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CLIENT ALERT: THE CORPORATE TRANSPARENCY ACT

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Business owners face the prospect of substantial financial penalties, including civil penalties of up to $500 per day, if they fail to comply with the registration requirements of the Corporate Transparency Act (the “CTA”), which became effective on January 1, 2024. This Client Alert is designed to help our clients satisfy these newly-imposed requirements.

The provisions of the CTA will impact a wide variety of businesses throughout the United States. The reporting requirements were adopted as part of the Bank Secrecy Act and are intended to assist the federal government to, among other things, combat money laundering, terrorism financing, and tax fraud. Administration of the CTA will be done through the Financial Crimes Enforcement Network (“FinCEN”), which is part of the U.S. Department of the Treasury.

The CTA requires reporting of beneficial ownership information concerning entities created in the United States as well as foreign entities that register to do business in the United States. Entities subject to the CTA are referred to as “reporting companies.” Generally, these are corporations, limited liability companies, or similar entities if created by the filing of a document with a secretary of state or similar office, or a foreign entity if it has registered to do business in the United States. As discussed below, there are various entities that are excluded from the definition of a reporting company, including banks, insurance companies, public companies, and public utilities, although a determination of whether a specific entity is or is not excluded depends on the particular circumstances.

The CTA requires the provision of information regarding (a) the individual who files the formation papers for a reporting company, who is known as the “applicant;” and (b) an individual who, directly or indirectly, exercises substantial control over the entity or owns or controls not less than 25% of the ownership interests of the entity, who is known as the “beneficial owner.” The concept of what constitutes substantial control is subject to analysis. Again, there are exceptions to the definition of beneficial owner, including, among others, a minor child, an individual acting solely as an employee, and a creditor.

The deadline for reporting information to FinCEN is critical. For entities that are reporting companies and formed between January 1, 2024 and December 31, 2024, a 90-day period exists to make the required filing with FinCEN. For entities that are reporting companies and formed on or after January 1, 2025, a 30-day period will exist to make the required filing with FinCEN.

Significantly, the CTA also applies to existing entities that are considered reporting companies. It is estimated that more than 32 million existing entities will be categorized as reporting companies. For existing entities formed before January 1, 2024, those entities must file the reporting information to FinCEN not later than January 1, 2025. The information requirements (discussed below) are quite extensive, which means that it could take significant time to gather the required information.

Moreover, regardless of whether a reporting company is existing or newly formed, updated information regarding any change in the beneficial owners or in the information previously submitted must be filed with FinCEN within 30 days of the change. This requirement to timely submit updated information is very broad and includes such things as a change in ownership, a change in the individual holding substantial control, or even a change in address for a beneficial owner or the issuance of a new driver's license for the beneficial owner.

The information that must be submitted for each applicant and each beneficial owner of a reporting company consists of the: (a) full legal name; (b) date of birth; (c) current residential or business street address; and (d) (1) unique identifying number from an acceptable identification document or (2) a FinCEN Identifier obtained upon application to and registration with FinCEN. An acceptable identification document is: (a) a non-expired passport; (b) a non-expired identification document issued by a governmental entity; or (c) a non-expired driver's license. In addition, a photograph of the identification document must be provided with each report filed with FinCEN. The FinCEN Identifier, once requested and issued, may be used to simplify the reporting process and submitting information to FinCEN.

Because the CTA is designed to combat money laundering and financial crimes, the penalties for non-compliance are significant. As noted above, there are civil penalties of up to $500 for each day that a violation continues. There are also criminal penalties for violations of up to $10,000 in fines, imprisonment for up to 2 years, or both.

As noted, there are various exemptions from the reporting requirements. These include companies that are subject to reporting under the Securities Exchange Act, registered broker dealers, banks, insurance companies, certain accounting firms, certain public utilities, 501(c) tax-exempt entities, certain larger operating entities, and certain inactive entities. However, in order to determine whether an entity is exempt, an examination of the relevant facts must be undertaken on a case-by-case basis.

The information filed by reporting companies with FinCEN is received, stored, and maintained in a secure, non-public database with access limited to law enforcement and governmental agencies. Reports filed with FinCEN are not accessible by the public and are not subject to requests under the Freedom of Information Act.

Given the broad requirements of the CTA and the serious penalties for non-compliance, businesses and entities should carefully make a prompt assessment as to whether they are a reporting company and compliant with the requirements of the CTA.

If you have any questions regarding the Corporate Transparency Act, please contact Brian W. Bisignani, Chair of the Firm's Financial Restructuring Practice Group at 717-612-6041, James R. Malone, Jr. of the Firm's Tax Controversy Practice Group at 215-587-1051, or the lawyer at the Firm with whom you regularly consult.

