

FinCEN's New Rule on Beneficial Ownership Information Reporting Requirements: Application to Investment Advisers and Related Entities

January 1, 2024 is the effective date of a new rule (the "BOI Reporting Rule") issued under the Corporate Transparency Act requiring domestic and foreign corporations, limited liability companies and other similar entities¹ formed or registered to do business in the United States, and not exempt pursuant to one or more exemptions ("Reporting Companies"), to report beneficial ownership information ("BOI") to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). Specifically, the BOI Reporting Rule requires Reporting Companies to file reports with FinCEN (a "BOI report").

Relevant Deadlines

As set forth in the table below, the date a Reporting Company's initial BOI report is required to be filed with FinCEN depends on the date on which the Reporting Company is formed or registered to do business in the United States.

| Date Reporting Company is formed or registered to do business in the United States | Initial BOI report filing deadline |
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| Prior to January 1, 2024 | January 1, 2025 |
| On or after January 1, 2024 but before January 1, 2025 | Within 90 calendar days after receiving actual or public notice that its creation or registration has become effective or after a secretary of state or similar office first provides public notice of its creation or registration |
| After January 1, 2025 | Within 30 calendar days after receiving actual or public notice that its creation or registration has become effective or after a secretary of state or similar office first provides public notice of its creation or registration |

If there is any change to the information included in a BOI report, the Reporting Company must file an updated BOI report no later than 30 calendar days after the date of the change. If a Reporting Company meets the criteria for an exemption subsequent to the filing of an initial BOI report, an updated BOI report may be filed. If an entity that was initially exempt no longer meets the criteria for an exemption, a BOI report is required to be filed within 30 calendar days after the date it no longer meets the exemption criteria unless a later deadline is permitted as described in the table above. Accordingly, entities should continually assess whether they have a filing obligation under the BOI Reporting Rule.

¹ Other similar entities refer to entities created or registered to do business in any State by the filing of a document with a secretary of state or any similar office under the law of a State, including limited partnerships.

Reporting Company BOI Reports

Whose Information is Reported

A Reporting Company's BOI report must include certain information about its beneficial owners and, for new entities that are formed on or after January 1, 2024, company applicants. A "beneficial owner" is any natural person who directly or indirectly: (i) exercises substantial control² over the Reporting Company or (ii) owns or controls 25% or more of the ownership interests of the Reporting Company. A "company applicant" is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company.

Information Required to be Reported

A Reporting Company's BOI report is required to include the following information about the Reporting Company: full legal name; trade name or "doing business as" name; principal place of business (or, in the case of a foreign Reporting Company, its primary location in the United States); State or foreign jurisdiction of formation (and in the case of a foreign Reporting Company, the State where it first registered); and applicable taxpayer identification number.

A Reporting Company's BOI report is required to include the following information for each beneficial owner and company applicant (as necessary): full legal name; date of birth; current address; unique identifying number from an acceptable identification document; and a copy of the acceptable identification document.

Application of the BOI Reporting Rule to Investment Advisers and Related Entities

An entity that qualifies for one of the 23 exemptions from the definition of Reporting Company (each, an "Exempt Entity") will not be required to file a BOI report with FinCEN. Certain exemptions from the definition of Reporting Company, including the exemptions for SEC-registered investment advisers ("RIAs"), venture capital fund advisers, large operating companies³, registered investment companies, certain other pooled investment vehicles and subsidiaries of certain Exempt Entities, are particularly applicable to investment advisers and their related entities. In determining whether an exemption applies, an investment adviser should consider the points highlighted below for itself and its related entities. However, whether the BOI Reporting Rule applies to an organization will depend on other considerations, including the specific facts and circumstances and ownership structures.

Investment Advisers

- RIAs and venture capital fund advisers are exempt from the definition of Reporting Company.
- Certain other investment advisers, including exempt reporting advisers ("ERAs") (other than venture capital fund advisers) and state-registered advisers, are outside the scope of

² Those individuals who have "substantial control" over a Reporting Company include, but are not limited to: a senior officer; an individual who has authority to appoint or remove officers or a majority of directors; an individual who is an important decision-maker; or an individual that has any other form of substantial control over the Reporting Company.

