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FOCUS

President's Message

Justin Carlson

I am grateful to be penning this article on my birthday, though some of you might question my sanity for feeling this way. But I am a firm believer that the best moments in life are shared, and I am glad to share this day with each of you. I often say that no matter how much you love your job, work is work and even rock stars wake up on the day of a concert and probably wish they could stay in bed. If it was always a pleasure, we wouldn't get paid to do what we do. Collaborating and spending time together makes work easier and more enjoyable. The ACC South Florida provides that opportunity, especially to those of you who, like me, put the "I" in team and are the only attorney in your office or organization.

If you are also like me and were informed that you are a member of the ACC by virtue of your employer's enterprise membership, you might not even be aware of what opportunities exist for you locally or nationally. At first, I was confused why a Colorado-based publicly traded company was associated with the Atlantic Coast Conference. As some of us here in Florida are aware, membership in that ACC has become so undesirable that some member universities are suing to get out and find better homes. Fortunately, our ACC does not require any prowess in basketball and continues to deliver tremendous value to its members.

As a quick aside, on the topic of college basketball and with this being the fantastic month of March, I encourage all of you to

consider creating or participating in your office's "March Madness" bracket pool. This is a quintessentially American office tradition, and even those with no familiarity with the sport find that filling out a bracket is a lot of fun and a great way to interact with your peers. And if you are familiar with your ACC resources, you can certainly find articles and other content about the ethical implications and other ins and outs of office "betting" and March Madness. Just an example of the type of relevant and helpful information being made available to you.

As an ACC member, regardless of your geographic location, you have access to the resources of the national organization. The ones I find most valuable include the Lexology digest of ACC law firm sponsor blogs, which you can customize based on subject matter and is a great way to stay current. Also, the webinars and other CLE materials available online supplement our chapter's in-person content and is a great way to obtain credit or learn about topics we might not cover locally. Getting involved in national "networks" that have subject matter focuses (for example, the small law department or the labor & employment network) can also be helpful if your practice is more niche or specialized. There are publications by the organization like compensation and other surveys which can help inform your career progress and expectations. And the annual national meeting (this year's will take place in Nashville from October 6-9) is our local CLE Conference writ large,



with excellent content and the opportunity to network with other in-house counsel from all over the United States.

I share this with you as part of our membership drive, which we are kicking off this year. While we already have a growing and robust membership, we've set ambitious growth targets and would like to ask for the help of our current members by spreading the word about the value you perceive and receive from your ACC membership and inviting peers and colleagues to join us. There is a discount available to new members on their first annual membership fee.

And while I think there is tremendous value of membership outside of our chap-

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ter, to me, the best return on your investment is the local opportunities provided by the ACC-SFL. Our sponsors continue to hit the mark with excellent venues and content, such as our extensively waitlisted interactive dinner at Uchi in Wynwood. We also continue to provide opportunities for our members to fulfill their professional obligation to provide pro bono legal

services, such as our clinic at Broward Legal Aid on March 14. And of course, CLE provided in the most entertaining way possible will continue to be a cornerstone of our value proposition, headlined by our Progressive Dinner in Miami on May 16 and our annual CLE conference taking place Thursday, September 12 at the Seminole Hard Rock Hotel & Casino.

Thank you for taking the time to read this article and our newsletter and, by doing so, tangentially spending part of my birthday with me. I hope you'll help us with our membership push so that we can continue to grow the opportunities to spend time together and collaborate as South Florida in-house counsel.

The Corporate Transparency Act: Ready, Set, Go!

By Jennifer J. Wioncek, Bilzin Sumberg

It's official: the Corporate Transparency Act (the "Act") has gone into effect January 1, 2024. Reporting companies can now go to the [Financial Crimes Enforcement Network \("FinCEN"\)](#) website () to file their beneficial ownership information reports. FinCEN's director announced that in the first week of January 2024, more than 100,000 companies successfully filed their beneficial ownership information ("BOI") reports- and, that as of February 14, 2024, FinCEN received more than 430,000 BOI reports. It is anticipated that tens of millions of companies will need to file such a report by January 1, 2025.

But, put on the brakes! While FinCEN was preparing for the implementation of the Act there was a case pending in the Northern District federal court of Alabama. On March 1, 2024, the federal court in *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.) entered a final declaratory judgment concluding that the Act exceeds the Constitution's limits on Congress' power and prohibits FinCEN from enforcing the Act against the plaintiffs.

