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Anti-Money Laundering Act of 2020 Implements Significant Changes, Including New Beneficial Ownership Disclosure Requirements

On January 1, 2021, the Anti-Money Laundering Act of 2020 (the "Act"), became law over the President's veto as part of the National Defense Authorization Act for Fiscal Year 2021 ("NDAA"). The Act contains significant reforms to the Bank Secrecy Act ("BSA") and implements an expanded beneficial ownership disclosure requirement for many entities, specifically corporations and limited liability companies that act as holding companies or "shell companies." The Act was designed to strengthen and modernize U.S. anti-money laundering rules by updating the BSA to reflect modern technology and AML practices. It represents a partial shift to federal responsibility for the collection of beneficial ownership information, rather than relying on financial institutions for this role.

Once implementing regulations have been promulgated, the Act will require "reporting companies" to submit a report containing certain beneficial ownership information to the U.S. Financial Crimes Enforcement Network (FinCEN) as part of the entity formation process. The definition of "reporting company" includes a corporation, limited liability company, or similar entity that is created in the United States or organized under the laws of a non-U.S. jurisdiction and registered to do business in the United States by filing with a U.S. jurisdiction. However, this definition contains numerous exceptions, including:

- Many entities already subject to disclosure requirements, such as public companies, broker-dealers, money transmitters, financial institutions, insurance companies, SEC-registered entities, and certain pooled investment vehicles;
- Nonprofit tax-exempt charitable and political organizations;
- Entities that employ more than 20 full-time persons in the United States, have taxable revenue of $5 million or more, and maintain a physical office in the United States; and
- Inactive entities, in existence for over a year, that are U.S.-owned, have not sent or received funds over $1,000 in the last year, and do not otherwise own assets.

The disclosure must contain the full legal name, date of birth, current residential or business address, and unique identifying number from an acceptable identification document for each beneficial owner. These requirements are similar to those currently in place for financial institutions under FinCEN's Customer Due Diligence rule. The Act defines beneficial owner to include a person who owns or controls 25% or

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more of the ownership interests of an entity and any person who "exercises substantial control" over the entity. Notably, the Act does not define "substantial control," and further clarity on what qualifies as "substantial control" will likely come through the regulation process.

In addition to this requirement being imposed at the time of entity formation or registration to do business in the United States, the Act also institutes an affirmative requirement to file updated beneficial ownership information with FinCEN within a year of any change. Already-existing entities have two years from the effective date of implementing regulations to file beneficial ownership information with FinCEN.

The Act will create a federal database of beneficial ownership data held by FinCEN. The database is not public, but will be available to law enforcement agencies and other regulators.

The new beneficial ownership requirements create a sweeping change in BSA/AML rules. Smaller entities and "shell companies" that were not previously subject to any beneficial ownership disclosure requirements will be directly affected. These new requirements represent a shift from reliance on financial institutions to maintain sufficient AML/KYC practices to effect U.S. policy designed to prevent money laundering to FinCEN taking a more active role and imposing country-wide federal KYC requirements. The Act also creates a new information sharing mechanism that will allow financial institutions to access this database with the consent of the reporting company. Accordingly, the Act instructs the Secretary of the Treasury to revise the customer due diligence rule currently in force to account for financial institutions' new ability (with the reporting company's consent) to access this database to satisfy KYC requirements. The revisions should reduce burdens on financial institutions and legal entity customers that are now "unnecessary or duplicative" because of the new requirements of the Act. This reflects the intent of Congress to modernize U.S. anti-money laundering rules at a federal level. The Act also requires the Treasury Department to review both the processes and thresholds for suspicious activity reports (SAR) and currency transaction reports (CTR) to determine if updates may be advisable.

The Act also significantly expands the potential for increased AML enforcement at the federal level. It creates new penalties and criminal liability for the concealment of the source of assets in monetary transactions related to senior foreign political figures or entities found to be "primary money laundering concerns." Penalties for existing violations have been increased, including fines equal to the profit gained as a result of the violation for first-time offenders. Fines for repeat offenders have been increased to up to the greater of three times the profit gained or loss avoided as a result of the violation or two times the maximum allowable statutory penalty associated with the violation. Finally, the Act also introduces whistleblower incentives and protections. A whistleblower who provides information to regulators relating to AML violations is eligible to receive up to 30% of the fines imposed by the government over $1 million.

All U.S. businesses and foreign-domiciled businesses operating in the United States should review this new legislation and determine whether they may qualify as a "reporting company" and may ultimately be subject to new disclosure requirements. Any entity that will qualify as a "reporting company" should monitor the upcoming regulatory process for additional details and clarity surrounding this new process. Separately, financial institutions should be on notice that they may have a new avenue to satisfy KYC requirements and that the existing customer due diligence rule will be changing in the future. If you have any questions regarding the Bank Secrecy Act or these new requirements, or how they may affect your business, please reach out to the contacts listed below.

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