

EFFECTIVE JANUARY 1, 2024

New Information Filing Requirements for Business Including Ownership

EFFECTIVE JANUARY 1, 2024 - Recent Federal rules have been enacted that may require your business to begin filing forms with the U.S. government containing information about both your business AND its ownership.

The Financial Crimes Enforcement Network (“FinCEN”) of the United States Treasury Department issued final rules on September 29 2022 implementing the beneficial ownership information (“BOI”) reporting provisions of the Corporate Transparency Act (“CTA”). The CTA will become effective on January 1, 2024.

BACKGROUND

The rules will enhance the ability of FinCEN and other agencies to protect U.S. national security and the U.S. financial system from illicit use. The BOI rules will not only provide direct benefits to law enforcement and other authorized users, but will also shed light on illicit actors who use shell companies to, among other things, launder their money or hide assets which disadvantage small U.S. businesses who play by the rules and harm American taxpayers.

The CTA will create beneficial ownership reporting requirements subject to specific exemptions for both domestic and foreign reporting companies operating in the United States both at the time of initial formation and upon certain ownership change events.

REPORTING COMPANIES

A **domestic reporting company** is defined as “any corporation, limited liability company or similar entity that is created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.” A **foreign reporting company** is defined as “a corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state of any similar office. All of the foregoing are “Reporting Companies”. Under the rule in keeping with the CTA, certain entities are exempt from the definition of Reporting Companies as set forth under Exempt Companies below. FinCEN expects that Reporting Companies will also include (subject to the applicability of specific exemptions), limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and limited liability companies. Other types of legal entities, including certain trusts, are excluded from the definition of Reporting Companies to the extent that they are not created by the filing of a document with the secretary of state or similar office.

EXEMPT COMPANIES

The CTA delineates twenty-three (23) types of companies that are exempt from inclusion as a “Reporting Company”

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For more information as to the application of this information to specific circumstances, please consult with counsel.

and therefore the reporting requirements set forth under Reporting below. As a general matter, any company that is owned by an exempt company is also exempt from the CTA's reporting requirements. Generally, exempt entities are already subject to federal reporting requirements. An exempt entity includes any: (i) securities reporting issuer (i.e., public company); (ii) bank; (iii) credit union (federal and state); (iv) bank holding company or savings and loan holding company; (v) money services business registered with FinCEN; (vi) broker or dealer in securities registered with the Securities Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (the "Exchange Act"); (vii) securities exchange or clearing house registered under the Exchange Act; (viii) investment company or investment advisor registered with the SEC under the Investment Company Act of 1940; (ix) venture capital fund advisor under the Investment Company Act of 1940 and registered with the SEC; (xi) insurance company under the Investment Company Act of 1940 and state-licensed insurance producer; (xii) public accounting firm registered in accordance with the Sarbanes-Oxley Act of 2002; (xiii) public utility; (xiv) tax exempt entity; (xv) large operating company that (A) employs more than twenty (20) fulltime employees in the United States, (B) has an operating presence at a physical office in the United State and (C) filed a Federal income tax or information return in the United States for the previous year demonstrating more than Five Million Dollars (\$5,000,000) in gross receipts or sales excluding gross receipts or sales from sources outside the United States (as determined under Federal income tax principals).

BENEFICIAL OWNERS

A "Beneficial Owner" is defined as any "individual" who, directly or indirectly, either (i) exercises "substantial control" over a Reporting Company or (ii) owns or controls at least twenty-five percent (25%) of the ownership interests of a Reporting Company. In keeping with the CTA, the rule exempts five (5) types of individuals from the definition of "Beneficial Owner." "Ownership Interests" include, without limitation, stock, equity interests, voting trust certificates, certificates of deposits for equity securities, interests in a joint venture, capital or profit interests, convertible securities, warrants, puts, calls, straddle or other option or privileges of buying the foregoing. "Substantial Control" includes individuals such as senior officers (i.e., president, chief financial officer, general counsel, chief executive officer, chief

operating officer, or other officer, regardless of official title, who performs a similar function), directors, managers, general partners, managing members or other individuals who have the power to exert significant decision-making involving the Reporting Company (these include, nature, scope and business, purchase, sale, mortgage or transfer of principal assets, reorganization, dissolution or merger, major expenditures, issuances of securities, incurrence of debt, selecting business lines, compensation schemes for senior officers, etc.). The CTA lists general practical exceptions to Beneficial Owners and include (i) minors, (ii) individuals acting as a nominee, intermediary, custodian or agent on behalf of another individual, (iii) employees, acting solely as employees, whose substantial control over or economic benefits from such entity are derived solely from the employment status of such entity (other than senior officers who are per the above Beneficial Owners) and (iv) creditors of Reporting Companies.

REPORTING

Each Reporting Company must file a report with FinCEN containing both company information and BOI (a "Report") and otherwise adhere to the CTA's requirements. A Report must include each Reporting Company's identity including any trade name and "doing business as" name, address, state of formation and such company's Internal Revenue Service tax payer identification number including an employer identification number. A Report must also include the following information about the Beneficial Owners: (i) full legal name; (ii) birthdate; (iii) complete current address and (iv) unique identifying number from an acceptable identification document such as a non-expired passport number, state issued non-expired driver's license number or military identification number and the image (i.e., picture) of such document.

WHEN TO FILE

New Reporting Companies created or registered after January 1, 2024 ("Effective Date") will have ninety (90) days (previously thirty (30) days) to file its initial Report with FinCEN from the earlier of (i) the date that the entity receives notice that its registration has become effective or (ii) the date which a secretary of state or similar office first provides public notice of registration such as through a public accessible registry.

Reporting Companies created or registered before the Effective Date will have until **January 1, 2025** to file its

initial Report with FinCEN. Reporting Companies will have thirty (30) days from the date of the filing of the initial Report to correct errors in the previous filing. This thirty (30) day period provides a safe harbor from any penalties set forth under Penalties below.

HOW TO REPORT

Reporting Companies will submit their Reports electronically through the Beneficial Ownership Secure System (“BOSS”) being developed by FinCEN the purpose of which is to receive, store and maintain BOI. The portal for the BOSS is expected to become effective on or before January 1, 2024.

All Reports submitted through the BOSS will be exempt from search and disclosure under the Freedom of Information Act.

PENALTIES

The BOI rules provide for civil and criminal penalties for **willful** violations in failing to file a Report or including false information in a Report. These include civil penalties of up to Five Hundred Dollars (\$500) per day and criminal penalties of up to Ten Thousand Dollars (\$10,000) and/or imprisonment for up to two (2) years.

ACCESS TO INFORMATION

FinCEN implemented an “Access Rule” on December 21, 2023 regarding the access and safeguard provisions of the CTA.

All uploaded BOI will be kept for safekeeping in a secure database and protected from unauthorized disclosure.

BOI is confidential, but, effective on February 20, 2024 to be rolled out by FinCEN in phases, may be disclosed to six categories of recipients (each of which shall be subject to security and confidentiality requirements): (1) U.S. Federal agencies engaged in national security, intelligence, or law enforcement activity; (2) U.S. State, local, and Tribal law enforcement agencies; (3) foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (foreign

requesters); (4) financial institutions using BOI to facilitate compliance with customer due diligence (CDD) requirements under applicable law; (5) Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with CDD requirements under applicable law; and (6) Treasury officers and employees.

CONCLUSION

If you own or control a business whether domestic or foreign that does business in the United States, that company will very likely be required to file a Report with FinCEN unless there are specific exemptions for such a filing requirement.

Please contact James D. Garbus to review your entity and determine if your business is required to file a report.

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