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Continuing Reporting Obligations Under the Corporate Transparency Act: You're Never Done

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Most smaller businesses newly formed or registered to do business in the United States will soon be required to file their initial beneficial ownership report with the federal Financial Crimes Enforcement Network (FinCEN), disclosing those individuals who are “*beneficial owners*” of the companies and “*company applicants*” with respect to the companies.¹

After a company files its initial beneficial ownership report, it will also have a continuing obligation to file updated reports with FinCEN within thirty (30) days following any change to the previously reported information, including if such information becomes incomplete.² Consequently, company management must keep abreast of any changes to (or additions to or deletions from) information that has been or will be reported to FinCEN.

A “beneficial owner” is any individual (not an entity) who, (a) directly or indirectly (through another entity) owns or controls 25% or more of the fully diluted ownership interests of the reporting company, (b) serves as a senior officer of the reporting company (holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function, (c) has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body), (d) directs, determines, or has substantial influence over important decisions made by the reporting company (including decisions regarding:

- (i) the nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company,
- (ii) the reorganization, dissolution, or merger of the reporting company,
- (iii) major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company,
- (iv) the selection or termination of business lines or ventures, or geographic focus, of the reporting company,
- (v) compensation schemes and incentive programs for senior officers,

(vi) the entry into or termination, or the fulfillment or non-fulfillment, of significant contracts,

(vii) amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures),

or, (e) has any other form of substantial control over the reporting company.

An individual may directly or indirectly (including as trustee of a trust or similar arrangement) exercise “substantial control” over a reporting company (and thus be a “beneficial owner”) through (a) representation on the company’s board of directors, (b) ownership or control of a majority of the voting power or voting rights of the reporting company, (c) rights associated with any financing arrangement or interest in the company, (d) control over one or more intermediary entities that separately or collectively exercise substantial control over the reporting company, (e) arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees, or (f) any other contract, arrangement, understanding, relationship, or otherwise.³

Exceptions exist for (i) minor children (so long as the reporting company reports the required information for a parent or legal guardian), (ii) an individual acting as a nominee, intermediary, custodian or agent on behalf of another individual, (iii) most employees of a reporting company (other than senior officers), (iv) individuals whose sole interest in the reporting company is a future interest through a right of inheritance, and (v) certain creditors of the reporting company.⁴

Here are some types of changes which could trigger an obligation to file an updated beneficial ownership report within 30 days of such change:

Company Issues Additional Voting or Nonvoting Stock, Membership Interests, or Other Equity Interests. When the company issues additional shares of voting or nonvoting stock, membership interests or other equity interests, the issuance may result in one or more individuals beneficially owning, or ceasing to own, 25% or more of the fully-diluted equity of the company.

The required information must be reported on any new 25%-or-more beneficial owners, and any individual who then ceases to beneficially own 25% or more must be removed from the report as a beneficial owner.

- **Example 1:** Alpha Corporation's fully diluted capitalization consists of 100 shares of common stock, of which 80 shares are owned by Bob and 20 shares are owned by Carla. Alpha filed its initial beneficial ownership report, disclosing Bob as the sole beneficial owner.
 - **Scenario 1a:** Alpha issues 10 more shares of common stock to Carla. Carla now beneficially owns 25% of the fully diluted stock of the company and is a beneficial owner. The company must file an updated beneficial ownership report

with FinCEN within 30 days of its issuance of the new stock to Carla, disclosing Carla as a new beneficial owner and providing the required information regarding her to FinCEN.

- **Scenario 1b:** Alpha issues 320 more shares of common stock to Carla, resulting in Carla beneficially owning 340 shares. Carla now beneficially owns well over 25% of the fully diluted stock of the company, and Bob no longer beneficially owns 25% or more of the fully diluted stock. The company must file an updated beneficial ownership report within 30 days of its issuance of the new stock to Carla, adding Carla as a new beneficial owner and removing Bob as a beneficial owner.
- **Scenario 1c:** Alpha issues 10 shares to Lambda LLC. All of the membership interests in Lambda are owned and controlled, directly or indirectly, by Carla, resulting in Carla beneficially owning and controlling over 27% of Alpha. Alpha must report Carla as a new beneficial owner within 30 days of issuance of the shares to Lambda.
- **Scenario 1d:** Alpha issues 10 shares to Lambda LLC. All of the membership interests in Lambda are owned and controlled by Tom. Tom later sells, gives or bequeaths his membership interests in Lambda to his sister, Carla, resulting in Carla beneficially owning over 27% of the fully diluted stock of Alpha. Alpha must report Carla as a new beneficial owner in an updated report within 30 days of Carla obtaining her ownership interest in Lambda.
- **Scenario 1e:** Bob and Carla enter into a voting trust agreement, which appoints Carla as trustee with the right to vote their respective shares in Alpha. Even though Carla only owns 20% of Alpha's stock, the voting trust gives Carla voting control of 25% or more of Alpha's stock, resulting in her becoming a beneficial owner. The reporting company must file an update report within 30 days of Carla being appointed trustee of the voting trust, disclosing her as a beneficial owner.

