



## CLIENT ADVISORY

### SMALL AND UNREGULATED ENTITIES MUST REPORT BENEFICIAL OWNERSHIP INFORMATION TO FINCEN BEGINNING JANUARY 1, 2024

#### *Executive Summary*

Starting January 1, 2024, a new federal law required that certain small business entities file information about the entity's beneficial owners with the Department of the Treasury at <https://boiefiling.fincen.gov/>. The information includes the name, tax identification number, jurisdiction of formation, and address of the reporting company, as well as information (including passport, driver's license or other identifying information) about its beneficial owners, including anyone who, directly or indirectly, exercises substantial control over it or owns 25% or more of its ownership interests.

For entities formed before January 1, 2024, the filing deadline is January 1, 2025. For entities formed in 2024, the filing deadline is 90 days after the entity is formed. For entities formed after January 1, 2025, the filing deadline is 30 days after the entity is formed. Changes to filed information must be filed within 30 days after the changes occur.

Most small corporations, limited liability companies, and limited partnerships, including entities formed to hold a single investment and not part of a larger investment complex, will be required to file. Larger operating companies, regulated entities, and their subsidiaries, are exempt from filing, including entities that have more than 20 full time employees and more than \$5 million in gross receipts, issuers of registered securities, investment companies, banks, credit unions, registered broker dealers and similar companies.

We recommend including language in LLC, partnership, and shareholders' agreements requiring principals of such entities to provide the required information to the entities allowing timely reporting.

Penalties for late filing include civil damages of up to \$500/day and criminal penalties of \$10,000 and up to 2 years' imprisonment.

See below for more detailed information or contact your FSPM attorney to discuss.

## I. Reporting Obligations and Deadlines

Beginning January 1, 2024, certain categories of small entities organized or doing business in the United States ("Reporting Companies") are required to file beneficial ownership information ("BOI") with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") using FinCEN's electronic filing system:

- Reporting Companies created or registered to do business before January 1, 2024, must file their initial BOI reports by January 1, 2025;
- Reporting Companies created or registered to do business on or after January 1, 2024, and before January 1, 2025, must file their initial BOI reports within 90 calendar days after their creation or registration is effective; and
- Reporting Companies created or registered to do business on or after January 1, 2025, must file their initial BOI reports within 30 calendar days after their creation or registration is effective.

Reporting Companies must file updated BOI reports within 30 calendar days after any changes to previously reported information about the Reporting Company or its Beneficial Owners. However, there is no requirement to report a Reporting Company's termination or dissolution.

## II. Reporting Companies

Reporting Companies that are not otherwise exempt are required to file the BOI reports. "Reporting Companies" are corporations, limited liability companies, and other entities that are created by the filing of document with the secretary of state or similar office under the law of a particular State or Indian tribe, or that are formed under the laws of a foreign country and registered to do business in the United States by a filing with a State or Indian tribe.

23 specific types of large and regulated entities ("Exempt Entities") are excluded from the definition of Reporting Companies, including:

- entities ("Large Operating Companies") that: (i) employ more than 20 employees on a full time basis in the United States, (ii) filed federal income tax or information returns in the United States for the previous year showing more than \$5 million in gross receipts or sales, and (iii) have an operating presence at a physical office within the United States;
- issuers ("Securities Reporting Issuers") of securities registered under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act");
- SEC registered investment companies and investment advisers;
- entities (i) that are "investment companies" (as defined in Section 3(a) of the Investment Company Act of 1940 (the "ICA")) or (ii) that rely on the exclusions provided by Section 3(c)(1) or 3(c)(7) of the ICA and are identified by their legal name by the applicable investment adviser in its Form ADV (those entities are referred to as "Pooled Investment Vehicles"), which are advised by an SEC registered investment adviser or certain other Exempt Entities;

- governmental authorities, banks, credit unions, depository institution holding companies, registered money transmitter businesses, registered broker-dealers, registered exchanges and clearing agencies, other Exchange Act registered entities, venture capital fund advisers, insurance companies, State-licensed insurance producers, Commodity Exchange Act registered entities, registered public accounting firms, regulated public utilities, and financial market utilities; and
- entities whose Ownership Interests are controlled or wholly owned, directly or indirectly, by one or more of certain types of Exempt Entities (such as Large Operating Companies, Securities Reporting Issuers, and registered investment companies and investment advisers).

