



**Morgan Lewis**

**ADVANCED TOPICS IN  
PRIVATE FUND PRACTICES  
CONFERENCE**

**Manager and Investor Perspectives**

**BOSTON**

**Thursday, June 13, 2024**

# Hot Topics Under the Corporate Transparency Act

## Speakers



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# Agenda

**Corporate Transparency Act (CTA) –  
What Does It Do and to Whom Does It Apply?**

**Control Analysis – Organization Chart Examples**

**Lawsuits**

**Proposed Legislation to Repeal CTA**

# CTA – What Does It Do?

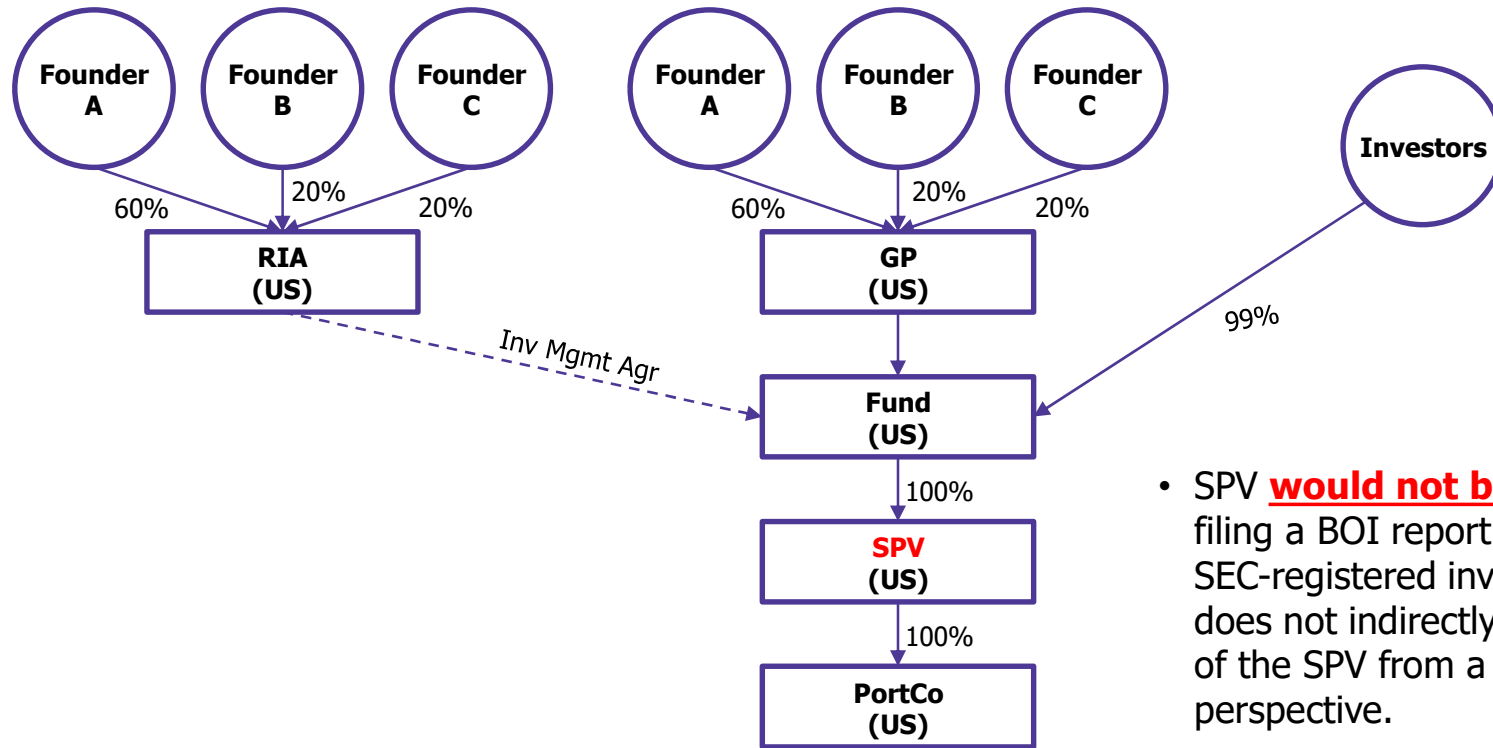
- Enacted on January 1, 2021; became effective on January 1, 2024
- Part of the Anti-Money Laundering Act of 2020
- Focus is to detect startups, small companies, and shell companies with limited to no operations, which are perceived to be the entities most often found to engage in money laundering and other illegal activities
- Directs the Financial Crimes Enforcement Network (FinCEN) to establish a national registry of beneficial ownership information (BOI) for the beneficial owners of most entities created or registered to do business in the United States
- The FinCEN Final Rule requires “**Reporting Companies**” to disclose to FinCEN certain identifying information of:
  - themselves;
  - their “beneficial owners”; and
  - their “company applicants” (for companies formed on or after January 1, 2024).

