

# **Beneficial Ownership – Compliance with Regulatory Requirements**



**Financial Services**

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**I. Executive Summary****A. Regulatory Landscape**

The recommendations put forth by the Financial Action Task Force (FATF) suggest that countries' regulations should require the collection of BO information for its use by authorities when investigating financial crimes.<sup>1</sup> Indeed, the U.S. Financial Crimes Enforcement Network (FinCEN) implemented its Customer Due Diligence Rule (CDD Rule) that codified a risk-based requirement for FIs to obtain and maintain accurate BO information to a threshold of 25% ownership.<sup>2</sup> The European Union's (EU) various Anti-Money Laundering Directives also establish a minimum standard that requires FIs to identify and verify beneficial ownership through gathering BO information for any ownership interests that represent greater than a 25% stake in a legal entity customer. Both the United Kingdom (UK) and Germany adopted the EU standard and established corporate registries to gather and record beneficial ownership information; however, public access is only available in the UK.

**B. Sanctions Considerations**

Gathering BO information for the purposes of U.S. sanctions compliance is less clear and ultimately applicable to both FIs and corporations. While the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) prohibits transactions involving sanctioned individuals and legal entities, the 50% Rule and related aggregation principle also prohibit transactions involving legal entities with direct or indirect ownership interests totaling 50% or more by specifically sanctioned individuals or legal entities.<sup>3</sup> In addition, FIs and corporations need to appreciate the sanctions risks posed by business partners that maintain relationships with sanctioned entities and by individuals exercising control over business partners that otherwise would not be subject to sanctions. Compliance obligations under the 50% Rule can become particularly burdensome as there is no defined minimum threshold for collection of BO information, although industry standards set the threshold at 10% ownership interest for higher risk entities.<sup>4</sup> In addition, compliance can be particularly onerous for corporations that otherwise are not required to collect BO information and employ extensive supply chains.

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1. See generally Financial Action Task Force, *Guidance on Transparency and Beneficial Ownership*, (2014). Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

2. 31 CFR § 1010.230. Available at: [https://www.ecfr.gov/cgi-bin/text-idx?SID=c1e6db14f22c51a04f57a02d12a90056&mc=true&node=se31.3.1010\\_1230&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=c1e6db14f22c51a04f57a02d12a90056&mc=true&node=se31.3.1010_1230&rgn=div8).

3. Each sanctions regime contained in Title 31, Subtitle B, Chapter V of the Code of Federal Regulations has its own subsection related to OFAC's 50% Rule. For an example of the 50% Rule, see 31 CFR § 591.406.

4. Harvard Law School Forum on Corporate Governance, FinCEN: Know Your Customer Requirements, (Feb. 7, 2016). Available at: <https://corpgov.law.harvard.edu/2016/02/07/fincen-know-your-customer-requirements/#6b/>.

### C. Challenges and Innovative Solutions

Maintaining compliance with these complex and regulatory obligations can create a web of costly, unaligned processes and create challenges surrounding the maintenance of current BO information, sharing BO information globally or across many jurisdictions, and soliciting adequate and appropriate certifications. Nevertheless, there are a number of methods for accelerating collection and sharing of BO processes that can generate efficiencies and increase business value. Such methods include implementing procedural and technological enhancements to screening procedures, developing global standards for gathering BO information, leveraging the quality control function, and administering strong data governance and information systems.

### D. Partnering with Guidehouse

Guidehouse is an industry leader in partnering with FIs and corporations to develop effective compliance programs that generate business value and drive down the cost of operations. Guidehouse professionals are ready to use their extensive combined experience to assist your organization with technological implementation and upgrades, program reviews, file remediation, gap assessments, and efficiency mapping.

## II. Background

Financial institutions face a patchwork of compliance obligations because of the various international laws, regulations, and standards relating to the collection and maintenance of customers' beneficial ownership information.

### A. Beneficial Ownership Requirements

Beneficial ownership information provides law enforcement with information used in financial investigations, helps prevent the evasion of targeted financial sanctions, improves the ability of financial institutions to assess risk, facilitates tax compliance, and advances U.S. compliance with international standards and commitments.<sup>5</sup> FIs with a global footprint, in particular, will have several sources of requirements, suggestions, and guidance, which may include conflicting provisions.

#### 1. Financial Action Task Force Recommendations

The FATF is the international organization that establishes standards related to anti-money laundering (AML) and counter-terrorist financing (CTF) for governments, law enforcement, regulators, and FIs. FATF recommendations recognize that the collection of BO data, and the timely availability of such information to law enforcement, can reduce the misuse of corporate vehicles for money laundering or terrorist financing purposes.<sup>6</sup> In conjunction with its mandate to establish standards related to anti-money laundering and counter-terrorist financing, Recommendations 24 and 25 relate to Transparency and Beneficial Ownership of Legal Persons Transparency and Beneficial Ownership of Legal Arrangements, respectively. These two FATF recommendations conclude that countries should ensure that there is, "adequate, accurate and timely information on the beneficial ownership and control,"<sup>7</sup> of legal persons and arrangements that can be "obtained or accessed in a timely fashion by competent authorities."<sup>8</sup> The recommendations further suggest measures designed to ensure that legal persons using nominee shareholders or directors, or those able to issue bearer shares, are not misused for money laundering or terrorist financing.<sup>9</sup>

5. U.S. Department of the Treasury, *Treasury Announces Key Regulations and Legislation to Counter Money Laundering and Corruption, Combat Tax Evasion*, (May 5, 2016), <https://www.treasury.gov/press-center/press-releases/Pages/jl0451.aspx> (last visited June 9, 2020).

