

2024: A New Year; A New Reporting Regime

As discussed in our [February 4, 2022 client alert](#) and our [December 15, 2022 client alert](#), certain legal entities are now subject to new reporting requirements in the United States about their beneficial ownership pursuant to the requirements of the Corporate Transparency Act (the “CTA”). As mandated by the CTA, the Financial Crimes Enforcement Network (“FinCEN”) issued a final rule (the “Final Rule”) to implement the CTA. This client alert highlights certain aspects of the Final Rule, including the information to be reported to FinCEN on the Beneficial Ownership Information Report (“BOIR”) and when a BOIR must be filed with FinCEN.

Information to be reported to FinCEN:

The Final Rule requires all non-exempt domestic reporting and foreign reporting companies (each, a “Reporting Company”) to report to FinCEN certain information on its BOIR, including the following:

I. Company Information

- its full legal name;
- any trade or “doing business as” name (regardless of whether such trade or “doing business as” names are formally registered);
- its business street address, which is the principal place of business for United States companies and the primary location in the United States for non-United States companies (which cannot, in either case, be a P.O. box or the address of a company formation agent or another third party);
- its jurisdiction of formation; and
- its Internal Revenue Service taxpayer identification number (“TIN”) or a tax identification number for foreign companies issued by the applicable foreign jurisdiction.

II. Beneficial Ownership Information

- each beneficial owner’s full legal name, date of birth, and address; and
- a unique identifying number from an unexpired identification document (e.g., passport, state identification card, or driver’s license) together with an image of such document with the individual’s photograph or a FinCEN ID.

Under the Final Rule, a “beneficial owner” of a Reporting Company to be disclosed on the BOIR is any individual who, directly or indirectly, exercises “substantial control” over a Reporting Company or owns or controls at least 25% of the “ownership interests” of a Reporting Company.

The Final Rule includes four categories of “substantial control”: (i) being a senior officer of a Reporting Company (e.g., president, chief executive officer, chief financial officer, chief operating officer, general counsel, etc.), (ii) having authority to appoint or remove any such senior officers or a majority of the board of directors of a Reporting Company, (iii) directing, determining, or having substantial influence over important decisions made by the Reporting Company, or (iv) having any other form of substantial control over the Reporting Company.

For purposes of the Final Rule, “ownership interests” include equity, stock, or voting rights, capital or profit interests, convertible instruments, other options or privileges to acquire equity, capital, or other interests in a Reporting Company, or any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership. The Final Rule sets forth that an individual may own or control ownership interests of a Reporting Company through any “contract, arrangement, understanding, relationship or otherwise,” including: (i) joint ownership of an undivided interest in such “ownership interest”, (ii) through another individual acting as a nominee, intermediary, custodian, or agent, (iii) with regard to a trust (or similar) arrangement that holds such ownership interest, a trustee with the authority to dispose of its assets, or a beneficiary who (x) is the sole permissible recipient of its income and principal or (y) has the right to withdraw, or demand a distribution of, substantially all of its assets, or (iv) through ownership or control of one or more intermediary entities (or the ownership interests of any such entities), that separately or collectively own or control ownership interests of the reporting company. To determine whether an individual owns or controls, directly or indirectly, at least 25% of the ownership interests, a Reporting Company will need to analyze its capital structure and voting arrangements and then calculate if any single individual’s ownership interests exceed the 25% threshold.

III. Company Applicant

A Reporting Company created after January 1, 2024 must identify the “company applicants” in its BOIR. The Final Rule defines a “company applicant” as: (i) the individual who directly files the document that forms a domestic Reporting Company or registers a foreign Reporting Company to transact business in the United States, and, if applicable, (ii) the individual primarily responsible for directing or controlling the filing of the formation or registration document. A Reporting Company must list at least one “company applicant” and a maximum of two “company applicants” on its BOIR. Reporting Companies formed or registered on or before December 31, 2023 are not required to list a “company applicant” when they file their initial BOIR.

Filing Deadlines:

BOIRs for Reporting Companies must be filed with FinCEN in accordance with the following deadlines:

Reporting Company Formation Date (domestic Reporting Company) or Registration Date (foreign Reporting Company)	Filing Deadline
December 31, 2023 or any date prior thereto:	January 1, 2025.
On or after January 1, 2024 and before January 1, 2025:	Within 90 calendar days of notice of the formation or registration of the Reporting Company.
On or after January 1, 2025:	Within 30 calendar days of notice of the formation or registration of the Reporting Company.

In addition, when there is a change in the information previously reported on its BOIR, a Reporting Company has 30 calendar days to file an updated report with FinCEN. If a Reporting Company determines that it filed inaccurate information on its BOIR at the time of such filing, it must file a corrected report within 30 calendar days of the date it knew, or should have known, that the previously reported information was inaccurate.

We recommend that companies begin compiling and confirming the information required to be reported as soon as possible. If you have any questions regarding specific requirements in the Final Rule and/or about the BOIR filing, please contact one of the attorneys listed below or your regular Patterson Belknap contact.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

<u>Andrew P. Beame</u>	212.336.2704	<u>apbeame@pbwt.com</u>
<u>Morgan B. Berenbaum</u>	212.336.2632	<u>mberenbaum@pbwt.com</u>
<u>Gerald F. DeSantis, Jr.</u>	212.336.2450	<u>gdesantis@pbwt.com</u>

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Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710
212.336.2000
www.pbwt.com