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CLIENT ALERT - FINCEN ISSUES FINAL RULE ON COMPANY APPLICANT - BENEFICIAL OWNERSHIP REPORTING UNDER THE CORPORATE TRANSPARENCY ACT

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On September 29, 2022, the Financial Crimes Enforcement Network ("**FinCEN**") issued a much-anticipated final rule ("**Final Rule**") implementing the Corporate Transparency Act's ("**CT Act**") beneficial ownership information ("**BOI**") reporting provisions. The purpose of the Final Rule is to assist FinCEN, law enforcement, and other stakeholders within the national security apparatus in interdicting criminal actors that seek to launder illegal source proceeds and/or to hide assets utilizing the U.S. financial system and/or U.S. (and foreign) corporate entities.

Subject to certain exceptions for corporate entities that are expressly exempt from the beneficial ownership information reporting requirements imposed by the CT Act, the Final Rule will require most corporate entities created in or registered to do business in the United States to prepare and submit BOI reports ("**BOI Reports**") to FinCEN identifying two categories of individuals: (1) the 'beneficial owners' of the entity; and (2) the 'company applicants' of the entity. The Final Rule provides guidance on who must file a BOI Report, what information must be reported, and when a BOI Report is due.

A synopsis of the Final Rule follows:

Reporting Companies

The Final Rule establishes two types of reporting companies: domestic and foreign. A domestic reporting company is a business entity created by filing a document with a secretary of state or any similar office under state law or the law of an Indian tribe. A foreign reporting company is a business entity formed under the law of a foreign country that is registered to do business in a state or tribal jurisdiction by filing a document with a secretary of state or any similar office.

Because in most cases they are created by a filing with a secretary of state or similar office, FinCEN anticipates the majority of reporting companies will include (subject to the applicability of specific exemptions) corporations, limited liability companies, limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships.

Beneficial Owners

The Final Rule defines 'beneficial owner' as any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company. The Final Rule defines "substantial control" and "ownership interest."

Company Applicants

The Final Rule defines ‘company applicant’ as: (1) the individual who directly files the document that creates the entity or, in the case of a foreign reporting company, the document that first registers the entity to do business in the U.S.; and (2) the individual who is primarily responsible for directing or controlling the filing of the relevant document by another.

It is important to note that (1) the Final Rule does not require reporting companies existing or registered on the effective date of the Final Rule to identify and report on their company applicants; and (2) reporting companies formed or registered after the effective date of the Final Rule must report company applicant information but do not need to update it.

Content of BOI Reports

In the BOI Report the Final Rule requires a reporting company to identify itself and report the following four pieces of information about each of its ‘beneficial owners’: (1) name; (2) birthdate; (3) address; and (iv) a unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document). In addition, the Final Rule requires reporting companies created after January 1, 2024, to provide the same four pieces of information and document image for ‘company applicants’.

Timing and BOI Report Deadlines

The Final Rule is effective January 1, 2024. Reporting companies created or registered before the effective date have until January 1, 2025 (one year), to file their initial BOI Reports. Reporting companies created or registered after the effective date have 30-days after receiving notice of their creation or registration to file their initial BOI Reports. Reporting companies have 30-days to report changes to the information in their previously filed BOI Reports and must correct inaccurate information in previously filed BOI Reports within 30-days of when the reporting company becomes aware or has reason to know of the inaccuracy of information in earlier BOI Reports.

Compliance

FinCEN will develop compliance and guidance documents to assist reporting companies in complying with the Final Rule and will publish in the Federal Register for public comment the reporting forms that persons will use to comply with their obligations under the Final Rule. FinCEN has proclaimed it will publish these forms well in advance of the effective date of the Final Rule.

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