



**January 16, 2024**

## **New Federal and New York Corporate Transparency Acts Require Corporate, LLC Beneficial Ownership Disclosures**

### **Executive Summary**

On January 1, 2024, the U.S. federal Corporate Transparency Act ("CTA"), enacted in 2021, took effect. On December 23, 2023, New York State's limited liability company ("LLC") transparency act ("NYTA") was signed into law, to go into effect later in 2024 on a yet-to-be-determined date.

Both the CTA and NYTA are measures to promote corporate transparency by requiring reporting on their beneficial ownership on prescribed forms: in the case of the CTA, to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"); and in the case of the NYTA, to the New York Department of State, unless the entity is exempt from reporting under the applicable statute. The CTA applies to most corporate entities (corporations, LLCs, limited partnerships, and others formed and organized under any state), while the NYTA applies only to LLCs. ***Critically, the NYTA applies not only to New York "Domestic LLCs" (formed and organized in New York State), but to "Foreign LLCs," (formed***

***and organized under the laws of a state other than New York) that are or become authorized to do business in New York.*** For example, a Delaware LLC doing business in New York will have to report beneficial ownership to the New York Secretary of State unless an exemption is available.

## Beneficial Ownership Reporting Under the CTA and NYTA

The CTA, passed as part of the Anti-Money Laundering Act of 2020, itself part of the FY 2021 National Defense Authorization Act, requires "reporting companies" to file with FinCEN, in the absence of exemption (see below), information on their beneficial owners ("Beneficial Ownership Information," or "BOI"). The BOI is not publicly available, but FinCEN is authorized to disclose it to U.S. federal law enforcement agencies and, with court approval, to other law enforcement agencies. Beneficial Owners may be indicated by several indicia, including equity ownership, control rights, affiliation status and others. Under CTA, information on "Applicants," those involved in forming and organizing the entity, is also required.

CTA requires BOI of a newly-formed entity to be filed with FinCEN within 90 days of entity formation, decreasing to 30 days after January 1, 2025. Pre-existing entities have until January 1, 2025 to file. NYTA requires BOI to be submitted at the time of LLC formation, or, for a Foreign LLC, at the time of application for authority to do business in New York.

## Exemptions

Both the CTA and NYTA exempt the same 23 categories of entities, essentially focused on entities that do beneficial ownership reporting under other regulatory regimes. Exemptions include: Securities Exchange Act of 1934 reporting issuers and broker-dealers; Investment Company Act of 1940 investment companies; Investment Advisers Act of 1940 investment advisers; federal, state or local governmental authorities or agencies; banks, credit unions and depository institutions; insurance companies; certain pooled investment vehicles, accounting firms; tax-exempt entities; certain "large operating companies" with more than 20 employees and more than \$5 million in gross receipts or sales; subsidiaries of certain other exempt entities; and inactive entities. CTA-exempt entities need not

file BOI reports with FinCEN; NYTA-exempt LLCs must file a statement with the NYS Department of State stating the exemption that applies.

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