Don't pump the brakes too hard though! The final judgment only applies to the plaintiffs in the case, and by implication does not apply to anyone else outside of the plaintiffs (i.e., everybody else!). On March 4, 2024, FinCEN issued a notice stating it will comply with the court's order for as long as it remains in effect. As a result, FinCEN is not currently enforcing the Act against the plaintiffs in that action. The government filed its

Notice of Appeal on March 11, 2024. It is possible that the issue is destined for the U.S. Supreme Court.

Do you need to read the rest of this article? Yes! The Act remains in effect for everyone else. The following is an overview of the Act and the latest guidance published by FinCEN to help with everyone else needing to comply.

Background of the Act

As background, the Act was enacted into U.S. federal law on January 1, 2021, as a new national beneficial ownership reporting regime for U.S. companies, and non-U.S. companies doing business in the United States. In broad terms, the Act creates a national company beneficial ownership registry accessible only by law enforcement, government agencies and other officials, and requires reporting companies to provide certain identifying information of its beneficial owners and company applicants to FinCEN. The purpose of the Act is to prevent the illicit use of so called "shell companies" to conceal illegal activity or to facilitate money laundering, tax evasion and other criminal activities.

FinCEN previously indicated its intent to issue three planned rulemakings to implement the Act. The first rulemaking was the final rule that FinCEN issued on September 29, 2022, implementing the Act's BOI reporting provisions.. The second rulemaking was the Notice of Proposed Rulemaking that FinCEN issued on December 15, 2022, which will govern access to, and protection of, BOI.

On December 21, 2023, FinCEN issued final regulations in connection with this second rulemaking. The third rulemaking will revise FinCEN's Customer Due Diligence rules no later than one year after the effective date of the regulations contained in the final rule (i.e., January 1, 2024). No proposed regulations have been issued yet for this third rulemaking.

Since December 15, 2022, FinCEN has issued several guidance materials for the public with the most recent coming on December 21, 2023.

Latest Guidance

Beneficial Ownership Information Access and Safeguards: Second Final Rule

On December 21, 2023, FinCEN issued a second final rule that prescribes the circumstances under which BOI reported to FinCEN may be disclosed to authorized BOI recipients. FinCEN claimed it carefully considered extensive public comments, along with extensive interagency consultations.

Pursuant to the second final rule, FinCEN is authorized to disclose BOI under specific circumstances to six categories of recipients: (1) U.S. Federal agencies engaged in national security, intelligence, or law enforcement activity; (2) U.S. State, local, and Tribal law enforcement agencies; (3) foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities; (4) financial institutions using BOI to facilitate compliance with customer due

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diligence (CDD) requirements under applicable law; (5) Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with CDD requirements under applicable law; and (6) Treasury officers and employees. Each category of authorized user will be subject to specific security and confidentiality requirements, in line with the Act, to protect the security and confidentiality of BOI.

FinCEN will take a phased approach to providing access to the BOI system from which authorized users may obtain BOI. The first stage will be a pilot program for a handful of key Federal agency users starting in 2024. Federal agencies engaged in national security, intelligence, and law enforcement activity; State, local, and Tribal law enforcement agencies; and Treasury personnel will be able to access and query the BOI system immediately.

The second final rule reiterates that the Act makes it unlawful for any person to knowingly disclose, or knowingly use BOI obtained by that person from a report submitted to, or an authorized disclosure made by, FinCEN, unless such disclosure is authorized under the Act. The Act provides for civil penalties in the amount of \$500 for each day a violation continues or has not been remedied. Criminal penalties are a fine of not more than \$250,000 or imprisonment for not more than 5 years, or both. The Act also provides for enhanced criminal penalties, including a fine of up to \$500,000, imprisonment of not more than 10 years, or both, if a person commits a violation while violating another law of the United States, or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period. The second final rule makes clear that violating applicable requirements could also lead to FinCEN suspending a requester from access to the BOI system.