6. Financial Action Task Force, *Guidance on Transparency and Beneficial Ownership*, 3 (2014). Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

7. Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, 20 (2019). Available at: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

8. *Id.*

9. *Id.*

## 2. Financial Crimes Enforcement Network Customer Due Diligence Rule

FinCEN is a bureau of the U.S. Department of the Treasury with responsibility for administering the Bank Secrecy Act (BSA), the U.S. statute that governs AML requirements for FIs. Following FATF's December 2016 Mutual Evaluation Report for the U.S. that criticized the country's "lack of timely access to adequate, accurate and current beneficial ownership information,"<sup>10</sup> and the Panama Papers disclosures, FinCEN developed its CDD Rule. The CDD Rule codifies a requirement to obtain 25% BO information for legal entity customers at the time of account opening, as well as customers' certifications regarding the veracity of BO information by the individual opening the account.<sup>11</sup> The rule also requires that the FI update BO information when the FI learns of a change to the customer's risk profile that would indicate a potential update to BO information. The CDD Rule applies to covered financial institutions<sup>12</sup> and uses a risk-based approach, targeting certain legal entities that present higher risk of being abused by nefarious actors, such as those legal entities that are not regulated.<sup>13</sup> The CDD Rule thus seeks to deter the abuse of the U.S. financial system by illicit finance networks, including criminals and kleptocrats.

## 3. OFAC 50% Rule

Sanctions screening is an integral part of an FI's ability to comply with U.S. economic sanctions, mitigate potential money laundering and terrorist financing risks, and for corporations to mitigate supply chain risks. The Treasury's OFAC publishes the Specially Designated Nationals and Blocked Persons List (SDN List) and Sectoral Sanctions Identifications (SSI List) to notify organizations of individuals and entities that are blocked from providing goods or services to U.S. entities or conducting transactions through U.S. banks and the U.S. financial system. Sanctions breaches constitute serious, strict liability offenses that may result in significant fines or regulatory actions against banks, FIs, and corporations.

Accordingly, to ensure they do not engage in prohibited transactions, FIs and corporations must check customers and, where appropriate, vendors, against applicable sanctions lists. Further, sanctions do not just apply to the sanctioned entities themselves. Specifically, organizations 50% owned or controlled by sanctioned entities are also considered to be sanctioned. In addition, customers who do not appear on a sanctions list but maintain a relationship with a sanctioned entity also present a sanctions risk, even if a transaction with them is not specifically prohibited. Thus, the OFAC 50% Rule considers entities with a direct or indirect ownership interest of 50% or more by one or more persons or entities that are a named subject in OFAC regulations or an Executive Order as blocked persons or entities, even if they do not separately appear on OFAC's SDN List or SSI List.<sup>14</sup>

10. Financial Action Task Force, *Anti-money Laundering and counter-terrorist financing measures: United States Mutual Evaluation Report*, 4 (2016). Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf>.

11. 31 CFR § 1010.230. Available at: [https://www.ecfr.gov/cgi-bin/text-idx?SID=c1e6db14f22c51a04f57a02d12a90056&mc=true&node=se31.3.1010\\_1230&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=c1e6db14f22c51a04f57a02d12a90056&mc=true&node=se31.3.1010_1230&rgn=div8).

12. The term "covered financial institution" refers to: (i) banks; (ii) brokers or dealers in securities; (iii) mutual funds; and (iv) futures commission merchants and introducing brokers in commodities.

13. Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29,398 (May 11, 2016).

14. Each sanctions regime contained in Title 31, Subtitle B, Chapter V of the Code of Federal Regulations has its own subsection related to OFAC's 50% Rule. For an example of the 50% Rule, see 31 CFR § 591.406.

In 2014, OFAC issued guidance that cautioned U.S. persons to be vigilant when considering conducting transactions with: (1) a non-blocked entity that has one or more blocked persons who maintain a significant ownership interest that is less than 50%; or (2) in which blocked persons may exert control by means other than a majority ownership interest.<sup>15</sup> In addition, OFAC provided more detailed explanation of the “aggregation principle” that requires organizations to block transactions and commerce with an entity if it is owned, directly or indirectly, by one or more blocked persons with an aggregate ownership interest of 50% or more.<sup>16</sup> Accordingly, a U.S. person or entity may not engage in any transactions with or procure goods, services, or technology from such an entity without prior authorization from OFAC.<sup>17</sup> Although there is no explicit BO unwrapping threshold or information that organizations must collect on beneficial owners, industry standards typically mirror those of BO requirements.

