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Nuts and Bolts of the CTA & Parsons' Approach to Compliance

Lexi Deal, Ross Keogh & Tyler MacKay

What's All the Fuss About?

Beginning January 1, 2024, each “reporting company” must file a report with U.S. Treasury’s Financial Crimes Enforcement Network (“FinCEN”), reporting information about each of its “beneficial owners.”

An estimated **32,556,929** entities will need to report in 2024.

Penalties for willful failure to register includes fines up \$10,000 and two years in prison.

Overview

- The **Corporate Transparency Act** went into effect January 1, 2024.
- There is a **substantial compliance burden** for many businesses especially for larger clients with more complex structures
- All entities need to comply, which will generally mean **registration with FinCEN** at <https://www.fincen.gov/boi>.
- PB&L's legal operations team has web-based product to make registration and compliance easy.

Presentation Road Map

- Overview of CTA and entity compliance obligations
- CTA in the context of entity deals and evolution
- Preview of PB&L's compliance tool
- 20 minutes for questions

CTA Basics – Tyler MacKay

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The FinCEN Rule

- Congress enacted the Corporate Transparency Act (“CTA”) on January 1, 2021 as part of the National Defense Authorization Act of 2021.
 - Overrode veto by President Trump
- On September 29, 2022, FinCEN issued a final rule, 31 CFR § 1010.380 (the “Rule”), implementing the Corporate Transparency Act’s beneficial ownership information reporting provisions.
- Reporting started January 1, 2024 and must be completed by January 1, 2025.

What is a Reporting Company?

- Is the entity / organization **organized or registered** with a state or similar office by filing a document?
- Has the foreign organization **registered to do business** in any state or tribal jurisdiction by filing a document?
- If “yes,” then entity is a reporting company.
- Subject to several (unhelpful) exemptions, each reporting company must report beneficial owners to FinCEN.

Who is a Beneficial Owner?

- "Beneficial owner" means any individual or entity which, directly or indirectly, either:
 - Exercises **substantial control** over the reporting company, or
 - Owns or controls at least **25%** of the ownership interests of the reporting company.

What is Substantial Control?

- Categories of individuals with “Substantial Control”:
 - Senior officers (and individuals with authority over their appointment / removal);
 - Individuals who can direct, determine, or have “substantial influence” over important decisions (nature of business, transfer of principal assets, dissolution, major expenditures / investments, comp. schemes, significant contracts, amendments of governing documents), etc.
- *Indirect* Substantial Control
 - Trustees (certain settlors / beneficiaries), board members, majority ownership / control, certain financing arrangements, control of intermediary entities, etc.
 - **“Any other contract, arrangement, understanding, relationship, or otherwise.”**

What **Company** Information Must be Reported?

Company Information

An initial report of a reporting company must include the following information for the reporting company:

- Full legal name
- All trade names or DBAs
- Complete current street address of the company's principal place of business, if it has one, or in all other cases the street address of the primary location in the U.S. where the company conducts business
- The company's State, Tribal, or foreign jurisdiction of formation, and for a foreign reporting company, the State or Tribal jurisdiction where such company first registers
- The company's IRS Taxpayer Identification Number
 - Consider that many single member limited liability companies which are disregarded for tax purposes don't have an EIN.

What **Beneficial Owner** Information Must be Reported?

Beneficial Owner and Company Applicant

The initial report must include the following information for every individual who is a beneficial owner and every individual who is a company applicant:

- Full legal name
- Date of birth
- Complete current address
 - Street address for a company applicant
 - The individual's residential street address in all other cases
- Unique identifying number and issuing jurisdiction from one of:
 - Non-expired US passport
 - Non-expired identification document issued by a State, local government, or Indian tribe
 - Non-expired driver's license
 - Non-expired passport issued by a foreign government, if the individual does not possess any of the others
- An image of the document from which the identifying number was obtained

Penalties for Willful Reporting Violations

- Civil penalties of not more than \$500 for each day that violation continues.
- Fine of not more than \$10,000 or 2 years' imprisonment, or both.


