

Corporate Transparency Act – Implications for Investment Advisers and their Fund Structures

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Beginning Jan. 1, 2024 (the “**Effective Date**”), the beneficial ownership reporting requirements of the Corporate Transparency Act (the “**Act**”) became effective, requiring entities doing business in the United States to file reports with the Financial Crimes Enforcement Network (“**FinCEN**”), subject to a variety of available exemptions. The Transparency Act and the related guidance published by FinCEN are meant to help increase beneficial ownership transparency in the U.S. financial system and protect it from illicit use. We previously published a client alert that provides a high-level overview of the Transparency Act, which can be found [here](#), and another client alert that discusses who has access to beneficial ownership information, which can be accessed [here](#).

This alert includes an expanded discussion on the exemptions that may be available to entities in a private fund structure.

Entities Subject to the New Rule

Unless a specific exemption is available, all U.S. domestic entities that are formed by filing a document with a secretary of state or similar office and all foreign entities that register to do business in the United States are required to file (and update when necessary) a beneficial ownership information report (a “**BOI Report**”) with FinCEN. The types of entities required to file a BOI Report include, without limitation, corporations, limited liability companies, and limited partnerships and, unless otherwise exempt, are referred to as “**Reporting Companies**.”

As a result of the broad application of the rules, each individual entity in a fund structure as well as the upper-tier management company structure will need to be separately considered.

Available Exemptions under the New Rule

The Transparency Act provides 23 specific exemptions that, if applicable, relieve an entity that is otherwise a Reporting Company from the obligation to file a BOI Report. Below is a summary of the exemptions that may be applicable to entities in many of our private fund clients’ structures.

- Registered Investment Companies and Registered Investment Advisers. The Transparency Act exempts many investment companies and registered investment advisors. To qualify for this “**RIA Exemption**,” the applicable entity must be (i) either an investment company (as defined in Section 3 of the Investment Company Act of 1940 (the “**Company Act**”) or is an investment adviser (as defined in Section 202 of the Investment Advisers Act of 1940 (the “**Advisers Act**”) and (ii) must be registered with the SEC under the Company Act.

Relying advisers listed on an SEC-registered investment advisor’s Form ADV may also be eligible for the RIA Exemption, and, in some cases, the RIA Exemption may also apply to general partner entities that meet specific criteria.

- Venture Capital Fund Advisers. Similarly, the Transparency Act exempts venture capital fund advisors that are fall within section 203(l) of the Advisers Act and have filed Item 10, Schedule A and B or Part 1A of Form ADV with the SEC.
- SEC Broker Dealer. Any broker or dealer that is registered under section 15 of the Securities Exchange Act of 1934 (the “**Exchange Act**”) is also exempt.
- Pooled Investment Vehicle. Many of the fund entities will be exempt as “pooled investment vehicles.” An exempt pooled investment vehicle is an entity that:
 - (i) is operated or advised by a bank, credit union, broker-dealer, investment adviser, or venture capital fund advisor that is exempt under the Transparency Act; and
 - (ii) either:
 - (A) is an investment company (as defined in Section 3(a) of the Company Act) or
 - (B) would be investment company but for Section 3(c)(1) or 3(c)(7) of the Company Act and is identified by the applicable adviser in its Form ADV (or will be added as part of the next annual updating amendment).
- Commodity Exchange Act Registered Entity. The Transparency Act also exempts Commodity Exchange Act registered entities that meet the following qualifications:
 - (i) the entity is a registered entity under section 1a of the Commodity Exchange Act; or
 - (ii) the entity is (a) a futures commission merchant, introducing broker, swap dealer, major swap participant, *commodity pool operator*, or *commodity trading advisor* (each as defined in section 1a of the Commodity Exchange Act), or a retail foreign exchange dealer (as described in section 2(c)(2)(B) of the Commodity Exchange Act) and (b) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.
- Large Operating Companies. For entities related to a fund’s portfolio investments that do not qualify as “pooled investment vehicles” or one of the other above exceptions (e.g., private equity portfolio companies), the exemption for “large operating companies” may be available.
- To qualify, the entity must (i) employ more than 20 full time employees in the United States, (ii) have an operating presence at a physical office within the United States, and (iii) have filed a U.S. federal income tax or information return for the prior year demonstrating an amount greater than \$5,000,000 in gross receipts or sales (excluding gross receipts or sales from sources outside the United States).
- Wholly Owned or Controlled Subsidiaries. The Transparency Act exempts any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by certain other entities exempt from the beneficial ownership reporting requirements, including an exempt broker or dealer, an exempt investment company or investment adviser, an exempt venture capital fund adviser, or an exempt large operating company.
- However, it is important to note that wholly owned and controlled subsidiaries of pooled investment vehicles do not qualify for this subsidiary exemption simply by virtue of being

wholly owned by a pooled investment vehicle. Depending on the specific structure and circumstances, other exemptions may be available for subsidiaries of funds.

Upcoming Initial Filing Deadlines

The good news is that non-exempt entities required to file BOI Reports with FinCEN will have until January 1, 2025 so long as they were formed prior to January 1, 2024. Reporting Companies formed on or after January 1, 2024 will have a shorter period to comply — 90 days post-formation if formed during 2024 and 30 days post-formation if formed during or after 2025.

Because of nuances in the rules and related exemptions, each private fund should carefully analyze its structure to determine which of its entities are reporting companies and which may fall under an exemption. Please consult with your contact at Haynes Boone or any attorney listed below if you have questions or need further guidance for your specific situation.