#### 4. EU AML Directives and Implementation into Local Law

##### a. EU General

The emphasis on BO in the EU’s Fourth Anti-Money Laundering Directive (4AMLD)<sup>18</sup> is consistent with the tone set in the EU’s Third Anti-Money Laundering Directive (3AMLD)<sup>19</sup> and the increased focus on financial transparency. The term, “beneficial owner,” is defined in Article 3(6) of the 4AMLD as, “any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted.”<sup>20</sup>

Article 3(6) also provides minimum BO standards for corporate entities, trusts, and legal entities and arrangements, such as foundations or trust-like entities. Under Article 13(1)(b), 4AMLD obliged entities<sup>21</sup> must identify beneficial owners and take reasonable measures to verify their identity with reliable and independent sources.

The 4AMLD also introduces the requirement for BO registers — i.e., country-specific central registers listing BOs for various entity types. In the Fifth Anti-Money-Laundering Directive (5AMLD),<sup>22</sup> the EU sought to increase access to the beneficial ownership registries and improve transparency by providing public access.

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15. Office of Foreign Assets Control, *Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked* (2014). Available at: [https://www.treasury.gov/resource-center/sanctions/Documents/licensing\\_guidance.pdf](https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf).

16. *Id.*

17. *Id.*

18. The Fourth Anti-Money Laundering Directive, or 4AMLD, is codified as Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 Relating to the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, 2015 O.J. (L 141/73). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0849>.

19. The Third Anti-Money Laundering Directive, or 3AMLD, is codified as Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 Relating to the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, 2005 O.J. (L 309/15). Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32005L0060>.

20. Fourth Anti-Money Laundering Directive, Article 3(6).

21. Fourth Anti-Money Laundering Directive, Article 2(1), provides an enumeration of “obliged entities.” Obligated entities include financial institutions and credit institutions, but also auditors, external accountants and tax advisors, notaries and lawyers acting on certain matters, estate agents, trust or company services providers, and providers of gambling services.

22. The Fifth Anti-Money Laundering Directive, or 5AMLD, is codified as Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Relating to the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, 2018 O.J. (L156/43). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>.

b. United Kingdom

The UK Money Laundering Regulations 2017<sup>23</sup> incorporated the 4AMLD into UK law with Sections 5 and 6 providing the beneficial owner definition and categories of BO as minimum standards for various entity types. Sections 28(4) and (18) established 4AMLD's identification and verification requirements. There are no major deviations from the 4AMLD. The Joint Money Laundering Steering Group (JMLSG) (5.3.8 ff) provides more detailed and practical guidance<sup>24</sup> with regard to the BO requirements and the definition of a beneficial owner.<sup>25</sup> The Companies House Person with Significant Control (PSC) Register makes this information publicly available.<sup>26</sup>

c. Germany

In Germany, the 4AMLD is transposed into law in the German Money Laundering Act (GwG).<sup>27</sup> Section 3 of the GwG includes the definition of a beneficial owner, which is essentially consistent with the previously applicable legal position in Germany and provides a nonexhaustive list of categories of beneficial owners for certain entity types. Under Section 11(5) of the GwG, an FI must identify the beneficial owners of a legal entity customer, but also satisfy itself as to the veracity of the BO information using a risk-based approach. Similar to the UK, there are no major deviations from the 4AMLD. The German Transparency Register makes this information accessible, however the access is restricted to certain categories of people, professions, institutions, and businesses.<sup>28</sup>



23. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (2017/692). Available at: <http://www.legislation.gov.uk/uksi/2017/692/contents/made>.

24. JMLSG, *Prevention of Money Laundering/Combating Terrorist Financing: Guidance for the UK Financial Sector, Part I* (2020). Available at: <https://jmlsg.org.uk/guidance/>.

25. Id. at § 5.3.8ff.

26. The UK Companies House information can be accessed (free of charge and without the need for registration) here: <https://www.gov.uk/get-information-about-a-company>. Under the "People" tab, a separate section contains the "Persons with significant control" as filed by the company itself.

27. See generally Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten (Geldwäschegesetz – GwG), 23.06.2017, BGBl. I p. 2602. German language version available at: [https://www.gesetze-im-internet.de/gwg\\_2017/](https://www.gesetze-im-internet.de/gwg_2017/). Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) also published an English version available at: [https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Gesetz/GwG\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Gesetz/GwG_en.html).

28. The German Transparency Register can be accessed here: <https://www.transparenzregister.de/treg/en/start?0>.

## B. Required BO Data Collection

The table on the following pages provides a comparative description of the BO data collection regimes for the U.S., the EU, the UK, and Germany.