Updated FAQs

FinCEN also recently updated its FAQs originally issued on March 24, 2023. Certain FAQs were added, or modified as of December 12, 2023, January 4, 2024, and January 12, 2024. The additional FAQs that were added address, amongst other things:

- Individuals filing on behalf of a Reporting Company will need to provide basic information on themselves when submitting the BOI report;
- Clarifying when the activity or revenue of a company is relevant for determining if a company meets one of the exemptions from a Reporting Company;
- Making clear that the only way to satisfy the reporting under the Act is through the FinCEN BOI report and not any other filings or reports submitted to other state or federal agencies;
- Making clear that a change to the type of ownership interest held by a beneficial owner is not a reason to file an updated BOI report (e.g., conversion from preferred stock to common stock); but that a change to the legal name of the reporting companies is a reason to file an updated BOI report;
- Clarifying that a Reporting Company can file a late BOI report (however, the Reporting Company should be aware of the risk of penalties for filing late);
- Further clarifications when corporate entities and individuals could be held liable for willful violations under the Act;
- Confirming there is no fee for filing BOI report;
- Confirming that companies created in U.S. territories can be treated as Reporting Companies;
- Clarifying whom to report if a Reporting Company is part of an active litigation regarding its beneficial owners;
- Confirming that determining who is a Company Applicant is not determined by who signs the creation documents but rather who is directing or controlling the filing of the document to form the company, and providing examples that can include mail room personnel as a Company Applicant; and
- Confirming that one of the approved forms of government identification can be submitted without a photo if for religious reasons.

Question Portal

On December 21, 2023, FinCEN also updated its BOI website with a question portal and chat box. It is anticipated that FinCEN will receive numerous questions and comments for future guidance after these applications begin functioning properly.

Next Steps

The BOI E-Filing system is live. Reporting companies created or registered on or after January 1, 2024 will have 90 days to file their initial BOI report (and those created or registered on or after January 1, 2025 will have 30 days to file their initial BOI report). Such reporting companies should be organizing themselves to determine internally who will handle such reporting to avoid any penalties under the Act.

Reporting companies in existence prior to January 1, 2024 still have until January 1, 2025 to file their initial BOI report. Some may decide to do a “wait and see” approach pending the outcome of the current legal case challenging the Act. However, now is the time to prepare your organization for its initial BOI filing. Many organizations have several companies within their structure and it is recommended not to wait to review such structures, and gather the information now considering the penalty exposures as part of the Act.

Author:

Jennifer Wioncek

serves as Practice Group Leader for Tax & Private Wealth at Bilzin Sumberg. She is a highly experienced tax attorney with extensive expertise in handling the tax and succession planning needs of high net worth clients for domestic and cross-border families. Her broad practice covers international and domestic tax and estate planning issues, pre-immigration tax planning, expatriation tax planning, private trust company structuring, cross-border estate administration, tax structuring for real estate funds with foreign investors, and other tax structuring for investment into the United States, and the acquisition, maintenance, and sale of U.S. real estate by foreigners.



EVENT PHOTOS

Palm Beach Progressive Dinner – Presented by Gunster, FTI Consulting, Carlton Fields



GC/CLO Dinner - Presented by Saul Ewing



Interactive Dinner – Presented by Bilzin Sumberg



Women's Event: Candle Making – Presented by Squire Patton Boggs



NEW BOARD MEMBER SPOTLIGHT



David Brill

Managing Director, FTI Consulting

1. How long have you been an ACC South Florida member?

I joined ACC

South Florida in January 2022 after moving from New York to Florida.

2. Why did you join the ACC?

I joined ACC because I saw the value of an organization that catered to in-house counsel and the variety of roles they take on within a company. Being part of an organization like ACC is invaluable to a practitioner navigating the complex challenges of representing a company.

3. What is a typical day like for you at FTI Technologies?

My role at FTI is unique, and every day is different. I spend most of my time evaluating and researching Blockchain and Digital Assets issues and developing solutions for complex and thorny issues. Whether it is strategy, regulation, compliance, or matters of first impression, I am constantly analyzing issues in an industry that moves lightning fast and an exchange infrastructure that trades cryptocurrencies 24/7.

4. What do you most enjoy about being in-house?

I most enjoy the variety of work I get to be involved with and the satisfaction of seeing projects to fruition.

5. When you're not working, where would we find you?

In the spring and summer, you'll find me at the beach enjoying the Florida sun, on the water, or at the tennis and pickleball courts. In the fall and winter, I'll be rooting on Michigan sports and watching NFL football.

