

# FinCEN Proposes Corporate Beneficial Ownership Reporting Rule

December 17, 2021

Last week, the Financial Crimes Enforcement Network (“FinCEN”) of the Department of the Treasury announced a [Notice of Proposed Rulemaking](#) (“NPRM”)<sup>1</sup> to implement the beneficial ownership reporting requirements of the Corporate Transparency Act (“CTA”), part of the Anti-Money Laundering Act of 2020.<sup>2</sup> This legislation requires a range of U.S. legal entities, and non-U.S. legal entities registered to do business in the United States, to report information on their underlying beneficial owners to FinCEN.

The NPRM addresses and interprets four key aspects of the CTA: who must report, when they must report, what information they must report, and what penalties apply for violations of reporting requirements. FinCEN plans to engage in separate rulemakings to implement the CTA’s protocols for collecting, accessing and protecting beneficial ownership information, and to revise FinCEN’s customer due diligence rule (the “CDD Rule”).<sup>3</sup> FinCEN is also in the process of developing infrastructure to administer the CTA, including a secure beneficial ownership information technology system.

Parties may submit written comments to FinCEN about the NPRM until February 7, 2022.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

WASHINGTON

**Derek M. Bush**  
+1 202 974 1526  
[dbush@cgsh.com](mailto:dbush@cgsh.com)

**Patrick Fuller**  
+1 202 974 1534  
[pfuller@cgsh.com](mailto:pfuller@cgsh.com)

**Michael Sanders**  
+1 202 974 1894  
[msanders@cgsh.com](mailto:msanders@cgsh.com)

**Rishi Kumar**  
+1 202 974 1838  
[rkumar@cgsh.com](mailto:rkumar@cgsh.com)

<sup>1</sup> Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 69,920 (Dec. 8, 2021). The NPRM follows an advanced notice of proposed rulemaking (the “ANPR”) released in April where FinCEN invited comments on a broad range of topics associated with the CTA. Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 17,557 (Apr. 5, 2021).

<sup>2</sup> The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388 §§ 6001-6511 (2020).

<sup>3</sup> [See Customer Due Diligence Requirements for Financial Institutions](#), 81 Fed. Reg. 29,397 (May 11, 2016). The CTA requires FinCEN to revise the CDD Rule in connection with implementing the CTA.



## Overview

In a major shift from current practice, the CTA requires “reporting companies” to file certain identifying information regarding the reporting company and its “company applicants” and “beneficial owners” (terms discussed below) with FinCEN. Currently, this information does not generally need to be reported to federal or state governments but may be collected by financial institutions at account opening under the CDD Rule.

Information reported to FinCEN under the CTA will be kept in a confidential database and made available only for national security, intelligence and law enforcement purposes, and (with customer consent) to facilitate financial institution customer due diligence requirements. Unlawful disclosures of beneficial ownership information would be subject to penalties.

The NPRM is notable in the breadth of its proposed reporting requirements. FinCEN has proposed to interpret the CTA expansively to maximize the number and types of legal entities that will be required to report beneficial ownership to FinCEN, and to maximize the number and types of relationships that would cause an individual to be deemed a beneficial owner of a reporting company. A consistent theme throughout the NPRM is a concern that a narrower approach would increase chances for evasion and make reports less useful for law enforcement, intelligence and national security purposes. The NPRM release was timed to coincide with the Biden Administration’s “Summit for Democracy”, and speeches by Treasury Secretary Yellen and Deputy Secretary Adeyemo delivered last week each emphasized the importance of the CTA in the Biden Administration’s broader efforts to fight corruption and money laundering in the United States and globally.<sup>4</sup>

FinCEN estimates that there are more than 25 million legal entities currently in existence that may be

reporting companies under the NPRM, and more than 3 million additional legal entities that may be reporting companies are formed or registered each year. Although for most of these companies, identifying and reporting beneficial owners is likely to be a straightforward exercise, some reporting companies may find it difficult to interpret and apply the NPRM’s broad and subjective definitions. The overall burden on businesses will depend on FinCEN’s ability to develop a simple, administrable rule and a streamlined reporting mechanism.