	1. United States AML/CTF	2. European Union AML/CTF	3. United Kingdom AML/CTF	4. Germany AML/CTF
<b>a. Name of Regulation/ Guidance</b>	i. FinCEN Customer Due Diligence Requirements for Financial Institutions – July 2016; <sup>29</sup> and ii. Frequently Asked Questions for CDD Final Rule	The Fourth Money Laundering Directive	Money Laundering Regulations 2017; JMLSG Guidance	German Money Laundering Act (GwG)
<b>b. Purpose</b>	i. AML/CTF; ii. Sanctions; and iii. Tax evasion	i. AML/CTF; and ii. Tax evasion	i. AML/CTF; and ii. Tax evasion.	i. AML/CTF; and ii. Tax evasion.
<b>c. Threshold</b>	25% <sup>30</sup>	Greater than 25%, with an option for member states to lower this threshold	Greater than 25%	Greater than 25%
<b>d. Certification</b>	The person opening/maintaining the account must certify the accuracy of BO information.	N/A	N/A	N/A
<b>e. Exclusions</b>	i. FinCEN's CDD Rule applies to "legal entity customers," including, <i>inter alia</i> , LLCs, corporates, partnerships, and business trusts; however, the CDD Rule does not include sole proprietorships, natural persons, or unincorporated associations. ii. There are several exclusions <sup>31</sup> from the definition of legal entity customer and account exclusions <sup>32</sup> in the CDD Rule.	Companies listed on a regulated market that is subject to disclosure requirements consistent with EU law or equivalent international standards that ensure adequate transparency of ownership information.  <i>4AMLD, Article 3(6)(a)(i).</i>	Companies listed on a regulated market.  Money Laundering Regulations 2017, § 28(5).	Corporate entities listed on a regulated market and those subject to transparency requirements regarding voting rights consistent with Community laws or equivalent international standards.  <i>GwG, § 3(2)</i>
<b>f. Specific Entity Types (See Appendix A for specific entity descriptions)</b>	i. Statutory Trusts; ii. Pooled Investment Vehicles (PIV). iii. Legal entities such as nonprofits.	i. Corporate entities; ii. Trusts; iii. Legal entities such as foundations; and iv. Other legal arrangements similar to trusts.	i. Corporate entities; ii. Partnerships; iii. Trusts; iv. Foundations; and v. Other legal arrangements similar to trusts.	i. Legal persons; ii. Foundations with legal capacity; and iii. Trusts and comparable legal constructs.

29. This section is focused on BO requirements related to equity beneficial ownership pursuant to FinCEN's CDD Rule. There are additional beneficial ownership requirements that apply pursuant to the regulations implementing Sections 312 of the USA PATRIOT Act, and certifications collected pursuant to 313 and 319(b) of the USA PATRIOT Act.

30. 31 C.F.R. §1010.610 requires covered financial institutions to collect 10% or greater beneficial ownership for certain foreign banks whose shares are not publicly traded for which it maintains a correspondent account.

31. Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29,413-5 (May 11, 2016).

32. Id. at 29,417-8.

	1. United States AML/CTF	2. European Union AML/CTF	3. United Kingdom AML/CTF	4. Germany AML/CTF
<b>g. Identification / Data Required on Beneficial Owners</b>	<ul style="list-style-type: none"> <li>i. Legal name;</li> <li>ii. Physical address;</li> <li>iii. Date of birth; and</li> <li>iv. Government-issued ID Number (must be a Social Security Number if U.S. Person).</li> </ul>	<p>The FI needs to identify the BO and take reasonable measures to verify the identity of the BO. For legal persons, trusts, companies, foundations, and similar legal arrangements, this includes taking reasonable measures to understand the ownership and control structure of the customer.</p>	<p>The same identification requirements as for customers apply – i.e.:</p> <ul style="list-style-type: none"> <li>i. Full name;</li> <li>ii. Residential address; and</li> <li>iii. Date of birth.</li> </ul> <p><i>Money Laundering Regulations 2017, § 28(4)(a); and JMLSG §§ 5.3.71, 5.3.8, and 5.3.13.</i></p>	<ul style="list-style-type: none"> <li>i. The minimum requirement is the beneficial owner's name; however, additional identification requirements require a risk-based approach. Nevertheless, some information should be gathered regardless of risk rating: <ul style="list-style-type: none"> <li>a.) Date of birth;</li> <li>b.) Place of birth; and</li> <li>c.) Residential address.</li> </ul> </li> <li>ii. For legal persons under private law, registered partnerships and trustee relationships, the customer should also present proof of registration with the transparency register.</li> </ul> <p><i>GwG, § 11(5), Sentences 1-3.</i></p>
<b>h. Methods of Verification</b>	<ul style="list-style-type: none"> <li>i. Documentary — e.g., Passport, Driver's License, Cedula, or other Government issued ID; and</li> <li>ii. Non-documentary — e.g., information in the public domain or from a third-party vendor.</li> </ul>	<p>See section above.</p>	<p>While there are no specifically required methods of verification, FIs need to take appropriate measures to verify beneficial owners' identities using documentary evidence or information obtained from a reliable and independent source; however, the FI must not rely exclusively on the information from the Companies House PSC Register.</p> <p><i>Money Laundering Regulations 2017, §§ 28(4)(b), (18); and JMLSG § 5.3.14.</i></p>	<p>FIs need to establish the veracity of gathered BO information for identification by taking risk-adequate measures. Similar to the UK, FIs cannot rely exclusively on the information from the transparency register.</p> <p><i>GwG, § 11(5), Sentence 4.</i></p>

## C. Challenges of Collecting and Maintaining BO Data

### 1. Maintaining Current BO Information

Two of the primary challenges faced by FIs when designing a program to capture BO information are how to keep BO information current and determine the appropriate frequency for BO updates. Many FIs take a two-pronged approach to updating BO information, using: (a) Event-Driven Reviews that are based on a triggering event; and (b) Risk-Based Periodic Reviews that occur at regularly scheduled intervals. The FI's policies and procedures should detail specific situations where the customer's entire due diligence file is updated following a triggering event and other situations that only require an update of BO information.

