

## **A New Business Ownership Disclosure Rule Launched, but Many Don't Know About It**

A federal anti-money laundering rule became effective in January of 2024 (Effective) requiring each entity to file a beneficial ownership report (BOI) with the Financial Crimes Enforcement Network (FinCEN) to implement Section 6403 of the Corporate Transparency Act (Final Rule).

You will have until January 1, 2025 to do so for pre-existing entities formed before the Final Rule became Effective unless the entity at issue is, among other things, a registered investment adviser then both the adviser and pooled investment vehicle(s) managed by the RIA can avoid this beneficial ownership interest (BOI) filing with FinCen.

Summarized below is a review of relevant publications about this Final Rule:

### **FinCEN Beneficial Ownership Interest (BOI) Rule Effective January 1, 2024**

FinCEN issued the Final Rule to require certain entities to file reports with FinCEN identifying and providing information about their beneficial owners and applicants to help prevent and combat money laundering. The practical result of the Final Rule is that **any entity created in the United States that is not already subject to certain federal or state regulation under one of the 23 exemptions** requiring an entity already to disclose its beneficial ownership information to a government authority, or not otherwise exempt by the Final Rule will be required to report such information to FinCEN.

### **Companies That Are Required to File Reports**

A “reporting company” is defined to mean a domestic or foreign reporting company, as follows:

- A “domestic reporting company” means any entity that is (i) a corporation, (ii) a limited liability company, or (iii) created by the filing of a document with a secretary of state or any similar office under the law of a state.
- A “foreign reporting company” means any entity that is (i) a corporation, limited liability company, or other entity (ii) formed under the law of a foreign country and (iii) registered to do business in any state by the filing of a document with a secretary of state or any similar office under the law of a state.

### **Beneficial Owners of a Reporting Company**

A “beneficial owner” under the Final Rule is defined as any individual who, directly or indirectly, either exercises **substantial control** over a reporting company or owns or controls at least **25% of the ownership interests** of a reporting company.

“**Substantial control**” over a reporting company includes an individual who:

- serves as a senior officer;

- has authority over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body);
- directs, determines, or has substantial influence over important decisions made by the reporting company; or
- has any other form of substantial control over the reporting company,

The Final Rule adopts 23 exemptions from the definition of “reporting company” for entities that in **general are already subject to substantial federal or state regulation under which beneficial ownership is disclosed.**

**Some of the relevant exemptions apply to:**

- entities that include investment advisers registered with the SEC;
- Pooled investment vehicles operated or advised by certain other exempted entities such as a registered investment adviser; and
- Subsidiaries whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more certain exempted entities such as above.

**Penalties:**

- The BOI Rules provide for civil and criminal penalties for willful violations, including civil penalties of up to \$500/day and criminal penalties of up to \$10,000 and/or imprisonment for up to two years.

**When to file report.**

The Final Rule requires entities in existence before January 1, 2024, to file a **report no later than January 1, 2025.** An entity created on or after January 1, 2024, must submit a report of its beneficial owners and related company information – a BOI report – within 90 days of receiving notice of the company’s creation or registration. A reporting entity that is created on or after January 1, 2025, must submit a BOI report within 30 days after receiving notice of the company’s creation or registration.

**CFTC and its Pools:**

CFTC-registered entities are exempt from the reporting requirement; however, a pooled investment vehicle, such as a commodity pool, may be required to comply with FinCEN's reporting rule unless it qualifies for another exemption under the Act. The Act exempts from the BOI reporting requirement any pool operated or advised by an SEC registered broker dealer (BD) or investment advisor (IA). As a result, a commodity pool operated or advised by an SEC-registered BD or IA is exempt from the reporting requirement. However, NFA Member commodity pool operators, which operate a commodity pool that does not qualify for an exemption under the Final Rule will be required to report BOI to FinCEN for any commodity pools they operate.

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