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HEIGHTENED AML RISKS FOR ENTITIES DOING BUSINESS WITH SHELL COMPANIES

Recent changes in US regulations now require a broad range of financial institutions to identify and in certain cases to verify, the ultimate beneficial owners of their customers, and to use that information in their AML compliance programs. The authors discuss these changes in the US, and similar heightened requirements in the EU and the British Virgin Islands. They close with a discussion of recent illustrative enforcement actions and the lessons they provide for financial institutions and others.

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Regulators have long noted the heightened Anti Money Laundering (“AML”) risks presented by shell companies or companies without transparent ownership. Recent regulatory changes in the US, EU, and elsewhere, require an increasing range of financial institutions and other companies to collect information about the ultimate beneficial ownership of their customers or account holders. Recent enforcement actions and guidance issued by regulators also demonstrate their heightened expectations for the design and implementation of AML compliance programs. One consequence of these trends is that a broad range of institutions — including not only banks but also entities such as real estate brokers or art galleries — face increasing risks when they do business with shell companies, companies incorporated using nominee shareholders, or which otherwise employ opaque ownership structures. This article provides an overview

of these regulatory changes, highlights illustrative enforcement actions, and outlines considerations for companies that do business with, or provide services to, shell companies as they assess their AML regulatory risk.

SHELL COMPANIES AND USAGE

The US Department of the Treasury Financial Crimes Enforcement Network (“FinCEN”) has defined shell companies as “non-publicly traded corporations, limited liability companies, and trusts that typically have no physical presence (other than a mailing address), and generate little to no independent economic value.”¹ Shell companies may be created for legitimate means,

¹ FinCEN Guidance, “Potential Money Laundering Risks Related to Shell Companies,” FIN-2006-G014 (Nov. 9, 2006).

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