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November 6, 2024

VIA EMAIL

To Our Investment Adviser Clients and Other Friends:

Re: Upcoming Corporate Transparency Act Compliance Deadline.

The Corporate Transparency Act (the "CTA") requires many domestic and foreign entities doing business in the United States to file reports with the U.S. Financial Crimes Enforcement Network ("FinCEN") regarding their beneficial ownership. These beneficial ownership information reports ("BOIRs") require reporting entities to identify their beneficial owners unless one of the enumerated exemptions apply. Entities that were formed prior to January 1, 2024 ("Existing Entities") and that do not qualify for an exemption must file their initial BOIR by the close of business on December 31, 2024. Please see our previous CTA Client Alert for general information on the reporting requirements for non-exempt reporting entities and the information collected in the BOIRs and our Update Alert for additional details on filing timelines.

The CTA rules and exemptions are complex. With the filing deadline for Existing Entities approaching, private fund advisers and the pooled investment vehicles they manage must evaluate whether the entities in their structure are subject to the CTA or exempt. The following is meant to highlight CTA guidance specific to private funds and investment advisers.

Exemptions Applicable to Investment Advisers, Pooled Investment Vehicles and Certain Affiliates. The following entities are among those not required to file BOIRs due to one of the CTA exemptions:

- *Registered Investment Advisers ("RIAs").* Investment advisers registered with the Securities and Exchange Commission (the "SEC") under the Investment Advisers Act of 1940 (the "Advisers Act") are exempt.
- *Venture Capital Fund Advisers*. Investment advisers exempt from registration with the SEC under Section 203(l) of the Advisers Act are exempt.
- *Pooled Investment Vehicles*. Pooled investment vehicles that are operated or advised by a bank, credit union, broker dealer, investment company, RIA or venture capital fund adviser exempt from filing a BOIR are also exempt. "Pooled investment vehicle" for the purpose of this exemption means any investment company or any entity that would be an investment company under the Investment Company Act of 1940 (the "ICA") but for the exemptions provided under Sections 3(c)(1) or 3(c)(7) of the ICA and is identified by the applicable adviser on its Form ADV (or will be identified on the applicable adviser's next annual amendment to Form ADV).

- *Subsidiaries of Certain Exempt Entities.* Entities whose ownership interests are wholly owned or controlled, directly or indirectly, by one or more other exempt entities (except for pooled investment vehicles) are exempt.

Non-Exempt Investment Advisers, Private Funds and Certain Affiliates. The following entities are among those that generally will be required to file a BOIR (unless they are not a reporting entity, or another exemption applies):

- *State-Registered Investment Advisers.* Investment advisers registered with a state as filed on their Form ADV are not exempt.
- *Private Fund Exempt Reporting Advisers ("ERAs").* Investment advisers exempt from registration with the SEC under Section 203(m) of the Advisers Act (i.e., the private fund adviser exemption) are not exempt.
- *Pooled Investment Vehicles Advised by an ERA or State-Registered Investment Adviser.* Any pooled investment vehicle listed on the Form ADV of an ERA or a state-registered investment adviser is not exempt.
- *Other Pooled Investment Vehicles.* A pooled investment vehicle that relies on an exemption under the ICA other than Section 3(c)(1) or 3(c)(7) of the ICA is not exempt.
- *General Partner Entities of Investment Advisers.* A general partner, holding company or other upper-tier management company entity that owns or controls an investment adviser (regardless of whether the investment adviser is itself an exempt entity) are not exempt.

Additional Considerations.

Relying Advisers. A relying adviser included on the umbrella registration of an RIA's Form ADV qualifies as an RIA itself and is therefore exempt from the reporting obligations.

Private Fund General Partners. Generally, the general partner or managing member of a private fund (the "Fund GP") will need to file a BOIR, even if the private fund is exempt. However, a Fund GP may be exempt from CTA reporting requirements if (i) it meets the requirements of the subsidiary exemption (e.g., it is wholly owned or controlled by an RIA), (ii) it is a relying adviser of an RIA, as discussed above, or (iii) it technically meets the conditions of the 2005 SEC No-Action Letter to the American Bar Association and the 2012 SEC No-Action Letter to the American Bar Association, which allow a special purpose vehicle that acts as a Fund GP to rely on the related investment adviser's registration with the SEC. Please contact us if you have a Fund GP and are unsure about its status.

Foreign Pooled Investment Vehicles. A non-U.S. (i.e., "foreign") pooled investment vehicle is out of scope of the CTA unless it is registered to do business in a U.S. state. If a foreign pooled investment vehicle is registered to do business in a U.S. state, it will be subject to a limited reporting requirement, even if it would otherwise meet the criteria for the pooled investment vehicle exemption noted above. On its BOIR, such foreign pooled investment vehicle must provide information on only one individual who exercises "substantial control" (i.e., the individual is a senior officer, an important decision-maker or has the authority to appoint or remove certain officers or a majority of directors of

the foreign pooled investment vehicle) over the pooled investment vehicle. If more than one individual exercises substantial control, the pooled investment vehicle must report information relating to the individual who has the greatest authority over the management of the foreign pooled investment vehicle.

Certain Subsidiaries. As noted above, the subsidiary exemption expressly excludes subsidiaries of pooled investment vehicles. Therefore, entities wholly owned by a pooled investment vehicle (i.e., vehicles, such as AIVs, formed to facilitate investments for tax reasons), are not automatically exempt from CTA reporting requirements by nature of being wholly owned or controlled by an exempt entity.

Dissolved Entities. The dissolution of a reporting entity prior to the date its initial BOIR is due does not absolve the entity from reporting under the CTA. Existing Entities that are formally dissolved on or after January 1, 2024, must still comply with the CTA, regardless of when they were formed. An entity must cease to exist as a legal entity prior to January 1, 2024, to avoid filing a BOIR. When an entity ceases as a legal entity depends on the law of the state in which the entity was created or registered; please contact us if you think this may apply to one of your entities. Entities that are administratively dissolved or suspended generally do not cease to exist as a legal entity unless the administrative dissolution or suspension becomes permanent.

We encourage all investment advisers with Existing Entities to review the CTA requirements carefully and to contact one of the Shartsis Friese attorneys in the Investment Funds & Advisers Group if you have questions about your structure and CTA reporting obligations.

Previous letters to our investment advisory clients and friends and discussions of other topics relevant to private fund managers, investment advisers and private investment funds can be found at our insights page: www.sflaw.com/blog/investment-funds-advisers-insights.

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