Companies should review the CTA and the NPRM, including the definition of “reporting company” and the related exemptions, to determine whether it will impose reporting requirements on them.

## Reporting Companies Definition

The CTA defines “reporting companies” that are subject to the CTA’s reporting requirements as any “corporation, limited liability company, or other similar entity that is (i) created by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe.” The NPRM proposes to modify and expand the CTA definition by dividing reporting companies into two classes of companies—domestic reporting companies and foreign reporting companies.

*A domestic reporting company would include any entity that is: (i) a corporation, (ii) limited liability company or (iii) other 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.*

<sup>4</sup> Janet Yellen, Secretary, Treasury Dep’t, Remarks at the Summit for Democracy (Dec. 9, 2021), <https://home.treasury.gov/news/press-releases/jy0524>; Wally Adeyemo, Deputy Secretary, Treasury Dep’t,

Remarks on Anti-Corruption at the Brookings Institution (Dec. 6, 2021), <https://home.treasury.gov/news/press-releases/jy0516>.

A *foreign reporting company* would include any entity that is: (i) a corporation, limited liability company, or other entity; (ii) formed under the law of a foreign country; and (iii) registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

The NPRM's definition of domestic reporting company would expand the CTA's definition by interpreting the concept of "similar entity" to include *any* entity that is created by filing a document with a secretary of state or similar office. In the NPRM, FinCEN states that it expects this definition of domestic reporting company to include limited liability partnerships, limited liability limited partnerships, business trusts (a/k/a statutory trusts or Massachusetts trusts) and most limited partnerships because such entities are typically created by filing with a secretary of state or similar office, although FinCEN acknowledge that certain other types of partnerships and trusts may not be captured.

The NPRM's definition of foreign reporting company also expands the CTA's definition by interpreting the concept of "similar entity" for foreign companies to include *any* entity that has registered to do business with any State or Indian tribe. FinCEN acknowledges that the definition of foreign reporting company may capture more types of legal entities that the definition of domestic reporting company, because U.S. states and tribal jurisdictions typically require any legal entity formed under the law of any other jurisdiction to register to do business as a "foreign" entity if it engages in certain types of activities within the state or jurisdiction.

### **Exemptions from Reporting**

The CTA is largely targeted at smaller, lightly regulated entities that may not be subject to other beneficial ownership reporting requirements. As a consequence, the CTA exempts many legal entities from reporting requirements, and the NPRM proposes

to implement the CTA's list of exemptions with only a handful of changes. FinCEN declined to exercise its authority to create new classes of exempt entities, despite numerous comments on the ANPR suggesting additional exemptions. However, the NPRM invites comment on what other exemptions may be appropriate.

### **Entities Proposed to be Exempt from Reporting under the NPRM**

*SEC reporting issuers* that have a class of securities registered under Section 12 or that are required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

*Governmental authorities* established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States that exercise governmental authority on behalf of the United States or any such Indian tribe, State or political subdivision.

*Banks* as defined under the Federal Deposit Insurance Act, the Investment Company Act of 1940 (the "40 Act") and the Investment Advisers Act of 1940 (the "Advisers Act") (which together include U.S. banks and other depository institutions, savings associations, trust companies and state and federal branches and agencies of foreign banks).

*Federal and state credit unions.*

*Bank holding companies and savings and loan holding companies.*

*Money transmitting businesses* if registered with FinCEN.

*SEC registrants* including broker-dealers, securities exchanges and clearing agencies, investment companies and investment advisers, and any other entity registered with the U.S. Securities and Exchange Commission ("SEC") under the Exchange Act.

*Venture capital fund advisers* as defined in section 203(l) of the Advisers Act, if the adviser has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV with the SEC.

*State-regulated insurance companies.*

*State-licensed insurance producers* that have an operating presence at a physical office in the United States.

*CFTC registrants* including futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, retail foreign exchange dealers, swap dealers and major swap participants registered with the Commodity Futures Trading Commission and other “registered entities” as defined in the Commodity Exchange Act.

*Public accounting firms* registered under the Sarbanes-Oxley Act.

