

A new KYC requirement may be coming to a credit agreement near you

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On May 11, 2018, the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued the Customer Due Diligence Requirements for Financial Institutions (the CDD Rule). The CDD Rule outlines customer due diligence requirements and imposes a new requirement for specific financial institutions to identify and verify the identity of beneficial owners of legal entity customers. Canadian entities that have borrowed funds from U.S. lenders should be aware of the CDD Rule Note that there are exemptions that may apply to Canadian borrowers, including the exemption for companies that are publicly traded in the United States. It is important to note that financial institutions are not required to obtain or update beneficial ownership information on customers with accounts opened before May 11, 2018, unless a financial institution becomes aware of information indicating a potential change of beneficial ownership.

The CDD Rule defines beneficial owner as follows:

- each individual, if any, who, directly or indirectly, owns 25% or more of the equity interests of a legal entity customer; and
- a single individual with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer or senior manager (i.e., a Chief Executive Officer or Chief Financial Officer) or any other individual who regularly performs similar functions.

Note that this list of positions is not exclusive.

If the CDD Rule applies, a Form of Certification Regarding Beneficial Owners of Legal Entity Customers (the Form) will need to be completed by the applicable legal entities. Additionally, provisions in credit agreements currently being negotiated are generally being revised to follow the approach taken by The Loan Syndications and Trading Association (LSTA). The LSTA Model Credit Agreement has been updated to include a representation that all information in the Form is true and correct in all respects, and the Form has been added to the conditions precedent and covenants.

For more information on the application of the CDD Rule to Canadian entities, please contact [Joyce Bernasek](#).