Use portals and Web pages that are from **trusted sources** or are backed by the international community
UBO Identification

- When internet searches are not enough, or the risk warrants a deeper search, consider alternate methods such as:
  - Intelligence reports (look for difficult to find public registries, local intelligence sources, etc.)
  - Tools like WorldCompliance, LexisNexis, RDC, or Reuters are excellent to identify corporate links
  - Use well known and well recognized professionals with significant experience and global reach that can produce:
    ✓ A full analysis,
    ✓ A report of investigation,
    ✓ Solutions and alternatives
PRESENTER: Andres "Andy" Fernandez is a partner in Holland & Knight's Miami office and leader of the firm's Cuba Action Team. He practices in the area of banking law and financial services, with a focus on licensing, regulatory and compliance matters. With an emphasis on issues pertaining to the Bank Secrecy Act (BSA), anti-money laundering (AML) and Office of Foreign Assets Control (OFAC), Mr. Fernandez counsels a broad range of clients such as domestic community banks, foreign banks, broker dealers and money service businesses (including virtual/digital currency and Bitcoin).
Thank you

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