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Understanding the Corporate Transparency Act (CTA)

Presented by: Peter S. Murphy, Partner

DISCLAIMER

These materials are intended for informational purposes and should not be construed as legal advice or opinion on any specific facts or circumstances. You should consult an attorney on any specific legal questions you may have concerning your circumstances.

FinCEN guidance and the interpretation and application of the Corporate Transparency Act (CTA) and the Final Rules is evolving. Therefore, the information provided in this presentation is subject to change.

TOPICS TO COVER

1. Background - Why the CTA?
2. Who, What, How, and When of CTA Compliance
3. Penalties for Noncompliance
4. Examples: Simple to Complex
5. Practice Tips and Good Corporate Hygiene

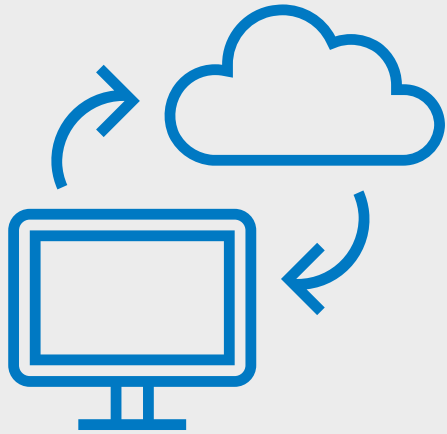
Bottom Line Up Front:

- **Simply:** The federal government wants to connect a human being to each entity formed or registered in the US.
- **More Precise:** The CTA requires all reporting companies identify their beneficial owners and their company applicants.
- These are substantive legal questions that may require legal analysis and/or an opinion of counsel.

Corporate Transparency Act (CTA)

- CTA establishes uniform **beneficial ownership information** (BOI) reporting requirements for certain business entities.
- Align U.S. law with international disclosure requirements.
- Close gaps in the AML/CTF framework due to states not collecting Beneficial Ownership Information (BOI) on legal entities.
- Provide essential information to national security, intelligence, law enforcement agencies and financial institutions.

BOI Storage & Access



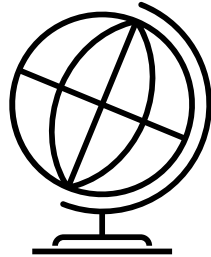
- FinCEN created the **Beneficial Ownership Secure System (BOSS)** to receive, store, and maintain BOI
- “in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect non-classified information security systems at the highest security level. . . .”
- BOSS is cloud-based and will meet the highest Federal Information Security Management ACT (FISMA) level – FISMA High
- Who Has Access?
 1. U.S. Federal, state, local, and Tribal government agencies
 2. Foreign law enforcement agencies
 3. Financial institutions
 4. The U.S. Department of the Treasury

Who Needs to Report?



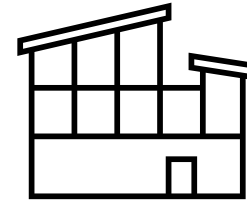
Domestic Reporting Companies

- Corporation, LLC, or other entity created by filing a document with a SOS (or similar office)



Foreign Reporting Companies

- Corporation, LLC, or other entity created under foreign law and registered in US by filing a document with a SOS (or similar office)



“Other entities”?

- LLP, LLLPs, STs, BTs, most LPs - FinCEN expects so
- SPs, GPs, trusts - FinCEN expects not

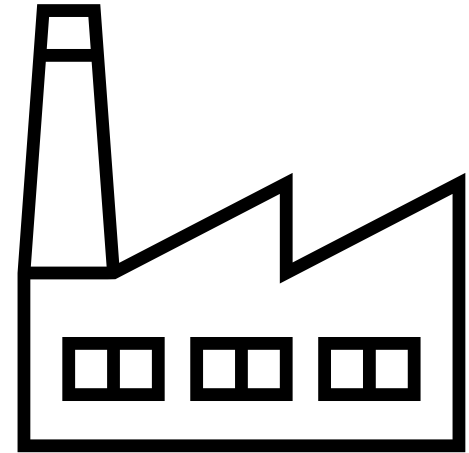
Who Does Not Need to Report BOI?