6. What's your favorite quote right now?

"You don't build a reputation by sitting down and waiting for something to happen." Herb Kelleher

7. Tell us something that might surprise us about you.

I played lacrosse for the Oxford Blues.

ACC News

ACC365 App Now Available to Download

Your work goes beyond your desktop and now so does the ACC member experience. The brand-new ACC365 app is now available to [download](#). Stay connected and get the ACC experience in the palm of your hand. With one tap, you are plugged into the people, resources, and knowledge that accelerate your career.



Mark your calendars and get ready for the event of the year! The 2024 ACC Annual Meeting is heading to the vibrant city of Nashville, TN, from October 6-9, and you won't want to miss it.

This annual gathering is the world's largest for in-house counsel, attracting thousands of professionals like you for an unforgettable experience.

ACC CLO Survey – Download Today

The Association of Corporate Counsel, in collaboration with Exterro, is excited to announce the launch of the [2024 Chief Legal Officers Survey](#).

Celebrating its 25th year, this research provides a critical lens into the evolving role of CLOs and how legal departments are adapting to the broader business environment. This year's report is a treasure trove of insights, directly from CLOs themselves, highlighting their expectations, challenges, and opportunities for the year ahead. This comprehensive survey, featuring responses from over 600 CLOs across 20 industries and 31 countries, reveals the intense pressures and challenges confronting legal departments.



ACC South Florida Upcoming Events

APRIL

APRIL 18

Social Event + CLE
Presented by Carlton Fields

APRIL 25 –
New Member Happy Hour

Be on the lookout
for calendar updates!

MAY

MAY 1

Pro Bono Event
Name Change Clinic
with the Legal Service of Greater
Miami

MAY 16

Miami-Dade Progressive Dinner
Presented by Shook, Hardy & Bacon,
Omni Bridgeway, Carlton Fields

Welcome New Members!

Rian Balfour Marcus

US Radiology Specialists Inc.

Colleen Batcheler

The Hertz Corporation

Suzan Blais

ADP Total Source Inc

Kallin Brooks

Guardant Health

James Bryan

The GEO Group, Inc.

Daniel Canedo

OLYMPUSAT HOLDINGS

Karina Castillo

Optimizely North America Inc.

Pamela Cavides

Cano Health

Denise Ceule

Modernizing Medicine, Inc.

K. Stefan Chin

Coastal Construction

Aniella Gonzalez

BHHS EWM Realty

Robert Hodapp

Mr. Cooper Group Inc.

Sankalp Kandaswamy

Modernizing Medicine, Inc.

Albertina Kawatu

Norwegian Cruise Line Holdings Ltd.

Brian Kurzmann

ADP

Nicole Lopez

ADP

Marcela Lozano

GardaWorld

Kimberly Monroe

Chewy, Inc.

Rebecca Oliver-Remshifski

WSP USA Inc.

Cristina Sanchez

Fresh Del Monte Produce, Inc.

Heather Schaeffer

Lee Hecht Harrison LLC

Cameron Scullen

tZERO Group, Inc.

John Thornton

Indelible Solutions

Alexander Valverde

Wartsila North America

Eduardo Vidal

Content Engine, LLC.

Caitlin Wilkinson

Modernizing Medicine, Inc.

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Saul Ewing Arnstein & Lehr LLP
Shook Hardy and Bacon, LLP
Squire Patton Boggs
TCDI
Winston & Strawn

Bronze

Armstrong Teasdale
Carlton Fields
FTI Consulting
Latitude
Littler
Robert Half Legal

Miami-Dade Progressive Dinner

Shook Hardy and Bacon, LLP (Premier)
OmniBridgeway (Dinner)
Carlton Fields (Dessert)

GC/CLO Dinner

Armstrong Teasdale
FTI Consulting

Social Event + CLE

Carlton Fields

Mini MBA

Foley & Lardner

Women's Event

Fisher Phillips
DLA Piper

Holiday Party

Barnes & Thornburg (Palm Beach)
Cozen O'Connor (Miami)

Newsletter Article

Barnes & Thornburg
King & Spalding

4 Ways to Mitigate Vendor Cybersecurity Incidents

By Kate Kreps, American Electric Power and Elizabeth Burgin Waller, Woods Rogers Vandeventer Black

In May 2023, the [CL0P ransomware gang](#) wreaked havoc on more than 2,500 organizations by infiltrating Progress Software's MOVEit file transfer platform, stealing copious amounts of data and posting it on the dark web to extort ransom from affected companies. This single exploit resulted in millions of data breach notifications to individuals. It also sparked a host of lawsuits and prompted dozens of corporations to file public disclosures about risks associated with third-party vendors' use of MOVEit's platform. Moving into 2024, third-party vendor risk mitigation is taking center stage in the cybersecurity and data privacy context. This article explores how to attempt to address that risk.

