

## FinCEN publishes final rule on beneficial ownership

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FinCEN's final rule, which goes into effect January 1, 2024, establishes the requirements for reporting companies to submit their beneficial ownership and company applicant information to the agency, with minimal changes from the proposed rule.

On September 30, 2022, the Financial Crimes Enforcement Network (FinCEN) published the final [Beneficial Ownership Information Reporting Rule](#) (the Beneficial Ownership Rule or Final Rule), requiring certain legal entities to submit to FinCEN a report containing information related to the beneficial owner and company applicant of the reporting company (BOI Report or Report). FinCEN published the proposed Beneficial Ownership Information Reporting Rule (the Proposed Rule) on December 7, 2021, as we discuss extensively in this [client update](#). In the Final Rule, FinCEN adopted the language and provisions of the Proposed Rule in most material respects, with certain modifications in response to comments received from the public. Those modifications, as discussed below, include changes to the reporting timeframes, minor updates to the content of the BOI Reports, and changes that clarify (and to a certain extent expand) the definition of "beneficial owner."

The Beneficial Ownership Rule is one of three FinCEN rulemakings that would implement the requirements of the Corporate Transparency Act (CTA). FinCEN has committed to additional rulemakings to: (1) govern access to a secure central database containing beneficial ownership information (the Registry); and (2) make conforming amendments to FinCEN's existing Customer Due Diligence Rule (CDD Rule).<sup>1</sup> The Beneficial Ownership Rule's requirements apply to "reporting companies," which include most legal entities (with a few exceptions such as trusts and partnerships that do not require state filings and entities specifically exempted such as public companies). The effective date for the Beneficial Ownership Rule is January 1, 2024. Under the Final Rule, reporting companies created or registered before January 1, 2024 will have until January 1, 2025 to file their initial Reports, while reporting companies created or registered after January 1, 2024, will have 30 days after receiving notice of their creation or registration to file their initial Reports.

As previewed in our discussion of the Proposed Rule, the Beneficial Ownership Rule diverges from the existing CDD Rule in significant ways. Notably, the definition of "beneficial owner" in the Beneficial Ownership Rule is significantly broader than the definition under the CDD Rule, in that, among other things, it requires the identification of all individuals that "control" a company, rather than a single individual (as required under the CDD Rule). In addition, there are more exemptions from the definition of "reporting company" in the Beneficial Ownership Rule than there are exclusions from the definition of "legal entity customer" in the CDD Rule. At least until the CDD Rule is amended, therefore, banks and other covered financial institutions will be collecting beneficial ownership information (BOI) from entities that will not be required to report such information to FinCEN under the Beneficial Ownership Rule. Because FinCEN is unlikely to amend the CDD Rule in the near future due to resource constraints and competing priorities, banks and other covered financial institutions must continue to comply with the existing CDD Rule for the foreseeable future.

While the Beneficial Ownership Rule is a step in the right direction in terms of enhancing financial transparency, the ultimate impact of the Rule is unclear, particularly considering the large number of exemptions from reporting requirements, and the fact that the Rule does not identify any person, entity, or mechanism to verify the accuracy of the information in the Registry. Similarly, the long-term impact on banks and other covered financial institutions remains unclear, and it is at least possible that full implementation of the CTA will add to, rather than reduce, their compliance burden.

# Overview of the Beneficial Ownership Rule's requirements

The Beneficial Ownership Rule implements the CTA by adding a new requirement at 31 C.F.R. § 1010.380 that directs reporting companies to report BOI to FinCEN. It applies both to companies established and registered in the United States, or “domestic reporting companies,” and to “foreign reporting companies,” which are entities established in foreign jurisdictions and registered to do business in the U.S. In both cases, the definition includes corporations, limited liability companies, and any entity formed with (or, in the case of foreign entities, registered to do business with) a secretary of state or similar office of any U.S. jurisdiction or Native American tribe. The operative question for domestic reporting companies is whether the company is “an entity created by the filing of a document with a secretary of state or other similar office.” This covers most forms of corporate entities but would exclude trusts, sole proprietorships, and general partnerships; however, as FinCEN noted, this may vary based on a given state’s formation practices (i.e., whether such entity is created by a filing in a given state).<sup>2</sup> Similarly, the definition of foreign reporting companies “broadly captures corporations, limited liability companies, and other entities formed in a foreign country when they are registered to do business in the United States by the filing of a document with the secretary of state or similar office.”

