



Seyfarth & Marcum Present: CTA Essentials

Overview and Preparing for Compliance

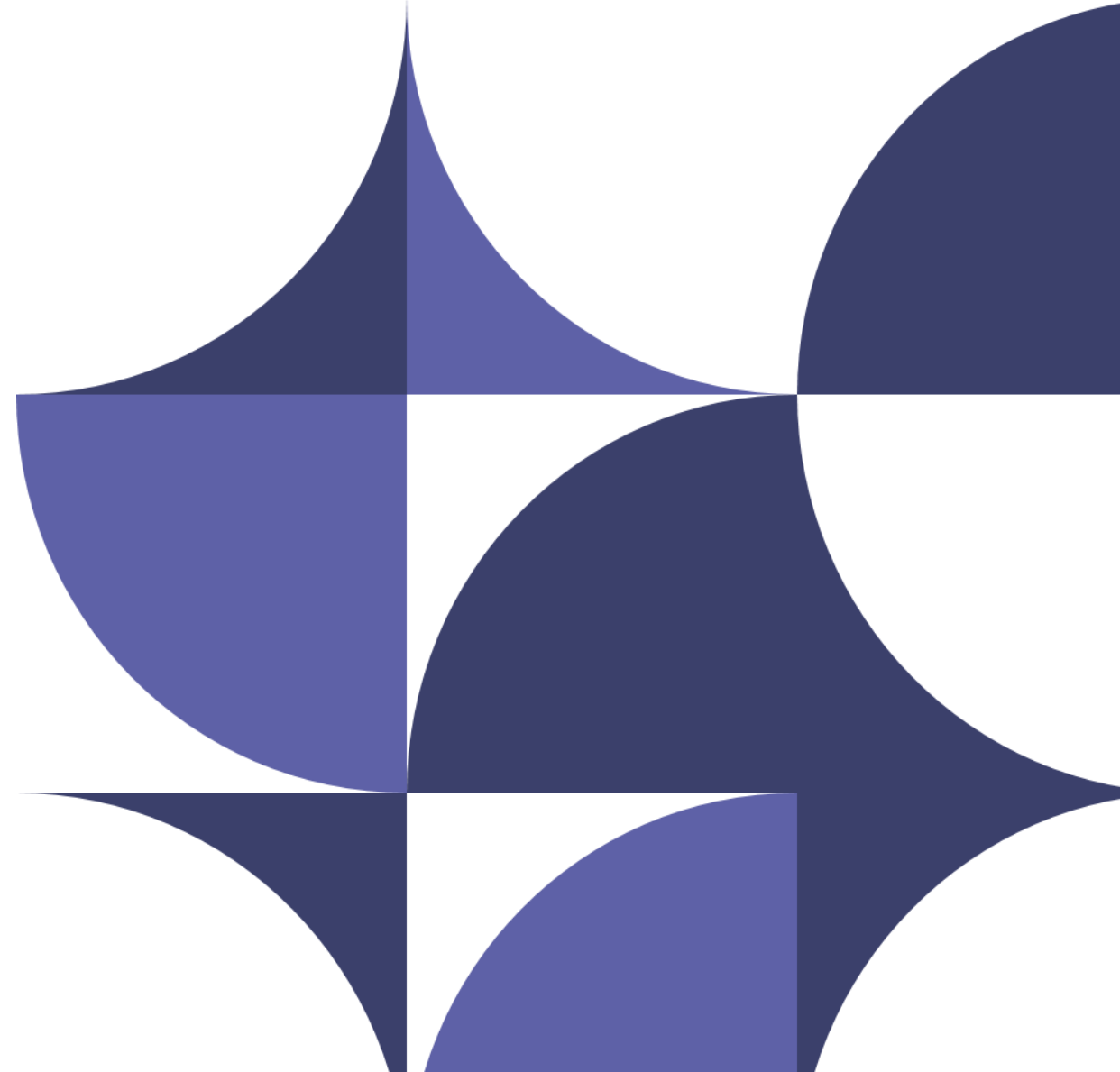
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May 29, 2024

Seyfarth Shaw LLP

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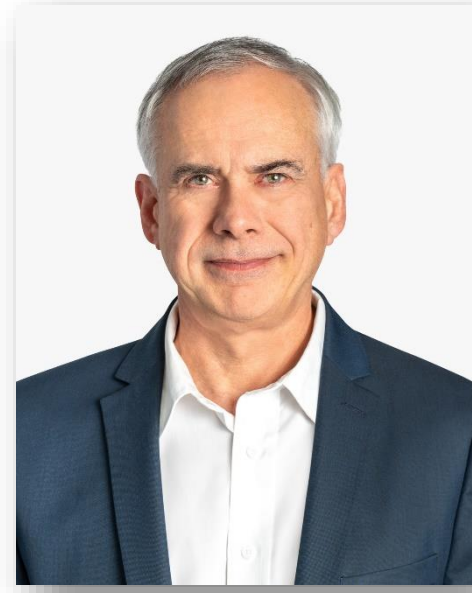
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What's the CTA?

