FinCEN Narrows CTA Reporting Requirements

By Mark High, Jua Tawah and Dan Cotter

On March 21, 2025, the Financial Crimes Enforcement Network (FinCEN) released an Interim Final Rule (the Interim Rule), which served to "narrow" the existing beneficial ownership information (BOI) reporting requirements of the Corporate Transparency Act (CTA or the Act). The Interim Rule, which appears to have immediate effect, (a) exempts from the Act's coverage all entities previously defined as "domestic reporting companies," (b) limits the CTA reporting requirements to only "foreign reporting companies," and (c) removes any requirement that U.S. persons need to submit, update, or correct BOI at all. In addition, it revises the reporting requirements for foreign pooled investment vehicles, which will not need to report the BOI of U.S. persons who exercise substantial control over the entity.

Foreign entities that are currently registered to do business in the U.S. need to file BOI reports 30 days after the Interim Rule is published in the Federal Register (expected to occur on or about March 26, 2025). Newly registered entities will have 30 days after receiving notice that their registration is effective to file reports.

The Interim Rule's effect is to scale back the reporting mechanism, which sought to identify the beneficial owners of shell companies using the U.S. legal system to launder funds involved in illicit activities or terrorist financing. While it is certainly true that the original CTA requirements covered a broad swath of this country's small business community, FinCEN's Notice issued February 27, 2025, promised to revise the existing CTA regulations to "minimize [the] burden on small businesses while ensuring that BOI [which] is highly useful to important national security, intelligence, and law enforcement activities is reported." The Interim Rule instead minimizes the BOI reporting requirements under the Act and provides a roadmap to avoid the requirements.

In particular, the Interim Rule exempts from the statutory definition of "reporting companies" all entities formed by a filing with a secretary of state or equivalent authority under the laws of a State or Indian tribe (collectively, a state authority), and applies the filing requirements to only those entities which are formed under the law of a foreign country and are registered to do business in the U.S by filing a document with a state authority. Even there, foreign reporting companies will not be required to submit BOI for any U.S. person (as defined in Sec. 7701(a) of the Internal Revenue Code, meaning, with respect to individuals, a citizen or resident of the U.S.). By limiting the required reports to only entities formerly known as "foreign reporting companies," FinCEN estimates that the number of initial reports required to be filed will go from its original number of 33 million to less than 20,000, with additional reporting companies to be created each year being cut from 5 million to 5,000.

FinCEN explains that the Act gives the Secretary of the Treasury, with the written concurrence of the Attorney General and Secretary of Homeland Security, the authority to establish exemptions where the Secretary determines that BOI reporting "would not serve the public interest" and "would not be highly useful in national security, intelligence, and law enforcement efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, series tax fraud, or other crimes."

Thus, effective immediately, only those entities formed in a foreign jurisdiction and registered with a state authority need to make BOI filings under the deadlines identified above, providing only BOI for non-U.S. persons. Going forward, a foreign company looking to do business in the U.S. only needs to establish and operate through a U.S. subsidiary, rather than directly registering the foreign entity, to avoid any CTA requirements. In our experience, the vast majority of foreign businesses active in the U.S. are already doing this for tax and liability insulating purposes. This appears to exempt the entity and its owners, foreign and domestic, from CTA coverage.

FinCEN states in the Interim Rule that it is concerned about the "heightened risk to U.S. national security" presented by foreign companies. See Interim Rule text at note 33. It seems reasonable to ask whether foreign nationals individually could also contribute to that heightened risk. A middle ground could require domestic entities with foreign beneficial owners to provide BOI regarding those owners and control persons. This could increase the "highly useful" information that FinCEN is seeking while still providing relief to most domestic entities.

The Interim Rule reports that the Know Your Customer requirements of the Bank Secrecy Act will continue to apply, mitigating certain illicit financing risks associated with domestic reporting companies. That information is only collected when

bank accounts are opened, not at formation, and is presumably not collected in a national database or even systematically updated. This appears to be an imprecise substitute for the CTA, and Congress apparently felt the same way when it added the CTA to the pre-existing KYC requirements.

As we have previously reported, several states have adopted or are looking at adopting state-level BOI reporting requirements. In particular, the New York state statute on LLC reporting incorporates several of the CTA definitions and exemptions. It remains to be seen how those provisions will be affected by the changes proposed in the Interim Rule.

It is also unclear where the Interim Rule leaves the existing litigation challenging the CTA. Presumably, some of those cases will continue to move forward and might provide a more certain conclusion to this saga. Legislation to amend or repeal the Act is also pending. As long as the CTA remains in place, a new Administration might take a look at these exemptions and decide to expand the Act's coverage again. We haven't reached the final stop on the CTA journey, but the Interim Rule is certainly a significant milestone along the way.

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