*Public utilities* that provide telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

*Financial market utilities* designated as systematically important pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

*Pooled investment vehicles* that are operated or advised by an exempt bank, credit union, broker-dealer, investment company, investment adviser or venture capital fund adviser (although the definition of pooled investment vehicle is limited to (i) investment companies as defined in the 40 Act and (ii) companies that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the 40 Act and which are reported on their adviser’s Form ADV, which may not capture the full scope of investment vehicles operated or advised by these types of entities).

*Certain tax-exempt entities* under Sections 501(a) (non-profit organizations), 527(a) (political organizations) or 4947(a) (non-exempt charitable trusts and split-interest trusts) of the

Internal Revenue Code of 1986, and certain U.S. entities that operate exclusively to provide assistance to, or hold governance rights over, such tax-exempt entities.

*Large operating companies* that (i) employ more than 20 employees on a full-time basis in the United States, (ii) have an operating presence at a physical office within the United States and (iii) filed in the previous year Federal income tax returns in the United States demonstrating more than \$5 million in gross receipts or sales in the aggregate, including the receipts or sales of other entities owned by the entity and other entities through which the entity operates, but excluding gross receipts or sales from sources outside the United States.

*Subsidiaries of exempt entities*, if wholly owned by another exempt entity, except that subsidiaries of exempt money transmitting businesses, pooled investment vehicles, entities that assist tax exempt organizations and inactive entities would not be exempt.

*Inactive entities* that (i) were in existence on or before January 1, 2020, (ii) are not engaged in active business, (iii) are not owned, directly or indirectly, by a foreign person, (iv) have not experienced any change in ownership in the prior 12-month period, (v) have not sent or received funds in an amount greater than \$1,000 in the preceding 12-month period and (vi) do not otherwise hold any kind or type of assets, whether in the United States or abroad, including but not limited to any ownership interest in any corporation, limited liability company or other similar entity.

The NPRM proposes mostly minor clarifications to the CTA’s exemptions. One substantive change is the NPRM’s proposed definition of “large operating companies”, where FinCEN has proposed to measure the CTA’s \$5 million threshold excluding gross receipts or sales from sources outside the United States. FinCEN states that the purpose of this

exclusion is to reflect the CTA's domestic focus, but the CTA provision is not limited in this way and FinCEN does not provide a policy rationale for treating operating companies that have employees and file tax returns in the United States less favorably because they have mostly non-U.S.-sourced revenues.

Other notable clarifications include interpreting the "subsidiary exemption" to apply only to entities that are entirely or wholly owned by one or more exempt entities, to prevent a partially owned entity from avoiding reporting requirements for its non-exempt owners. In addition, the inactive entity exemption would be clarified to serve solely as a grandfathering provision for entities that were in existence for over one year before *enactment* of the CTA, rather than any entity in existence but inactive for over one year. The NPRM also proposes a minor, non-substantive clarification to the definition of "public utilities".

Given the breadth of reporting companies proposed to be captured by the NPRM, and the NPRM's proposed extensive and subjective definition of beneficial owner (discussed below), the scope and applicability of these exemptions will be critical to mitigating the burden placed on legal entities that may otherwise have to report. Of particular note, the exemptions are primarily available to larger domestic U.S. companies and to U.S.-regulated entities, and may not be of much value for smaller U.S. subsidiaries and offices of foreign companies, even where the foreign parent is publicly traded, a large employer and/or a regulated entity outside of the U.S. that would be exempt if domiciled in the United States.

## Reporting Requirements for Reporting Companies

The NPRM would require reporting companies to file a report with FinCEN that provides identifying information for the reporting company, its beneficial owners and any company applicants.

### *Reporting Company Information*

The NPRM would require each report to include the following information on the reporting company: (i) name, (ii) alternative names through which the company is engaging in business (such as trade names and d/b/a names), (iii) business street address, (iv) its jurisdiction of formation or registration and (v) a unique identification number (an IRS Taxpayer Identification Number ("TIN"), or where a TIN has not yet been issued, a Dun & Bradstreet Data Universal Numbering System Number or Legal Entity Identifier). The NPRM notes that FinCEN believes use of a business street address should preclude the use of a reporting company's formation agent or other third-party representative.