1. Securities Exchange Act issuer
2. Governmental authority
3. Bank
4. Credit Union
5. Depository institution holding company
6. Money services business registered with FinCEN
7. Broker/Dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment Company or investment advisory registered with SEC
11. Venture capital fund advisor
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Public 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
23. Inactive entity

Exemption: “Large Operating Company”

Any entity that:

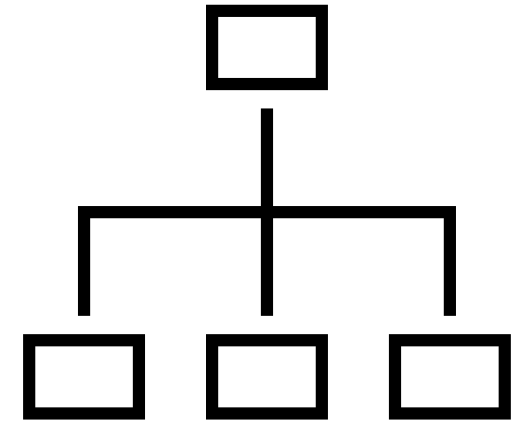
- Employs **20+ full time employees** in the U.S., and
- Filed a Federal income tax or information return in the U.S. for the previous year demonstrating **over \$5 million in gross receipts or sales**; and
- Has an operating presence at a physical office in the U.S.



Exemption: “Subsidiary of Exempt Entity”

Any entity:

- Whose ownership interests are **controlled or wholly owned, directly or indirectly, by certain exempt entities** is exempt from the beneficial ownership information (BOI) reporting requirements.



What Needs to be Reported?

Reporting Company Info:

- **Legal name** used to establish the entity
- Any **trade name** or “DBA”
- Complete **current address** consisting of:
 - If in US, the street address of such principal place of business; and
 - In all other cases, the street address of primary location in the US*
- **State** of formation or foreign registration
- **IRS Tax ID** number (and EIN);

Beneficial Ownership Info:

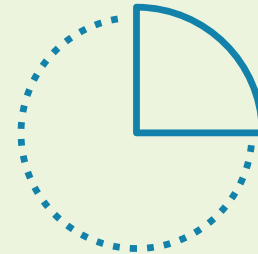
- The **full legal name** of the individual
- The **date of birth** of the individual
- A complete current **address of the individual's residence**
- A **unique identifying number** and the issuing jurisdiction from:
 - A non-expired passport, driver's license, or identification document issued to the individual by the U.S. or foreign government.
- An **image** of the document containing unique ID number.

Who is a Beneficial Owner?

31 CFR 1010.380(d):

Beneficial owner . . . means any individual who, directly or indirectly, either:

- Exercises substantial control over such reporting company
- OR
- Owns or controls at least 25% of the ownership interest of such reporting company



What is Substantial Control?

- Senior Officers – (President, CFO, GC, CEO, COO, or similar function)
- Individual with Authority to Appoint Senior Officers
- Important Decision-Maker
- Any other form of Substantial Control



Who is a Company Applicant?

Reporting applies to companies created *on or after* [January 1, 2024](#)

Individual who [directly files](#) document [creating](#) the company

AND

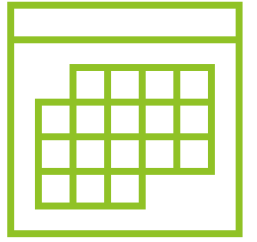
Individual [who directs or controls filing](#) of document creating company.

Examples:

- Attorney + Paralegal
- Business Formation Service
- Same information required as Beneficial Owners except:
 - Address Requirement:
 - Company applicant should use [business address](#).



When is the Initial Report Due?



Created before January 1, 2024:

- File on or before January 1, 2025

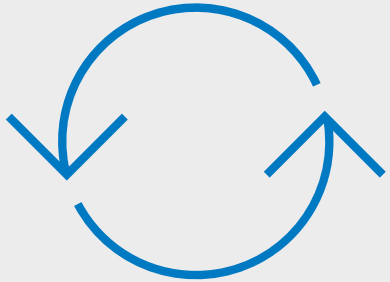
Created on or after January 1, 2024:

- File within 90 calendar days of earlier actual/public notice of creation.
- Earliest Reports due **March 29, 2024**.

Once exempt but no longer

- File within 30 calendar days after no longer meeting exemption criteria

When do you Need to Update or Correct a BOI Report?



