

The Corporate Transparency Act: Implications for Investment Management

November 30, 2023 | Client Alert

Starting Jan. 1, 2024, domestic and foreign entities registered to do business in the United States will need to comply with new beneficial ownership reporting requirements imposed under the Corporate Transparency Act (CTA). These requirements are designed to combat money laundering, terrorism financing and other illicit activities by mandating certain entities to disclose their beneficial owners.

Registered investment companies and their wholly owned subsidiaries are broadly exempt from reporting requirements under the CTA. Exemptions are also available for many other investment management entities, including investment advisers registered with the U.S. Securities and Exchange Commission (SEC) and some private funds. Nevertheless, a number of entities in the investment management space will be subject to CTA reporting requirements, including some that historically have been subject to few reporting obligations of any kind.

What Is the CTA?

The CTA was enacted by Congress in 2021 as part of the White House's [United States Strategy on Countering Corruption](#).

The CTA directs the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) to create a national registry of beneficial ownership information for certain entities (defined under the CTA as Reporting Companies). FinCEN issued a [Final Rule](#) on Sept. 30, 2022, which implements the reporting requirements of the CTA.

Who Is Considered a Reporting Company?

The CTA defines two types of Reporting Companies: domestic and foreign. Domestic Reporting Companies are corporations, limited liability companies or other similar entities created by filing a document with a state secretary of state or any similar office of a state, territory or possession of the United States or any tribal jurisdiction. Foreign Reporting Companies are entities formed under the law of a foreign country that are registered to do business in any U.S. state, territory or possession or tribal jurisdiction by filing a document with a state secretary of state or any similar office of a state, territory or possession or tribal jurisdiction.

Who Is Not Considered a Reporting Company?¹

There are 23 types of entities that are exempt from the CTA's reporting requirements, including, generally:

- Publicly traded companies.
- Banks, credit unions and other financial institutions.
- Registered investment companies.
- Other SEC-registered entities, including investment advisers and broker-dealers.
- Private funds advised by an SEC-registered investment adviser and identified by the fund's legal name on the adviser's Form ADV.
- Certain large operating companies.
- Wholly owned subsidiaries of the above (other than subsidiaries of private funds).

Application to Investment Management Entities

The majority of investment management entities will come within one or more of the exemptions from the CTA's reporting requirements and, therefore, will not be Reporting Companies. However, many investment management entities will be subject to reporting requirements:

- **Unregistered investment advisers:** The exemption for investment advisers applies only to those registered with the SEC. State-registered investment advisers do not qualify for the exemption. Family offices are also not exempt.
- **Investment entities:** The exemption for private funds will not be available unless the private fund is identified by its legal name in the applicable investment adviser's Form ADV (or will be so identified in the next annual updating amendment). There is no similar exemption for other investment vehicles. Foreign private funds (if registered to do business in a U.S. jurisdiction) will be subject to some reporting requirements, even if the private fund exemption would otherwise be available.
- **Affiliates:** No specific exemption is available for holding companies of investment advisers, general partners of private funds, subsidiaries of private funds or most other affiliated entities. In some cases, the affiliate will be able to rely upon some other exemption (e.g., a general partner will be exempt if it is a wholly owned subsidiary of a registered investment adviser), but exemptions will not always be available.

Reporting Information

Under the CTA, a Reporting Company must submit an online confidential report identifying the beneficial owners of the entity (the Beneficial Ownership Information Report, or BOIR). The BOIR must include identifying information for all beneficial owners. In addition, for Reporting Companies formed on or after Jan. 1, 2024, the BOIR must include identifying information for company applicants. A reporting company and any individual required to provide information on beneficial ownership may obtain an identifier number from FinCEN for use on any BOIRs in place of providing such ownership information directly on each applicable BOIR on which such information is required to be reported.

¹ The full list of exceptions is available at [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(i\) – \(xxiv\)](#).