CTA in the Context of Business – Ross Keogh

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Key Registration Logistics

- New Entities '24 forward:
 - “Company Applicant” must be identified perpetually with the Entity.
 - This will generally be the attorney/individual that formed the Entity.
 - Registration must occur within [30/90] days of Entity formation.
 - 90 days for '24 Entities only; 30 days in '25 and forward.
 - First registration due date is April 1, 2024.
- Old Entities:
 - Have all of 2024 to register.
 - Unclear if entities dissolved in '24 still need to register

Why the CTA -- Wyoming Example

| | |
|--|--|
|  <p>Wyoming Secretary of State Herschler Building East, Suite 101 122 W 25th Street Cheyenne, WY 82002-0020 Ph. 307.777.7311 Email: Business@wvso.gov</p> | <p>For Office Use Only</p> |
| Limited Liability Company Articles of Organization | |
| 1. Name of the limited liability company: <input type="text"/> | |
| 2. This entity elects to be a close limited liability company: <input type="checkbox"/> <small>(Refer to the Close Limited Liability Supplement for more information W.S. 17-25-101-W.S 17-25-109.)</small> | |
| 3. Name and physical address of its registered agent: <small>(The registered agent may be an individual resident in Wyoming or a domestic or foreign business entity authorized to transact business in Wyoming. The registered agent must have a physical address in Wyoming. If the registered office includes a suite number, it must be included in the registered office address. A Drop Box is not acceptable. A PO Box is acceptable if listed in addition to a physical address.)</small> | |
| Name: | <input type="text"/> |
| Address: | <input type="text"/> |
| 4. Mailing address of the limited liability company: <input type="text"/> | |
| 5. Principal office address: <input type="text"/> | |
| 6. Certification. <small>(Please check the box to complete the required certification.)</small> | |
| <input type="checkbox"/> I consent on behalf of the business entity to accept electronic service of process at the required email address provided on the form under the circumstances specified in W.S. 17-28-104(e). | |
| Signature: _____ <small>(Shall be executed by an organizer.)</small> | Date: _____ <small>(mm/dd/yyyy)</small> |
| Print Name: _____ | |
| Contact Person: _____ | |
| Daytime Phone Number: _____ | Email: _____ |
| <small>(An email address is required. Email(s) provided will receive important reminders, notices and filing evidence.)</small> | |
| LLC-ArticlesOrganization - Revised June 2021 | |

On Trusts

- A trustee exercises Substantial Control over a Reporting Company
- A trust owning or controlling 25% or more of a Reporting Company implicates reporting by:
 - Each trustee
 - If the trustee is a corporate trustee, query whether reporting stops at the corporate trustee level or is one required to identify the trust officer(s) who work on the trust for the corporate trustee?
 - Any individual with authority to control or dispose of trust assets, to include:
 - Each beneficiary who is the sole permissible recipient of income and principal from the trust
 - Each beneficiary who has a right to demand a distribution of, or withdraw substantially all assets from, the trust
 - Each grantor or settlor who has a right to revoke the trust or otherwise withdraw trust assets

Ownership interests held in trust could be considered simultaneously as owned or controlled by multiple parties in a trust arrangement

Who is a Company Applicant?

- “Company Applicant” means:
 - [T]he **individual** who directly files the document that creates the domestic reporting company . . . ;
 - [T]he **individual** who directly files the document that first registers the foreign reporting company . . . ; and
 - [T]he **individual** who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.
- In the case of a law firm forming an entity, it will require the reporting of the paralegal submitting the filing and the supervising attorney.
- PB&L will provide FinCEN ID to clients of attorneys/paralegals involved when we form the entity to allow client correctly identify the “company applicant”.

Creation of Beneficial Ownership Registry

- CTA directs FinCEN to create and operate a secure, nonpublic database (the "beneficial ownership registry"). To implement this directive, FinCEN has developed the Beneficial Ownership Secure System (BOSS) to receive, store, and maintain BOI.
- BOSS will be subject to retention and disclosure rules.
- Financial institutions may access BOSS for "Know Your Customer" reporting.

FinCEN Identifier

- A FinCEN identifier is a unique number assigned by FinCEN to an individual or reporting company.
- An individual may obtain a FinCEN identifier by submitting an application that contains all the information required to be reported about an individual beneficial owner.
- Entities cannot obtain a FinCEN identifier.
- Individuals with nexus with more than one entity should secure FinCEN ID.

Needed for a FinCEN Identifier

- Full legal name
- Date of birth
- Complete current address
 - Street address for a company applicant
 - The individual's residential street address in all other cases
- Unique identifying number and issuing jurisdiction from one of:
 - Non-expired US passport
 - Non-expired identification document issued by a State, local government, or Indian tribe
 - Non-expired driver's license
 - Non-expired passport issued by a foreign government, if the individual does not possess any of the others
- An image of the document from which the identifying number was obtained.

Use of FinCEN Identifier

- An individual beneficial owner may give the individual's FinCEN identifier to a reporting company and the reporting company may report the FinCEN identifier in lieu of the information about the individual that would otherwise be required.

FinCEN Identifier Updates and Corrections

- An individual with a FinCEN identifier must update or correct any information previously submitted in an application within 30 calendar days after a change occurs or an inaccuracy becomes known.
- A reporting company with a FinCEN identifier must update or correct any information previously submitted at the same time and manner that the reporting company's report must be updated or corrected.