The Beneficial Ownership Rule (consistent with the CTA), excludes 23 types of corporate entities from the definition of reporting company – notably including large operating companies,<sup>3</sup> banks, credit unions, depository institution holding companies, broker-dealers, clearing agencies, investment companies, investment advisers and other Exchange Act registered entities, and pooled investment vehicles. The exemptions from the definition of reporting company are notably broader than the exclusions under the CDD Rule, which requires financial institutions to collect ownership information from certain “legal entity customers,” with a narrower set of exclusions that include banks and publicly traded companies.

Under the Beneficial Ownership Rule, reporting companies must provide, within specific timeframes prescribed under the regulations,<sup>4</sup> an initial BOI report to FinCEN containing identifying information about the company, its beneficial owners, and the company applicant,<sup>5</sup> and an updated or corrected report if a company’s beneficial ownership information changes or is determined to be incorrect. A “beneficial owner” of a company is any individual who either: (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company. As discussed in greater detail below, the Beneficial Ownership Rule sets out criteria to define “substantial control” and an “ownership interest” (which to a limited extent changed between the Proposed and Final Rule), but in both cases the definitions are broad and may prove challenging to apply in practice.

Reporting companies must identify each individual that falls under the definition of beneficial owner under both the ownership and control prongs, and FinCEN expects that there will always be “at least one” beneficial owner under the substantial control prong, even if there are no individuals who satisfy the ownership prong. This is notably broader than the CDD Rule, which only required the identification of a single individual under the control prong, rather than all such individuals. Under both prongs, an individual can be considered a beneficial owner by owning interest or exercising control either directly or indirectly, and, under both prongs, the question is whether an individual *ultimately* owns or controls the company.

The Beneficial Ownership Rule, consistent with the CTA, provides for penalties for failure to report BOI, failing to update BOI, or failing to correct inaccurate BOI. However, FinCEN indicated that the agency “intends to prioritize education and outreach.”

## Key changes in the final Beneficial Ownership Rule

### Definition of beneficial owner

The Final Rule largely tracks the language of both the CTA and the Proposed Rule in its definition of “beneficial owner,” although it modifies the language of certain underlying terms to clarify (and in some ways expand) the definition’s scope. As under the CTA and the Proposed Rule, the Final Rule defines the “beneficial owner” of a reporting company as “any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.” The Final Rule’s definition of beneficial owner, like the Proposed Rule, is significantly broader than the definition in FinCEN’s existing CDD Rule, in that, among other things, it does not limit the substantial control prong to a single individual and adopts broader definitions of what constitutes “substantial control” and an “ownership interest.”<sup>6</sup>

## Substantial control

The meaning of “substantial control” under the Final Rule is generally consistent with the Proposed Rule, although FinCEN modified certain language at the margins and made organizational changes to clarify its application. As under the Proposed Rule, whether a person exercises substantial control is based on four indicators – the first of which concerns nominal or de jure authority, the second and third of which relate to functional or de facto authority, and the fourth of which is an (arguably circular) catch-all. Under the Final Rule, an individual exercises substantial control of a company if the individual:

**1. Serves as a senior officer.** This factor remains largely unchanged under the Final Rule, although FinCEN adjusted the meaning of “senior officer” elsewhere in the regulations to exclude the roles of corporate secretary and treasurer, which FinCEN considered to be primarily ministerial functions.<sup>7</sup>

**2. Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body).** The Final Rule narrows this factor by removing the authority to appoint a “dominant minority” of directors from its scope, in response to comments that the meaning of “dominant minority” was ambiguous.

**3. Directs, determines, or has substantial influence over important decisions made by the reporting company.** The Final Rule modifies the Proposed Rule’s language by replacing the phrase “matters affecting” the reporting company with “decisions made by” the reporting company. FinCEN changed this language to clarify that the rule is concerned with the internal decision making of the company. The Final Rule also provides a non-exclusive list of examples of “important decisions,” which are substantively unchanged from the Proposed Rule.<sup>8</sup> Even with the specific examples, however, this factor remains exceptionally broad and vague; it is unclear, for example, if a director of a private equity firm owning a large number of portfolio companies would be considered to have “substantial influence” over each of those companies (and thus be a beneficial owner).