- The Corporate Transparency Act of 2020 (the “CTA”) became effective January 1, 2024.
- The stated purpose of the CTA is to:

“protect the U.S. financial system from illicit use and impeding malign actors from abusing legal entities, like shell companies, to conceal proceeds of corrupt and criminal acts.”

- Simply put, the CTA seeks the disclosure of corporate ownership and the prevention of money laundering.

Corporate Transparency Act Overview

**Who is
Impacted?**

Requirements

Timing

**Authorized
Disclosures**

Next Steps

Required Filings for Reporting Companies

- Who is required to report? “Reporting Companies” – Domestic & Foreign

Unless covered by an exemption, the CTA requires corporations, limited liability companies, limited partnerships, statutory trusts and any other entity created by the filing of a document with a Secretary of State (or similar office under state law, Indian Tribal law or foreign jurisdictions) to disclose information regarding their **Beneficial Owners** and **Company Applicants**.

- Sole proprietorships, general partnerships, and common law trusts are not covered.
- FinCEN estimates there are 32+ Million covered entities!

Exemptions

There are **23** exemptions. In general, they include many entities that already are subject to substantial federal or state regulation under which beneficial ownership already may be known.

- For example, **regulated entities** that are exempt include: (i) entities that file reports with the SEC, (ii) government authorities, (iii) banks, (iv) credit unions, (v) money services businesses, (vi) investment advisors, (vii) securities brokers and dealers, (viii) tax exempt entities, (ix) entities assisting tax exempt entities, (x) insurance companies, (xi) state-licensed insurance producers, (xii) pooled investment vehicles, (xiii) public utilities. (xiv) inactive entities, (xv) accounting firms, and (xvii) large operating companies.
- A **large operating company** is an entity that (i) employs more than 20 full time employees in the US, (ii) has an operating presence at a physical office in the U.S., and (ii) has filed federal income tax or information return in the U.S. for the previous year demonstrating more than \$5 Million in gross receipts or sales on IRS form 1120 or other applicable forms, excluding gross receipts or sales from sources outside the U.S.
- **Tax exempt entities.**
- Certain **subsidiaries of exempt entities.**
- If an entity loses an exemption, it has 30 days to make the required filing.

Required Filings

	Existing Entities (as of December 31, 2023)	New Entities
Filing Deadline	December 31, 2024	90 days for entities formed <u>prior to</u> January 1, 2025 30 days for entities formed <u>on or after</u> January 1, 2025
“Company Applicant” Information		✓
“Beneficial Ownership” Information	✓	✓

- Filing system is online through FinCEN’s website
- Any updates to the filing must be filed within 30 days after a change in reportable information

Company Applicants

- A “Company Applicant” is defined as: the individual(s) who files the document that creates the company, as well as any individual primarily responsible for directing or controlling the filing.
- **NOTE:** If a manager is responsible for supervising a junior employee, they both would be Company Applicants.
- There can be up to two Company Applicants on a given filing.
- While still evolving, law firms, accounting firms and other professionals are taking differing positions as to when, if at all, they will agree to serve as Company Applicants.
- Several third-party service providers are developing products to help those forming entities comply with the CTA.

Company Applicants: Required Information

- Company Applicants are required to provide their:

- 1** Full legal name
- 2** Date of birth
- 3** Current address
- 4** A unique identification number assigned by an issuing jurisdiction (e.g., current passport or driver's license), plus a copy of the document from which the ID number was taken

Company Applicant: Personal Information

- The personal information of the Company Applicant must be included in each applicable filing.
- However, the Company Applicant can instead provide the information to FinCen and obtain a FinCen ID number. Instead of disclosing the personal information each time, the Company Applicant would merely have to provide its FinCen ID number to the reporting company.
- We recommend all individuals who will be reportable in BOI filings obtain a FinCen ID number.

