

September 25, 2023

## Corporate Transparency Act Disclosure

**George Ryan Holton**

The Corporate Transparency Act (“CTA”) was enacted into law on January 1, 2021, as part of the Anti-Money Laundering Act of 2020, to promote corporate transparency and combat financial crimes, such as money laundering and financing terrorism. The CTA requires certain newly formed and existing domestic and foreign entities to disclose their beneficial owners and other pertinent information to the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the U.S. Department of the Treasury. FinCEN issued final rules on September 29, 2022, to govern the key registration requirements under the CTA.

### **Effective Date and Registration Deadlines:**

The CTA's main provisions come into effect on January 1, 2024. Entities formed before this date have until January 1, 2025, to register (if required). Entities formed on or after January 1, 2024, have 30 days from either the effective date of their creation or registration or from the date when the relevant state authority provides public notice of their creation or registration.

### **Definition of Reporting Companies:**

The CTA introduces the concept of "Reporting Companies," which includes all domestic entities such as corporations, limited liability companies, and other entities created under state or tribal law, as well as foreign entities that have registered to do business in the United States, with certain exclusions.

### **Exclusions from Reporting Companies:**

Specific categories of entities covered under existing regulatory regimes are excluded from the definition of Reporting Companies. Some examples of excluded entities include registered brokers and dealers in securities, registered investment companies and advisors, certain insurance, accounting, and public utility companies, venture capital fund advisors, certain tax-exempt organizations, certain charitable trusts, and large operating companies (defined as entities that (a) have more than 20 full-time employees in the United States, and (b) earn more than \$5 million in gross receipts or sales from sources inside the United States, including through subsidiaries or parent companies, and (c) have an operating presence at a physical office in the United States).

Furthermore, certain entities which are typically formed or created without filing formation documents with a governmental entity, such as trusts, sole proprietorships, or general partnerships, will generally not be considered Reporting Companies and; therefore, will not be subject to the disclosure and filing requirements under the CTA.

## Client Alert

### Definition of Beneficial Owners:

Reporting Companies must disclose "Beneficial Owners," defined as individuals who either (i) own or control at least 25% of a Reporting Company's ownership interests or (ii) either directly or indirectly exercise substantial control over the Reporting Company.

Specifically, a Beneficial Owner is **not** (a) an individual acting solely as an employee of a Reporting Company whose control over or economic benefits from such entity are derived solely from that person's employment status, (b) an individual whose only interest in an entity is through a right of inheritance (until such inheritance occurs), (c) a minor child (so long as the information of a parent or guardian of the minor child is reported), (d) an individual acting as a nominee, intermediary, custodian, or agent on behalf of another, or (e) a creditor of the Reporting Company.

For instances in which a trust owns an interest in a Reporting Company, the trustee, beneficiary, grantor, or a combination thereof, may need to be disclosed depending on the terms of the trust.

Specific provisions of the CTA also require disclosure in certain instances to report ownership in equity, voting trusts, capital or profit interests, convertible interests, options, and any "other instrument, contract, arrangement, understanding, relationship, or other mechanism used to establish ownership."

### Ownership Threshold and Substantial Control:

In order to be considered a Beneficial Owner, an individual must have at least a 25% ownership interest in the Reporting Company.

An individual is deemed to have substantial control over a Reporting Company if the individual (a) serves as a senior officer, (b) has authority over the appointment or removal of senior officers or a majority of the board of directors, or (c) maintains influence over important decisions for the company, with the CTA making clear that this list is non-exhaustive, and that an individual can exercise substantial control by a variety of means.

### Company Applicants:

A Reporting Company formed on or after January 1, 2024, must also disclose its "Company Applicant," which refers to the individual who directly files the documents that create the Reporting Company.

### Disclosure Requirements:

In its initial report, a Reporting Company must provide its: (a) full legal name, (b) trade name, (c) current address, (d) jurisdiction of formation, and (e) IRS taxpayer identification number. For each Beneficial Owner and Company Applicant, a Reporting Company must disclose the Beneficial Owners' and Company Applicants' (v) full legal names, (w) dates of birth, (x) residential or business addresses, (y) unique identification numbers in the form of one or more accepted documents, and (z) an image of the document from which the unique identifying number was obtained. Reports must be filed electronically with FinCEN through a secure filing system.

## Client **Alert**

### Exemptions for Public Access:

The information provided to FinCEN is not made publicly available and is primarily intended for law enforcement and national security purposes. Access to this information is restricted to certain governmental agencies, financial institutions, and regulators for specific purposes.

### Penalties for Non-Compliance:

Failure to willfully submit required information regarding the Beneficial Owner, or providing false or fraudulent information, may result in civil penalties of up to \$500 per day and criminal fines of up to \$10,000 or imprisonment for up to two years. Safe Harbor provisions exist for submitting corrected information within 90 days of the original report. This provision is in place for those unknowingly submitting inaccurate information to avoid civil or criminal penalties.

These are the key provisions and requirements of the CTA. This law represents a significant change in corporate practices, and Riley Safer Holmes & Cancila will diligently assist clients to help ensure full compliance with the CTA and we will provide the guidance necessary for our clients to meet their disclosure obligations. If you have additional questions, please reach out to George Holton, with the Business Transactions Team.

For more information, **please contact:**

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**George Ryan Holton**  
734.773.4925  
[gholton@rshc-law.com](mailto:gholton@rshc-law.com)  
Ann Arbor

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