**4. Has any other form of substantial control over the reporting company.** Although FinCEN acknowledged comments arguing that this factor is circular (providing, in effect, that an individual has substantial control over a company if that individual has substantial control over a company), the agency left this factor substantively unchanged in the Final Rule. FinCEN indicated that this catch-all language is intended to recognize that control can be exercised through a variety of arrangements and governance structures that might not otherwise be addressed by the other factors. Nevertheless, this factor remains broad and may be difficult to apply in practice, as it lacks any meaningful guiding principle.

## Indirect control

Under both the Proposed Rule and Final Rule, an individual can be considered to exercise substantial control of a company either directly or indirectly. The Final Rule generally adopted the substantive terms of the Proposed Rule in this regard, although it made certain changes to their structure and organization. Although these changes were primarily organizational – and did not change the scope of the regulatory language – FinCEN notably modified the introductory text to underscore that substantial control can be exercised “as a trustee of a trust or similar arrangement.” Under the Final Rule, an individual may indirectly exercise substantial control of a company through:

- Board representation;
- Ownership or control of a majority of the voting power or voting rights of the reporting company;
- Rights associated with any financing arrangement or interest in a company;
- Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;
- Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
- Any other contract, arrangement, understanding, relationship, or otherwise.

As is the case for the definition of substantial control, some of these factors – and in particular the final catch-all provision – remain broad and may be difficult to apply.

## Ownership interests

The Final Rule largely adopts the Proposed Rule’s provisions regarding ownership interests, although FinCEN made certain changes to clarify their scope and application and provide more detailed terms on how total ownership interest is calculated. The underlying definition of “ownership interest” under the Final Rule is generally consistent with the

Proposed Rule, and it remains significantly broader than the ownership prong of the CDD Rule. Notably, however, the Final Rule added a catch-all covering all other types of interests not explicitly identified in the Final Rule. Under the Final Rule, an ownership interest is defined to include:

- (A) Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;
- (B) Any capital or profit interest in an entity;
- (C) Any instrument convertible, with or without consideration, into any share or instrument described in in (A), or (B), any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share of such an interest, regardless of whether characterized as debt;
- (D) Any put, call, straddle, or other option or privilege of buying or selling any of the interests described above without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or
- (E) Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

The Final Rule also elaborates on how total ownership interest is calculated, setting out separate standards with respect to individuals, companies that issue capital or profit interest, and corporations that issue shares of stock.<sup>9</sup> As is the case under the control prong, an ownership interest of a reporting company can be held indirectly through “any contract, arrangement, understanding, relationship, or otherwise.”

## Timing of reports and company applicant information

The CTA requires new and existing corporate entities to file initial Reports to FinCEN that identify their beneficial ownership and information on company applicants, and to submit updated Reports when beneficial ownership information changes or is determined to be incorrect. The Final Rule largely adopts the Proposed Rule’s framework for the submission of Reports, but it makes notable changes to the timeframe for submission of those Reports. The Proposed Rule required existing entities to submit initial Reports within one year of the effective date of the regulations and required newly created or registered entities to submit reports within 14 days of their creation or registration. It also required corrected Reports to be filed within 14 days after a reporting company becomes aware or has reason to know that reported information is inaccurate, and it required updated Reports to be filed within 30 days of a change in information requiring an update. The Final Rule harmonizes these reporting timeframes at 30 days for initial Reports by newly created or registered entities, updated Reports, and corrected Reports. Companies in existence before the Final Rule’s January 1, 2024 effective date must file with FinCEN no later than January 1, 2025. Additionally, the final rule removes the requirement that entities created before the effective date of the regulations report company applicant information. Under the Final Rule, newly created entities must still report company applicant information, but they will not be required to update it.

