



One Maritime Plaza ♦ Eighteenth Floor  
San Francisco, California 94111-3598

October 19, 2023

**VIA EMAIL**

To Our Investment Adviser Clients and Other Friends:

Re: **Corporate Transparency Act Compliance**

The Financial Crimes Enforcement Network (“FinCEN”) previously issued a [final rule](#) to implement the Corporate Transparency Act (the “CTA”), which requires business entities to file reports with certain beneficial ownership information (the “Reporting Requirements”), unless an exemption applies. The CTA broadly applies to most business entities formed in the U.S. (e.g., limited liability companies, corporations, etc.) and certain non-U.S. entities that do business in the U.S. The Reporting Requirements include information about the reporting entity itself and two categories of individuals: beneficial owners and company applicants.

Key Dates. The CTA is effective as of January 1, 2024 (the “Effective Date”). Entities that exist as of the Effective Date and that do not qualify for one of the exemptions from the Reporting Requirements have until January 1, 2025 to file an initial report. Any entity that does not qualify for an exemption created on or after the Effective Date must file an initial report within 30 calendar days<sup>1</sup> of receiving notification of legal formation (for U.S. entities) or registration to do business (for non-U.S. entities) from the applicable secretary of state’s office. After any initial report is filed, all reporting entities must report any changes to their beneficial ownership structure or corrections of inaccurate previously-reported information within 30 days of becoming aware of the change or inaccuracy. Reports are filed via a portal provided by FinCEN and are not publicly available.

Entities Exempt from Reporting Requirements. The CTA includes 23 exemptions for various types of business entities. Of interest to investment advisers, the following entity-types are exempt from the Reporting Requirements (each, an “Exempt Entity”):

1. Investment advisers registered with the SEC (“RIAs”) under the Investment Advisers Act of 1940 (the “Advisers Act”);
2. Investment companies registered with the SEC under the Investment Company Act of 1940 (the “ICA”) (e.g., mutual funds);

---

<sup>1</sup> FinCEN has [proposed](#) extending this period to 90 calendar days for entities formed in 2024. Entities created or registered on or after January 1, 2025, would have 30 days to file their initial reports.

3. Venture capital fund advisers that rely on section 203(l) of the Advisers Act and have already filed a Form ADV disclosing ownership information on Schedule A and B of Part 1A (“Venture Capital Fund Advisers”);
4. Private investment funds that would be investment companies but for the exclusion under section 3(c)(1) or section 3(c)(7) of the ICA (“Private Investment Funds”), provided that such Private Investment Fund is advised by and listed on the Form ADV for either an RIA or a Venture Capital Fund Adviser (or will be listed on that adviser’s next annual update to its Form ADV);
5. Commodity pool operators or commodity trading advisors that are registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (but not the funds that they manage, as discussed below);
6. Brokers or dealers that are registered under section 15 of the Securities Exchange Act of 1934; and
7. Large operating companies (which could potentially also be an investment adviser or similar entity) that (a) employ more than 20-full time employees, (b) filed a U.S. income tax return for the previous year demonstrating more than \$5 million in revenue, and (c) have an operating presence in a physical office within the U.S. (the “Large Operating Company Exemption”).

Please consult the CTA for additional categories of exemptions regarding other business entities, including tax-exempt entities.

Entities Not Exempt from Reporting Requirements. The list of Exempt Entities does not include:

1. An investment adviser exempt from SEC registration pursuant to the private fund adviser exemption under Advisers Act section 203(m);
2. A state-registered investment adviser;
3. An investment adviser with under \$25 million in assets under management that is exempt from state registration under applicable state law;
4. Private Investment Funds managed by these exempt or state-registered investment advisers;
5. Real estate investment funds that rely on ICA section 3(c)(5), even if advised by an RIA that is itself an Exempt Entity; and
6. Commodity pools, even if advised by a registered commodity trading adviser or operated by a registered commodity pool operative that is itself an Exempt Entity.

Family offices that are not RIAs are unlikely to qualify for any CTA exemption (other than perhaps the Large Operating Company Exemption) and therefore will be subject to the Reporting Requirements.

Subsidiaries; General Partner Entities. Subsidiaries whose ownership interests are controlled or wholly owned, directly or indirectly, by certain Exempt Entities (including RIAs or Venture Capital Fund Advisers) do not have to report. This narrow subsidiary carve-out applies to general partner

entities to funds formed as limited partnerships or managing members of funds formed as limited liability companies if such general partner or managing member is controlled or wholly owned, directly or indirectly, by such Exempt Entity. However, if the ownership interests of the subsidiary are not controlled or wholly owned by such Exempt Entity, this subsidiary carve-out will not apply. For example, in the typical fund structure where a general partner of a fund is under common control with the investment adviser, the general partner will be required to file if it is not itself an Exempt Entity. This subsidiary carve-out also does not apply to a subsidiary that is controlled or wholly owned by a Private Investment Fund that is an Exempt Entity unless the subsidiary qualifies for one of the exemptions on its own (for example, if the subsidiary itself is a Private Investment Fund advised by and listed on the Form ADV for either a RIA or a Venture Capital Fund Adviser).

Reporting Requirements. All reporting entities that do not qualify for an exemption must disclose to FinCEN identifying information for each “beneficial owner” and “company applicant” of the reporting entity. A “beneficial owner” is any individual who, directly or indirectly, either exercises substantial control over such reporting entity or owns or controls at least 25% of the ownership interests of such reporting entity. A “company applicant” is any individual who directly files the document that creates the domestic reporting entity (or registers the foreign reporting entity). Reporting on the company applicant is required only for U.S. entities formed after January 1, 2024 (or non-U.S. entities registered to do business in the U.S. after January 1, 2024).

A reporting entity’s initial filing under the Reporting Requirements must state information about the reporting entity itself, including: (1) legal name, (2) trade name, (3) business address, (4) jurisdiction information, and (5) U.S. Internal Revenue Service taxpayer identification number. For each beneficial owner and company applicant (as applicable), the reporting entity must also include such person’s (a) legal name, (b) date of birth, (c) current address, and (d) an identification document with a unique identifying number.

Non-U.S. Entities. Entities formed in a non-U.S. jurisdiction that register to do business in a U.S. state may be subject to reduced reporting obligations (if an exemption does not otherwise apply). If more than one individual exercises substantial control over a non-U.S. fund that is required to report, the entity will report information with respect to the individual who has the greatest authority over the strategic management of the entity (instead of all beneficial owners).

Compliance. Compliance with the Reporting Requirements will differ based on when and where the reporting entity was registered or created. Exemption applicability is assessed on an entity-by-entity basis. If an Exempt Entity can no longer rely on its exemption, such entity must file a report within 30 calendar days after the date it no longer meets the criteria for any exemption.

Please contact one of the Shartsis Friese attorneys in the [Investment Funds & Advisers Group](#) if you have any questions about your obligations under the CTA and, as applicable, to update your compliance policies and procedures accordingly.

**SHARTSIS FRIESE LLP**