### III. Required Information

For its initial report, a Reporting Company will have to provide to FinCEN, the Reporting Company's:

- full legal name,
- any trade name,
- current address,
- the State, Tribal, or foreign jurisdiction of formation,
- IRS Taxpayer Identification Number (including EIN) or, if foreign Reporting Company does not have a Taxpayer Identification Number, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction, and
- for a foreign Reporting Company, the State or Tribal jurisdiction which the Reporting Company first registered.

In addition, the Reporting Company will have to provide, for each of its Beneficial Owners, such Beneficial Owner's:

- full legal name,
- date of birth,
- current address, and
- identifying number, issuing jurisdiction, and image of any of (i) a non-expired U.S. passport, (ii) a non-expired identification document issued by a State, local government or Indian tribe issued, (iii) a non-expired driver's license issued by a State, or, (iv) if none of the above are available, a foreign passport.

Reporting Companies created or registered to do business in the United States on or after January 1, 2024, must also provide the information required of Beneficial Owners for (i) the individual who directly filed the document creating a domestic Reporting Company or the document that first registered a foreign Reporting Company and (ii) if more than one individual was involved in the creation or registration of the Reporting Company, the individual who was primarily responsible for directing or controlling the filing of the creation or registration document.

Special reporting rules apply to (i) ownership in a Reporting Company held through Exempt Entities (see discussion under Section IV below), (ii) minor children, and (iii) Pooled investment Vehicles formed under the laws of a foreign country.

#### **IV. Definition of Beneficial Owners**

A “Beneficial Owner” of an entity is any individual who (i) exercises “Substantial Control” over a Reporting Company or (ii) owns or controls 25% or more of the “Ownership Interests” of the Reporting Company. A person exercises “Substantial Control” over a Reporting Company if such person (i) serves as senior officer of the Reporting Company, (ii) has authority over the appointment or removal of any senior officer or a majority of the board of directors or similar body of the Reporting Company, (iii) directs, determines or has substantial influence over important decisions made by the Reporting Company, or (iv) has any other firm of substantial control over the Reporting Company. “Ownership Interests” are broadly defined and include (i) any equity, stock, or similar instrument, (ii) any capital or profit interest, (iii) any instrument convertible into the foregoing, (iv) any put, call, straddle or other option or privilege of buying or selling any of the foregoing, and (v) any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

Substantial Control can be exercised either directly or indirectly, such as through Substantial Control of one or more intermediate entities that exercise Substantial Control over the Reporting Company. Similarly, Ownership Interests include Ownership Interests held directly and indirectly, including through intermediate entities. Accordingly, a Reporting Company must aggregate all Ownership Interests held by an individual in the Reporting Company, whether held directly or indirectly through intermediate entities, to determine if the individual must be reported as a Beneficial Owner. An exception applies if the individual’s Ownership Interest is held exclusively through Exempt Entities, in which case the Reporting Company may report the Exempt Entity rather than the individual. However, this exemption does not apply to individuals whose Ownership Interest is held through a mix of Exempt Entities and non-Exempt Entities or Exempt Entities and directly.

The following types of persons are specifically excluded from the definition of “Beneficial Owner”: (i) minor children, (ii) nominees, intermediaries, custodians, or agents, (iii) employees of a Reporting Company that are not senior officers of the Reporting Company and whose Substantial Control over or economic benefits from the Reporting Company derive solely from their employment status, (iv) individuals whose only interest in the Reporting Company is a future interest through a right of inheritance, and (v) creditors of the Reporting Company.

#### **V. Penalties**

Willfully providing, or attempting to provide, a false or fraudulent BOI, and willfully failing to report a complete or updated BOI, to FinCEN, may result in civil penalties of up to \$500 per day that the violation continues, and criminal penalties of a fine of up to \$10,000 and/or imprisonment for up to two years.

#### **VI. Additional Information**

Please contact your FSPM attorney if you have any questions about your BOI reporting obligations. Resources to assist Reporting Companies in understanding the new rules, including frequently asked questions, and access to the BOI E-Filing System, are also available at FinCEN’s website at <https://www.fincen.gov/boi>.