- A beneficial owner is any individual who owns or controls a 25 percent “ownership interest” in the Reporting Company or who exercises “substantial control” over the Reporting Company. This includes individuals who have significant control over the company, even if they do not own a majority of the shares.
 - In calculating this 25 percent ownership interest, an individual's options are considered as having been exercised, and capital and profits interests are taken into account.
 - Interests that are convertible into equity, stock or voting rights will also be treated as exercised for the purposes of the calculation. This is also an important consideration in determining if a person has substantial control.
 - Any put, call, straddle or other option or privilege of buying or selling equity, stock, voting rights, capital or profit interest or convertible interest will be considered, except if the option or privilege is created and held by others without the knowledge or involvement of the Reporting Company.
- A “company applicant” is any individual who directly files the document that creates the domestic Reporting Company or registers the foreign Reporting Company and the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved.

What Is Substantial Control?

FinCEN has identified the following circumstances in which an individual is likely exercising substantial control and, therefore, would need to report:

- The individual is a senior officer (the company's president, chief financial officer, general counsel, chief executive officer, chief operating officer or any other officer who performs a similar function).
- The individual has the authority to appoint or remove certain officers or a majority of the board of directors (or similar bodies) of the Reporting Company.
- The individual is an important decision-maker for the Reporting Company. Important decisions include those involving a Reporting Company's business, finances and structure.
- The individual has any other form of substantial control over the Reporting Company.

For each beneficial owner and company applicant, the BOIR will include the name, date of birth, address and a copy of an identifying document, such as a driver's license or passport.

How/Where Do I Report?

Beneficial ownership information will be reported using an electronic filing system that is in the process of being developed by FinCEN (known as the Beneficial Ownership Secure System, or BOSS). This system is anticipated to be live by the Jan. 1 commencement date.

Reporting Deadlines

The CTA's reporting requirements go into effect on Jan. 1:

- New Reporting Companies formed or registered to do business in a U.S. jurisdiction on or after Jan. 1, 2024, and before Jan. 1, 2025, have 90 calendar days to file an initial report, and new Reporting Companies formed or registered to do business on or after Jan. 1, 2025,

have 30 calendar days to file an initial report. The 90-day or 30-day period starts from the date the entity receives notice that its creation or registration is effective or from the date its creation or registration is first publicly noticed by a secretary of state or similar office, whichever is earlier.

- Existing Reporting Companies (those formed before Jan. 1, 2024) must file their initial report by Jan. 1, 2025.

If an entity that is initially exempt from the CTA reporting requirements later loses that exemption, it has 30 calendar days to file its initial report. For all Reporting Companies, any changes to previously reported information, including information concerning any beneficial owner, must be reported within 30 calendar days.

Penalties for Noncompliance

Noncompliance with CTA reporting requirements carries significant risk. The CTA imposes civil and criminal penalties on anyone who willfully fails to report or update BOIR information or who provides false information as part of a report. Individual employees who prepare and submit reporting information may be held personally liable for false reports. Civil penalties include a daily fine of \$500, up to a maximum of \$10,000. Criminal penalties include up to two years' imprisonment.

Who Has Access to BOIR Information?

FinCEN will permit federal, state, local and tribal officials, as well as certain foreign officials who submit a request through a U.S. government agency, to obtain beneficial ownership information for authorized activities related to national security, intelligence and law enforcement. With customer consent, financial institutions will also have access to the information for "know your customer" purposes.

What Steps Does Your Business Need to Take Now?

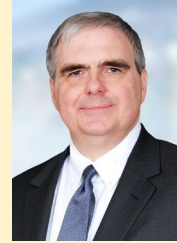
- Identify entities within your organization that may be Reporting Companies.
- Identify whether you and any or all of your affiliate entities qualify for any exemption.
- If any entity within your organization is not exempt from the reporting requirements, identify each such entity's beneficial owners.
- Collect the required information about the entity and its beneficial owners.
- Develop a system for updating and correcting beneficial ownership information regularly. This may include reviewing agreements to ensure that anyone who could be a beneficial owner is required to provide the company with updated and accurate information on a timely basis.
- Establish procedures for filing initial and updated reports with FinCEN.

More Information

The CTA requirements remain subject to further modification and guidance. FinCEN has published [guidance tools](#) that may be useful in interpreting the regulations as they are implemented. For current guidance and updates from FinCEN on the rules and existing regulations, see [FinCEN's BOI Small Entity Compliance Guide](#).

We are continuing to monitor these developments and are available on request to assist clients with their obligations in navigating these complicated new requirements.

For more information, contact:



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