

Corporate Transparency Act's Reporting Requirements: Impact on the Private Client

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Private clients and family offices commonly create legal entities, such as limited liability companies, limited partnerships and corporations, to facilitate investment, asset management, tax planning, business succession planning, privacy, liability protection and many other purposes. Such planning will be impacted by disclosures required by the Corporate Transparency Act (**CTA**), set to take effect **January 1, 2024**. The CTA, enacted to combat illicit financial activities, brings significant regulatory changes and effectively creates a national registry for law enforcement and certain other entities of the beneficial ownership information (**BOI**) for many legal entities formed or registered in the U.S. ("**Reporting Companies**").

A recent advisory explaining the CTA reporting requirements in further detail may be found .

Under the CTA, Reporting Companies include limited liability companies, corporations, and any other entities created by the filing of a document with

a secretary of state or other similar office, whether or not the legal entity engages in any business or other commercial activity. If a legal entity meets the definition of a Reporting Company and does not qualify for an exemption, the Reporting Company will be obligated to disclose to the U.S. Department of Treasury's Financial Crimes Enforcement Network (**FinCEN**) specific information about itself and the BOI of its beneficial owners and company applicants, including their full name, date of birth, complete address, and other identifying information. The CTA defines "**beneficial owner**" as an individual who either, directly or indirectly, exercises substantial control over the Reporting Company or owns or controls at least 25% of the ownership interests of the Reporting Company.

A trust itself is not a Reporting Company if it is not created by the filing of a document with a secretary of state or other similar office (which is often the case). Regardless, if a trust exercises substantial control over the Reporting Company or holds an ownership interest in a Reporting Company and the other requirements are met, at least one individual associated with the trust will be a beneficial owner. The CTA contains specific rules under which an ownership interest held by a trust or similar arrangement is attributed for determining the individual(s) subject to the BOI disclosure requirement. **The Reporting Company should attribute such ownership as follows:**

- To any individual **trustee** that has "the authority to dispose of trust assets."
- To any individual **beneficiary** who "(i) is the sole permissible recipient of income and principal, or (ii) has the right to demand a distribution of or withdrawal substantially all the assets from the trust."
- To any individual **grantor** or **settlor** who "has the right to revoke the trust or otherwise withdraw the assets of the trust."

For many trusts, more than one individual will meet these criteria, and, in such cases, each individual's BOI must be reported. Even if a trust owns or controls less than 25% of the ownership interests of the Reporting Company, the Reporting Company must assess whether the trustee exercises substantial control over the Reporting Company, such as through board representation.

As noted above, certain Reporting Companies are exempt from the CTA,

including certain tax-exempt entities, certain entities subject to other federal reporting, and certain large operating companies. Additionally, certain individuals who may otherwise qualify as a beneficial owner will not be required to disclose BOI if an exception applies, including minor children (if applicable, the Reporting Company may instead report information about the parent or legal guardian of the minor child). The failure to timely comply with the reporting requirements could result in civil and criminal penalties.

The disclosure of BOI for private clients and family offices may be counter-productive to privacy and other goals and may in some circumstances necessitate further analysis and planning. Each private client, family office, and small business owner should prepare now.

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