³ A "large operating company" is any entity that (a) employs more than 20 full-time employees in the United States; (b) has an operating presence at a physical office within the United States; and (c) filed a federal income tax or information return in the United States demonstrating more than \$5,000,000 in gross receipts or sales on the entity's IRS Form.

the exemptions for RIAs and venture capital fund advisers, and will therefore be required to file BOI reports for themselves, as well as for the private funds they advise, unless in each instance, another exemption applies. For example, an adviser that meets the large operating company exemption or is registered under the Commodity Exchange Act as a commodity pool operator and/or a commodity trading advisor is exempt from the definition of Reporting Company. A full description of all 23 exemptions is set forth in Seward & Kissel's December 1, 2023 [Memorandum](#), "FinCEN Imposes New Reporting Requirements on LLCs and Other Entities".

Private Fund General Partners/Managing Members

- Under certain circumstances, the general partner or managing member of a private fund that is affiliated with an RIA may qualify for an exemption from the BOI Reporting Rule as an RIA or otherwise. However, this must be evaluated on a case-by-case basis.

Pooled Investment Vehicles

- The pooled investment vehicle exemption provides that any U.S. private fund relying on an exclusion from the definition of investment company in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940 (the "Investment Company Act") that is operated or advised by, among other entities, an RIA or a venture capital fund adviser, and that is identified by its legal name by the applicable investment adviser in its Form ADV filed with the SEC (or will be identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser) is exempt and not required to file a BOI report. A foreign pooled investment vehicle (i.e., a non-U.S. private fund) that would, if formed in the United States, otherwise be exempt in accordance with the foregoing sentence, and is registered to do business in the United States, is subject to limited reporting.⁴
- A foreign pooled investment vehicle that is not registered to do business in the United States is not a Reporting Company under the BOI Reporting Rule, and accordingly will not be required to file a BOI report.
- Any pooled investment vehicle other than a private fund relying on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act is outside of the scope of the pooled investment vehicle exemption. This means that private real estate funds, commodity pools, and private funds managed by ERAs, state-registered advisers or commodity trading advisors will be required to file a BOI report unless another exemption applies. There is a specific exemption covering investment companies registered under the Investment Company Act.

Subsidiaries

- Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by certain Exempt Entities (a "subsidiary"), including an RIA, venture capital fund adviser or large operating company, is itself exempt under the BOI Reporting Rule.

⁴ The foreign pooled investment vehicle's BOI report is required to include information solely with respect to the individual who exercises substantial control over the entity and is not required to identify those individuals who own or control 25% or more of the ownership interests of the entity.

- There is no specific exemption covering subsidiaries of entities exempt under the pooled investment vehicle exemption, such as special purpose vehicles and alternative investment vehicles. Therefore, these types of entities may be required to file a BOI report, although this must be evaluated on a case-by-case basis.

Holding Companies

- Any entity acting as a holding company may be required to file a BOI report. For example, while an RIA (or other adviser as described above) may itself be an Exempt Entity, an entity that directly or indirectly owns or controls the RIA (or other adviser) is not exempt unless another exemption applies.
- Any individual beneficial owner whose ownership interests in a Reporting Company are held through one or more entities, all of which are themselves exempt, may include the names of the Exempt Entities in lieu of the information related to the individual beneficial owner in the BOI report for the Reporting Company.

Next Steps

Investment advisers and other individuals and organizations should analyze their ownership structures, pooled investment vehicle clients and other related entities to determine whether any entities will be deemed Reporting Companies and, if so, begin collecting the information required for the initial BOI report.

If you have any questions regarding the Corporate Transparency Act or this Memorandum, please contact your Investment Management Group attorney at Seward & Kissel LLP.

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