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Subject Docket Number FINCEN-2023-0002; OMB Control Number 1506-0076 Beneficial Ownership Information Reports; Comments in Response to Notice and Request for Comments

Dear FinCEN Policy Division:

CT Corporation (CT) is America's leading corporate service company. CT was founded in 1892 to help businesses comply with the legal requirements to incorporate businesses and remain in compliance by providing products and services to keep them in good standing. More than one hundred thirty years later, we remain committed to taking care of our customers' needs by providing and delivering professional and knowledgeable, high-quality service in all 50 U.S. states, the District of Columbia, and in many international jurisdictions. Our customer base spans from the smallest startup businesses to the largest global conglomerates.

CT supports Congressional and FinCEN objectives in enacting the Corporate Transparency Act. CT appreciates the opportunity to provide comments to FinCEN's proposed rules, reports, and applications and would welcome additional and continuing conversations with FinCEN.

The following responses are respectfully submitted regarding selected questions and topics posed by FinCEN's Notice and Request for Comments posted on January 17, 2023, covering the report used to collect Beneficial Ownership information. Our overarching request is that the data fields provide clarity to avoid uncertainty and errors in completing the BOI reporting form.

Sincerely,

David Spencer
Director of Compliance and Government Operations, Business Enablement, CT Corporation
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Part I. Reporting Company Information:

Line 4. Foreign pooled investment vehicle:

The form indicates this box is to be checked if a Reporting Company is a foreign pooled investment vehicle. It would be helpful to add an instruction indicating the specific Beneficial Owner reporting requirement for these entities.

Line 10e. Jurisdiction of formation or first registration; Foreign Reporting Company:

The first state of foreign registration needs clarification. Some entities register in multiple states at the same time. In this situation, it would be useful to have direction on what state should be listed.

Line 11. Address: The current U.S. address of a Reporting Company should be the company's principal place of business address.

We request that the question ask for the Reporting Company's "Principal Place of Business" rather than just an address. We also request an instruction stating that this address must be a physical location where business is conducted and cannot be the registered office (address of the agent for service of process appointed under the business entity statute) unless the registered office is also a location where business is conducted. This change will avoid confusion which may arise in completing this section.

Line 16. Existing Reporting Company: Because Company Applicant information is not required if this box is checked we recommend that Part II of the form relating to Company Applicant information not be enabled for completion.

When a Reporting Company checks the box indicating that it is an existing Reporting Company, "Part II. Company Applicant Information" should be inactivated. This will ensure that no Reporting Company mistakenly provides Company Applicant information, as that information is not required to be provided by companies existing before January 1, 2024.

Part II. Company Applicant Information:

In General. Updated Prior Reports:

Because Company Applicant Information does not need to be updated unless a correction is needed, we suggest that "Part II. Company Applicant information" be inactivated or removed for purposes of filing an updated prior report.

In General. Unknown Information:

Throughout the form there are numerous areas where "Unknown" is an option for Company Applicant information (including name, date of birth, address, form of identification and issuing jurisdiction, and identifying document image). May a BOI report qualify having some or all of these options selected? Is there a due diligence requirement before checking the "Unknown" option(s), and is there a continuing obligation to try to obtain the information and then file an updated report when it is obtained?

Line 17. Unable to identify all Company Applicants:

This line requires additional explanation. Based upon the language of the Corporate Transparency Act and FinCEN's final rule, if Company Applicant information is required, then it must be supplied to file an accurate

BOI report. If FinCEN contemplates exceptions to this requirement, then those exceptions should be specified. For example, may a report be submitted without identifying all Company Applicants? Is there a due diligence requirement before checking the “Unable to identify” option, and is there a continuing obligation to try to obtain the information and then file an update when it is obtained?

Line 24. Address type: An instruction should be added that a business address should be selected for Company Applicants who formed or registered an entity in the course of business.

An instruction should be added to line 24a. “Business address” indicating that a business address is to be set forth in the case of a Company Applicant who forms or registers an entity in the course of such Company Applicant's business. Without that instruction, it is not clear whether the Reporting Company is to provide the Company Applicant's business or residential address.

