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## Corporate Transparency Act Introduces New Reporting Requirements for Investment Funds and Advisers

### Overview

Ropes & Gray previously published an [Alert](#) on the Corporate Transparency Act (“CTA”) – a sweeping reform designed to modernize and strengthen the United States financial crime monitoring system. The legislation represents the first major anti-money laundering overhaul in decades and contains new reporting requirements to FinCEN for funds and advisers.

The CTA’s reach is broad, and for the first time targets private investment funds, mutual funds, and their advisers. More generally, the CTA targets LLCs and corporations registered in any state, or formed under the law of any foreign country but registered in the United States to conduct business. Although the legislation seemingly creates an added burden for funds and their advisers, it contains several exemptions aimed specifically at funds and advisers that will relieve funds and advisers from these obligations.

### To Report, or Not to Report?

#### *Exempt Funds and Exempt Investment Advisers*

Although the CTA appears to apply to a broad range of entities, ample exemptions discharge most funds and their advisers from the new Ultimate Beneficial Owner (“UBO”) reporting requirements. In particular, when such funds and advisers are already subject to reporting obligations to other agencies, such as the SEC’s Form ADV, they are generally exempt. The following, therefore, are all excluded from the definition of “reporting company” under the CTA, and are exempt from the new requirements:

- Mutual Funds;<sup>1</sup>
- Private Investment Funds;<sup>2</sup>
- SEC-Registered Advisers;<sup>3</sup> and
- Venture Capital Fund Advisers.<sup>4</sup>

Additionally, should a fund or structuring vehicle, such as an LLC, employ more than 20 full-time employees, have filed a federal income tax return in the last year showing more than \$5 million in gross revenue, and maintain a physical office presence within the United States, it too will be exempt from the UBO reporting.<sup>5</sup>

#### *Partially Exempt Funds and Investment Advisers*

Certain private investment funds will have modified reporting requirements, including offshore private investment funds operated by SEC-registered advisers. Such funds need not file the full UBO Report containing information on all beneficial owners, and may instead file an abbreviated report with FinCEN that provides identification information concerning one individual who exercises “substantial control over the pooled investment vehicle.”<sup>6</sup>

#### *Investment Advisers Subject to Reporting Requirements*

Last, investment advisers who are exempt from SEC registration requirements in reliance on, and pursuant to the “Private Funds Adviser” exemption (§ 203(m) of the Advisers Act) and state-registered investment advisers not registered with the SEC will be required to file a UBO Report with FinCEN in addition to the abbreviated Form ADV, unless an above exemption applies. Although the CTA is silent on reporting requirements for foreign exempt reporting advisers (“Foreign

ERAs”), it is likely that Foreign ERAs will also be subject to the reporting requirements unless they either conduct business solely outside of the United States or claim one of the other above exemptions.<sup>7</sup>

## Reporting Requirements

The CTA and its reporting obligations will not go into effect until January 2022, and will be subject to regulations introduced by the Treasury Department and FinCEN over the next year.

For funds and advisers subject to reporting requirements, the CTA will require disclosure of the name, date of birth, current address, and unique identification number (from a passport or driver’s license) of the fund’s “beneficial owner(s)” to FinCEN.<sup>8</sup> The CTA defines a beneficial owner as “an individual, who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—exercises substantial control” or who “owns or controls not less than 25 percent of the ownership interests of the entity.”<sup>9</sup> Although the CTA does not define “substantial control,” it is likely the functional definition will reflect FinCEN’s customer due diligence rules, which define control as an individual “with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer or senior manager.”<sup>10</sup>

## Conclusion

Although on first glance the CTA appears to broadly apply to funds and advisers, it will likely exempt many who already report to the SEC. Implementation of the CTA will take time, as the Treasury Department and FinCEN engage in the rulemaking process. We will continue to monitor regulations implemented as a result of the CTA. For further information on the CTA’s other provisions, please see Ropes & Gray’s previous [Alert](#). If you have any questions, please consult your Ropes & Gray adviser.

1. “Mutual Funds” are defined as “investment compan[ies]... registered with the Securities and Exchange Commission under the Investment Company Act of 1940.” *National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong.* § 5336 (11)(B)(x) (2020).
2. “Private Investment Funds” are “pooled investment vehicles” (which includes funds/other vehicles that would be investment companies if not for the exclusion under Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940) and are exempt if operated or advised by an SEC-registered investment company or investment adviser and identified by legal name in the applicable investment adviser’s Form ADV. *Id.* at (11)(B)(xvii).
3. “SEC-Registered Advisers” are defined as “investment adviser[s]... registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940.” *Id.* at (11)(B)(x).
4. “Venture Capital Fund Advisers” are investment advisers that (i) are described in section 203(l) of the Investment Advisers Act of 1940 (referring to venture capital advisers); and (ii) have filed the records required by the SEC. *Id.* at (11)(B)(xi).
5. *Id.* at § 6403.
6. *Id.* at § 5336(b)(2)(C).
7. It is likely that FinCEN and the Treasury Department will provide added clarity on requirements for Foreign ERAs during the rulemaking process. Even so, the CTA generally exempts only funds and other entities that are already subject to reporting requirements from other agencies, most importantly the SEC. As Foreign ERAs are currently exempt from such reporting requirements, yet conduct business operations (albeit at a *de minimus* level) in the U.S., it is likely that the broad umbrella of the CTA may impose reporting obligations.
8. *National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong.* § 6403 (2020).
9. *Id.*
10. *Id.*