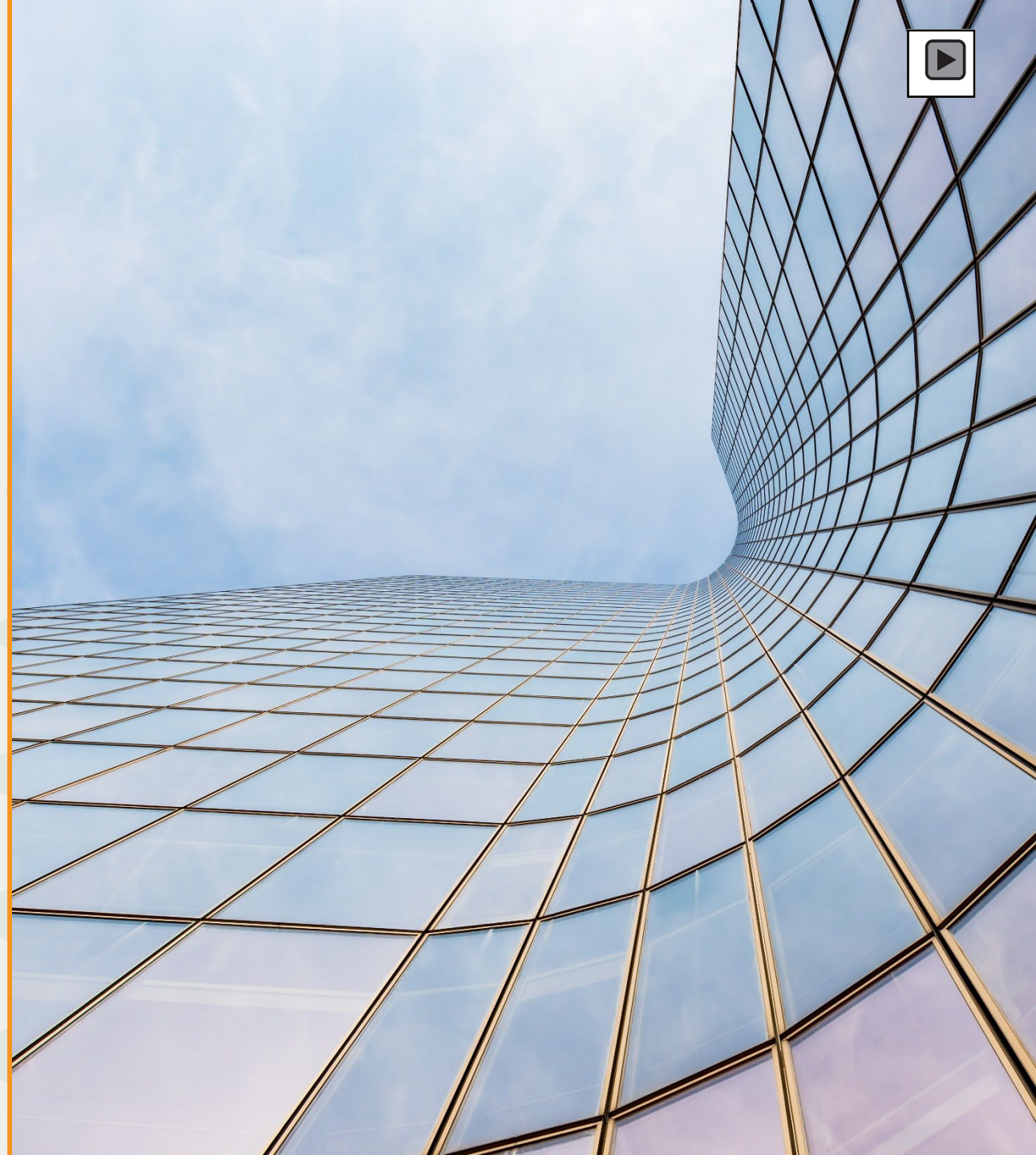




FinCEN Beneficial Ownership Reporting under the Corporate Transparency Act

Presentation for Private Investment Funds

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Beneficial Ownership Information (BOI) Reporting – Overview



Reporting Companies

- Domestic Reporting Companies
 - Entities created by the filing of a document with a SOS or similar office of a U.S. state or tribe.
- Foreign Reporting Companies
 - Entities formed under the law of a foreign country and registered to do business in any U.S. state or tribal jurisdiction by filing of a document with a SOS or similar office of a U.S. state or tribe.