## Other changes

The Final Rule made a number of other changes to the Proposed Rule, some of which are summarized below:

Topic	Proposed Rule	Final Rule
<b>Required reports</b>	The Proposed Rule requires companies to provide BOI Reports to FinCEN. With respect to the reporting company, the BOI Report was to provide the company's name, trade names, address, state of formation, and Taxpayer Identification Number. For each beneficial owner, the Report was to provide the individual's full name, address, and a unique identifying number taken from a passport, driver's license, or state-issued ID, as well as an image of the document from which the number was obtained. <sup>10</sup>	The Final Rule generally adopts the Proposed Rule's requirements, with some minor modifications. For example, FinCEN clarifies that: (1) reporting companies should provide their full <i>legal</i> names; (2) for reporting companies with a principal place of business in the United States, reporting companies should provide the street address of their principal place of business; and (3) reporting companies are no longer invited to provide the tax identification number for beneficial owners and company applicants.
<b>Special rule for ownership by exempt entity</b>	The Proposed Rule provided a special rule for companies with ownership interest held by a company exempt from reporting requirements. Under the Proposed Rule, if an exempt entity has, or will have, a direct or indirect ownership interest in a reporting company, and an individual is a beneficial owner of the reporting company by virtue of such ownership interest, the report filed by the reporting company "shall" include the name of the exempt entity rather than the information required with respect to such beneficial owner.	The Final Rule makes several changes to the special rule: (1) the Final Rule clarifies that the special rule may apply where an individual holds ownership interests in a reporting company through "one or more" exempt entities; (2) the Final Rule clarifies that it applies only when an individual is a beneficial owner of a reporting company "exclusively" by virtue of the individual's ownership interest in exempt entities, in order to avoid circumvention of requirements; and (3) the Final Rule makes the use of the special rule optional, rather than mandatory, by changing the word "shall" to "may."
<b>Certification of accuracy</b>	The Proposed Rule required reporting companies to certify that reports submitted to FinCEN are "accurate and complete."	The Final Rule retains the certification requirement set out in the Proposed Rule, but requires a certification that the reported information is " <i>true, correct, and complete</i> " (emphasis added). FinCEN modified this language to emphasize that the agency "believes that it is reasonable to require reporting companies to certify the accuracy and completeness of their own reports, and it is appropriate to expect that reporting companies will take care to verify the information they receive from their beneficial owners."
<b>FinCEN identifier</b>	The Proposed Rule set out the requirements and permissible uses of FinCEN IDs. Among other things, the Proposed Rule provided that (1) a reporting company with a FinCEN ID may provide it in lieu of the identifying information in an initial report; and (2) if an individual is a beneficial owner of a reporting company through an interest in an intermediary company a FinCEN ID, then the reporting company can report the FinCEN ID of that intermediary entity in lieu of reporting the company's beneficial owner.	Although the Final Rule adopted some of the permitted uses of FinCEN IDs, it did not adopt the Proposed Rule's permitted use of a FinCEN ID in lieu of identifying information in an initial report or in lieu of information on intermediary companies.
<b>Certification number</b>	The Proposed Rule required reporting companies to submit a Tax Identification Number (TIN) (including an Employer Identification Number), or where a reporting company has not yet been issued a TIN, a Dunn & Bradstreet Number (DUNS) or a Legal Entity Identifier (LEI).	The Final Rule requires reporting companies to submit a TIN and removes the alternative options of reporting a DUNS or LEI in lieu of a TIN.