#### a. Event-Driven Reviews

Event-Driven Reviews occur when an FI becomes aware of a change in a legal entity customer's BO information, or information that suggests that the BO is inaccurate. A triggering event may be the result of any number of occurrences, including, but not limited to, a corporate action such as a merger or acquisition; delisting from an exchange; the sale, gifting or inheritance of shares; or a forfeiture of assets. Certain triggering events may indicate a change to the customer's risk profile but will not be an indicator of a potential change to BO information. Monitoring for such events, identifying whether there are potential new beneficial owners, and subsequently verifying that information across thousands or even millions of clients requires significant coordination and process engineering.

#### b. Risk-Based Periodic Reviews

Risk-Based Periodic Reviews are regularly scheduled reviews of a customer's due diligence information. Financial institutions should take a risk-based approach and determine exactly what BO information needs to be refreshed and how frequently. If contemplating a wide-scale remediation or uplift effort, the FI should understand the impact to its long-term staffing model and consider the impact to setting the clock on the initial refresh period.

- c. In conjunction with operationalizing the maintenance of BO information, one challenge is identifying touch points within the FI where information regarding a change of BO information may be identified and whether the FI should be aware of that change. There may be several different departments handling client data such as client services, investor relations, transaction monitoring and investigations, or even back-office wire operations room or a call center. The FI should create an inventory of the end points and develop a mechanism that can be used to communicate changes to the person or team responsible for updating the client's file. Training and talking points may be needed, both for internal staff and client-facing roles. Further, the FI should consider any downstream impacts of changed BO data, such as records in other departments, and coordinate with those responsible for data security requirements.

### 2. Global Financial Institutions with Global Operations

Global FIs often have a large customer base of multinational corporates (MNC) that require products and services in various jurisdictions for multiple group entities. This poses several challenges relating to the collection and maintenance of BO data, including onboarding and refresh requirements, sharing data across entities and jurisdictions, and reporting requirements.

#### a. Onboarding and Refresh Requirements

A customer, or each group entity of an MNC customer, will need to be onboarded and provide BO data to the FI in each jurisdiction in which it requires services. For some FIs, separate onboarding processes apply even within a single jurisdiction, depending on the risk associated with different business units. Depending on the time of onboarding or most recent Know-Your-Customer (KYC) refresh, the FI may require updated documents to verify a beneficial owner. For example, certified copies of bank statements or utility bills used for verification must be dated within the past three months.

#### b. Sharing Data Across Entities and Jurisdictions

Global FIs should share BO information within the group to avoid repeatedly requesting such information. There are challenges associated with sharing beneficial ownership information, however, as both the U.S. and EU allow FIs to share data within the FI's group, subject to the same AML rules. The EU approach includes affiliates and subsidiaries in non-EU countries. Sharing BO data with third parties in high-risk countries requires that the data-sharing organization is a branch or majority-owned subsidiary of the FI and fully compliant with the groupwide policies and procedures. An equivalent provision is missing in U.S. law.

Problems can also arise from the wider use of data within an organization. Customer information, including KYC and BO data, is extremely valuable from a marketing and commercial perspective. The EU generally prohibits the use of data collected in the KYC process for commercial purposes.<sup>33</sup> Relevant provisions of the General Data Protection Regulation (GDPR) support this restriction.<sup>34</sup> There is no corresponding provision under U.S. law — i.e., the U.S. allows sharing of BO data within the organization for commercial purposes in a nonconsumer context. Therefore, where U.S. FIs deal with EU customers or operate in the EU, they must restrict and monitor the data use in adherence with the 4AMLD and GDPR. As many high-profile beneficial owners are concerned and secretive about their personal data for security reasons, any misuse — as well as regulatory violations — can cause substantial reputational damage.

#### c. Reporting Requirements

Another challenge can arise with regard to understanding reporting requirements for BO data across jurisdictions. For example, based on the 5AMLD's implementation into UK law, FIs are required to report material discrepancies between information they hold about BOs and the information on the Companies House PSC Register to the UK Companies House identified.<sup>35</sup> Section 23a of the GwG includes a similar obligation without the materiality threshold. This raises practical challenges in instances where a U.S.-based FI accesses UK Companies House data (or the equivalent German register) as part of their KYC process, and thus might become subject to the local reporting obligations for identified discrepancies.

