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## STRUCTURED FINANCE SPECIAL PURPOSE VEHICLES AND FINCEN'S CDD RULE

*Compliance with FinCEN's new customer due diligence rule can present significant difficulties for financial institutions that do business with SPVs in structured finance transactions. The author discusses the rule, the difficulties it presents, and the many exclusions it allows. He finds that similarly situated SPVs may be subject to dissimilar treatments under the rule and that a compelling case can be made for FinCEN to exclude SPVs more broadly from the rule's definition of "legal entity."*

By Jeremy Kuester \*

Structured finance is a common way for companies to share their risks and more efficiently access capital. In the course of a structured financing, legal entities are created to hold an asset, which in turn issues securities (primarily fixed income) that are offered to investors. These structured finance entities, called special purpose vehicles or special purpose entities (collectively, "SPVs"), can create compliance challenges under the Financial Crimes Enforcement Network's ("FinCEN") Customer Due Diligence Rule ("CDD Rule" or "the Rule") for the banks, brokers or dealers in securities, mutual funds, and futures commission merchants or introducing brokers in commodities ("covered financial institutions") with which they have formal financial relationships.

Because SPVs may be considered "legal entities" under the CDD Rule, covered financial institutions must collect and verify information regarding the SPV's beneficial owners. However, there are many exclusions to the CDD Rule's definition of "legal entity," including

one excluding pooled investment vehicles ("PIVs") managed or advised by an otherwise excluded financial institution, which could include some versions of SPVs. SPVs may come in several forms, including as PIVs or other types of entities not excluded under the CDD Rule, leading to situations where similarly situated SPVs with similar purposes, similar organizations, and similar associations with regulated financial institutions may be subject to dissimilar treatments under the CDD Rule. Given the similarities between excluded PIVs and otherwise not-excluded SPVs, a compelling case can be made for FinCEN to exclude such SPVs from the CDD Rule's definition of "legal entity."

### STRUCTURED FINANCE

Structured finance is a technique companies may employ to restructure debt, raise capital, transfer assets, or manage risk, among other purposes. While the dominant form of structured finance is securitization, whereby typically illiquid debt assets or receivables are

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