Line 30. Identifying document type: Foreign passport should only be used where state issued driver's license, state/local/Tribe-issued ID, or U.S. passport are not available.

An instruction should be added indicating that a foreign passport can only be used where options a, b and c (state issued driver's license, state/local/Tribe-issued ID, U.S. passport) are not available. This will reduce errors to comply with the FinCEN final rule [31 C.F.R. §1010.380(b)(1)(ii)(D)(4)].

Line 33. Identifying document image: Redaction of non-relevant information.

We suggest that individuals be permitted to block out all information on their identification document other than the information that is required to be reported. The image of the document is for the purpose of corroborating required information. As such, FinCEN does not need to have information in its database that is not considered necessary by the Corporate Transparency Act or final reporting rule.

Part III. Beneficial Owner Information:

In General. Unknown Information:

Throughout the form there are numerous areas where “Unknown” is an option for Beneficial Owner information (including name, date of birth, address, form of identification and issuing jurisdiction, and identifying document image). May a BOI report qualify having some or all of these options selected? Is there a due diligence requirement before checking the “Unknown” option(s), and is there a continuing obligation to try to obtain the information and then file an updated report when it is obtained?

Line 34. Unable to identify all Beneficial Owners:

This line requires additional explanation. Based upon the language of the Corporate Transparency Act and FinCEN's final rule, Beneficial Owner information is required and must be supplied to file an accurate BOI report. If FinCEN contemplates exceptions to this requirement, then those exceptions should be specified. For example, may a report be submitted without identifying all Beneficial Owners? Is there a due diligence requirement before checking the “Unable to identify” option, and is there a continuing obligation to try to obtain the information and then file an update when it is obtained?

Line 48. Identifying document type: Foreign passport should only be used where state issued driver's license, state/local/Tribe-issued ID, or U.S. passport are not available.

An instruction should be added indicating that a foreign passport can only be used where options a, b and c (state issued driver's license, state/local/Tribe-issued ID, U.S. passport) are not available. This will reduce errors to comply with the FinCEN final rule [31 C.F.R. §1010.380(b)(1)(ii)(D)(4)].

Line 51. Identifying document image: Redaction of non-relevant information.

We suggest that individuals be permitted to block out all information on their identification document other than the information that is required to be reported. The image of the document is for the purpose of corroborating required information. As such, FinCEN does not need to have information in its database that is not considered necessary by the Corporate Transparency Act or final reporting rule.

General Comments:

Submission of BOI Reports.

Does FinCEN require that each BOI report be completed and submitted online individually, or may service providers develop more efficient methods to complete and submit online BOI report information via a direct link of service provider systems to BOSS? This would enable more efficient processing of BOI reports where service providers are involved in filing the reports on behalf of entities.

Certification: The FinCEN final rule indicates that the reporting company must certify that the report is true, correct, and complete.

The BOI reporting form itself does not appear to contain a certification provision. Will this be supplied within the online form itself, or will it be a step to be completed during the electronic submission? This information would be useful to have and review before the form and submission process is finalized by FinCEN.

Instructions: A comprehensive set of instructions should accompany the online interface.

Several of the questions could benefit from explanations. For example, in addition to our specific comments above, in asking for the name of the company, it should be explained that this must be the name on the formation document. Otherwise, companies might use abbreviations. The question about alternate names should specify that this includes registered and unregistered names. In addition, it would be helpful to provide instruction within the form on when corrected prior reports, updated prior reports, and newly exempt entity filings are necessary.

Other Uses: We suggest that BOI forms which are filed with FinCEN should not be filed with other federal or state governmental entities.

We suggest that the BOI Reporting form indicate that no part of the form may be filed with any other governmental agency. This would address concerns regarding potential state legislation which would permit the disclosure of beneficial owners through filing a copy of the FinCEN reporting form. In such situations, information may not be subject to the strict security protocols of the Corporate Transparency Act. This would ensure that data submitted to FinCEN would remain exclusively subject to the strict security requirements of the Corporate Transparency Act.