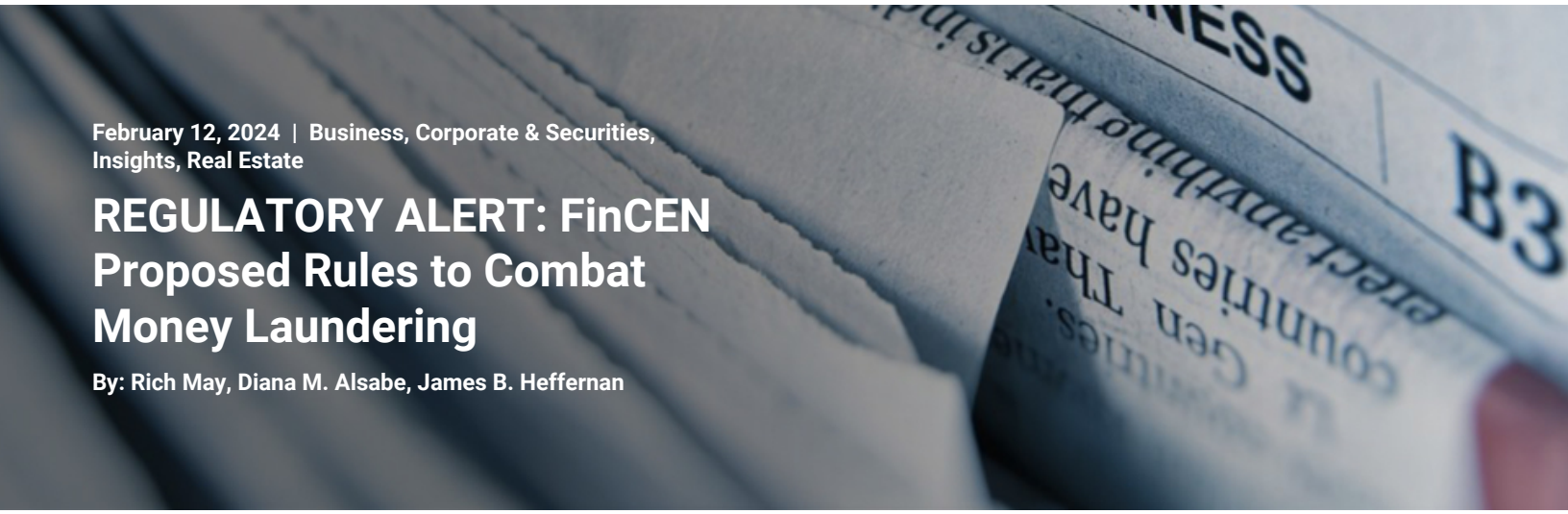

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REGULATORY ALERT: FinCEN Proposed Rules to Combat Money Laundering

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The U.S. Department of the Treasury ("Treasury") Financial Crimes Enforcement Network ("FinCEN") continues its effort to curtail fraud in residential real estate by proposing new rules to counteract and prevent money laundering. On February 7, 2024, FinCEN issued new rules entitled "Anti-Money Laundering Regulations for Residential Real Estate" (RIN: 1506-AB54) (the "Proposed Rules"). The Proposed Rules intend to increase transparency around reporting and recordkeeping of certain non-financed sales and transfers. Historically, illicit actors have relied on non-financed sales of residential real estate to evade scrutiny from financial institutions, holding residential real estate in the name of a legal entity or trust to further obscure ownership interests. FinCEN has found that such transfers are frequently vulnerable to money laundering due to the lack of oversight associated with such transactions. The ambit of these rules is to support the Treasury, as well as federal, state and local law enforcement, in tackling illicit financing transactions within the residential real estate sector.

The Proposed Rules seek to address money-laundering in non-financed "cash only" transactions by requiring that certain individuals involved in real estate transactions file reports and maintain books and records reflecting such transfers of residential real estate to legal entities and trusts. The Proposed Rules would require businesses (including attorneys) who perform specified closing or settlement functions for the cash-only sale or transfer of residential real estate to collect and report certain information to FinCEN including, but not limited to, beneficial ownership for the transferee, information about individuals representing the transferee, information about the residential real property being sold, and information about payments being made. Certain transferees may be exempt from the Proposed Rules, and the scope of residential real estate transactions that would be affected by the Proposed Rules is limited.

The Proposed Rules are a culmination of FinCEN's ongoing effort to curtail fraud in this sector, as previously demonstrated in FinCEN's Residential Real Estate Geographic Targeting Order program ("GTO"). The GTO program requires title insurance companies to file reports identifying beneficial owners of legal entities that engage in certain cash-only

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purchases of residential real estate in certain jurisdictions identified by FinCEN. The Proposed Rules draw on and expand the GTO program, in addition to incorporating some elements raised in public comments solicited by FinCEN. More information can be found in the full text of the Proposed Rules. We will provide an update if the Proposed Rules become final.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney(s) James B. Heffernan and Diana Alsabe.

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