### *Beneficial Owner and Company Applicant Information*

The CTA requires that reporting companies provide, for each individual that is a beneficial owner or company applicant, such individual's (i) full legal name, (ii) date of birth, (iii) current residential or business street address and (iv) a unique identifying number from a non-expired U.S. passport, identification document issued by a State, local government, or Indian Tribe, or driver's license or, if none of the foregoing is available, a non-expired foreign passport.

The NPRM would add a requirement that the report include a scanned image of the identification document used for the unique identifying number that includes both the identifying number and a photograph of the individual. It would also clarify that the address used should generally be the individual's residential street address used for tax residency purposes.<sup>5</sup> Finally, it would allow (but not require) a reporting company to provide, with each individual's consent, the TINs of its beneficial owners and company applicants, noting that such information would help ensure the resulting beneficial ownership database is highly useful to authorized users.

<sup>5</sup> "Company applicants" who form or register companies as part of their business (e.g., corporate service

providers) would be required to use a business street address.

Reporting companies already in existence when the final rule becomes effective would still be required to report their company applicants, even if the company was formed many years earlier, unless the individual or individuals are deceased. In this specific case, the reporting company would only need to report that fact along with whatever identifying information the reporting company actually knows about the company applicant.

### *Special Reporting Rules*

The CTA and NPRM include certain modifications of the baseline reporting requirements to cover certain special situations:<sup>6</sup>

- *Ownership through an exempt entity.* If an individual would be a beneficial owner by virtue of an ownership interest held directly or indirectly by an exempt entity, then the name of the exempt entity, and not the individual, would be reported.
- *Foreign pooled investment vehicles.* The CTA and NPRM both provide that exempt pooled investment vehicles, if organized outside the United States, must report one individual that exercises substantial control over the vehicle. If there is more than one individual with substantial control, the individual with greatest authority over strategic management must be reported.
- *FinCEN identifying numbers.* The CTA provides a process for FinCEN to provide individuals and reporting companies with unique identifying numbers that can be provided in reports in lieu of the required information for the individual or company.

### **Beneficial Owner Definition**

The CTA defines a beneficial owner as any “individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.” The CTA does not,

however, define “substantial control” or “ownership interest”.

### **Proposed Definition of Substantial Control**

The NPRM proposes an expansive and subjective definition for individuals with substantial control, covering both *de jure* and *de facto* control. It identifies three specific indicators and a fourth catch-all provision in the definition, which cover:

- service as a senior officer of a reporting company;
- authority over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body) of a reporting company;
- direction, determination or decision of, or substantial influence over, important matters of a reporting company; and
- any other form of substantial control over the reporting company.

The NPRM provides a non-exclusive list of examples where an individual’s ability to direct, determine, decide or exercise substantial influence over important matters (the third prong of the proposed definition) would constitute substantial control, including:

- the nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage or other transfer of any principal assets;
- reorganization, dissolution or merger;
- major expenditures or investments, issuances of any equity, incurrence of any significant debt or approval of the operating budget;

<sup>6</sup> Special rules for minor children and deceased company applicants are addressed elsewhere in this alert.

- the selection or termination of business lines or ventures, or geographic focus, of the reporting company;
- compensation schemes and incentive programs for senior officers;
- the entry into or termination, or the fulfillment or non-fulfillment of significant contracts; and
- amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws and significant policies or procedures.

The NPRM would also provide that “direct or indirect” exercise of substantial control can take a variety of forms, including through:

- board representation;
- ownership or control of a majority or dominant minority of the voting shares of the reporting company;
- rights associated with any financing arrangement or interest in a company;
- control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;
- arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
- any other contract, arrangement, understanding, relationship or otherwise.

When combined with the requirement that the reporting company identify *every* individual with substantial control of the company—a sharp contrast to the CDD Rule, which requires only one beneficial owner to be identified under its control test—the NPRM’s definition of substantial control could substantially increase the burden on reporting

companies both in initial reporting and monitoring and updating previously provided information regarding controlling persons.