### 3. Certification of BO Information

In the U.S., covered FIs are required to obtain a certification<sup>36</sup> of BO information for legal entity customers at account opening and after becoming aware of a change to BO data. The certification must be made by the person opening the account and may be relied on unless the FI has reason to doubt the accuracy of the information being provided. Banks in the EU do not have a similar certification requirement but need to apply reasonable measures to verify that the BO information is correct. Similarly, OFAC does not require such a certification; however, best practices dictate that FIs gather BO certifications.

Policies and procedures should clearly detail when certifications are necessary or appropriate, what is being certified, and, importantly, what is acceptable for a certification. For example, an FI may only accept certification from a notary; however, other FIs may accept certification from a third-party employee of the customer.

Financial institutions should also clearly document how they confirm BO information and resolve any discrepancies between the various inputs on file. For example, a firm may use a third-party vendor to obtain or validate information. Alternatively, if an FI has differing information from a third-party vendor or the information collected on a USA PATRIOT Certificate,<sup>37</sup> policies and procedures should determine the way the FI resolves the discrepancy and certifies the BO data.

33. See 4AMLD, Recital 43, 2015 O.J. (L 141/79) and 4AMLD, Art. 41, 2015 O.J. (L 141/102).

34. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation), O.J. 2016 (L119/1), Article 5(1)(b). Available at: <https://gdpr.eu/article-5-how-to-process-personal-data/>

35. The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (2019/1151), § 30A(2). Available at: <http://www.legislation.gov.uk/uksl/2019/1511/made/data.pdf>

36. See Model Form in Appendix.

37. Collected for certain foreign banks pursuant to §§ 313 and 319(b) of the USA PATRIOT Act.

### III. Methods of Gaining Efficiencies

To enhance BO compliance efficiencies, FIs and MNCs should implement a blend of procedural and technological enhancements, deploy global standards for BO data gathering, empowering quality control initiatives, and leveraging robust data management and sharing practices.

#### A. Improving the Sanctions Screening Process

As sanctions compliance becomes more complex and traditional screening techniques and technology become less efficient, dynamic compliance programs will implement procedural changes and adopt new technologies to create business value. Routine changes to sanctions lists and the frequency of false positives pose a risk to FIs and corporations. Businesses can mitigate that risk by ensuring that sanctions screening processes and technologies are current, efficient, and effective.

##### 1. Procedural Enhancements

The least expensive way to generate and capture new efficiencies in the sanctions screening process is by implementing procedural enhancements. Methods of gaining efficiencies with sanctions screening processes include but are not limited to the following:

- a. Utilizing sanctions screening technology and software;
- b. Consistently monitoring sanctions updates and changes to sanctions lists;
- c. Deploying accurate and comprehensive naming conventions;
- d. Identifying and resolving false-positive sanctions hits;
- e. Delivering comprehensive training to AML and sanctions staff on the screening process and sanctions laws and regulations; and
- f. Maintaining accurate customer data and applicable geographies to further mitigate the risk of false-positive results.

While procedural updates can create new burdens for compliance staff, a thorough cost-benefit analysis and steadfast commitment to continuous improvement can significantly enhance an existing sanctions compliance program.

##### 2. Technological Enhancements

The increasing complexity of sanctions regimes exposed a significant and costly limitation in traditional sanctions technologies — specifically, the increasingly occurring false positive. The implementation of advanced compliance technologies using natural language processing, machine learning, automation, and other artificial intelligence disciplines can create valuable efficiencies for financial institutions.

Artificial intelligence disciplines, like machine learning and natural language processing, can analyze alerts to reduce duplicative and repetitive work for analysts. Financial institutions can deploy software to identify recurring false positive alerts on known and trusted customers to create and automatically update so-called “client white lists.” Managing false positive results reduces the cost of investigating alerts while allowing analysts to focus on investigating actual sanctions risks.

Process engineering and automation can minimize or even eliminate repetitive and menial tasks that are costly and prone to error. For instance, when sanctions screening software identifies a potential sanctions match, automated searches for adverse media can provide an investigator with a standardized output and reduce time spent on the task.

Similarly, entity resolution technologies can link common entities across different databases where a common identifier is absent. This technology can reduce the need to screen an entity multiple times against lists of politically exposed persons and sanctions lists such as the SSI and SDN lists.

Identifying and implementing the right advanced technology requires thoughtful vendor selection and matching technological capabilities with program components. Improper selection, as well as poor maintenance and tuning, can amplify inefficiencies and substantially increase inaccuracies by repeating the same fault on multiple occasions. Financial institutions should conduct periodic model and data validation testing to ensure that the system performs exactly as intended.

#### B. Development of a Global KYC Standard

Competition for winning business from MNCs is fierce among global FIs, and customer experience is a key factor in such relationships. A well-tuned KYC process not only provides efficiency gains but can improve customer experience and thus create a competitive advantage.

