FinCEN Narrows Beneficial Ownership Information Reporting to Foreign Entities

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On March 21, 2025, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued an interim final rule (the "Interim Final Rule") that exempts domestic entities from reporting beneficial ownership information ("BOI") under the Corporate Transparency Act (the "CTA") and requires only a narrow set of foreign entities to report certain BOI to FinCEN.

The Interim Final Rule takes effect when it is published in the Federal Register, but FinCEN is requesting comments on the rule and intends to issue a final rule later this year. Comments on the Interim Final Rule are due 60 days from the date of publication.[1]

Revised Reporting Requirements. The Interim Final Rule revises the definition of "reporting company" in FinCEN's regulations implementing the CTA to include only a legal entity that is formed under the law of a foreign country and registered to do business in a U.S. state or Indian tribe by the filing of a document with a secretary of state or similar office. From our experience, few non-U.S. entities register with U.S. states or tribal entities, and as such, very few entities will now be in scope for the BOI reporting requirement. FinCEN appears to acknowledge this outcome, as it notes that only "0.6 percent of the total original population" will need to comply with the BOI requirements as revised.

The reporting requirement applicable to these foreign entities also has been narrowed. These companies need only report BOI on their non-U.S. beneficial owners. Consequently, a reporting company that has only U.S. person beneficial owners would be exempt from the requirement to report any beneficial owners and instead would need only to report information on the entity itself and its company applicants, if applicable.

The Interim Final Rule makes a similar change with respect to the "special rule" for foreign pooled investment vehicles ("PIVs") that are in scope for the reporting requirement. These PIVs, of which we have found few examples, had been required to

[1] For a detailed overview of the history and developments of BOI reporting, please see our previous client update, available here.

report the BOI of an individual who exercises substantial control over the entity. The Interim Final Rule provides that a foreign PIV in scope of the rule must report BOI solely with respect to an individual who exercises substantial control *if that individual is not a U.S. person*. Where more than one individual exercises substantial control over the entity, the entity must report information on the individual who is not a U.S. person who has the greatest authority over the PIV's strategic management. If there is no non-U.S. person with substantial control, the foreign PIV is not required to report any beneficial owners.

Reporting Deadlines. Foreign entities that registered to do business in a U.S. state or Indian tribe prior to the publication of the Interim Final Rule will have 30 days from publication to file their initial BOI reports or any necessary updates or corrections to previously filed reports. Foreign entities that register to do business in a U.S. state or Indian tribe after the Interim Final Rule is published will have 30 days from registration to report.

Rationale for Revisions. FinCEN justifies these amendments by citing the CTA's mandate to the U.S. Treasury Secretary to "minimize burdens on reporting companies" and the Secretary's authority to exempt certain entities from reporting. Specifically, the CTA authorizes exemptions for any entity or class of entities if the Secretary, with the concurrence of the Attorney General and the Secretary of Homeland Security, determines that requiring BOI reporting "would not serve the public interest" and "would not be highly useful in national security, intelligence, and law enforcement agency efforts."

Although the Interim Final Rule acknowledges that the failure to require BOI reporting by domestic entities could pose illicit finance risks, the rule mentions that "alternative sources of information," such as the continuing customer due diligence ("CDD") requirements applicable to many U.S. financial institutions, mitigate these risks.

Next Steps and Implications. The Interim Final Rule takes effect on publication in the Federal Register, and comments on the rule are due 60 days from the date of publication. FinCEN has said it will consider comments from the public prior to issuing the final rule later this year, which suggests there is a possibility of further revisions.[2]

The BOI reporting regime was one of three required rulemakings to implement the CTA. In December 2023, FinCEN finalized the second of the three rulemakings, establishing a framework for access to and protection of BOI reported pursuant to the

[2] According to press reports, law enforcement agencies and other groups that had expected to have access to and use the BOI database are dissatisfied with the changes and are considering challenging the revisions to the BOI regime.

CTA. The third rulemaking requires revisions to the CDD rule, pursuant to which certain U.S. financial institutions must obtain and verify information about the beneficial owners of their legal entity customers. The CTA directs Treasury to revise the CDD rule to bring it into conformance with the BOI regime and account for the access financial institutions would have to BOI filed by reporting companies under the CTA. Given the Interim Final Rule, it is unclear how FinCEN will revise, if at all, the CDD rule.

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We will continue to monitor developments and provide additional updates as warranted. Please do not hesitate to contact us with any questions.

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