Corporation

LLC

LP

Statutory Trust

LLP

LLLL



Timing of Reports

- Entities created prior to January 1, 2024
 - Initial report due on or before **January 1, 2025**.
- Entities created between January 1, 2024 – December 31, 2024
 - Initial report due **within 90 calendar days** of the Reporting Company's formation or registration. **Note that this timing is proposed and not yet finalized.**
- Entities created on or after January 1, 2025
 - Initial report due **within 30 calendar days** of the Reporting Company's formation or registration.
- Updated Reports and Corrections
 - Must be filed **within 30 calendar days** after (i) the date of a change, or (ii) the Reporting Company becomes aware of or has reason to know of an inaccuracy in a report.

Penalties

The **willful failure to report complete or updated beneficial ownership information to FinCEN**, or the **willful provision of or attempt to provide false or fraudulent beneficial ownership information** may result in a civil or criminal penalties, including:

- **Civil penalties** of up to \$500 for each day that the violation continues.
- **Criminal penalties** including imprisonment for up to two years and/or a fine of up to \$10,000.

Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.

A person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information to FinCEN.



BOI Reporting System Overview

FinCEN expects that the BOI reports will be submitted electronically through an online interface.

- The online interface itself has not yet been made public, but the website where the online interface will appear is located at <https://www.fincen.gov/boi>.
- FinCEN has released a revised summary of data fields to be completed for the BOI report.
- FinCEN indicated that it may issue additional guidance for entities or individuals who are not able to submit BOI reports electronically.

Individuals and Reporting Companies may obtain a “FinCEN identifier” (FinCEN ID), a unique identification number that can be provided in lieu of the BOI required to be disclosed (see following slide).

- FinCEN has released the proposed form of application for the FinCEN identifier (*i.e.*, the data fields that will need to be completed online).

BOI Reporting – Required BOI

Reporting Company

- Full legal name
- Any trade names or DBAs (registered or not)
- Street address of principal place of business (if a domestic Reporting Company) or primary location in the United States where the Reporting Company conducts business (if a foreign Reporting Company)*
- Jurisdiction of formation
- For a foreign Reporting Company, the state or tribal jurisdiction where the company first registers
- Taxpayer ID (if issued by a foreign jurisdiction, the name of such jurisdiction)

*Post office boxes, private mailboxes, and addresses of business agents or corporate agents will not fulfil this requirement.

Beneficial Owners and Company Applicants

- FinCEN ID
- OR**
- The following information:
 - Full Legal Name
 - Date of Birth
 - Current Residential Street Address**
 - Image of Identification Document
 - Identification Number and Issuing Jurisdiction of Identification Document

**Company Applicants can use a business address if the Company Applicant “creates entities in the ordinary course of such company applicant’s business.” If the individual does not have a street address in the United States, a street address in a foreign jurisdiction may be reported.

Beneficial Owners of Reporting Companies

Individuals who, directly or indirectly, own or control 25% or more of the ownership interests of the Reporting Company.

- **Ownership Interests**
 - Broadly defined.
- **Debt**
 - May be ownership interest if it enables the holder to exercise the same rights as an equity interest.

Special Rule: If an individual is a beneficial owner of a Reporting Company **exclusively** by virtue of the individual's ownership interests in exempt entities that have direct or indirect ownership interests in such Reporting Company, the BOI report may include the names of the exempt entities in lieu of the beneficial ownership information of such individual. See more details in Example #3.

Individuals who, directly or indirectly, exercise substantial control over the Reporting Company.