Required BOI

The BOI information that is required is:

As to the Company:

1. Full legal name
2. Any trade name or d/b/a
3. Current address in the U.S.
4. State, tribal or foreign jurisdiction of formation
5. Taxpayer Identification Number (including the EIN)

As to the Beneficial Owners:

1. Full legal name
2. Date of birth
3. Current residential address
4. Unique identification number and issuing jurisdiction (e.g., current passport or driver's license), plus a image of the document from which the id number was taken)

Beneficial Owners

Beneficial Owners are those that:

- Exercise substantial control (including negative control) over the entity (serves as a senior officer, appoints or removes senior officers or makes/approves major decisions for the entity); or
- Own 25% or more of the entity (this includes convertible notes, warrants, options and similar instruments, whether or not exercised).
- This applies to domestic and foreign entities.

Criminal Penalties

There are both civil and criminal penalties for willful failure to report or willfully providing false or fraudulent BOI:

- Civil Penalties are \$500 per day for a continuing violation, up to a maximum of \$10,000.00.
- Criminal penalties are up to 2 years in jail.

What to Do



1. Identify individuals to monitor CTA regulations and notify Company management of any relevant changes.
2. Adopt Company policy regarding CTA compliance.
3. Develop CTA-related training, as needed.
4. Review Company's org chart, ownership and other records to ensure they are up to date.
5. Determine whether the Company is a reporting company under CTA.
6. Determine if any exemptions apply, and memorialize applicable exemption analysis.

What to Do



7. Collect reporting information on the reporting companies.
8. Identify all reportable beneficial owners and control persons for reporting companies.
9. Collect reporting information on beneficial owners or obtain FinCEN Identifier number for each reportable beneficial owner and control person.
10. Identify Company Applicants for reporting companies formed in 2024 or later (2 maximum Company Applicants).
11. Collect reporting information on Company Applicants for Companies formed in 2024 or later or obtain FinCEN ID numbers for Company Applicants.
12. Request all reportable beneficial owners (including control persons) and Company Applicants obtain FinCEN Identifiers (FinCEN ID).

What to Do



13. Determine when to file BOI Report:

- a) If the reporting company was created or becomes a foreign reporting company before January 1, 2024.
- b) If the reporting company was created or registered on or after January 1, 2024, file an initial BOI report within either 90 days (for reporting companies created or registered in 2024) or 30 days (for reporting companies created or registered on or after January 1, 2025) of the earlier of the date on which: (1) the company receives notice the creation of the company has become effective or (2) the secretary of state provides public notice the reporting company has been created or registered to do business.

14. Prepare BOI Report as needed for reporting companies and file at FinCEN portal during 2024.

What to Do



15. Implement a compliance process to monitor and report any changes or inaccuracies in BOI reports.
16. File updates if any information about the reporting company or beneficial owners and control persons changes after the initial BOI filing is made.
17. File a corrected report if the Company discovers an inaccuracy was filed by a reporting company.
18. If an exemption applies, continue to monitor that such exemption continues to apply. Any reporting company that stops qualifying for an exemption must file a BOI report within 30 calendar days after the date the exemption no longer applies.
19. A reporting company that becomes exempt, must update its BOI report within 30 calendar days of the date it meets the exemption criteria.

