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The Corporate Transparency Act

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Corporate Transparency Act Beneficial Ownership Information Reporting

The Corporate Transparency Act (the “**CTA**”) was enacted by the United States Congress in 2021 in order to combat money laundering, terrorist financing, corruption, tax fraud and other illegal activities by legal entities established and/or doing business in the United States. Effective as of January 1, 2024, all such entities not otherwise exempt from the CTA must comply with the beneficial ownership information (“**BOI**”) reporting requirements promulgated by the United States Treasury Department’s Financial Crimes Enforcement Network (“**FinCEN**”) by filing reports with FinCEN providing specific identifying information about the entity and its beneficial owners.

Beneficial Ownership Information Reports – Initial Filing Deadlines

- Beginning in 2024, all “**Reporting Companies**” subject to the CTA must file reports with FinCEN disclosing required information with respect to the Reporting Company, its “**Beneficial Owners**” and, with respect to Reporting Companies formed on or after January 1, 2024, its “**Company Applicants**”.
- Initial Report Filing Deadlines:
 - Reporting Companies existing on December 31, 2023: No later than January 1, 2025
 - Reporting Companies formed on or after January 1, 2024, but prior to January 1, 2025: Within 90 days of formation
 - Reporting Companies formed on or after January 1, 2025: Within 30 days of formation

Beneficial Ownership Information Reports – Required Information

The initial BOI report for a domestic Reporting Company must include the following information with respect to the

Reporting Company:

- Full legal name;
- Any trade name or d/b/a name;
- Complete mailing address of its principal place of business;
- Jurisdiction of formation; and
- Tax Identification Number (TIN), such as an EIN.

Beneficial Ownership Information Reports – Required Information (cont.)

The initial BOI report must also include the following information with respect to each individual **Beneficial Owner** and, with respect to a Reporting Company formed on or after January 1, 2024, up to two **Company Applicants** of the Reporting Company:

- Full legal name;
- Date of birth;
- Complete residential street address (provided, however, that a Company Applicant who forms an entity in the course of such Company Applicant's business may provide a business street address);
- Unique identifying number from a U.S. passport, driver's license or other government issued identification document; and
- An image of the document from which such unique identifying number was obtained.

Beneficial Ownership Information Reports – Filings, Updates and Access to Information

- Reporting Companies may file BOI reports directly via FinCEN's BOI web site: <https://www.fincen.gov/boi>
- If there is any change in the information submitted to FinCEN concerning the Reporting Company or its Beneficial Owners, the Reporting Company must file an updated BOI report with FinCEN within 30 days of such change in information.
- FinCEN will provide BOI to certain federal and state government agencies engaged in national security, intelligence or law enforcement activities upon request from such agencies, but BOI will **not** be available to the general public.

Reporting Companies – General

A “**Reporting Company**” means either a “**domestic reporting company**” or a “**foreign reporting company**”. A “**domestic reporting company**” means any entity that is (1) a corporation, (2) a limited liability company or (3) created by the filing of a document with a secretary of state or a similar office. A “**foreign reporting company**” means any entity that is (1) a corporation, limited liability company or other entity, (2) formed under the laws of a foreign country and (3) registered to do business in any state by the filing of a document with a secretary of state or a similar office.

Reporting Companies – Exclusions

However, the definition of “**Reporting Company**” excludes a variety of specified “**Exempt Companies**” including the following already highly regulated entities:

- Public companies
- Banks and credit unions
- Securities brokers or dealers
- Registered investment companies and registered investment advisors
- Insurance companies
- Public accounting firms
- Governmental authorities
- Public utilities
- Certain tax-exempt entities

Reporting Companies – Exclusions (cont.)

Other Excluded Companies include:

- Large operating companies (defined as a company that has: (1) more than 20 full-time employees in the United States; (2) an operating presence at a physical office within the United States; and (3) filed a Federal income tax or information return for the previous year demonstrating more than \$5,000,000 in gross receipts or sales from United States sources. The minimum **employee** requirement must be tested on a **per entity basis**, while the minimum **gross receipts or sales** requirement may be tested on a **consolidated company basis.**);

Reporting Companies – Exclusions (cont.)

- Wholly owned subsidiaries of certain Exempt Companies; and
- Inactive entities (defined as any entity that: (1) was in existence on or before January 1, 2020; (2) is not engaged in an active business; (3) is not owned by a foreign person, directly or indirectly, in whole or in part; (4) has not experienced any change in ownership in the preceding twelve months; (5) has not sent or received more than \$1,000 in the preceding twelve months; and (6) does not otherwise hold any assets, including any ownership interest in any other entity).

Beneficial Owners – General

A “**Beneficial Owner**” of a Reporting Company means any **individual** who, directly or indirectly, either (1) exercises “**substantial control**” over such Reporting Company or (2) owns or controls at least 25% of the “**ownership interests**” of such Reporting Company.