- **Senior Officers**
 - Includes President, CEO, CFO, COO, GC or any other officer who performs similar function.
- **Authority Over Appointment/Removal**
 - Over any senior officer, a majority of the board of directors (or similar governing body – such as a general partner or managing member).
- **Important Decisions**
 - Direct, determine or have substantial influence over important decisions.
- **Other Substantial Control**

Substantial Control Analysis

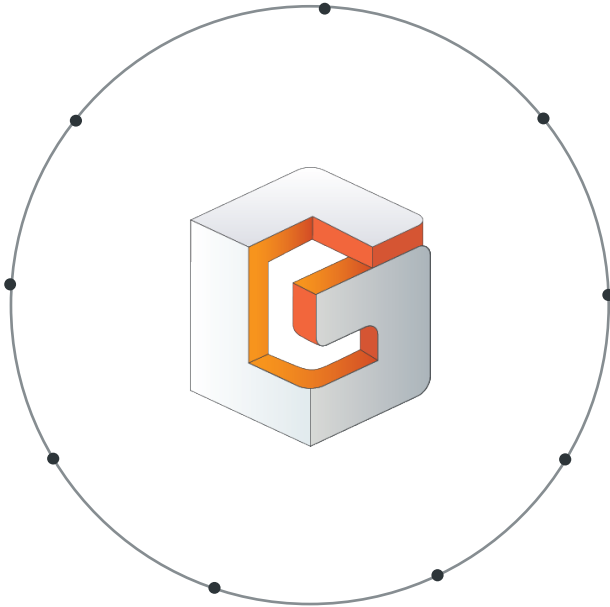
Individuals who direct, determine or have substantial influence over **important decisions** made by the Reporting Company, which may include:

- 1 The nature, scope, and attributes of the business of the Reporting Company, including the sale, lease, mortgage, or other transfer of any principal assets of the Reporting Company;
- 2 The reorganization, dissolution, or merger of the Reporting Company;
- 3 Major expenditures or investments, equity issuances, incurrence of any significant debt, or approval of operating budget of the Reporting Company;
- 4 The selection or termination of business lines or ventures, or geographic focus, of the Reporting Company;
- 5 Compensation schemes and incentive programs for senior officers;
- 6 The entry into or termination, or the fulfillment or nonfulfillment, of significant contracts;
- 7 Amendments of any substantial governance documents of the Reporting Company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures

Note: This list is not exhaustive.

Substantial Control Analysis (Cont'd)

Types of individuals who may exercise substantial control over a Reporting Company within a fund structure:



Officers

Directors

Authorized signatories

Investment committee members

Portfolio managers

Members of Limited Partner Advisory Committee (LPAC) holding individual veto or blocking rights or with non-standard, control rights

Individual investors or individuals associated with investors holding with veto or blocking rights

Others?

Exemptions – Entities That Are Not Reporting Companies

Caution: Review Specific Requirements for Each Exemption
Do Not Rely on the Name of the Exemption

1. Public Company
2. Government Authority
3. Certain Highly-Regulated Entities (e.g., Banks)
4. Registered Investment Companies and Investment Advisers
5. Venture Capital Fund Advisers
6. Insurance Companies and State-Licensed Insurance Producers
7. Entities registered under the Commodity Exchange Act
8. Public Accounting Firms
9. Regulated Public Utilities
10. Pooled Investment Vehicles Operated by Certain Exempt Entities
11. Tax-Exempt Entities
12. Entities Assisting Tax-Exempt Entities
13. Large Operating Company
14. Wholly-Owned Subsidiaries of Certain Exempt Entities
15. Inactive Entities

Key Exemptions to Consider in Private Fund Structures

Registered Investment Company and Registered Investment Adviser Exemption	An investment company as defined in Section 3 of the Investment Company Act of 1940 or an investment adviser as defined in Section 202 of the Investment Advisers Act of 1940; and has registered with the SEC under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.
Venture Capital Adviser Exemption	An investment adviser described in Section 203(l) of the Investment Advisers Act of 1940 and has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV with the SEC.
Pooled Investment Vehicle Exemption (the “PIV Exemption”)	<p>Any <u>Pooled Investment Vehicle</u> that is operated or advised by a person who is a CTA exempt (i) bank; (ii) credit union; (iii) SEC-registered broker/dealer; (iv) SEC registered investment company or investment adviser; or (v) venture capital fund adviser.</p> <p><u>Pooled Investment Vehicles</u> means:</p> <ol style="list-style-type: none">1. Any investment company as defined in Section 3(a) of the Investment Company Act of 1940; or2. Any company that<ol style="list-style-type: none">a. Would be an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exclusion provided by Section 3(c)(1) or Section 3(c)(7) of that Act; andb. Is identified by its legal name by the applicable investment adviser in its Form ADV filed with the SEC or will be so identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser pursuant to Rule 204-1 under the Investment Advisers Act of 1940. <p>BUT: For a foreign pooled investment vehicle that would be deemed a Reporting Company but for the Pooled Investment Vehicles Exemption, such entity will still need to report beneficial ownership information with respect to one individual who exercises substantial control over the entity.</p>

