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Re: Corporate Transparency Act; 31 U.S. Code § 5336

Dear Client,

Recent regulatory changes may impact your business, as the Corporate Transparency Act (“CTA”) enumerated in 31 U.S. Code § 5336 introduces new requirements for certain companies operating in the United States. Compliance with these new regulations is crucial, as failure to meet the reporting obligations could result in significant penalties. If your company meets the criteria set forth by the CTA, action may be required to report Beneficial Ownership Information (“BOI”). We want to make you are aware of these changes and have the information you need to take the necessary steps.

Please note that the purpose of this letter is informational only; **our firm will not prepare and file BOI Reports on your behalf**. However, we recommend that you consider reaching out to CT Corporation at <https://www.wolterskluwer.com/en/know/beneficial-ownership-information-reporting#SmallBusinessOwners> or call their support desk at (888)-318-0446 for assistance with preparing and submitting a BOI report. Or you may file on your own using FinCEN’s e-filing portal (more information on filing methods below).

The CTA, enacted as part of the National Defense Authorization Act on January 1, 2021, introduces significant reforms to the Bank Secrecy Act and related anti-money laundering regulations, the most notable changes since the U.S. Patriot Act. It is a part of Congress’s ongoing efforts to combat terrorism, organized crime, and money-laundering. The CTA requires certain companies formed in, or registered to do business in, the United States to report their BOI to the Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”) in an effort to create a national database for use by national security and law enforcements agencies. Specifically, companies that meet the CTA’s criteria as **“reporting companies”** must submit reports FinCEN, detailing information about their **beneficial owners**, as well as key details about the company’s ownership structure.

Both domestic and foreign companies may be subject to the reporting requirements under the CTA. A **“reporting company”** may include corporations, limited liability companies (LLCs), and other entities that are created or registered through a filing with a Secretary of State or an equivalent state office. This also extends to non-U.S. companies that are registered to do business in the United States through similar filings. However, sole-proprietorships, trusts and general partnerships are not required to file a

formal document with the Secretary of State, and therefore do not have a BOI filing requirement. Also, companies may be exempt from reporting BOI, if they fall into one of the 23 specific reporting exemptions outlined in the CTA. These exemptions cover entities that are already subject to reporting regulations such as public companies, government entities, insurance companies, banks, tax exempt entities etc. One notable exemption is for “large operating companies” defined as meeting the requirements of directly employing at least twenty full-time employees in the U.S., have gross revenue over five million USD on the prior year’s tax return, **and** have a physical operating presence in the U.S.

Under the CTA a “**beneficial owner**” refers to any individual who either holds a significant ownership stake, specifically 25% or more of the company’s ownership interests (equity, stock, capital, or profit interest) **or** has a substantial degree of control over the company’s operations. Substantial control can be demonstrated through various roles, such as serving as a senior officer, having the authority to appoint or remove senior officers or board members, or possessing significant influence over important decisions and policies of the company. It is important to note that individuals may be classified as beneficial owners even if they do not own any shares or equity in the company. Also, control can also be exercised indirectly, such as through influence over other entities or through specific rights tied to financing arrangements etc.

There are specific deadlines for reporting companies to submit their initial BOI reports. For companies formed or registered before January 1, 2024, the initial BOI report must be filed no later than January 1, 2025. Companies formed or registered in 2024 must have their initial report due within 90 days of their formation or registration. For any company created or registered after January 1, 2025, the initial report must be filed within 30 days of the company’s creation or registration.

BOI reports must be filed electronically through FinCEN’s e-filing portal, available at <https://boiefiling.fincen.gov>. Reporting companies can either complete a web-based form directly online or upload a completed PDF version of the report. The report must include the company’s full legal name, any trade or “doing business as” names, the complete street address of its principal place of business (no P.O. Box or attorney’s address), the state of formation, and its Taxpayer Identification Number. Additionally, it must provide each beneficial owner’s and company applicant’s full legal name, date of birth, residential address, a unique identifying number from a valid government-issued ID (passport or driver’s license, etc.), and an image of the ID used.

If you are not comfortable completing the filing on your own, we recommend using CT Corporation for assistance. CT Corporation is an online provider of registered agent services and various other business compliance solutions, helping companies manage their legal and regulatory obligations effectively. For more information on how CT Corporation can help with your BOI reporting, visit <https://www.wolterskluwer.com/en/know/beneficial-ownership-information-reporting#SmallBusinessOwners>

Please be aware that willfully failing to comply with the CTA’s reporting requirements can result in significant penalties. These penalties include civil fines of up to \$591 per

day for each day the report is late, potential criminal fines of up to \$10,000, and/or imprisonment for up to two years.

While there is a case currently challenging the validity of the act that arose in the United States District for the Northern District of Alabama. This case has been appealed by the United States to the 11th Circuit Court of Appeals. Oral arguments were heard on September 27th, 2024; however, no decision is anticipated until after January 1st, 2025; and the initial filing deadline for the CTA.

The current court case regarding the constitutionality of the CTA only issues an injunction affecting the specific parties involved not requiring them to file a BOI, there is a possibility that litigation in another jurisdiction or an appeal to a higher court for the current case **may** lead to a nationwide injunction. It is still recommended that you **proceed with filing** your BOI report, as the 90-day deadline is likely to arrive before any nationwide injunction is issued.

You or a qualified professional should determine whether your company qualifies as a “reporting company” under the Corporate Transparency Act. Additionally, you will need to identify any beneficial owners and verify if your company qualifies for any exemptions from the reporting requirements. Please note that, **in addition to not filing the BOI report on your behalf, we will not provide a legal determination regarding whether your company is required to file or qualifies for an exemption.**

Please note that this letter is for **informational purposes only**. We will try to keep you informed of any updates regarding the legality of the CTA or any additional requirements that may arise. However, **we cannot guarantee** that all changes will be communicated to you.

For the latest guidance and updates related to the CTA rules, FinCEN has released resources to help navigate these complex rules such as a Frequently Asked Questions (FAQs) page which can be accessed at <https://www.fincen.gov/boi>

Sincerely,



/s/ Guy C. Crowgey