Beneficial Owners – Substantial Control

An individual is deemed to exercise “**substantial control**” over a Reporting Company if such individual:

- Serves as a senior officer of the Reporting Company;
- Has authority over the appointment or removal of any senior officer or a majority of the board of directors or similar governing body of the Reporting Company;
- Directs, determines or has substantial influence over important decisions of the Reporting Company, including (1) the sale of any principal assets, (2) the reorganization, dissolution or merger of the Reporting Company, (3) major expenditures or investments, the issuance of any equity, the incurrence of any substantial debt or approval of the Reporting Company’s operating budget, (4) the selection or termination of business lines or geographic focus of the Reporting Company, (5) compensation arrangements for senior officers, (6) the entry or termination of significant contracts and (7) amendments of substantial governance documents or policies; or
- Has any other form of substantial control over the Reporting Company.

Beneficial Owners – Substantial Control (cont.)

An individual may also be deemed to exercise “**substantial control**” over a Reporting Company through:

- Board representation;
- Ownership or control over a majority of the voting power of the Reporting Company;
- Rights associated with any financial arrangement or interest in the Reporting Company;
- Control over any intermediate entity that exercises substantial control over the Reporting Company;
- Arrangements with others acting as nominees; or
- Any other contract, arrangement or undertaking.

Beneficial Owners – Ownership Interest

An “**ownership interest**” in a Reporting Company means any equity, capital stock, capital or profits interests, convertible securities, puts, calls or options, or any other contract, arrangement or understanding used to establish ownership.

Beneficial Owners – Calculating Ownership

- Ownership percentages must be calculated as of the present time and options or convertible securities must be treated as exercised or converted (i.e., a fully-diluted basis).
- For Reporting Companies that issue capital or profits interests (e.g., LLC's), an individual's ownership percentage equals (x) the individual's capital and profits interests divided by (y) the total outstanding capital and profits interests.

Beneficial Owners – Calculating Ownership (cont.)

- For corporations, an individual's ownership percentage equals the greater of (1) (x) the total combined voting power of all classes of the individual's ownership interests divided by (y) the total outstanding voting power of all classes of ownership interests entitled to vote and (2) (x) the total combined value of the individual's ownership interests divided by (y) the total outstanding value of all classes of ownership interests.
- If the facts and circumstances do not permit such calculations with reasonable certainty, then any individual who owns 25% or more of any class or type of ownership interest of a Reporting Company shall be deemed to own 25% or more of the ownership interests of the Reporting Company.

Beneficial Owners – Exempt Companies

If a direct beneficial owner of a Reporting Company is itself an “**Exempt Company**”, the Reporting Company may simply include in its BOI report the name of the Exempt Company in lieu of the individual specific information that would otherwise be required with respect to the Beneficial Owners of that Exempt Company.

Beneficial Owners – Multi-Level Ownership

- Example: ABC Corporation is a non-exempt Reporting Company. XYZ LLC owns 30% of the capital stock of ABC Corporation, and therefore is a direct beneficial owner of ABC Corporation.
- Question: How does ABC Corporation report the beneficial ownership of the 30% interest directly owned by XYZ LLC?
- Analysis:
 - Is XYZ LLC an Exempt Company? If yes, list XYZ LLC as the beneficial owner.
 - If no, must report the beneficial owners of XYZ LLC.
 - If any beneficial owner of XYZ LLC is itself an entity, then the analysis process must be repeated until one is left with only Exempt Companies and/or individual Beneficial Owners.

Company Applicants

All BOI reports filed with respect to Reporting Companies created on and after **January 1, 2024** must also include substantially the same information with respect to up to two “**Company Applicants**” of the Reporting Company as is required for individual Beneficial Owners. A “**Company Applicant**” for a domestic Reporting Company means (1) the individual who directly files the document that creates the domestic Reporting Company and (2) the individual who is primarily responsible for directing such filing if more than one individual is involved in the filing of the document.

FinCEN Identifiers

An individual (including any Beneficial Owner or Company Applicant) or a Reporting Company may obtain a specific FinCEN Identifier by submitting to FinCEN an application containing the information about such individual or Reporting Company as would otherwise be required to be included in a BOI report filed with FinCEN. Once an individual obtains such a FinCEN Identifier, such individual may provide such FinCEN Identifier to a Reporting Company and the Reporting Company may include such FinCEN Identifier in its BOI report in lieu of the individual information otherwise required from an individual (whether a Beneficial Owner or a Company Applicant).

Violation Penalties

The willful failure to file any required initial or updated BOI report with FinCEN can result in a civil fine of \$500 per day (up to a maximum of \$10,000) and/or imprisonment of up to two years.

Questions?

Thank you

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