FinCEN’s decision to cast a wide net, rather than use a narrower definition and more limited reporting obligation that is easier to administer, is driven by a concern that a narrower definition would create opportunities for evasion. The fourth catch-all definition in particular is intended to capture control exercised in “novel and unorthodox ways”. For most small reporting companies with simple governance structures, identifying a set of individuals with “substantial control” should still be relatively straightforward. But even simple companies may encounter grey areas and borderline cases, and for companies that have more complex governance arrangements, the definition of substantial control is likely to present challenges.

#### **Proposed Definition of Ownership Interest**

The NPRM also takes an expansive approach to defining ownership interest, which would include:

- any equity, stock, or similar instrument, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, interest in a joint venture, or certificate of interest in a business trust, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or represents voting or non-voting shares;
- any capital or profit interest in a limited liability company or partnership, including limited and general partnership interests;
- any proprietorship interest;
- any instrument convertible, with or without consideration, into any instrument described in the prior paragraphs, any future on any such

instrument, or any warrant or right to purchase, sell or subscribe to a share or interest described in the prior paragraphs, regardless of whether characterized as debt; or

- any put, call, straddle or other option or privilege of buying or selling any of the items described in the prior paragraphs without being bound to do so.

In addition, the NPRM provides examples of circumstances where an individual might be deemed to have direct or indirect ownership or control of an ownership interest of a reporting company, including but not limited to:

- joint ownership with one or more other persons of an undivided interest in such ownership interest;
- control of an ownership interest owned by another individual; and
- with regard to a trust or similar arrangement that holds an ownership interest:
  - acting as a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;
  - being a beneficiary of the trust who (i) is the sole permissible recipient of income and principal from the trust or (ii) has the right to demand a distribution of or withdraw substantially all of the assets from the trust;
  - being a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust: (i) through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company; or

(ii) through any other contract, arrangement, understanding or relationship.

Finally, the NPRM provides that, when determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company, all ownership interests of any class or type should be aggregated and the individuals' holdings should be determined by aggregating all of the individual's ownership interests in comparison to the undiluted ownership interests of the company.

The NPRM's proposed definition of ownership interest again demonstrates FinCEN's preference for a broad definition that minimizes chances for technical evasion over a simpler, easier to administer rule. Smaller companies with simple ownership structures should generally not find it difficult to evaluate their ownership structures and identify beneficial owners under the ownership interest test. But the proposed definition presents serious interpretive and practical challenges in more complex cases, including how a company with more than one "type" of ownership interest should weigh them relative to each other when trying to count the total aggregate ownership interests of the company, and whether a company should be expected to know about all the possible contingent and indirect arrangements and options regarding its ownership interests when those arrangements may have been put in place between parties without the company's knowledge or consent.

#### *Individuals Excluded from the Definition of Beneficial Owner*

The CTA lists five categories of individuals who are excluded from the definition of beneficial owners and therefore not reportable, which the NPRM proposes to implement with some clarifications:

- Minor children, provided the reporting company reports the minor's parent or legal guardian instead of the minor child (and indicates that the individual identified is a parent or legal guardian).



- Individuals acting as nominee, intermediary, custodian or agent for another individual.
- Employees of the reporting company, if acting solely as employee and not senior officer, and whose substantial control or economic benefits from the company are derived solely from their employment status. The NPRM notes that ordinary execution of day-to-day management decisions by a manager or employee with respect to one part of a reporting company's assets or employees typically should not cause the individual to have substantial control over the reporting company.
- Individuals with future interests through a right of inheritance.
- Creditors of a reporting company, if the individual would be a beneficial owner solely through rights or interests in the company for the payment of a predetermined sum of money, such as a debt and the payment of interest on such debt. Where an individual has capital or profits interests, or a right to convert its debt interest to an ownership interest, the NPRM would not permit the individual to qualify as a creditor, and the preamble specifically notes that a debt-linked "equity kicker" would not qualify for this exclusion.

