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Memorandum

New Beneficial Owner Disclosure Requirements Under the New York LLC Transparency Act

January 23, 2024

On March 1, 2024, New York Governor Kathy Hochul signed an amended version of the LLC Transparency Act (the "LLCTA") into law, which was originally signed with provisions for amendments in December 2023. The LLCTA mirrors and, in some instances, expressly incorporates provisions of the federal Corporate Transparency Act (codified as 31 U.S.C. § 5336) (the "CTA"). Indeed, like the CTA, the LLCTA requires non-exempt limited liability companies ("LLCs") formed or registered to do business in the State of New York to report certain beneficial ownership information to the New York Department of State ("NYDOS").

While the LLCTA mirrors the CTA in many key respects, there are a few important differences. As reflected more fully below, key differences from the CTA include:

- Exempt LLCs must still make filings under the LLCTA (no filing is required for exempt entities under the CTA);
- An annual statement confirming or updating their beneficial ownership disclosure information must be filed under the LLCTA, while updates must be filed within 30 days under the CTA–and–
- The penalties for noncompliance are less severe under the LLCTA and can be mitigated.

NY LLCs should therefore be mindful to set up special procedures to ensure they comply with the LLCTA. The similarities and differences between the LLCTA and CTA are discussed below.

Who Is Required to Comply With the LLCTA?

The LLCTA applies to all existing and newly formed LLCs in New York, as well as foreign LLCs that register to do business in New York. The LLCTA is narrower in scope than the CTA, which applies not only to LLCs but also to corporations and other entities (like partnerships) that register with the secretary of state.

Are any LLCs Exempt From the Requirements of the LLCTA?

Yes. Just as with the CTA, many LLCs that might otherwise be required to report their beneficial ownership information under the LLCTA are exempt from those reporting requirements. The LLCTA expressly adopts the same exemptions provided for in the CTA. At a high level, this means that most LLCs that are already subject to significant regulatory oversight (either at the state or federal level), are likely to be exempt under the LLCTA. A full list of exemptions (provided in 31 U.S.C. § 5336(a)(11)(B)) is included at the end of this memorandum, but key

exemptions cover large operating companies (*i.e.*, companies with $5 million or more in taxable revenue, with 20 or more employees and a physical operating presence in the U.S.), specific types of entities registered with and/or regulated by the SEC (*e.g.*, registered investment advisors, investment companies, and certain types of pooled investment vehicles), and public companies.

When Does the LLCTA Go Into Effect?

The LLCTA was set to become effective in December 2024, but after amendments were passed in March 2024, the new effective date is January 1, 2026. That said, the timing of compliance depends on when a particular LLC was created. Non-exempt LLCs formed prior to January 1, 2026 must file the relevant information with the NYDOS no later than January 1, 2027.

Non-exempt LLCs formed on or after January 1, 2026 must submit beneficial ownership information within 30 days from the date of formation or registration.

Additionally, LLCs are required to file an annual statement with the NYDOS confirming or updating (1) their beneficial ownership disclosure information; (2) the street address of its principal executive office; (3) status as exempt company, if applicable; and (4) any other information as may be designated by the NYDOS. Unlike the CTA, which requires an update to be made within 30 days after a relevant change, the LLCTA does not require LLCs to file an updated BOI report within 30 days of any change of BOI. Instead, it requires LLCs to correct any false or fraudulent BOI within 90 days of the filing and update any information as necessary in the annual statement.

Does an Exempt LLC Have to File Anything Under the LLCTA?

Yes. Unlike the CTA which does not require an entity to file for an exemption, the LLCTA requires LLCs which qualify for an exemption file to NYDOS an attestation of exemption, which includes the specific exemption that they are relying upon and the facts on which such exemption is based. Specifically, (i) in the case of any exempt LLC formed or registered to do business in the State of New York prior to the effective date of the Act, the exempt LLC must file an attestation of exemption with the NYDOS no later than January 1, 2027, and (ii) in the case of any exempt LLC formed or registered to do business in the State of New York on or after the effective date of the Act, the exempt LLC must file an attestation of exemption with the NY Department of State within 30 days of an initial filing of articles of organization.

What Does a Non-Exempt LLC Have to File?

A non-exempt LLC is required by the LLCTA to disclose its "beneficial owners," as defined in the CTA. Thus, a non-exempt LLC is required to identify any natural person who (1) owns or controls at least 25% of the ownership interests of the LLC or (2) indirectly or directly exercises substantial control over the LLC, such as the senior officer of the LLC (*e.g.*, CEO, president, COO, or CFO).

For each beneficial owner identified, a non-exempt LLC will need to provide certain personal identifying information, including each beneficial owner's (1) full legal name, (2) date of birth, (3) current business street address, and (4) unique identifying number from an acceptable identification document.

Will the Filing Be Public?

No. Although the LLCTA originally provided for information to be made publicly available, Governor Hochul struck that provision before signing. Thus, as with the CTA, all personal or identifying information of beneficial owners provided to the department of state under the LLCTA will be deemed confidential except for the purposes of law enforcement or as otherwise required to be disclosed pursuant to a court order.