Key Exemptions to Consider in Private Fund Structures (Cont'd)

Subsidiary Exemption*

Entity the ownership interests of which are controlled or wholly owned, directly or indirectly, by one or more exempt entities under the CTA, but does not apply if such entity or entities are exempt under any of the following exemptions:

- Pooled investment vehicle,
- Money transmitting or money service business,
- An entity that operates exclusively to provide financial assistance to or hold governance rights over tax-exempt entities, or
- An inactive entity.

*There is no categorical exemption for subsidiaries of Pooled Investment Vehicles. For any such subsidiaries, Reporting Companies may consider taking the “Controlled Subsidiary Position” (as further discussed on next slide).

Application of Certain Exemptions: Controlled Subsidiary Position

Caution: The Controlled Subsidiary Position is not an express exemption under the CTA, but an interpretive position that we consider to be a reasonable basis for determining that a BOI report should not be required for the particular entity being analyzed.

- If the subject entity is a direct or indirect subsidiary of a fund-level entity that is exempt under the PIV Exemption (an “Exempt PIV”), the subject entity is not categorically exempted under the Subsidiary Exemption.
- However, if the subject entity is directly or indirectly controlled solely by individuals affiliated with the types of exempt entities not excluded from the Subsidiary Exemption (e.g., an entity that relies on the Registered Investment Advisers Exemption), then the subject entity could conclude that no beneficial ownership report is required IF the filing of a beneficial ownership report by such subject entity would only require disclosure of individuals affiliated with such exempt entity (the “Controlled Subsidiary Position”).
- This position should not be relied upon to the extent that any individual other than beneficial owners described in the prior bullet point would need to be identified as beneficial owners on the BOI report for the subject entity.

Application of Certain Exemptions: Relying Advisers and General Partners Affiliated with RIAs



Relying advisers identified as such on the Form ADV of a registered investment adviser can rely on the Registered Investment Adviser Exemption

- The Registered Investment Adviser Exemption may apply if a general partner entity:
 - Is a vehicle set up by an RIA to act as a private fund's general partner or managing member,
 - Fits within the definition of "investment adviser" under the Investment Advisers Act of 1940; and
 - Meets the relevant conditions set forth in the SEC staff's 2005 and 2012 no-action letters to the American Bar Association (see below).



In the 2012 no-action letter to American Bar Association, the SEC staff noted that a general partner entity would be deemed an investment adviser registered with the SEC if it meets the fact patterns and conditions described in the 2005 no-action letter to American Bar Association:

- The investment adviser to a private fund establishes the [general partner entity] to act as the private fund's general partner or managing member;
- The [general partner entity's] formation documents designate the investment adviser to manage the private fund's assets;
- All of the investment advisory activities of the [general partner entity] are subject to the Advisers Act and the rules thereunder, and the [general partner entity] is subject to examination by the [SEC]; and
- The registered adviser subjects the [general partner entity], its employees and persons acting on its behalf to the registered adviser's supervision and control and, therefore, the [general partner entity], all of its employees and the persons acting on its behalf are "persons associated with" the registered adviser (as defined in section 202(a)(17) of the Advisers Act).

Application of Certain Exemptions: General Partners Affiliated with VC ERAs



The Venture Capital Adviser Exemption may apply if the general partner entity:

- Is a vehicle set up by a venture capital fund adviser relying on Section 203(I) of the Investment Advisers Act of 1940 to act as the general partner or managing member of a venture capital fund;
- Fits within the definition of "investment adviser" under the Investment Advisers Act of 1940; and
- Reports its beneficial ownership information in Item 10, Schedule A and Schedule B of Part 1A of the Form ADV of such venture capital fund adviser in accordance with the Form ADV FAQ.