### **Applicant Definition**

In addition to beneficial owners, the CTA requires a reporting company to identify and report on each of the company's "applicants". These are defined under the CTA as the individuals who file the application to form or register a reporting company with a secretary of state or similar office. The NPRM proposes to expand the definition of "company applicant" to include any individual who directs or controls such filing, in order to ensure that information on individuals responsible for the decision to form a reporting company are reported, not just information on a corporate service provider or other agent.

### **Timing and Deadlines for Reporting; Effective Date**

The CTA provides that pre-existing companies must report the required information to FinCEN not later than two years after the effective date of the reporting regulations, and that any reporting company formed or registered after the effective date of the regulations shall, at the time of formation or registration, submit to FinCEN the required information.

The NPRM proposes to elaborate on the CTA's deadlines for information reporting, in some cases proposing shorter deadlines than the deadlines contemplated by the CTA.

- New domestic reporting companies and foreign entities that newly become foreign reporting companies would have 14 calendar days from the date of formation or registration, as applicable, to file their initial report with FinCEN.
- Entities formed or registered before the effective date of the final rule would have one year to file their initial report.
- Previously exempt entities that no longer qualify for an exemption would have 30 calendar days after losing the exemption to file a report.
- A reporting company that later becomes exempt would be required to file a report indicating that the company has become exempt.
- Reporting companies would have 30 calendar days to file updated reports upon any change to information previously reported to FinCEN.
- Reporting companies would have 14 calendar days to correct any inaccurate information in a report beginning on the day the company becomes aware of or has a reason to know that the information was inaccurate when filed and remains inaccurate. The CTA provides for a 90-day safe harbor for filing a corrected report, which begins on the day of the submission of the incorrect report. Thus, the NPRM provides that companies could avoid penalties by correcting inaccurate information within 14 days of discovery of the inaccuracy, so

long as the correction is made within 90 days of the initial filing.

- If an individual is a beneficial owner of a reporting company by virtue of ownership, and the individual dies, a change with respect to the required information will be deemed to occur when the estate of a deceased beneficial owner is settled. The effect of this provision would be to require an update to beneficial ownership information within 30 calendar days of the date the beneficial owner's estate is settled.

The NPRM does not propose a specific effective date, but it solicits comment on factors it will consider in setting an effective date after publication of a final rule. The NPRM states that “FinCEN is committed to identifying the soonest possible effective date after publication of the final rule.” However, it also notes a number of practical steps that must be completed before the rule becomes effective and information can be collected. Among other things, FinCEN must design and build its new IT system for securely collecting and providing access to beneficial ownership information, complete a parallel rulemaking (not yet proposed) on the protocols for access to and disclosure of beneficial ownership information, rescind and revise portions of the CDD Rule to be consistent with the CTA, and work with stakeholders including secretaries of state, tribal authorities, trade groups and others to conduct outreach and provide notice and guidance on the new requirements for reporting companies.

### Penalties

The CTA provides that any person that willfully provides (or attempts to provide) false or fraudulent beneficial ownership information (including identifying documents or photographs) to FinCEN, or willfully fails to report complete or updated beneficial ownership to FinCEN, is punishable by (i) a civil penalty of not more than \$500 for each day the

violation continues and (ii) a criminal fine of not more than \$10,000 and up to two years of imprisonment.<sup>7</sup>

The NPRM proposes to interpret the CTA's penalties for reporting violations as applying to any person (including individuals, reporting companies and other entities) that directly *or indirectly* provides or fails to provide beneficial ownership information to FinCEN in violation of the statute. Under the NPRM, this would include a person that provides another person with false or fraudulent information for the purpose of reporting the information to FinCEN, and it would include any person that directs or controls a person with respect to a failure to report, or has substantial control of a reporting company when it fails to report, complete or updated information. The NPRM states that the intent of these provisions is to clarify that a person can be liable under the statute even if the person was not the reporting company directly required to file and update reports with FinCEN.

If you have any questions or would like to discuss this further, please do not hesitate to reach out to your regular contacts at the firm.

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<sup>7</sup> The CTA also provides for civil and criminal liability for unauthorized knowing disclosure or use of

beneficial ownership information, but those provisions are not covered by the NPRM.