

Simplifying Trustee Compliance with the Corporate Transparency Act

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Under the Corporate Transparency Act ("CTA"), every "reporting company" needs to file a Beneficial Ownership Information ("BOI") report by January 1, 2025. For entities formed during 2024, this BOI report is due within 90 days of formation. In most cases, any domestic or foreign entity registered to do business in the U.S. will be considered a reporting company unless it qualifies for an exemption. This notice is here to guide you through a trustee's responsibilities under the CTA, especially if a trust holds 25% or more of a reporting company's equity.

What You Need to Know About Trustee Ownership

When filing a BOI report, reporting companies must include key details about their beneficial owners. A "beneficial owner" is an individual who directly or indirectly owns or controls at least 25% of the company's equity or who holds significant control over the company's operations.

In cases where trusts are involved, trustees are often treated as beneficial owners if they manage 25% or more of the company's equity, even if they don't benefit financially from the trust's assets. The CTA's "look-through" rule adds some complexity when the trustee is an entity, requiring the reporting company to identify and report the individuals who control that entity trustee.

Trustees and Beneficiaries: Understanding Their Roles Under the CTA

While trustees are often considered beneficial owners, beneficiaries can also fall under this category in certain situations. For example, if a beneficiary has the authority to remove and replace a trustee or to demand the distribution of the trust's assets, they might be classified as a beneficial owner due to their influence over the trust's stake in the reporting company.

Things can become more complicated when multiple trusts hold interests in the same reporting company. If the same trustee manages several trusts that, combined, hold 25% or more of the company's equity, the trustee may be viewed as a beneficial owner. Similarly, beneficiaries with roles across different trusts may have their interests combined to determine whether they meet the criteria for beneficial ownership under the CTA.

Corporate Trustees and Compliance Challenges

When a corporate trustee holds 25% or more of a reporting company's equity, the CTA requires the reporting company to disclose information about both the trustee and, in some cases, key individuals within the trustee who control major decisions. However, certain corporate trustees may qualify for an exemption. If a corporate trustee is considered a "large operating company" or another CTA-exempt entity, the reporting company can list the trustee itself rather than identifying individual owners.

If the corporate trustee doesn't qualify for this exemption, any individuals within the trustee who are involved in significant decision-making must be reported as beneficial owners. This is particularly important if the trustee exercises substantial control over the company's operations or its board of directors. Given these complexities, it's crucial for companies to carefully assess their ownership structures and trustee arrangements to ensure full compliance with the CTA.

What You Should Do Next

With the filing deadline approaching and the complexity of trustee ownership under the CTA, it's important for companies with trustee involvement to start planning now. Here are a few key steps to take:

- **Review Beneficial Owner Status:** Determine whether your trustee—whether an individual or a corporate entity—must be reported as a beneficial owner. Don't forget to check whether any exemptions might apply to corporate trustees.
- **Evaluate Ownership and Control:** Complex ownership structures, including those with tiered ownership, require close attention. Make sure to identify any beneficial owners, even if they only have indirect control.
- **Plan for Compliance:** Your compliance plan should reflect the specific details of your ownership and trustee arrangements. Make sure you have all the necessary information from trustees and other stakeholders so you can submit accurate BOI reports on time.

Final Thoughts

Navigating trustee ownership under the CTA can be tricky, especially when corporate trustees are involved. Taking a proactive approach to reviewing your ownership structures and developing a clear compliance strategy is crucial to avoid any penalties. Trustees and reporting companies should work together to meet the CTA's filing requirements by the deadline.

For more information on trustee compliance or CTA-related issues, please contact Jonah S. Levinson (levinsonj@whiteandwilliams.com; 215.864.7194); Bridget La Rosa (larosab@whiteandwilliams.com; 212.714.3067) or any other member of our Trusts and Estates Group.

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