Other Best Practices

Data Security

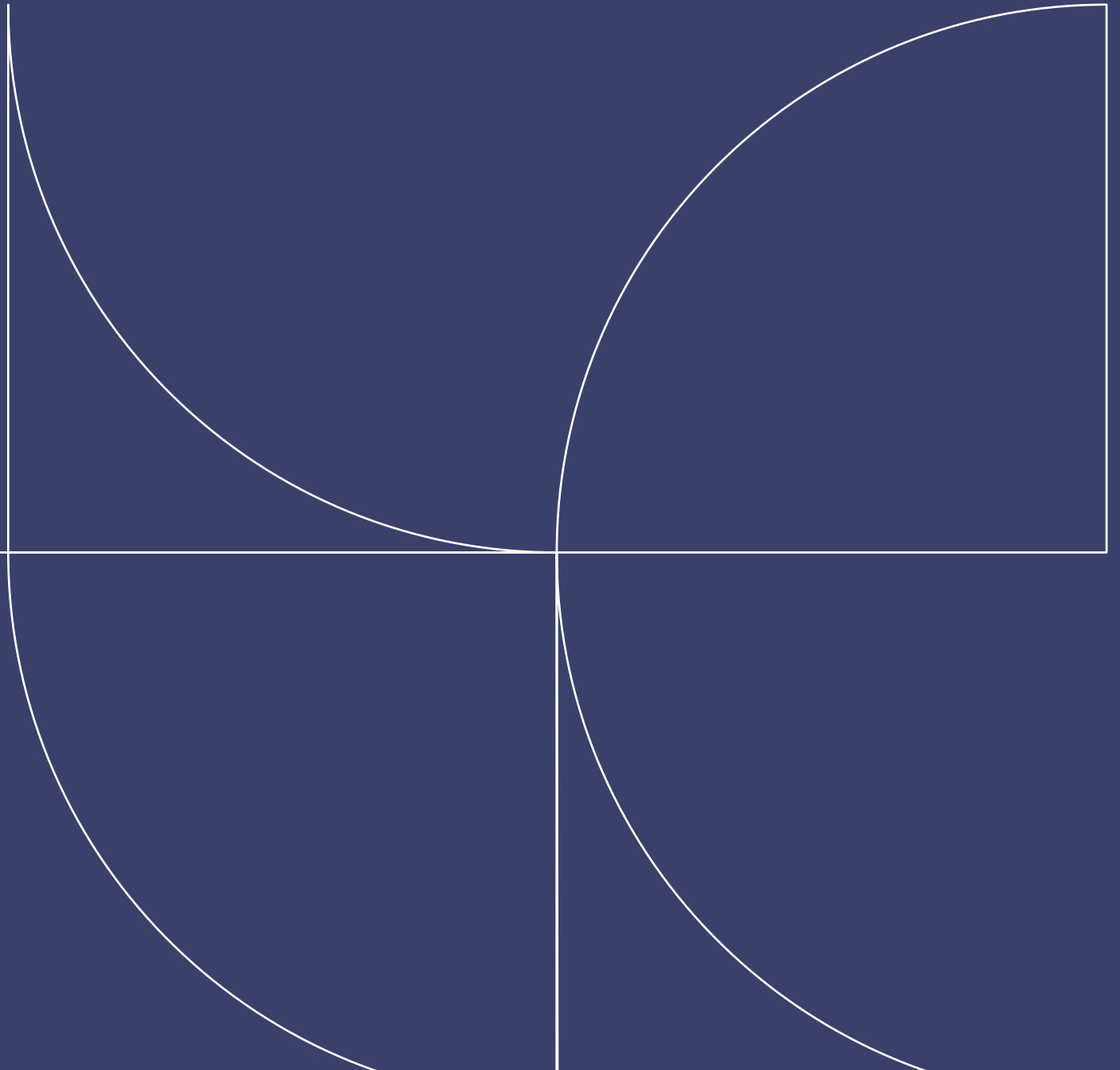
- Develop a secure process for collecting and storing personal information of beneficial owners and company applicants as applicable.
- Review applicable privacy policies to confirm whether disclosure to comply with law is permitted. Amend policies as necessary.

General Company Practices

- Review company documents for appropriate CTA-related provisions.
- Review and consider whether other company documents should include appropriate CTA related provisions (ex. Shareholders' Agreement, Subscription Agreements, Investor Questionnaire, LLC Agreement, convertible notes, warrants, options, etc.).
- Employment Agreements (executive level).
- Director and Officer Agreements (Indemnification Agreements).
- Dissolve Inactive Entities.



Q&A





Thank You

Questions?
Contact Us

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Panelist Bios



Douglas Farrington is the Boston office managing partner and partner-in-charge of the Massachusetts Tax department at Marcum. Douglas has more than 30 years of experience providing insight and solving problems for a range of clients across industries, including financial services, construction, professional services, manufacturing, healthcare, not-for-profit, and hospitality. Douglas regularly consults with public and non-public companies on a variety of federal, state, and local planning matters. He advises professional staff on technical tax matters.



Lou DiFronzo is a partner at Seyfarth Shaw LLP and the lead of the firm's Boston office Corporate department. Lou regularly advises clients on a broad range of transactions including complex financings, raising capital, navigating corporate governance and compliance matters, and more. Lou has been assisting clients in navigating the Corporate Transparency Act through his role as outside general counsel to many private companies.

Panelist Bios



Michael Herbst is a partner in the Seattle office of Seyfarth Shaw and a member of the firm's Corporate Transparency Act task force. Michael counsels privately held businesses in complex corporate and commercial transactions, including corporate formations, mergers, acquisitions, spin-offs, recapitalizations, private placements, and dispositions. He has participated in several presentations and publications related to the CTA and what it means for companies.



Shamim Mohandessi is an associate in the Seattle office of Seyfarth Shaw and is also a member of the firm's Corporate Transparency Act task force. Shamim advises emerging growth and lower middle-market companies on debt and equity financings, mergers and acquisitions, joint ventures, and managing the transition from closely held businesses to high-growth, investor-backed market leaders. In addition, Shamim advises institutional investors, including public and private pension funds, universities, family offices, and sovereign wealth funds in various alternative investments.