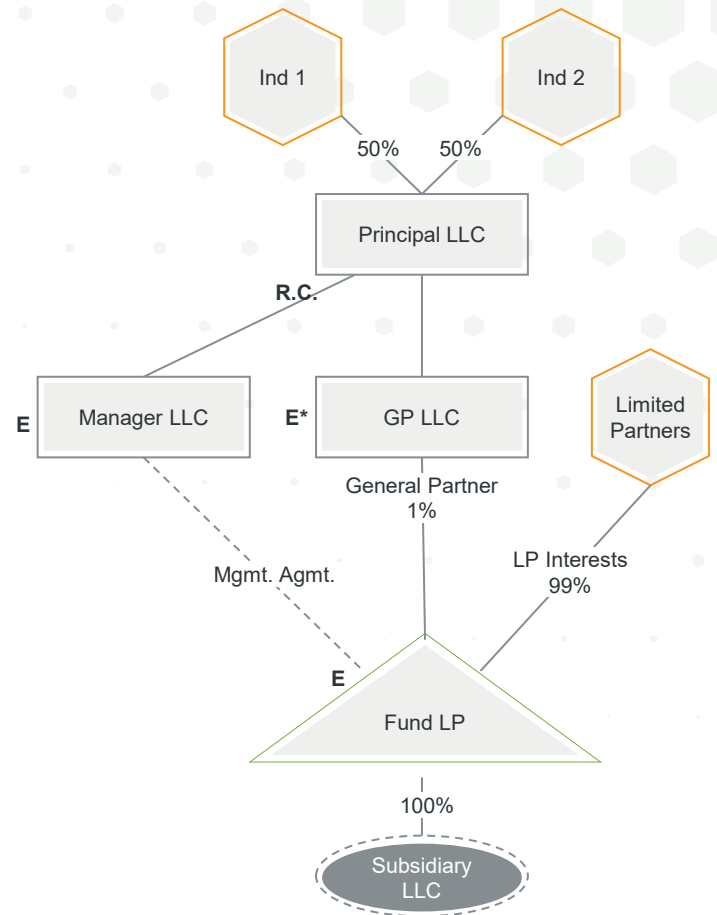
Important Note:

- This exemption is not available to a general partner that does not report its beneficial ownership information in Item 10, Schedule A and Schedule B of Part 1A of the Form ADV of the venture capital fund adviser.
- For any newly formed general partner, the investment adviser has the option to:
 - (i) make an Other-than-Annual Amendment to its Form ADV to include the general partner's beneficial ownership information in Item 10, Schedule A and Schedule B of Part 1A of the Form ADV, or
 - (ii) if the investment adviser does not make any such Other-than-Annual Amendment, the general partner should file a beneficial ownership report with FinCEN upon formation and, after beneficial ownership information of the general partner has been included on the Form ADV in connection with the next Annual Updating Amendment, make an updated report with FinCEN to claim the exemption.

Example #1: Private Fund Managed by SEC RIA or Venture Capital Fund Adviser

- Fund LP meets the PIV Exemption requirements and Manager LLC and GP LLC meet either the Registered Investment Adviser or Venture Capital Adviser Exemption requirements.*
- Consider whether the Subsidiary LLC can rely on the PIV Exemption or the Controlled Subsidiary Position. If not, consider if any other exemption is available. Otherwise, Subsidiary LLC is a Reporting Company.
- Because Fund LP relies on PIV Exemption, for the Subsidiary LLC’s BOI Report, no LP needs to be disclosed under the 25% Ownership Test, but any individuals that are beneficial owners under the Substantial Control Test must be disclosed.
- Beneficial Ownership:

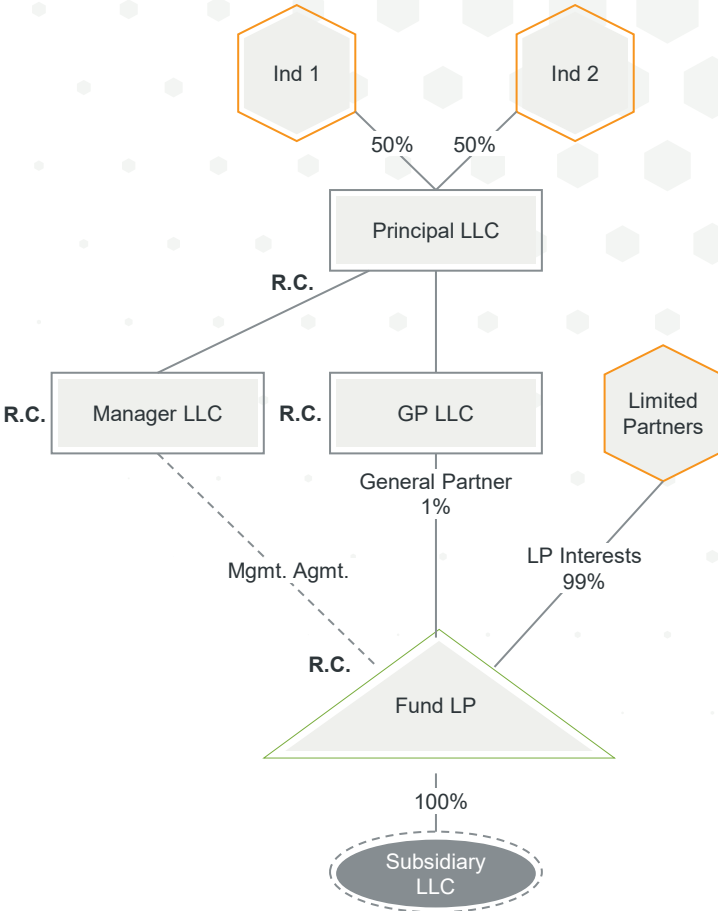
Entity	25% Ownership Test	Substantial Control Test
Principal LLC	Ind. 1 & Ind. 2	Individuals who have substantial control of Principal LLC
Manager LLC	Exempt – Registered Investment Adviser Exemption or Venture Capital Adviser Exemption	Exempt – Registered Investment Adviser Exemption or Venture Capital Adviser Exemption
GP LLC	Exempt – Registered Investment Adviser Exemption or Venture Capital Adviser Exemption	Exempt – Registered Investment Adviser Exemption or Venture Capital Adviser Exemption
Fund LP	Exempt – Pooled Investment Vehicle	Exempt – Pooled Investment Vehicle
Owner LLC	Fund LP – as exempt 100% owner	Individuals who have substantial control of Subsidiary LLC directly or indirectly through Manager LLC, Principal LLC, GP LLC and/or Fund LP**



**In certain factual scenarios, it is possible that one or more individuals affiliated with limited partners of a fund may be deemed to have substantial control over a Reporting Company (see Substantial Control Analysis in Fund Structures slide)

Example #2: Non-Private Fund Managed by ERA or Non-RIA Adviser

- Principal LLC, Manager LLC, GP LLC, Fund LP and Subsidiary LLC are Reporting Companies.
- 25% Ownership Test and Substantial Control Test must be conducted at each level to determine individuals to be disclosed on BOI report of each Reporting Company.
- Unlike the previous slide, any individual that directly or indirectly owns at least 25% of Fund LP must be disclosed on BOI reports of Fund LP and Subsidiary LLC.
- Beneficial Ownership:

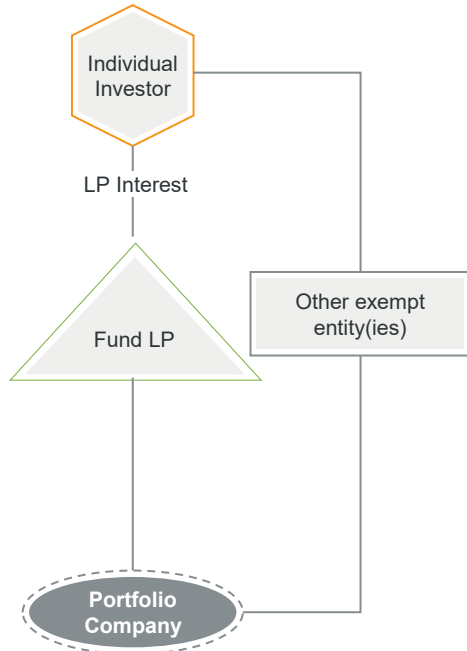


Entity	25% Ownership Test	Substantial Control Test
Principal LLC	Ind. 1 & Ind. 2	Individuals who have substantial control of Principal LLC
Manager LLC	Ind. 1 & Ind. 2	Individuals who have substantial control of Manager LLC directly or indirectly through Principal LLC
GP LLC	Ind. 1 & Ind. 2	Individuals who have substantial control of GP LLC directly or indirectly through Principal LLC
Fund LP	Any individual that owns 25% or more of Fund LP on a direct or indirect basis	Individuals who have substantial control of Fund LP directly or indirectly through Manager LLC, Principal LLC and/or GP LLC*
Owner LLC	Any individual that owns 25% or more of Subsidiary LLC on a direct or indirect basis	Individuals who have substantial control of Subsidiary LLC directly or indirectly through Manager LLC, Principal LLC, GP LLC and/or Fund LP*