Company Redeems Stock, Membership Interests or Other Equity

Interests. When a company redeems (i.e., purchases) its stock, membership interests or other equity interests, such redemption may result in one or more individuals beneficially owning, or ceasing to own, 25% or more of the fully-diluted equity of the company. The required information must be reported on any new 25%-or-more beneficial owners, and any individual who then ceases to beneficially own 25% or more must be removed from the report as a beneficial owner.

- **Scenario 1f:** On Bob's retirement from the company, Alpha redeems all of Bob's shares, resulting in Carla owning all of the fully diluted stock of Alpha. Alpha must file an updated beneficial ownership report within 30 days of the redemption, removing Bob as a beneficial owner.

Company Issues Capital or Profit Interests, Warrants, Options,

Subscription Agreements, Convertible Debt, or Other Rights Exercisable to Acquire Equity Securities. For purposes of determining who is, becomes, or ceases to be a beneficial owner holding at least 25% of the fully diluted equity of the reporting company, each of these is treated as though such right to acquire equity securities has been exercised.

- **Scenario 1g.** Alpha issues Carla warrants to acquire 10 shares of common stock. Even before they are exercised, the warrants are treated as though they had been exercised for purposes of beneficial ownership percentage calculation. Together with her existing 20 shares of common stock, Carla is now deemed to beneficially own over 27% of Alpha's stock, and Alpha is required to submit an updated report within 30 days of the issuance of the warrants, reporting Carla's new beneficial ownership percentage.
- **Scenario 1h:** Same as Scenario 1e, except that two years later, Carla's warrants expire unexercised. In this case, Carla reverts to 20% beneficial ownership. Alpha must file an updated report within 30 days of the warrants' expiration, removing Carla as a 25%+ beneficial owner.

Company Changes any Director, Senior Officer or Manager. Within 30 days of any person becoming (or ceasing to be) a new director or senior officer, or manager of a limited liability company, the company must file an updated report.

Company Grants any Control Right. Upon any individual obtaining, directly or indirectly, a control right over certain key decisions of a reporting company, the reporting company must file an updated report disclosing such person as a beneficial owner.

- **Scenario 1i:** Alpha Corporation accepts an investment (under 25%) from Edward. Under the terms of the investment, Edward has the right to appoint a member of Alpha's board of directors and/or control (or veto) rights over certain significant corporate actions of Alpha. Edward is a beneficial owner and must be included in an updated report.

Outstanding Stock or Other Equity Interests, or Voting Rights, are Transferred. A sale, gift, bequest or other transfer of stock or other equity interests, or voting rights, in a reporting company (or in an intermediate company between the individual and the reporting company) may result in a change in beneficial owners, requiring an updated report.

- **Scenario 1j:** Bob sells 25 shares of Alpha corporation to Gina, resulting in Gina owning and controlling 25% of Alpha's fully diluted stock. Gina is now a beneficial owner, and Alpha must report Gina as an additional beneficial owner in an updated report within 30 days of such transfer.

Company Changes its Legal Name. Any change to the company's legal name must be disclosed in an updated beneficial ownership report.

- **Example 2:** Beta Corporation changes its name to Beta Products Corporation by filing articles of amendment with the Secretary of

State in the state where it is incorporated. Beta must file an updated report within 30 days of its name change.

- **Example 3:** Beta Corporation converts from a corporation to a limited liability company, with its name changing to Beta LLC. Beta must file an updated report within 30 days of its conversion and name change.

Company Changes Trade Name(s) or d/b/a Name(s).

- **Example 4:** Gamma LLC adopts a new trade name or d/b/a (doing business as) name after filing its initial beneficial ownership report. Gamma must file an updated report within 30 days after adopting the new trade name.
- **Example 5:** Gamma LLC has been using the trade name Gamma Widgets for one of its business lines, and has reported this trade name on its initial beneficial ownership report. Gamma has decided to discontinue this business line and to cease using the trade name. Gamma must file an updated beneficial ownership report, disclosing that Gamma Widgets is no longer a trade name of the company.

Company Changes its Primary US Address. When a reporting company changes the street address of its principal place of business in the US or primary US location from that reported in its initial filing, it must file an updated report noting such change.

Company Becomes Exempt from Reporting Obligations. A reporting company which becomes exempt from reporting requirements must file a updated report, indicating that the company is no longer a reporting company.