Are There Penalties for Non-Compliance?

A non-exempt LLC that fails to file beneficial ownership disclosures as required by the LLCTA for a period exceeding 30 days would be reflected as past due in the secretary of state's records until the LLC files an up-to-date beneficial ownership disclosure. If a non-exempt LLC fails to file a beneficial ownership disclosure as required by the LLCTA for a period exceeding two years, it would receive a notice from the secretary of state and have 60 days to file a beneficial ownership disclosure. If a non-exempt LLC fails to file within that 60-day period, it would be recorded as delinquent in the secretary of state's records. While being past due or delinquent does not restrict an LLC's ability to obtain a certificate of status, the certificate would reflect that the LLC is "past due" or "delinquent" which could in turn prevent the LLC from completing certain business transactions (*i.e.*, obtaining a loan or entering into a transaction with another party requesting a certificate of status from such LLC). Such LLC would be required to pay a civil penalty of $250 and file the beneficial ownership disclosure to remove the delinquency. In contrast, the CTA provides for more significant civil and potentially criminal penalties.

31 U.S. Code § 5336 – Beneficial Ownership Information Reporting Requirements

(11) Reporting company—The term "reporting company"—

(B) does not include—

(i) an issuer—

(I) of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(II) that is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 780(d));

(ii) an entity—

(I) established under the laws of the United States, an Indian Tribe, a State, or a political subdivision of a State, or under an interstate compact between 2 or more States; and

(II) that exercises governmental authority on behalf of the United States or any such Indian Tribe, State, or political subdivision;

(iii) a bank, as defined in—

(I) section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(II) section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)); or

(III) section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a));

(iv) a Federal credit union or a State credit union (as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

(v) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) or a savings and loan holding company (as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)));

(vi) a money transmitting business registered with the Secretary of the Treasury under section 5330;

(vii) a broker or dealer (as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) that is registered under section 15 of that Act (15 U.S.C. 78o);

(viii) an exchange or clearing agency (as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) that is registered under section 6 or 17A of that Act (15 U.S.C. 78f, 78q–1);

(ix) any other entity not described in clause (i), (vii), or (viii) that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(x) an entity that—

(I) is an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) or an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)); and

(II) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

(xi) an investment adviser—

(I) described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(l)); and

(II) that has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission;

(xii) an insurance company (as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2));

(xiii) an entity that—

(I) is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

(II) has an operating presence at a physical office within the United States;

(xiv)

(I) a registered entity (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

(II) an entity that is—

(aa)

(AA) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor (as those terms are defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

(BB) a retail foreign exchange dealer, as described in section 2(c)(2)(B) of that Act (7 U.S.C. 2(c)(2)(B)); and

(bb) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(xv) a public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212);

(xvi) a public utility that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States;

(xvii) a financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463);

(xviii) any pooled investment vehicle that is operated or advised by a person described in clause (iii), (iv), (vii), (x), or (xi);

(xix) any—

(I) organization that is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of such Code) and exempt from tax under section 501(a) of such Code, except that in the case of any such organization that loses an exemption from tax, such organization shall be considered to be continued to be described in this subclause for the 180-day period beginning on the date of the loss of such tax-exempt status;

(II) political organization (as defined in section 527(e)(1) of such Code) that is exempt from tax under section 527(a) of such Code; or

(III) trust described in paragraph (1) or (2) of section 4947(a) of such Code;

(xx) any corporation, limited liability company, or other similar entity that—

(I) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in clause (xix);

(II) is a United States person;

(III) is beneficially owned or controlled exclusively by 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

(IV) derives at least a majority of its funding or revenue from 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence;

(xxi) any entity that—

(I) employs more than 20 employees on a full-time basis in the United States;

(II) 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—

(aa) other entities owned by the entity; and

(bb) other entities through which the entity operates; and

(III) has an operating presence at a physical office within the United States;

(xxii) any corporation, limited liability company, or other similar entity of which the ownership interests are owned or controlled, directly or indirectly, by 1 or more entities described in clause (i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii) [1] (xix), or (xxi);

(xxiii) any corporation, limited liability company, or other similar entity—

(I) in existence for over 1 year;

(II) that is not engaged in active business;

(III) that is not owned, directly or indirectly, by a foreign person;

(IV) that has not, in the preceding 12-month period, experienced a change in ownership or sent or received funds in an amount greater than $1,000 (including all funds sent to or received from any source through a financial account or accounts in which the entity, or an affiliate of the entity, maintains an interest); and

(V) that does not otherwise hold any kind or type of assets, including an ownership interest in any corporation, limited liability company, or other similar entity;

(xxiv) any entity or class of entities that the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has, by regulation, determined should

be exempt from the requirements of subsection (b) because requiring beneficial ownership information from the entity or class of entities—

(I) would not serve the public interest; and

(II) would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.

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