<p><b>Updated and corrected reports</b></p>	<p>The Proposed Rule required reporting companies to file an updated Report within 30 calendar days after the date on which there is any change with respect to any information previously submitted to FinCEN, including any change with respect to who is a beneficial owner of a reporting company or with respect to information reported for any particular beneficial owner or applicant. The Proposed Rule also required reporting companies to file a Report to correct inaccurately filed information within 14 calendar days of learning of or having reason to know of inaccuracies. Commenters to the Proposed Rule argued that the deadline for correcting an inaccurate Report should be longer and that small businesses acting in good faith should have an opportunity to correct a violation and come into compliance, without fines or enforcement actions provided for under the CTA.</p>	<p>The Final Rule adopts the Proposed Rule's 30-day timeframe for filing an updated Report but, in accordance with comments, extends the timeframe for corrected Reports to 30 calendar days, rather than 14. However, The Final Rule does not adopt a good faith or other standard regarding the requirements to update or correct reports. FinCEN reasoned that the "CTA places the reporting responsibility on reporting companies, and this responsibility includes the obligation to report accurately."</p>
<p><b>Reporting company information</b></p>	<p>The Proposed Rule required reporting companies to report certain information including:</p> <ul style="list-style-type: none"> <li>the full name of the reporting company, as well as any trade or d/b/a names;</li> <li>the business street address of the reporting company; and</li> <li>its state or Tribal jurisdiction of formation, or for a foreign reporting company, the state or Tribal jurisdiction where the first registers.</li> </ul>	<p>The Final Rule made certain clarifications to the specific information that must be provided. The Final Rule clarified that a reporting company must provide:</p> <ul style="list-style-type: none"> <li>its full "legal name" and all d/b/a names, whether or not registered;</li> <li>the address of its "principal place of business;" and</li> <li>jurisdiction of formation, for both domestic <i>and</i> foreign reporting companies.</li> </ul>
<p><b>Address of beneficial owners and company applicants</b></p>	<p>The Proposed Rule required reporting companies to report the address of beneficial owners and company applicants:</p> <p>Company applicants filing to create or register a reporting company in the course of that individual's business were required to report the business street address of such business.</p> <p>In any other case, the Proposed Rule required the address to be the residential address that the individual uses for tax residency purposes.</p>	<p>The Final Rule made certain changes to the address requirements:</p> <p>The Final Rule omits the requirement that the reported residential street address be the address an individual uses for tax residency purposes; and</p> <p>The Final Rule revises the provision to provide additional clarity: a business address is required for a company applicant "who forms or registers an entity in the course of such company applicant's business."</p>
<p><b>Unique identifying number and image of beneficial owners and company applicants</b></p>	<p>The Proposed Rule provided that for each individual who is a beneficial owner or company applicant, a unique identifying number must be reported from one of four types of acceptable identification documents. The Proposed Rule also required the reporting company to provide an image of the identification document from which the unique identifying number was obtained.</p>	<p>The Final Rule largely adopts the Proposed Rule requirements, but FinCEN clarified that reporting companies must specify what jurisdiction issued the identification document from which a beneficial owner's unique identifying number came.</p>

<p><b>Creditor exception to beneficial owner definition</b></p>	<p>The Proposed Rule provided five exceptions to the definition of beneficial owner, including an exception for creditor. The Proposed Rule defined an “excepted creditor” as an individual who meets the definition of beneficial owner solely through rights or interests in the reporting company for the payment of a predetermined sum of money, such as a debt and the interest on such debt. FinCEN also explained that any capital interest in the reporting company, or any right or interest in the value of the reporting company or its profits, would not be considered rights or interests for payment of a predetermined sum, regardless of whether they took the form of a debt instrument. Accordingly, if an individual has a right or ability to convert the right to payment of a predetermined sum to any form of ownership interest in the company, that would preclude that individual from claiming the creditor exception under the Proposed Rule’s approach.</p>	<p>The Final Rule modifies the regulatory language to clarify that an individual would qualify for the creditor exception based on the individual’s entitlement to payment of a reporting company’s indebtedness, even if there are loan covenants or other similar obligations associated with that indebtedness that are intended to secure repayment or enhance the likelihood of repayment.</p>
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## Misalignments with the CDD Rule

As discussed previously, the Beneficial Ownership Rule, both as proposed and in its final form, diverges from the CDD Rule in several material respects. Notably, the scope of the entities covered in the Final Rule and CDD Rule do not align, due in large part to the CTA and Final Rule’s exempted entities. The CDD Rule requires financial institutions to collect BOI from certain “legal entity customers,” with a narrower set of exemptions that include banks and publicly traded companies. The Final Rule, in contrast, will exclude a wider range of entities from its reporting requirements, such as “large operating companies.” Accordingly, when FinCEN amends the CDD Rule, the agency may make substantial modifications to conform the CDD requirements to the Proposed Rule. FinCEN acknowledges in the preamble of the Beneficial Ownership Rule that it intends to revise the CDD Rule, providing the public with an opportunity to comment on the effect of the Beneficial Ownership Rule and allowing FinCEN to reach conclusions about how to align the CDD Rule with the Beneficial Ownership Rule.

## Looking forward

As mentioned above, the Beneficial Ownership Rule is the first of three rules that FinCEN plans to issue to implement the CTA. The Beneficial Ownership Rule will not become effective until January 1, 2024 and, since existing reporting companies have one year from the effective date to come into compliance, such companies will not be required to file a BOI until January 1, 2025. Additionally, FinCEN has to stand up the Registry, and it has yet to begin the rulemaking governing access to the Registry. Even if the Registry is operational by January 1, 2024, and the access rule has been finalized by that date, it will be over a year before reporting companies formed after January 1, 2024 will be required to comply with the Beneficial Ownership Rule, and over two years before reporting companies in existence now will be required to comply with it. Given FinCEN’s staffing and resource challenges, it would not be surprising to see these deadlines slip.