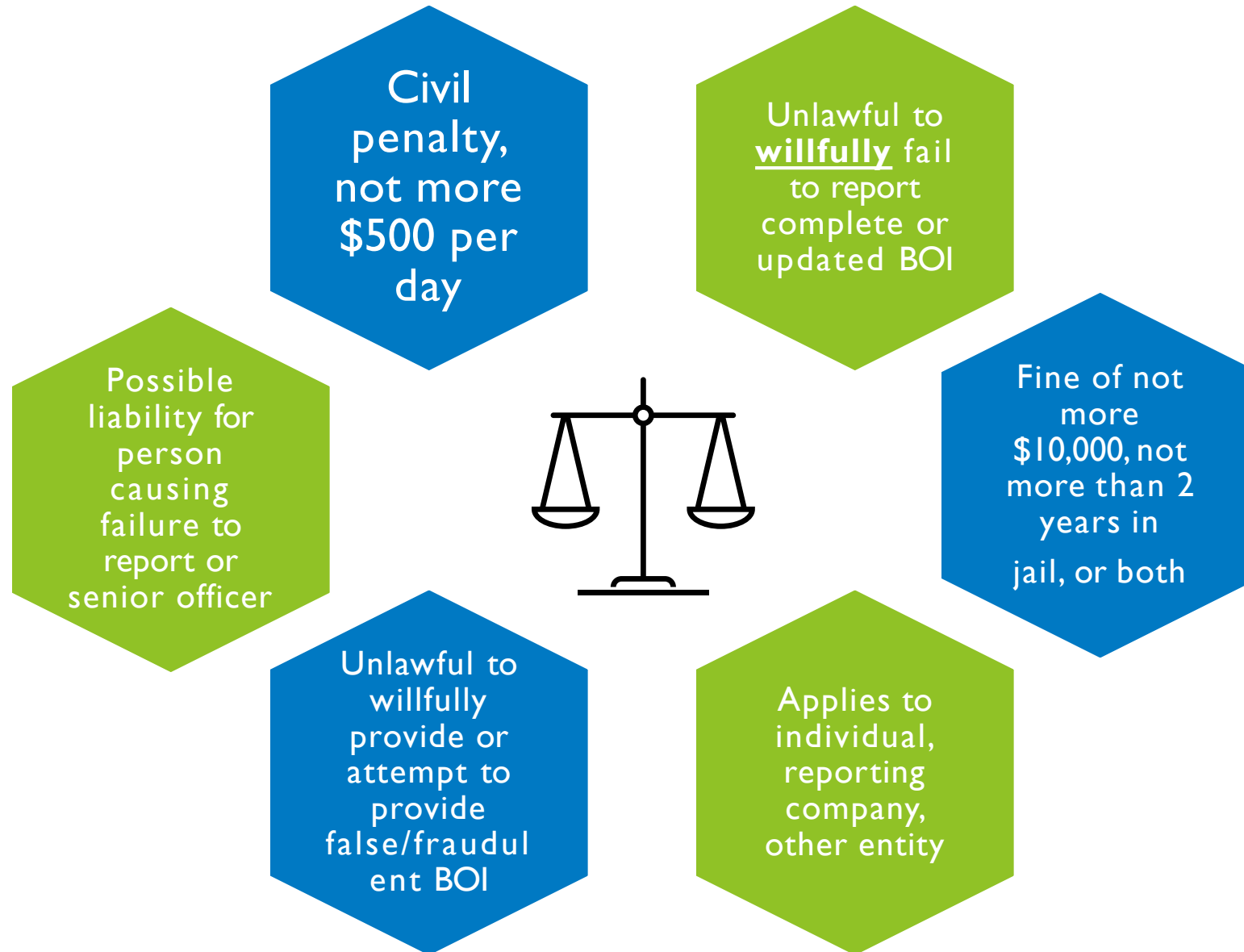
Updates

- File **within 30 calendar days** after the following change occurs:
 - Change in information for reporting company or a beneficial owner
 - If reporting company qualifies for exemption after filing initial report
- Company applicant information does not have to be updated

Corrections

- File **within 30 calendar** days after company becomes aware of or has reason to know of inaccuracy
- **Safe harbor** from civil and criminal liability for voluntary corrections within **90 days** of submission

What are the Penalties?