A global KYC standard defines the minimum standard across all jurisdictions in which a FI operates. Typically, a FI will not choose the most stringent requirement across all jurisdictions but take into consideration the requirements set by its local regulator and key jurisdictions to ensure that a majority of locations can operate on one standard. Uplifts, such as a lower BO threshold or specific verification requirements, are possible for jurisdictions where prescribed by local law. Waivers of the global minimum standard are only permitted where the standard conflicts with local law — e.g., where local law prohibits the collection of certain data points. This allows onboarding of an entity in multiple jurisdictions with the same set of BO information and documentation.

FIs can further improve this approach to only require one BO solicitation for an MNC client with multiple group entities by taking the following steps:

1. Identify entities belonging to one group, i.e., being part of the same corporate structure and thus having the same BO; and
2. Align KYC review cycles.

Under such circumstances, MNCs may be willing to provide a dedicated contact at head office level to coordinate the collection of BO and other KYC-related information and documentation across the group to further simplify the KYC process.

#### C. Quality Control

A fundamental measurement of any process is the quality of the final product. Quality Control (QC) initiatives seek to review the underlying product for accuracy, uniformity, and fitness for purpose. In the compliance context, QC roles double-check results of investigations, ensure completeness of documentation and adherence to established policy and procedures, and provide feedback to standardize work product. The QC function therefore provides businesses with an added layer of protection against inadvertent dealings with bad actors and seeks to reduce the associated regulatory and enforcement risks.

While QC initiatives are sometimes viewed as purely operational, businesses that incorporate elements of continuous improvement into their QC functions can leverage QC to identify opportunities for increased efficiencies and create business value. By defining and tracking QC metrics, utilizing statistical analysis, and generating efficiency maps, management can gain insight into compliance processes that could be executed with improved efficiency, accuracy, and effectiveness. Leveraging this insight can ultimately lead to leaner, more cost-effective compliance programs.

#### D. Leveraging Data Throughout the Organization

The many touch points for BO data in an organization can pose operational challenges but also present opportunities to generate business value. Customer BO data should be exported from the AML and sanctions functions and imported to other departments within the FI. For example, credit and/or reputational risk departments may monitor information in the public domain and could become aware of changes to customer information. A corporate actions department or a control room may also identify BO information updates through a pending investment banking deal. Additionally, organizations with an escheatment function may monitor death records that could impact a customer's BO data. Financial institutions should leverage all available sources of information to keep records current, maintain compliance, and create additional value.

Weak information-sharing methodologies and siloed information systems may produce inefficient and inaccurate compliance programs. For instance, when an FI updates a customer's CDD file, but fails to inform the sanctions department of new, relevant compliance data, the lack of information may result in duplicative work or inadvertent compliance violations. When newly obtained information is automatically extracted from one system, transformed into a required format, and uploaded into various compliance systems, however, the FI can capture improvements in quality and efficiency, while also reducing operating costs.

##### 1. Benefits of Data Mapping

Data mapping is the process of matching fields from one database to another. It is a critical tool for data management and provides a schematic for the migration, transformation, and integration of data across multiple systems. Although data hierarchy and disparities between data sources and targets can complicate data mapping, the seamless movement of data between systems is an effective method for increasing workflow efficiency, improving output quality and creating enhanced business value.

##### 2. Limitations of Data Mapping

The benefits of data mapping are substantial. However, the process can be difficult and time-consuming. Different mapping methods — i.e., manual, semi-automated, or automated — and execution present unique challenges. Any data mapping endeavor also requires extensive data validation to ensure accurate and complete data sources and targets. Inaccurate or invalid data mapping can cause catastrophic failure of data migration projects, emphasizing the importance of high-quality data mapping techniques and partners.



## IV. Financial Services Advisory & Compliance Service Offerings: How We Can Help

Guidehouse has a team of experts with experience in designing, building, and leading AML and sanctions programs. Guidehouse is routinely called upon to advise leading FIs on complex regulatory matters and firmwide initiatives. Our team has been engaged by some of the world's largest banks, broker-dealers, and advisory firms to manage and execute efforts to support compliance with applicable laws, rules, and regulatory requirements. Specifically, Guidehouse specializes in the following services:

### A. Customer Due Diligence Program Enhancements

Guidehouse can test, review, or create a risk-based AML and sanctions compliance program tailored to the size and sophistication of the financial institution.

### B. Customer Due Diligence File Remediation or Uplift

Guidehouse can manage or augment remediation efforts as firms adapt to changing requirements.

### C. Gap Analysis — Targeted or Full-Scale

Guidehouse can perform a gap analysis to identify areas of risk and formulate action plans to remediate areas requiring heightened focus. Our team can help guide clients through next steps and decision points and evaluate the impact on operations.

### D. Efficiency Assessment — Targeted or Full-Scale

Guidehouse can help identify root causes of inefficiencies and provide recommendations for improvement without losing effectiveness of the customer due diligence function or process.

### E. Technology Offerings

Guidehouse has experience developing and implementing technology accelerators and intelligent solutions to improve compliance workflows. Some past successes include development of intelligent alert scoring programs, automated adverse media production, entity resolution and network analysis solutions, analysis automation, and guided research aids.

