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Dear Clients & Friends,

We are writing to inform you of a new regulation (the “**Regulation**”)<sup>1</sup> enacted under the Corporate Transparency Act<sup>2</sup> affecting most of our clients and friends effective as of January 1, 2024.

Every non-exempt reporting company is required to file certain information with the Financial Crimes Enforcement Network (“**FinCEN**”) concerning the reporting company and the individuals who indirectly or directly own or control the reporting company (referred to as Beneficial Ownership Information or BOI).<sup>3</sup>

The failure to file timely and accurately report Beneficial Ownership Information can result in criminal and civil penalties.

***What companies are required to report Beneficial Ownership Information to FinCEN?***

A “reporting company” is any domestic company formed by the filing of a document with a secretary of state or Indian tribe and any foreign company that has registered to do business by filing a document with a secretary of state or Indian tribe, that is not exempt under one of twenty-three exemptions.<sup>4</sup> All non-exempt corporations and limited liability companies are reporting companies. All reporting companies are required to file Beneficial Ownership Information Reports with FinCen.

***What companies are exempt from reporting?***

Of the twenty-three exemptions set forth in the Regulation, the exemptions that might be applicable to most of our clients and friends are:

***Large operating company.*** A company that has: (1) more than 20 full-time employees in the United States, **and** (2) filed a Federal income tax or information return for the previous year demonstrating gross receipts or sales (net of returns and allowances) of at least \$5,000,000 (excluding

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<sup>1</sup> 31 CFR 1010.380

<sup>2</sup> 31 U.S.C. § 5336

<sup>3</sup> The stated intent of this reporting requirement is to safeguard the U.S. financial system by collecting identifying information that will make it more difficult to launder ill-gotten gains through shell companies or other opaque ownership structures.

<sup>4</sup> See 31 CFR 1010.380(c)(2). The twenty-three exemptions are: 1) securities reporting issuer; 2) governmental authority; 3) bank; 4) credit union; 5) depository institution holding company; 6) money services business; 7) broker or dealer in securities; 8) securities exchange or clearing agency; 9) other Exchange Act registered agency; 10) investment company or investment adviser; 11) venture capital fund adviser; 12) insurance company; 13) state-licensed insurance producer; 14) Commodity Exchange Act registered entity; 15) accounting firm; 16) public utility; 17) financial market utility; 18) pooled investment vehicle; 19) tax-exempt entity; 20) entity assisting a tax-exempt entity; 21) large operating company; 22) subsidiary of certain exempt entities; and 23) inactive entity.



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gross receipts or sales from sources outside the US), **and** (3) an operating presence at a physical office in the United States.<sup>5</sup>

***Subsidiary of certain exempt entities.*** Any company 100% owned directly or indirectly by one or more exempt companies.<sup>6</sup>

***Inactive entity.*** Any company organized on or before January 1, 2020 that: (1) is not engaged in active business, **and** (2) is not owned by a foreign person directly or indirectly, in whole or in part, **and** (3) has not experienced a change in ownership in the preceding 12-month period, **and** (4) has not sent or received any funds greater than \$1,000 in the preceding 12-month period, **and** (5) does not hold any assets (including an ownership interest in another entity).<sup>7</sup>

#### ***What information must be reported to FinCEN?***

A reporting company must file a Beneficial Ownership Information Report (BOIR) with information about the reporting company<sup>8</sup> and the individuals that are beneficial owners of the reporting company.<sup>9,10</sup>

The information about the reporting company includes the legal name, any trade or doing business as name, the current street address of the principal place of business in the United States, the state, Tribal, or foreign jurisdiction of formation, and the taxpayer identification number.<sup>11</sup>

The information about the beneficial owners includes the full legal name, the date of birth, the current residential street address, a unique identifying number and the issuing jurisdiction of one of (a) an unexpired passport issued by the US, (b) an unexpired identification document or driver's license

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<sup>5</sup> See 31 CFR 1010.380(c)(2)(xxi).

<sup>6</sup> See 31 CFR 1010.380(c)(2)(xxii).

<sup>7</sup> See 31 CFR 1010.380(c)(2)(xxiii).

<sup>8</sup> See 31 CFR 1010.380(b)(1)(i).

<sup>9</sup> See 31 CFR 1010.380(b)(1)(ii).

<sup>10</sup> This analysis is intended for clients and friends with existing companies and therefore does not address reporting the information of "company applicants". Company applicants are individuals involved in the filing of organizational/ formation documents of reporting companies formed on or after January 1, 2024. Such companies are required to identify and report information on company applicants; provided, however, no companies formed prior to January 1, 2024 are required to report information on their company applicants. Company applicants are required to report the same information as beneficial owners.

<sup>11</sup> See 31 CFR 1010.380(b)(1)(i).



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issued by a state or tribe, or (c) an unexpired passport issued by a foreign government if the individual does not possess a U.S. passport. An image of the document containing the unique identifying number must also be provided.<sup>12</sup>

### ***Who is a beneficial owner?***

A beneficial owner of a reporting company is an individual who (a) owns or controls at least twenty-five percent (25%) of the reporting company's ownership interests *or* (b) exercises "substantial control" over the reporting company.<sup>13</sup>

The determination of individuals that own or control at least twenty-five percent (25%) of a reporting company's ownership interests may be complex. Some examples are an individual who owns ownership interests in a reporting company individually and through one or more other entities; an individual that is a trustee (or an officer that owns interests in a reporting company trustee) of a trust that owns interests in a reporting company; an individual who holds a SAFE or convertible note in which the facts and circumstances don't permit a calculation of the number of securities issuable upon conversion of the SAFE or convertible note (because the number of shares can't be determined until an event triggers conversion). Ownership interests include shares of stock in a corporation or interests in a limited liability company and any instrument convertible into or exercisable for, ownership interests.