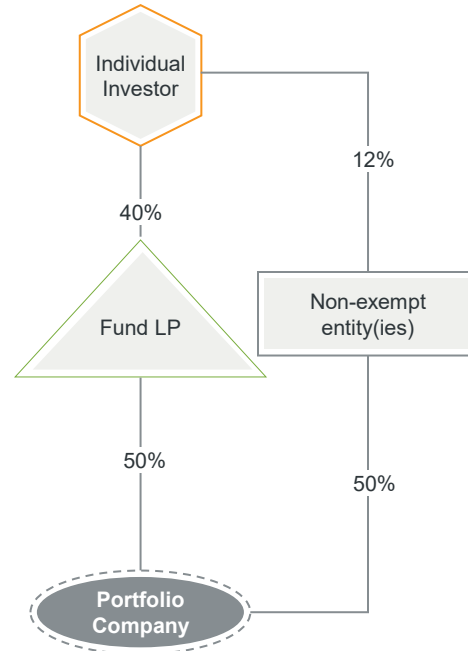
*In certain factual scenarios, it is possible that one or more individuals affiliated with limited partners of a fund may be deemed to have substantial control over a Reporting Company (see Substantial Control Analysis in Fund Structures slide)

Example #3: Individuals Holding Interests in a Reporting Company through Private Investment Vehicles

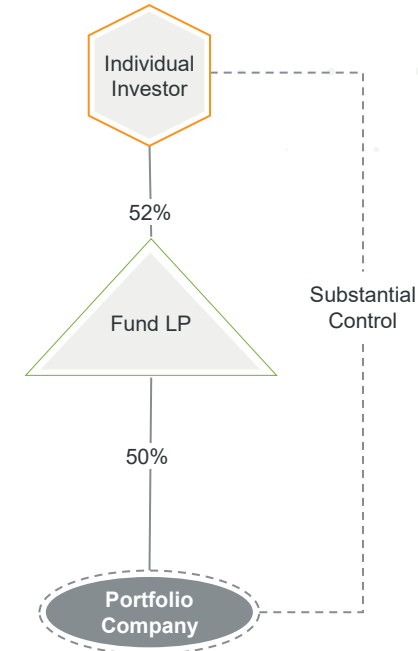
- Fund LP meets the pooled investment vehicle exemption requirements.
- Individual holds interests in a portfolio company that is a Reporting Company through the Fund LP and one or more exempt entities.
- The portfolio company can report the names of the exempt entities in lieu of the information of the individual investor.



- Fund LP meets the pooled investment vehicle exemption requirements.
- Individual holds interests in a portfolio company that is a Reporting Company through the Fund LP and one or more non-exempt entities, and the individual's direct or indirect interests in the portfolio company exceed 25% in the aggregate.
- Unless any other exemption is applicable, the portfolio company needs to report the individual as a beneficial owner.



- Fund LP meets the pooled investment vehicle exemption requirements.
- Individual holds an interest in a portfolio company that is a Reporting Company through the Fund LP in excess of 25%, and the individual also exercises substantial control over the portfolio company.
- Unless any other exemption is applicable, the portfolio company needs to report the individual as a beneficial owner.



Key Steps to Prepare for BOI Reporting

Review your structures using Goodwin's Project Plans, available at [Corporate Transparency Act | Goodwin Procter \(goodwinlaw.com\)](#).

**Review
Your
Structures**

**Create a
Beneficial
Ownership
Tracker**

Track the individuals that have been identified as beneficial owners of each reporting company. Memorialize the analysis undertaken to identify beneficial owners of each reporting company.

Your compliance program should include periodic review of entity exemption status and policies and procedures to ensure the beneficial ownership information remains up to date.

**Develop a
Compliance
Program**