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Stricter Anti-Money Laundering Controls on Tap for EU Banks and Financial Companies

By Raymond L. Sweigart

Financial businesses operating in the European Union will need to consider implementing stricter anti-money-laundering and anti-terrorism-financing controls or face a potential fine of up to 10 percent of their annual revenue, if the proposed rules issued on 5 February by the European Commission are adopted.

The new rules proposed as a fourth money laundering directive (4th Directive) include steps financial companies will have to take to prevent money laundering and terrorist financing and will require further enhancements to the information that must be gathered to accompany fund transfers. These new rules, when adopted, will complement and enhance the EU's existing anti-money laundering provisions in the 3rd Directive that have been in place since 2005. The 4th Directive was announced as a necessary reaction to the "constantly evolving" threats associated with money laundering and terrorist financing. The new rules will serve to close loopholes while presenting a more "targeted and focused" risk-based approach to money laundering.

The proposed rules are based on the latest standards adopted by the Financial Action Task Force in February 2012, but extend beyond that body's recommendations. The EU clearly aims to set consistent minimum standards for all its member states and enhance coordination of their actions in cross-border money laundering and terrorism financing.

Companies involved in the movement of money or goods will be required to conduct greater due diligence on their customers, and report any suspicious activity to a relevant authority. There is a particular focus under these proposals on identifying and maintaining records of the ultimate controllers or beneficial owners of any entity making any cross-border funds transfers of €1,000 ($1,350) or above, and on monitoring all transactions involving the transfer of goods or payments worth €7,500 ($10,160) or more, a reduction from the current threshold trigger of €15,000 ($20,323). EU member states will be free to set lower thresholds.

The proposed rules will also impose enhanced due diligence measures for so-called politically exposed people (PEPs) who are viewed as presenting a potentially higher risk of corruption through abuse of the public or governmental positions they hold. These enhanced due diligence measures will apply not only to transactions involving foreign nationals but also to domestic PEPs as well as their families and close associates.

A further enhancement not covered by the current EU rules includes specific provisions to address potential tax crimes related to money laundering and more comprehensive coverage of the entire gambling industry.

Failure to follow the newly required due diligence measures will expose companies and their executives to temporary bans on individuals overseeing the company, fines of up to 10 percent of a company's annual turnover or €5 million ($6,775,000) for individuals. Further sanctions of up to twice the profit gained or loss avoided from a particular transaction may also be available, depending the length and size of noncompliance and a number of other factors.

The proposed rules still require formal adoption by the European Parliament and the Council of Ministers under ordinary legislative procedure. A public hearing has been scheduled for 15 March. Once they are adopted, the laws and regulations of member states will have to be changed accordingly. Thus, it is unlikely that implementation at the national level will occur until later in 2014. Nevertheless, while the final details remain to be worked out, the writing is clearly on the wall and all affected businesses would be well-advised to be prepared.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the author.

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