

March 28, 2024

## Corporate Transparency Act Compliance for Fund Professionals

The recently effective Corporate Transparency Act (CTA)<sup>[1]</sup> directs the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury to establish and maintain a national registry of beneficial owners for entities classified as "reporting companies." In this Day Pitney Alert, we outline CTA beneficial ownership requirements and reporting company exemptions relevant to fund managers and other investment management professionals and discuss the disclosure of beneficial ownership information under the CTA and its compliance deadlines.

The CTA defines a "reporting company" as any entity created by the filing of a document with the Secretary of State of a U.S. state or similar office or formed under foreign laws but registered to do business in the United States.<sup>[2]</sup> Required beneficial ownership information for reporting companies includes the full legal names, dates of birth, current residential addresses and unique identifying numbers from acceptable identification documents (such as a driver's license or passport, including a copy of the document), or a unique FinCEN identifier, for individuals with 25 percent aggregate ownership of, or substantial control over, a reporting company.

Certain reporting company exemptions (RIA Exemption) exist for investment advisers registered with the U.S. Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940, as amended (Advisers Act), and investment companies registered with the SEC under the Investment Company Act of 1940, as amended.<sup>[3]</sup> FinCEN has yet to explicitly include certain relying advisers and special purpose vehicles (SPVs) created by registered investment advisers within the RIA Exemption to the reporting company definition.<sup>[4]</sup> For each of these types of entities, a facts and circumstances analysis is necessary to determine whether any reporting company exemption would apply.

Further reporting company exemptions exist for venture capital fund advisers relying on Section 203(l) of the Advisers Act; pooled investment vehicles operated or advised by a bank, credit union, broker or dealer in securities, registered investment adviser or investment company, or venture capital fund adviser; wholly owned subsidiaries of certain exempt entities; and certain inactive entities.<sup>[5]</sup> However, private fund advisers relying on Section 203(m) of the Advisers Act, state-registered investment advisers, holding companies<sup>[6]</sup> and family offices are not granted explicit exemptions and must qualify for another exemption to be excluded from the definition of a reporting company.

Entities formed before January 1, 2024, have a one-year period, until January 1, 2025, in which to make the requisite initial beneficial ownership filing. *Entities formed between January 1, 2024, and January 1, 2025, must comply within 90 days following the applicable filing or notice of registration.* For entities formed on or after January 1, 2025, compliance is required within 30 days following the applicable filing or notice of registration. Additionally, all reporting companies, regardless of date of formation, must update their company and beneficial ownership information within 30 calendar days of any change to such information. Penalties for willful noncompliance include aggregate fines of up to \$10,000 (as adjusted for inflation) and/or a prison term, but there is a 90-day safe harbor to correct inaccurate disclosure information upon discovery of an inaccuracy.

In tandem with this federal legislation, the New York LLC Transparency Act (NYLTA), which applies only to LLCs formed or authorized to do business in New York, mandates similar reporting obligations with mirroring exemptions. Effective January 1, 2026, existing reporting companies covered by the NYLTA must make their initial filings within one year, before January 1, 2027. Reporting companies covered by the NYLTA formed on or after January 1, 2026, must make their initial filings within 30 days of formation or authorization. Notably, reporting companies relying on an exemption from the definition of a reporting company in New York must submit a statement to the New York Secretary of State indicating the applicable exemption.<sup>[7]</sup>

If you have questions about the CTA, NYLTA, their application to you or your entities, or your related federal and state reporting obligations, Day Pitney LLP can assist you. Please feel free to contact your Day Pitney LLP attorney, email us at [CTA@daypitney.com](mailto:CTA@daypitney.com) or visit FinCEN's website listed above.

*Michael T. Cummings, Independent Contractor, contributed to this alert.*

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[1] On March 1, 2024, the U.S. District Court for the Northern District of Alabama held that the CTA is an unconstitutional exercise of legislative authority and enjoined the U.S. Government from applying it to the plaintiffs in that case. Nevertheless, reporting companies formed at or near the beginning of 2024 will soon be coming up on the 90-day deadline for beneficial ownership reporting compliance. Accordingly, we will continue to provide CTA-related legal services to clients while assessing the broader implications of that decision and any subsequently issued guidance.

[2] FinCEN has not yet provided guidance on whether a series limited liability company (LLC) and its protected series may file a combined beneficial ownership report. Please contact us directly if you have questions regarding the reporting company status of a series LLC under the CTA.

[3] Certain entities registered under the Securities Exchange Act of 1934, as amended, or the Commodity Exchange Act of 1936, as amended, are also exempt from the definition of a reporting company.

[4] A registered investment adviser that creates separate, affiliated entities to conduct a single advisory business can utilize the SEC's "umbrella registration" framework, which involves one entity registering with the SEC and disclosing its advisory affiliates (i.e., relying advisers) on its Form ADV. See [Appendix C: Form ADV, Glossary of Terms](#). Similarly, an SPV created by a registered investment adviser does not have to separately register with the SEC if (i) its activities are subject to the registered investment adviser's supervision and control, (ii) its employees and persons acting on its behalf are "supervised persons" of such registered investment adviser and (iii) it is therefore subject to SEC examination. See [Regulation of Investment Advisers by the U.S. Securities and Exchange Commission](#), pp. 18-19, 39 (March 2013).

[5] To qualify for the inactive entity exemption, an entity generally must (1) have been in existence on or before January 1, 2020; (2) not be engaged in active business; (3) not be owned by a foreign person; (4) have had no change in ownership in the preceding 12 months; (5) not have, directly or indirectly, sent or received any funds greater than \$1,000 in the preceding 12 months; and (6) not otherwise, directly or indirectly, hold any kind or type of assets.

[6] A holding company is an entity that exists for the sole purpose of owning and operating another company or companies.

[7] Beginning in 2025, all LLCs formed or registered to do business in Pennsylvania must file an annual report containing certain beneficial ownership information to maintain their company's good standing. Other states, such as California, are also considering adopting state-level reporting obligations.

## Authors



**Peter J. Bilfield**  
**Partner**

Stamford, CT | (203) 977-7569

New York, NY | (212) 297-5853

[pbilfield@daypitney.com](mailto:pbilfield@daypitney.com)



**Lane T. Watson**  
**Partner**

Hartford, CT | (860) 275-0355

[ltwatson@daypitney.com](mailto:ltwatson@daypitney.com)