1. Define expectations for early notification

Early notice about a vendor's incident is critical to managing the potential impact on your organization. To ensure timely notice, build robust incident notification requirements into your vendor contracts. We recommend notice provisions that require vendor incident notice within a specific timeframe — preferably a matter of hours but no more than three days after suspicion or discovery of an incident. Standard notice provisions typically state vendors will provide “reasonable” notice, but that definition could be up for debate after an incident.



Artwork by Diyajyoti / Shutterstock.com

In ransomware incidents, cyber criminals may gain access to your organization's information through your vendor and post that stolen information on the dark web. As such, early notice of potential exposure is critical to managing your organization's regulatory concerns, crisis communications, and potential liability. Requiring notice within 24 or 36 hours — not just of an incident that impacts personally identifiable information — but of any incident that may impact any information belonging to your organization is an important step. Ensure your vendors alert you to an incident the moment they suspect your information is or could be compromised. Immediate notification affords an organization essential time to activate its own incident response plan.

Ensure your vendors alert you to an incident the moment they suspect your information is or could be compromised.

2. Establish requirements for breach remediation

Robust contract requirements for vendor management of an incident also help mitigate risk. Include a provision requiring vendors to provide a certification from an outside forensic team of the “all clear” after a ransomware incident can alleviate disputes after an incident occurs about whether they have properly remediated a breach.

3. Insist on robust indemnification provisions

Vendor contracts often agree to cover the cost of consumer breach notices and credit monitoring, but these expenses constitute only a small percentage of the overall cost of an incident. Credit

Cyber criminals will use unsecure vendors as a gateway to your organization's data.



Artwork by Bundit / Shutterstock.com

monitoring, for example, costs only cents on the dollar. Include robust indemnification provisions to your vendor contracts aimed at recouping the larger expenses your organization will face — lost profits, regulatory fines and penalties, crisis response, and outside attorneys' fees.

4. Assemble your own incident response team

One of the most important steps in-house legal teams can take is to make sure that when an incident occurs, their security teams know to notify the legal department. Seemingly minor breaches can quickly balloon into big issues. Assembling your own incident response team to address even a third-party breach can be critical to understanding whether the vendor's breach is critical to your own operations.

When notified of a potential vendor incident, set up a call with the vendor to learn more. Ask to speak directly with the forensic team involved in the incident. This allows you direct insight into what has occurred and what is being done to remedy a breach.

Disclaimer: the information in any resource collected in this virtual library should not be construed as legal advice or legal opinion on specific facts and should not be considered representative of the views of its authors, its sponsors, and/or ACC. These resources are not intended as a definitive statement on the subject addressed. Rather, they are intended to serve as a tool providing practical advice and references for the busy in-house practitioner and other readers.

Chapter Leadership

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Immediate Past President

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Executive Director

Christina Kim

Christina Kim
Executive Director

Executive Director Note

Dear Members,

Spring is here! Which for many means allergy season, sugary Peeps, spring training, Spring Break, and the countdown to the end of the school year. For me, it is the start of the planning season for our 14th Annual CLE Conference which is taking place on Thursday, September 12 – mark your calendars and keep an eye on your email for the official Save the Date and more details!

Thank you to the many volunteers who have joined the planning committee – our conference would not be a success without your insights, ideas, and feedback.

In the meantime, we have many awesome events coming up between now and the Annual Conference – be sure to check out our Upcoming Events section in the newsletter and we hope to see many of you in attendance.

On a more serious note, we recently learned of the passing of one of our long-time members, Michael Chrusch. I've encountered Michael, as I am sure many of you have, at numerous events and he always had a friendly smile and encouraging words. We extend our heartfelt sympathies to his wife and family. He will be missed.

Sincerely,

Christina Y. Kim

Executive Director, ACC South Florida



Christina + Family