Exemptions – Subsidiary/Inactive

- Entities in existence prior to 2020 that:
 - Are not owned by a foreign person;
 - Not engaged in active business;
 - Has not received funds > \$1k; and
 - Does not own an asset.
- Entities that are wholly controlled by certain exempt entities.
 - I.E. a SMLLC owned by a 501(c)(3)

Large Reporting Company Exemption

- Large reporting company:
 - Employs more than 20 FTEs;
 - Has an operating presence in the US; **and**
 - Federal tax return with more than \$5 million gross receipts (1120/1120S/1065—maybe Schedule C?).

Other Exemptions

- Non-profits
- Many regulated entities
 - CPA firms, banks, publicly traded companies, registered insurance brokerages, etc.
- 23 categories of exemptions

| Exemption No. | Exemption Short Title |
|---------------|--|
| 1 | Securities reporting issuer |
| 2 | Governmental authority |
| 3 | Bank |
| 4 | Credit union |
| 5 | Depository institution holding company |
| 6 | Money services business |
| 7 | Broker or dealer in securities |
| 8 | Securities exchange or clearing agency |
| 9 | Other Exchange Act registered entity |
| 10 | Investment company or investment adviser |
| 11 | Venture capital fund adviser |
| 12 | Insurance company |
| 13 | State-licensed insurance producer |
| 14 | Commodity Exchange Act registered entity |
| 15 | Accounting firm |
| 16 | Public utility |
| 17 | Financial market utility |
| 18 | Pooled investment vehicle |
| 19 | Tax-exempt entity |
| 20 | Entity assisting a tax-exempt entity |
| 21 | Large operating company |
| 22 | Subsidiary of certain exempt entities |
| 23 | Inactive entity |

Observations

- 1 year reporting/registration window for pre-2024 entities.
- Reporting must be done within 90 days of registration for 2024 filings; 30 days from 2025 onward.
 - i.e. when an LLC's manager changes; report must be updated in 30 days.
- Multi-tiered ownership structures require reporting start at the top.
 - Ultimate upstream beneficial owners must be reported.
- FinCEN identifiers will be critical and should be listed and identified on cap tables and engagement documents—similar to tax IDs.
- Expect FinCEN to match Secretary of State entity database and IRS EIN database.

Parsons' Approach to Compliance – Lexi Deal

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Parsons' approach

- CTA registration is not included in existing legal services.
 - Clients must specifically engage PB&L to provide CTA registration and/or FinCEN ID registration.
- PB&L collects applicable information through secure web-based application to ensure accuracy and privacy in filing, and ultimate ease.
- PB&L integrates information into a database to allow for seamless updating with FinCEN for cascading changes in corporate structure.
- PB&L attorneys and staff available to aid clients in specifically identifying beneficial owners.

Beneficial Owner Form

Parsons ("BOIR") Beneficial Owner Information Collection Form

The information collected in this form is intended to be submitted to FinCEN for the company's Beneficial Ownership Information Report. Please include as much of the information as possible. We will contact you with next steps if necessary.

To be completed by individual Beneficial Owners as identified by the Reporting Company.

General ▾

Last Name (required)
Deal

First Name (required)
Lexi

Middle Name

Email address (required)
LDeal@parsonsbehle.com

Do you have a FinCEN Identifier? (required)
 Yes
 No

FinCEN Identifier (required)
12345678

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Conditional logic to simplify entry

Beneficial Owner Certification & Authorization ▾

Certification (required)

By selecting "I agree" below, you hereby certify that the information furnished is true, correct, and complete. This information is intended to be submitted to FinCEN, and I understand that the willful provision to FinCEN of false or fraudulent information in this application may result in civil or criminal penalties.

I agree

Authorization (required)

By selecting "I agree" below, you hereby authorize and appoint Parsons Behle & Latimer as your limited power of attorney to file and report with FinCEN your beneficial owner information.

I agree

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Submit

Beneficial Owner Form Continued

Email address (required)

LDeal@parsonsbehle.com

Do you have a FinCEN Identifier? (required)

- Yes
 No

Would you like us to obtain a FinCEN Identifier on your behalf?

We highly recommend that you obtain a FinCEN identifier if you are a beneficial owner for more than one entity. Having a FinCEN identifier will simplify updating records across multiple entity filings.

Yes

Date of Birth (required)

IMPORTANT: If the beneficial owner is a minor child, information for this beneficial owner must be that of the beneficial owner's parent/guardian.

mm/dd/yyyy



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- Walk-Through Forms
- Mobile Compatible

ID Image Upload ▾

Identifying document image

Browse or drag file(s) here

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