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A PROFESSIONAL CORPORATION

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Re: Corporate Transparency Act

To our valued clients and friends:

I. INTRODUCTION

On January 1, 2024 The Corporate Transparency Act (“CTA”) went into effect. The CTA is intended to assist National Security, Intelligence and Law Enforcement in efforts to discover financial crimes by disclosing the beneficial ownership of legal entities making it more difficult to hide behind shell corporations and companies when hiding money. **THIS MEMORANDUM IS TO MAKE YOU AWARE OF AND INFORM YOU OF YOUR POTENTIAL OBLIGATIONS UNDER THE ACT. THE PELLEGRINO LAW FIRM HAS NO OBLIGATION, AND DISAVOWS ANY OBLIGATION, TO PROVIDE INDIVIDUAL NOTICE OR TO EFFECT ANY FILING UNDER THE CTA ABSENT A SPECIFIC SEPARATE ENGAGEMENT AGREEMENT FOR THAT PURPOSE.**

The CTA requires, in general, that all companies formed or created by filings with the Secretary of State or other similar entity in any state, to file beneficial ownership information (“BOI”) with the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Treasury Department. This applies to all companies, with some exemptions, which, under most circumstances, will not apply (“Reporting Companies”). This memorandum will answer basic questions about the Act and Reporting Companies’ obligations to file under the Act.

Filing under the Act is mandatory and failure to file is subject to significant civil penalties of \$500.00 per day and criminal penalties for willful violation of up to a \$10,000.00 fine and up to two (2) years in prison.

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II. REPORTING COMPANIES

A Reporting Company is any corporation, limited liability company, or other entity which was created under U.S. laws by filing with a Secretary of State or similar functioning governmental entity. Such entity is a “Domestic Reporting Company” unless one of the twenty-three (23) exemptions applied to it. Similarly, any company formed under the laws of a foreign country which is registered to do business in any U.S., State or tribal jurisdiction by filing with the Secretary of State or similar office of the state or tribe is a “Foreign Reporting Company” unless a particular exemption applies. “States” include any commonwealth, territory, or possession of the United States.

III. EXEMPTIONS FOR REPORTING COMPANIES

There are twenty-three (23) specific exemptions which include, in general terms, securities type regulated companies, banks, insurance companies or licensed insurance producers, accounting firms, public utility companies, tax exempt entities, large operating companies and inactive entities. Detailed information on exemptions can be found in the Small Entity Compliance Guide at the following link: www.fincen.gov/boi/small-entity-compliance-guide. The most likely possible exemption are large operating company and inactive entity exemptions which can be found on page 12 and 14 of the Compliance Guide.

IV. WHO IS A BENEFICIAL OWNER OF A REPORTING COMPANY

A Beneficial Owner is anyone who owns twenty-five (25) percent of the ownership interest in the Reporting Company or exercises substantial control over the Reporting Company. An individual exercises substantial control over the Reporting Company if the individual meets any of the following four (4) general criteria: (i) The individual is a senior officer; (ii) The individual has authority to appoint or remove certain officers or a majority of the directors of the Reporting Company; (iii) The individual is an important decision maker; or (iv) The individual has any other substantial control over the Reporting Company. Substantial control can be control over the nature

and scope of the business, selection and termination of ventures, the ability to enter into significant contracts, incur debt, have budgetary approval, control the reorganization and dissolution or merger of the Reporting Company, or authority to make substantial amendments to governing documents.

Ownership Interests would include stock ownership or instruments convertible into equity, stock or voting rights, or capital or profit interests; input calls, straddles or other options of privilege for buying or selling equity., the interest holders as beneficial interest holders, the questionable individual as a reporting business owner.

V. THE EXCEPTIONS FROM THE DEFINITION OF BENEFICIAL OWNER

There are five (5) exceptions to the definition of Beneficial Owner. They are:

- (i) a minor child;
- (ii) a person acting merely on behalf of a Beneficial Owner as the Beneficial Owner's intermediary, custodian or agent;
- (iii) The individual is an employee under the will and control of the employer, whose control, if any, over economic benefits is derived solely from the individual's status as an employee and who is not a senior officer of the Reporting Company;
- (iv) The individual's interest in the Reporting Company is a future interest pursuant to a right of inheritance; or
- (v) the individual is a creditor of the Reporting Company.

VI. WHAT IS A COMPANY APPLICANT?

A Company Applicant is the individual who directs or controls the filing of the formation documents for a Domestic Reporting Company and/or the person who physically files the application. By way of example, if I, as the attorney for the Reporting Company, am responsible for controlling the filing of an LLC's certificate of Organization and my paralegal performed the physical act of filing we would both be Company Applicants. The Company Applicants never change. **REPORTING BOI FOR COMPANY APPLICANTS IS NOT REQUIRED FOR REPORTING ENTITIES CREATED PRIOR TO JANUARY 1, 2024.**

VII. WHEN MUST COMPANY APPLICANTS BE DISCLOSED?

Entities formed prior to January 1, 2024 need not provide BOI for Company Applicants. For any reporting company created or registered on or after January 1, 2024, all Company Applicants must be identified.

VIII. WHAT INFORMATION MUST BE FILED WITH FINCEN BY A REPORTING COMPANY?

Reporting Company must file its full legal name, any trade name, complete U.S. address, state, tribal or foreign jurisdiction of formation, social security number, taxpayer identification number and/or employee identification number. Information required to be provided by a Reporting Company with respect to Beneficial Owners and company applicants include: full legal name; date of birth; complete current address; license number or U.S. passport number including legible copies of the special identifying document.

IX. WHEN MUST THE BOIR BE FILED?

All entities who have received confirmation of filing or registration of its formation documents **prior to January 1, 2024** must file its Beneficial Ownership Report (“BOIR”) **before January 1, 2025**.

For entities formed **on or after January 1, 2024** through and including **December 31, 2024**, the BOIR must be filed within **90 days** of receipt of confirmation of acceptance of the formation documents from the Secretary of State or other governmental entity with whom the formation documents were filed.

For entities formed **on or after January 1, 2025**, the BOIR must be filed within thirty (30) days of receipt of approval of the formation documents.

COMPANIES THAT ARE DISSOLVED PRIOR TO JANUARY 1, 2024 DO NOT NEED TO FILE A BOIR. HOWEVER A COMPANY DISSOLVED ON OR AFTER JANUARY 1, 2014 MUST FILE A BOIR EVEN IF THE COMPANY WAS FORMED IN 2023 AND THE BOIR IS NOT DUE UNTIL AFTER THE DISSOLUTION HAS BEEN FILED

X. WHERE TO FILE?

The BOIR prepared and filing must be done online, which may be by way of printing the COMPLETED and uploading the same or filing directly at the FinCen site at www.FinCen.gov/BOI .

XI. ARE UPDATES TO THE INITIAL BOIR REQUIRED?

Updates are only required if there is a change in the information reported or new information needs to be added. Filing of an update is required within thirty (30) days of the occurrence resulting in the change in information.

XII. WHAT IS A FINCEN ID?

A FinCEN ID is an identifying number which can be used in place of detailing the personal information in the BOIR or any updates. A FinCEN ID can be applied for and obtained on the FinCEN website.

XIII. FINAL THOUGHTS.

The CTA is an onerous, broad reaching Statute which requires every business company's attention. It may well be a daunting task to determine whether your company is a Reporting Company and who the Beneficial Owners are. Clarity is not a hallmark of this legislation. Gathering the BOI can also be burdensome. The cardinal principles are to err on the side of reporting if there is a question and start gathering the information to be reported yesterday.