

# Private Clients Alert: New Reporting Requirements under the Corporate Transparency Act Require Action by January 1st

*October 10, 2024*

Clients should be aware that under the Corporate Transparency Act (the “CTA”), beneficial ownership of certain entities (“Reporting Companies,” described below) must be reported to FinCEN. We are writing to remind clients of the upcoming January 1, 2025 deadline to file the relevant reports for Reporting Companies that were in existence before January 1, 2024, as well as deadlines for Reporting Companies that were created on or after January 1, 2024.

The required report, known as a Beneficial Ownership Information Report (“BOIR”), can be completed online by using this [FinCEN BOIR link](#). While the rules relating to the CTA can be complicated, for many private clients the burden will not be excessive.

Below is a step-by-step outline to assist clients with determining whether an entity is subject to the reporting requirements and what information must be reported.

FinCEN has also established a [beneficial ownership information reporting website](#), which includes a detailed [Small Entity Compliance Guide](#) and periodically updated [FAQs](#) that provide additional guidance and answer interpretive questions under the CTA.

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

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### **Step 1: Determine if the entity is subject to the CTA Reporting Requirements**

The CTA applies to any domestic corporation, limited liability company, limited partnership or other entity created by a filing with a Secretary of State or any similar office (a “Reporting Company”). A foreign entity is also considered a Reporting Company if it is registered to do business in any State by a filing with a Secretary of State or similar office.

Various entities are not subject to reporting, including general partnerships, most trusts, certain tax exempt entities, public companies listed on a U.S. securities exchange, certain large operating companies and investment advisers, broker-dealers and investment companies registered with the SEC.

### **Step 2: Identify Beneficial Owners**

Each Reporting Company must report its “Beneficial Owners.” Generally, a Beneficial Owner is an individual who, directly or indirectly, (i) exercises substantial control over the entity or (ii) owns or controls twenty-five percent (25%) or more of the ownership interests of the entity. The rules are written broadly to include a wide range of ownership interests (including, for example, a profits interest or an option) and even de facto control. Thus, senior officers, individuals with the power to remove or appoint senior officers and others with substantial influence over the entity, including managers of an LLC, are considered to have substantial control over the entity.

When an ownership interest in a Reporting Company is owned or controlled by another entity or entities, the Reporting Company must look through the upper-tier entity or entities to identify individuals who are indirect Beneficial Owners of the Reporting Company.

When an ownership interest in a Reporting Company is owned or controlled by a trust, the identity of the Beneficial Owners will depend on a number of factors.

The Beneficial Owners of such a Reporting Company include the following individuals:

- The trustees of the trust and any individual with control over the trust’s investments or distributions (e.g., a trust Protector)
- Any beneficiary who has a withdrawal power over substantially all of the trust property
- If the trust has only one current income and principal beneficiary, the beneficiary
- If the trust donor has the power to revoke the trust, the donor

### **Step 3: Identify Company Applicants, if applicable**

The CTA requires that any entity formed or registered on or after January 1, 2024 must include the “Company Applicants” on its BOIR. Generally, either one or two individuals are treated as Company Applicants: the individual who directly filed the formation or registration documents with the Secretary of State and the individual who was primarily responsible for directing or controlling the filing. For example, the Company Applicants may be (i) an individual who works at the corporate service provider that filed the formation documents and (ii) an attorney, accountant or advisor. Company Applicants do not need to be reported for entities that were in existence or registered prior to January 1, 2024.

### **Step 4: Gather the relevant information to be reported**

The following information should be gathered to fill out the BOIR:

- The Reporting Company’s legal name, street address of the U.S. principal place of business, jurisdiction of formation or registration and IRS taxpayer identification number
- For any Beneficial Owner or Company Applicant who has a FinCEN identification number, discussed below, the FinCEN identification number

- For any Beneficial Owner or Company Applicant without a FinCEN identification number, the legal name, date of birth and residential address of the individual (or, for certain Company Applicants, their business address), plus a copy of one of the following non-expired documents (1) a U.S. passport, (2) a State driver’s license, (3) an identification document issued by a state, local government or tribe or, (4) if an individual does not have any of (1)-(3), a foreign passport. The filer will be required to upload a copy of the ID and to provide the unique identifying number found on the ID.

If a Beneficial Owner has obtained a FinCEN identification number, the BOIR need not disclose the name of the Beneficial Owner or any other information about the Beneficial Owner – the Beneficial Owner’s FinCEN identification number takes the place of the Beneficial Owner’s identifying information. For this reason, an individual who will be reported as the Beneficial Owner of one or more Reporting Companies may wish to obtain their own [FinCEN identification number](#). Any person who obtains a FinCEN identification number is responsible for updating their information if, for example, they change their address or name or if the form of ID provided to FinCEN is subsequently updated (e.g., if the prior ID was updated to reflect a name or address change). A change in the expiration date of the ID does not need to be reported.

### Step 5: File the BOIR by the due date

The due dates for filing the initial BOIR are as follows:

- January 1, 2025, for a Reporting Company formed or registered before January 1, 2024
- 90 days after formation or registration, for a Reporting Company formed or registered during 2024
- 30 days after formation or registration, for a Reporting Company formed or registered on or after January 1, 2025

### Step 6: Update the BOIR when changes occur

Every Reporting Company has an ongoing obligation to update any change to the information reported on its BOIR within 30 days, including any change in:

- The Reporting Company’s U.S. principal place of business or legal name
- The individuals with “substantial control” over the Reporting Company
- The individuals who own or control 25% or more of the ownership interests of the Reporting Company
- The personal information of a Beneficial Owner (unless the Reporting Company used the Beneficial Owner’s FinCEN identifier)

A *willful failure* to report complete or updated beneficial ownership information to FinCEN as required (including within the reporting deadlines) may result in civil penalties of up to \$500 per day and/or criminal penalties.

Please contact any of the members of the Private Clients Group to discuss the reporting obligations under the CTA.

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