# CTA – To Whom Does It Apply?

**Absent an exemption, the CTA and the FinCEN Final Rule that implements it apply to domestic and foreign entities that meet the definition of a “Reporting Company.”**

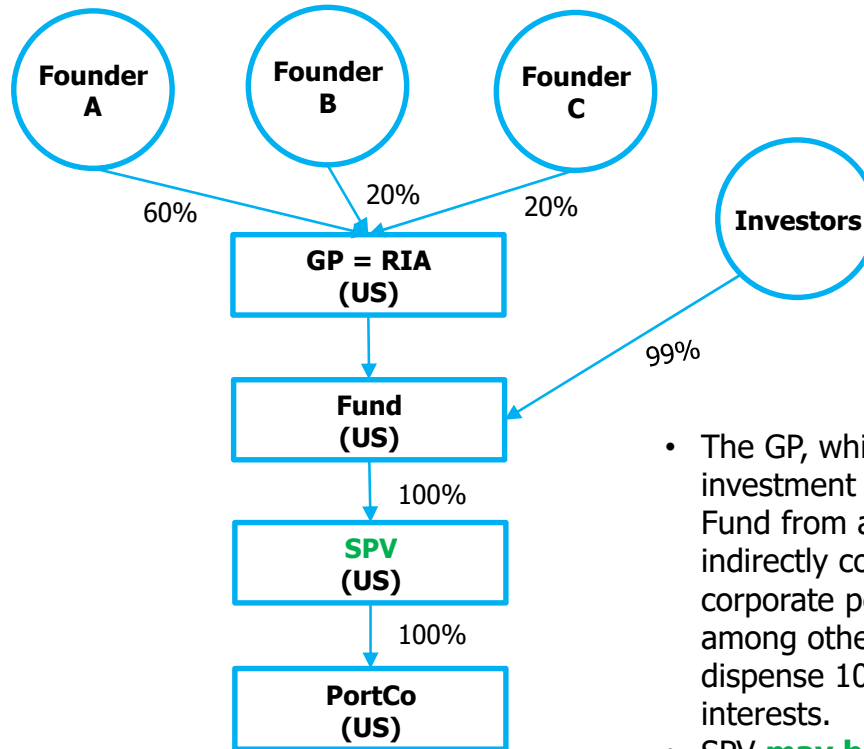
- A domestic Reporting Company is any entity that is:
  - A corporation; **or**
  - A limited liability company (LLC); **or**
  - Created by the filing of a document with a secretary of state or any similar office under the law of a state or an American Indian tribe.
- A foreign Reporting Company is any entity that is:
  - A corporation, LLC, or other entity; **and**
  - Formed under the law of a foreign country; **and**
  - Registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a state or an American Indian tribe.

# CTA – Organization Chart Example 1



- SPV **would not be exempt** from filing a BOI report because the SEC-registered investment adviser does not indirectly control 100% of the SPV from a corporate-law perspective.

# CTA – Organization Chart Example 2



- The GP, which is an SEC-registered investment adviser, controls 100% of the Fund from a corporate perspective and it indirectly controls 100% of the SPV from a corporate perspective, which includes, among other things, the authority to dispense 100% of the SPV's ownership interests.
- SPV **may be exempt** from filing a BOI report.

# Lawsuits

- ***Nat'l Small Bus. United v. Yellen (N.D. Ala.)***

- **Final Judgment on March 1:** “The Court **FINDS** that the Plaintiffs are entitled to summary judgment as a matter of law, and **GRANTS** the Plaintiffs' request for relief as follows: The Court **ENTERS** this final declaratory judgment; the Defendants, along with any other agency or employee acting on behalf of the United States, are **PERMANENTLY ENJOINED** from enforcing the Corporate Transparency Act against **the Plaintiffs.**”
- **Appeal to Eleventh Circuit:**
  - Appellee’s Brief filed May 13, 2024
  - Reply Brief filed June 3, 2024
  - Tentatively scheduled for argument on September 16

- ***Boyle v. Yellen (D. Me.)***

- Filed March 15, 2024
- “The parties agree that this case presents a purely legal issue that can be resolved through the filing of dispositive motions and without the need for discovery.”
- Proposed briefing schedule filed by the Parties



# Lawsuits (cont.)

- ***Small Bus. Ass'n of Mich. v. Yellen (W.D. Mich.)***
  - Filed March 26, 2024
  - Preliminary Injunction denied April 26, 2024
  - Motion for Summary Judgment filed May 31, 2024
- ***Gargasz v. Sec'y of Treasury (N.D. Ohio)***
  - Pro se complaint/Motion for Preliminary Injunction filed December 29, 2023
  - Conditional assent pending the outcome of the 11<sup>th</sup> Circuit case, by court order on April 17, 2024
- ***Black Economic Council of Massachusetts, Inc. v. Yellen (D. of Mass.)***
  - Filed May 29, 2024
  - Request for a permanent injunction, enjoining the Defendants from enforcing any provision of the CTA against any individual or entity
  - Argues that the CTA is unconstitutional because it violates the First, Fourth, Fifth, Ninth, and Tenth Amendments

# Proposed Legislation to Repeal CTA

## Repealing Big Brother Overreach Act (the Act)

- Introduced by US Senator Tommy Tuberville and Congressman Warren Davidson to repeal the CTA and protect small businesses.
- Asserts that “FinCEN is violating the personal privacy of American business owners by forcing them to disclose sensitive information.”
- The Act would overturn the CTA in its entirety.