FinCEN has also not commenced the rulemaking for the third implementing rule, which will conform the beneficial ownership requirements of the CDD Rule to the Beneficial Ownership Rule, so it will be some time before that rule is finalized and effective. For banks, broker-dealers, mutual funds, and other financial institutions subject to the CDD Rule, this will arguably be the most important of the three rules, since it will address the information that they are required to obtain from their legal entity customers, and the methods of verifying the identities of those customers’ beneficial owners. At this point, it is not clear what those institutions’ legal obligations will be once the revised CDD Rule is in place, and expectations regarding use of the Registry; it seems at least possible that those obligations will increase, rather than reduce, their compliance burden. Until the revised CDD Rule has been issued and become effective, covered financial institutions are required to continue to comply with the existing CDD Rule.

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- <sup>1</sup> The CDD Rule requires certain financial institutions to identify and verify the identity of their legal entity customers' beneficial owners.
- <sup>2</sup> FinCEN stated that, given the variations in state formation practices, the agency would "consider issuing guidance as necessary to resolve questions on whether entities of particular types in particular circumstances are created by the filing of a document with the relevant authority."
- <sup>3</sup> An entity qualifies as a "large operating company" if it: (1) employs more than 20 employees on a full-time basis in the United States; (2) filed in the previous year Federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of other entities owned by the entity and through which the entity operates; and (3) has an operating presence at a physical office within the United States.
- <sup>4</sup> After the Rule goes into effect on January 1, 2024, reporting companies created or registered before January 1, 2024 will have until January 1, 2025 to file their initial Reports, while reporting companies created or registered after January 1, 2024, will have 30 days after receiving notice of their creation or registration to file their initial Reports. Corrections to Reports must be filed within 30 days after a reporting company becomes aware or has reason to know that reported information is inaccurate, and updates to Reports must be filed within 30 days of a change in information requiring an update. There is a safe harbor of 90 days for submitting a correction if filed within 90 calendar days after the date on which an inaccurate report is filed.
- <sup>5</sup> For domestic reporting companies, the "company applicant" is the individual who files the document that creates the entity, and for foreign reporting companies, the company applicant is the individual who files the document that first registers the entity to do business in the United States. In both cases, where more than one individual is responsible for the filing, the company applicant is the individual who is primarily responsible for directing or controlling such filing.
- <sup>6</sup> The CDD Rule defines beneficial ownership as: (1) each individual who owns 25 percent or more of the equity interests of a legal entity customer; and (2) a single individual with significant responsibility to control, manage, or direct a legal entity customer. Under the CDD Rule, an individual

with significant responsibility includes “an executive officer or senior manager” or “[a]ny other individual who regularly performs similar functions.”

- <sup>7</sup> A “senior officer” under the Final Rule means “any individual 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.”
- <sup>8</sup> “Important decisions” under the Final Rule include (without limitation) decisions regarding: (1) 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; (2) the reorganization, dissolution, or merger of the reporting company; (3) major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company; (4) the selection or termination of business lines or ventures, or geographic focus, of the reporting company; (5) compensation schemes and incentive programs for senior officers; (6) the entry into or termination, or the fulfillment or non-fulfillment, of significant contracts; and (7) 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.
- <sup>9</sup> The calculations are set out as follows: (A) for individuals, ownership interest is calculated at the present time, and any options or similar interests of the individual are treated as exercised. (B) for reporting companies that issue capital stock or profit interest, an individual’s ownership interests are the individual’s capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity; (C) for corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage is the greater of: (1) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or (2) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; and (D) if the facts and circumstances do not permit the calculations described in either (B) or (C) to be performed with reasonable certainty, any individual who owns or controls 25 percent or more of any class or type of ownership interest of a reporting company will be deemed to own or control 25 percent or more of the ownership interests of the reporting company.
- <sup>10</sup> After an individual has provided FinCEN with the personal information required of beneficial owners, an individual may obtain a unique identification number from FinCEN (FinCEN ID) to be used in subsequent reports. In lieu of providing the certain personal information in every subsequent report, individuals may use their FinCEN ID.