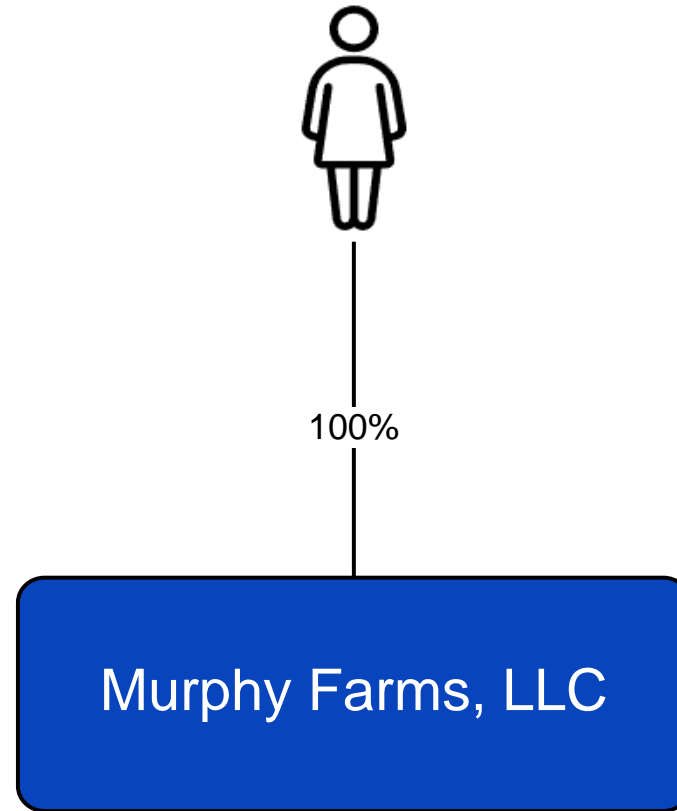


Examples of CTA Analysis: Simple, Less Simple, and Potentially Nauseating

Example 1:

Single Member LLC

- Murphy Farms, LLC has 5 employees and \$1.5 million in annual gross receipts.
- Mrs. Murphy is 100% owner and President



- Murphy Farms, LLC is a Reporting Company.
- Mrs. Murphy is the sole beneficial owner because she owns 25% or more (100% in this case) of Murphy Farms, LLC and because she substantially controls the entity as President.

Example 2:

Multi-Member Medical Practice LLC

A

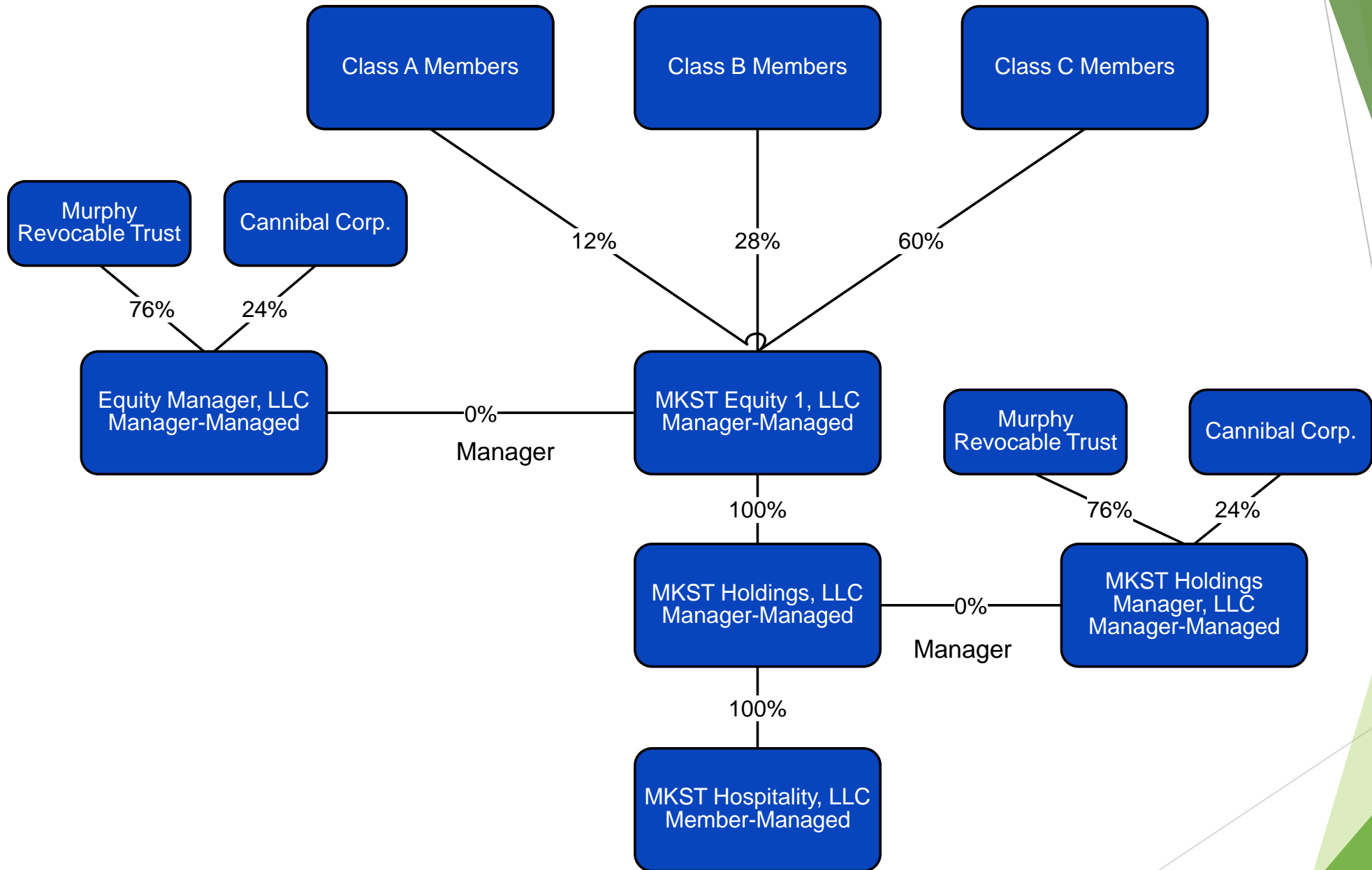
B

C

D

- Drs. A and C are the Managers of Medical Practice LLC and are responsible for its day-to-day affairs.
- Drs. B and D have no voting or management rights.
- Medical Practice LLC has \$6 million in gross receipts, 23 full-time employees, and a physical office in Toronto, Canada.

- Medical Practice LLC is a Reporting Company because it does not qualify as a Large Operating Company – no operating presence in U.S.
- Disclosure required for Dr. A (ownership + substantial control), Dr. B (ownership), Dr. C (substantial control) but not Dr. D.





Impacts Beyond Reporting Companies

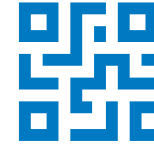


- FinCEN Access Rule broadens the definition of “customer due diligence under applicable law” to include requirements to “**counter money laundering and financing of terrorism**”, “**safeguard national security**”, or “**obtain and verify beneficial ownership information**” uses of BOI by financial institutions.
- Evolution of Best Practices/Proactive Compliance
 - Lender permission to obtain BOI from FinCEN
 - CTA as component of client intake
 - Amendment to operating agreements, loan documents, credit agreements, additional representations, ongoing compliance covenants, noncompliance as an event of default, etc.
 - Indemnification for refusal or failure to provide BOI.
 - Protection of PII

Practice Tips:

CTA as Integral Component of
Compliance Strategy

Practice Tip: FinCEN Identifier



- Number specific to beneficial owner or company applicant
- Issued by FinCEN
- Application contains PII and document image
- Eases administrative burden and protects PII
- BOI report may set forth FinCEN ID
- Reporting company that files initial report can obtain FinCEN ID
- Information must be updated or corrected with FinCEN **within 30 days**

Practice Tip: Privacy Concerns



- Managing BOI
 - Protecting personal identifying information (PII)
 - Evaluate internal PII protocols and policies
 - Rapid evolution in privacy laws
 - GDPR
 - State Privacy Laws

Practice Tip: Prepare for Future Disclosure



- Amending Documents
 - Key Contracts
 - Operating Agreements
 - Add CTA compliance obligations provisions
- Add Consent to Disclosure
- Consider Annual Certifications/BOI Updates
- Consider Requiring FinCEN Identifiers

Practice Tip: Transaction Considerations



- Due Diligence Process
- Standard Warranties & Representations
- Indemnity Coverage for Noncompliance

Practice Tip: Good Corporate Hygiene



- Recordkeeping
 - Organizational Charts/Diagrams/Info Sheets
 - Adding CTA to existing compliance obligations
- Pre-formation Considerations
 - LLC or Corporation ownership/management
 - Impact of statutory rights as substantial control triggers
- Member Managed vs. Manager Managed
 - Reserved rights of members create ‘hook’ even if manager managed?
- Inactive/Dormant/Shell Companies: Dissolve?

Final Thoughts & Resources



- Get the Word Out
- Accounting and law firms
- Avoiding Q4 Crunch - too late!
- FinCEN Website: www.fincen.gov/boi
 - Small Entity Compliance Guide
 - FAQs



Thank you for attending!

For questions regarding CTA compliance, please contact:

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