An individual exercises "substantial control" over the reporting company if the individual: (1) is a senior officer (president, chief financial officer, general counsel, chief executive officer, etc.); (2) has authority to appoint or remove a senior officer or a majority of directors of the reporting company; (3) directs, determines, or has substantial influence over important decisions of the reporting company<sup>14</sup>; or (4) the individual has any other form of substantial control over the reporting company.<sup>15</sup>

The following individuals will not qualify as beneficial owners even if they meet one of the four criteria listed above: (1) minor children; (2) nominees, intermediaries, custodians, or agents acting as

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<sup>12</sup> See 31 CFR 1010.380(b)(1)(ii).

<sup>13</sup> See 31 CFR 1010.380(d).

<sup>14</sup> See 31 CFR 1010.380(d)(1)(C). "Important decisions" include decisions regarding: the "nature, scope, and attributes" of the business, major expenditures or investments, the issuance of equity, incurrence of significant debt, approval of the operating budget, the selection or termination of business lines or ventures, or the geographic focus of the reporting company, compensation schemes and incentive programs for senior officers, the entry into or termination, or the fulfillment or non-fulfillment, of significant contracts, or amendment of any substantial governance documents of the reporting company.

<sup>15</sup> See 31 CFR 1010.380(d)(1)(i).



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such on behalf of another individual; (3) certain employees; (4) inheritors; and (5) creditors. As is the case with determining whether someone is a beneficial owner, determining whether an exception applies to an individual who would otherwise be a beneficial owner is not always black and white. FinCEN's Small Entity Compliance Guide offers provides some insights for making these determinations.<sup>16</sup>

### ***How do I file a Beneficial Ownership Information Report?***

Beneficial Ownership Information Reports must be submitted electronically through the FinCEN BOI E-Filing System: <https://boiefiling.fincen.gov/>. You, an affiliate of your company, or a third party you engage may complete the filing process on behalf of your company. FinCEN does not charge any fee for filing a Beneficial Ownership Information Report.

### ***When do I have to file a Beneficial Ownership Information Report?***

Reporting companies formed prior to January 1, 2024, are required to file their initial Beneficial Ownership Information Report with FinCEN by January 1, 2025.<sup>17</sup>

Reporting companies formed between January 1, 2024 and December 31, 2024 are required to file their initial Beneficial Ownership Information Report with FinCEN within ninety (90) days after receipt of evidence of filing from the secretary of state or equivalent officer.<sup>18</sup>

Reporting companies formed on or after January 1, 2025 are required to file their initial Beneficial Ownership Information Report with FinCEN within thirty (30) days after receipt of evidence of filing from the secretary of state or equivalent officer.<sup>19</sup>

Reporting companies are required to file updates to the initial Beneficial Ownership Information Report with FinCEN within thirty (30) days of any change in the information reported in the initial Beneficial Ownership Information Report or any updated report filed with FinCEN.<sup>20</sup> This would apply, for instance, if your company changed its officers and key employees, changes its address, or issues securities, or if a shareholder or member acquires or disposes of ownership interests or changes his or her residential address.

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<sup>16</sup> See 31 CFR 1010.380(d)(3).

<sup>17</sup> See 31 CFR 1010.380(a)(1)(iii) [sic] (with the correct citation being 31 CFR 1010.380(a)(1)(iv)).

<sup>18</sup> See 31 CFR 1010.380(a)(1)(i)(A).

<sup>19</sup> See 31 CFR 1010.380(a)(1)(i)(B).

<sup>20</sup> See 31 CFR 1010.380(a)(2)(i).



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***What are the penalties for failure to file a Beneficial Ownership Information Report?***

Senior officers of a reporting company that fails to timely and accurately file Beneficial Ownership Information Reports are subject to civil penalties of up to \$500 per day for each day the failure continues, or criminal penalties including imprisonment for up to two years and/or fines of up to \$10,000.

***What should I do next?***

While the deadline to file an initial Beneficial Ownership Information Report for reporting companies in existence prior to the year 2024 is not until January 1, 2025, Krevolin & Horst advises taking steps now to prepare for filing. For example, it is important for reporting companies to amend their governing documents to require beneficial owners to disclose to the reporting company the information required for the reporting company to comply with the reporting requirements of the CTA.

If you are a shareholder or member of a company, you need to be prepared to provide your personal information, and to assist applicable reporting companies in complying with the CTA.

Please note that this notice is not intended to be exhaustive; compliance with the BOI reporting requirements requires an analysis of each of the above questions with respect to your particular company ownership and leadership structure. Moreover, while this notice touches on certain nuances of the new BOI reporting requirements for companies formed in 2024 and beyond, it is primarily directed at companies existing prior to January 1, 2024.

Once you have reviewed the below, if you have any questions, please do not hesitate to reach out. Our primary contacts regarding the Beneficial Ownership Information reporting requirements are Gerry Balboni ([gbalboni@khlawfirm.com](mailto:gbalboni@khlawfirm.com)), Crissy Wolfe ([wolfe@khlawfirm.com](mailto:wolfe@khlawfirm.com)), and John Wisiackas ([wisiackas@khlawfirm.com](mailto:wisiackas@khlawfirm.com)).