## Conclusion

Collecting and maintaining BO information can be a significant challenge for FIs. FIs must understand what data they hold, how it is used and by whom to ensure coordination between relevant stakeholders and operationalize efforts to obtain and maintain such information as efficiently as possible. Guidehouse's AML and sanctions professionals are dedicated to solving our clients' most difficult business problems and improving their performance by providing advice and guidance, converting strategy to action, and supporting delivery across our client's functions using our transformation, risk, regulatory, and industry expertise.



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### About Guidehouse

Guidehouse is a leading global provider of consulting services to the public and commercial markets with broad capabilities in management, technology, and risk consulting. We help clients address their toughest challenges with a focus on markets and clients facing transformational change, technology-driven innovation and significant regulatory pressure. Across a range of advisory, consulting, outsourcing, and technology/analytics services, we help clients create scalable, innovative solutions that prepare them for future growth and success. Headquartered in Washington, D.C., the company has more than 7,000 professionals in more than 50 locations. Guidehouse is a Veritas Capital portfolio company, led by seasoned professionals with proven and diverse expertise in traditional and emerging technologies, markets, and agenda-setting issues driving national and global economies. For more information, please visit: [www.guidehouse.com](http://www.guidehouse.com).

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## Appendix A

Below explains how Specific Entity Types are defined with respect to various data collection regimes.



### United States AML/CTF

- i. Statutory Trusts: FIs must identify and verify the trustees and gather information about the settlor, grantor, and/or protector as appropriate.
- ii. Pooled Investment Vehicles (PIV): A PIV operated by an FI that is a legal entity customer under the CDD Rule does not have to provide equity BO information.<sup>38</sup>
- iii. Legal entities such as nonprofits: Any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate State authority as necessary. CP must be identified but not equity BO.



### European Union AML/CTF

- i. Corporate Entities: Greater than 25% of shares or voting rights (direct or indirectly held). If this cannot be determined / if there are doubts about the beneficial ownership, natural person(s) who hold the position of senior managing official(s). (See under e. Exclusions for companies listed on a regulated market). EU Member States can lower this threshold.
- ii. Trusts: The settlor, the trustee(s), the protector (if any), the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates, and any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means
- iii. Legal entities such as foundations: The natural person(s) holding equivalent or similar positions to those referred to for Trusts.
- iv. Other legal arrangements similar to trusts: The natural person(s) holding equivalent or similar positions to those referred to for Trusts.



### United Kingdom AML/CTF

- i. Corporate Entities: Individual exercising ultimate control over the management, owns greater than 25% of the shares or voting rights or controls the body corporate. (See under e. Exclusions for companies listed on a regulated market).
- ii. Partnership: Individual who ultimately is entitled to or controls (directly or indirectly) greater than 25% of the share capital or profits or holds greater than 25% of the voting rights, or otherwise exercise ultimate control over the management of the partnership.
- iii. Trusts: The settlor, the trustees, the beneficiaries, where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates, and any individual who has control over the trust.
- iv. Foundations: Individuals who hold equivalent or similar positions to those set out under Trusts.
- v. Other legal arrangements similar to trusts: Individuals who hold equivalent or similar positions to those set out under Trusts.



### Germany AML/CTF

- i. Corporate Legal persons: Individuals (directly or indirectly) holding greater than 25% of the shares or voting rights or exercising control in a similar manner. If this cannot be determined, the legal representative or the managing partner of the entity. (See under e. Exclusions for companies listed on a regulated market).
- ii. Foundations with legal capacity: The settlor, the trustee(s), the protector (if any), the beneficiaries, or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose interest the monies are administered, any other natural person who can exercise (direct or indirect) controlling influence over the administration or distribution of profits and any natural person who can exercise (direct or indirect) controlling influence on an entity that is a member of the board of the foundation or beneficiary of the foundation.
- iii. Trusts and comparable legal constructs: The same requirements as for foundations with legal capacity apply.

38. "Beneficial Owner" in the CDD Rule is defined as both the equity beneficial owner as well as a control person. Although this paper is focused on equity beneficial ownership, these pooled investment vehicles are not considered "excluded" pursuant to the CDD Rule, as there remains a requirement to identify and verify a control person.

Appendix B: Certification of Beneficial Owner(s)

Persons opening an account on behalf of a legal entity must provide the following information:

A. Name and Title of Natural Person Opening Account:

B. Name and Address of Legal Entity for Which the Account is Being Opened:

C. The following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, owns 25% or more of the equity interests of the legal entity listed above:

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number	For Foreign Persons: Passport no. and Country of Issuance or other similar identification number <sup>1</sup>

(If no individual meets this definition, please write "Not Applicable.")

D. The following information for one individual with significant responsibility for managing the legal entity listed above, such as:

- ☐ An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- ☐ Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under Section C above may also be listed in this Section D).

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number	For Foreign Persons: Passport no. and Country of Issuance or other similar identification number <sup>39</sup>

I, \_\_\_\_\_ (name of natural person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Legal Entity Identifier \_\_\_\_\_ (Optional)

39. In lieu of a passport number, a foreign person may also provide an alien identification card number or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.