- **Example 6:** Delta Corporation is incorporated in January 2024, and is not then exempt from reporting requirements. Following its first year of operations, Delta meets the requirements for the “large operating company” exemption, including the filing of the federal income tax return or report reflecting at least the minimum amount of adjusted gross receipts or sales.⁵ Delta should file an updated report indicating that it is no longer a reporting company.
- **Example 7:** Epsilon LLC acquires substantially all of the assets of Alpha Corporation (or merges with Alpha, with Epsilon as the surviving entity), and all Alpha Corporation US employees and locations are assumed or acquired by Epsilon. Epsilon was formed as a shell company for purposes of acquiring the assets or effecting the merger. Immediately prior to the transaction, Alpha was exempt under the “large operating company” exemption, but not under any other exemption. Epsilon will meet the 20 full time US employees test and the US physical location test, but unless its consolidated group meets the test, it cannot meet the tax return test because it has not yet filed an individual corporate tax return meeting the minimum gross receipts or sales requirement.
- **Example 8:** Zeta Corporation is a reporting company and has filed its initial beneficial ownership report. It later files a registration

statement for its common stock with the Securities and Exchange Commission. Upon the effectiveness of the registration requirement, Zeta is exempt under the “securities reporting issuer” exemption and should file an updated report indicating that it is no longer a reporting company.

Company Changes its Jurisdiction of Formation. When a company changes its jurisdiction of formation (e.g., domicile), whether a state, tribal or foreign jurisdiction, it must file an updated report describing the change.

- **Example 9:** Eta LLC was a California limited liability company, but it redomesticates to become a Delaware limited liability company. Eta must file an updated report describing the change.

Company's Taxpayer Identification Number (TIN) Changes. When a company's TIN is changed, or a new TIN is issued for the company, the company must file an updated report describing the change.

- **Example 10:** Theta Corp. undergoes a change in ownership of a type which, under federal tax law, requires that Theta obtain and use a new EIN. Theta must file an updated report describing the change.

A Beneficial Owner's Legal Name is Changed.

A Beneficial Owner's Residential Street Address Changes.

A Beneficial Owner's Unique Identifying Number and/or Document Used in an Initial or Updated Report Changes.

- **Example 11:** Alice is a beneficial owner of Iota LLC. In Iota's initial report (or an updated report), Iota disclosed the required information for Alice, including Alice's Utah driver's license and license number. Alice subsequently moves to Colorado and replaces her Utah license with a Colorado license. (Alternatively, Alice's Utah license expires and is replaced with a new license.) Iota must file an updated report disclosing the new license number and/or jurisdiction and a copy of the license (or, alternatively, the information and copy of Alice's unexpired passport or other acceptable identifying document).

A Minor Reaches the Age of Majority. Information regarding a minor individual (as determined under state or tribal law) who would otherwise be deemed a beneficial owner is not required to be reported so long as such information is reported for a parent or legal guardian of such person. However, within 30 days after the person reaches the age of majority, the reporting company is required to file an updated report disclosing the person as a beneficial owner (and removing the parent or legal guardian as a beneficial owner).

Companies and their senior officers should take steps now to:

- Have and maintain complete records of ownership of their stock or other equity interests;
- Ensure that entities which own or control any of their stock or other

equity interests provide and update the company on changes in beneficial ownership;

- Evaluate agreements with minority equity holders to identify any significant control rights; and
- Require beneficial owners of 25% or more of the company's equity securities, board members, senior officers, LLC managers, and those with contractual or other significant control rights provide and update any information required to be reported to FinCEN.

¹ For non-exempt US domestic companies formed (or foreign companies which first register to do business in a state) before January 1, 2024, the initial report must be filed by January 1, 2025. For non-exempt US domestic companies formed (or foreign companies which first register to do business in a state) on or after January 1, 2024, the initial report must be filed within 30 days of such formation or registration.

² 31 C.F.R. § 1010.380(a)(2).

³ 31 C.F.R. § 1010.380(d).

⁴ 31 C.F.R. § 1010.380(d)(3).

⁵ Such a company must (a) employ more than 20 full time employees in the United States, (b) have an operating presence at a physical office within the United States, and (c) have filed a federal income tax or information return (or consolidated return) with the IRS for the previous year demonstrating more than \$5 million in gross receipts or sales for itself (or, if part of an affiliated group of companies that filed a consolidated return, the consolidated group filed such a return demonstrating more than \$5 million in gross receipts or sales for the group), as reported as gross receipts or sales (net of returns and allowances) on the company's (or such consolidated group's) tax or information return, excluding gross receipts or sales from sources outside the United States. 31 C.F.R. § 1010.380(c)(2)(xxi).

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