

Goodwin Corporate Transparency Act Toolkit:

**Supplement for Private Investment
Funds**

Last Updated: November 2023



The following supplement is intended to be used as a companion to the [Goodwin Corporate Transparency Act Toolkit](#) (the “CTA Toolkit”).¹ Capitalized terms used and not otherwise defined herein have the same meaning as in the CTA Toolkit.

Private Investment Fund Structures: Recommended Steps for Entity Analysis

1. Obtain a master fund structure chart or series of structure charts that reflect (i) all fund entities and subsidiaries, including any general partner entities, investment advisers, holding companies, blockers and aggregators (each, a “Subject Entity”) and (ii) all individuals (*i.e.*, natural persons) that directly or indirectly own 25% or more of any Subject Entity.
2. Identify each Subject Entity that was (1) created by the filing of a document with a secretary of state or a similar office of a U.S. state or tribe or (2) formed under the law of a foreign country and registered to do business in any U.S. state or tribal jurisdiction by the filing of a document with a secretary of state or a similar office of a U.S. state or tribe.
 - a. Each Subject Entity so identified will be a “Reporting Company” under the CTA unless an exemption is available. Please refer to Exhibit A of any CTA Toolkit guide for a description of all CTA exemptions. Please see “Common CTA Exemptions to Consider for Entities in Private Investment Fund Structures” below for guidance on CTA exemptions that are most common for Subject Entities in private investment fund structures. We have included a “Quick Reference Guide” at the end of this Supplement to help facilitate the analysis.
 - b. Each Subject Entity for which a CTA exemption is available is an “Exempt Entity.”
 - c. Any Subject Entity that was not created or registered as set forth above is not a Reporting Company under the CTA.

¹ Please note that Goodwin has three guides in the CTA Toolkit: (i) one for new entities formed or registered on or after January 1, 2024, (ii) one for existing entities formed or registered prior to January 1, 2024, and (iii) one for ongoing filing obligations for all Reporting Companies. This Supplement is intended to provide additional guidance for analyzing CTA reporting and compliance requirements for entities in private investment fund structures and can be referenced when using any of the three CTA Toolkit guides.

Common CTA Exemptions to Consider for Entities in Private Investment Fund Structures

- **Fund-Level Entities**, including main fund vehicles, parallel funds, and feeders:
 - Determine if the **Pooled Investment Vehicle Exemption**² applies to the Subject Entity.
 - If yes, then the Subject Entity is an Exempt Entity and not a Reporting Company and no beneficial ownership information report (a “BOI Report”) is required for the Subject Entity.
 - If no, unless another CTA exemption applies, the Subject Entity is a Reporting Company, and a BOI Report must be filed. See Attachment A for how to identify beneficial owners of the Subject Entity that will need to be disclosed on the BOI Report.
 - Special Rule for Foreign Pooled Investment Vehicles:
 - For a Subject Entity that is formed under the laws of a foreign country and would be deemed a Reporting Company but for the Pooled Investment Vehicle Exemption, such Subject Entity will still need to report beneficial ownership information with respect to one individual who exercises substantial control over the Subject Entity; provided that if more than one individual exercises such control, then the Subject Entity must report information for the individual with the greatest authority over the strategic management of the Subject Entity.
 - 3(a)(1), 3(c)(5) and 3(c)(6) Funds:
 - The Pooled Investment Vehicle Exemption will generally not be available to Subject Entities relying on a 3(a)(1) position (*i.e.*, not an “investment company” under the Investment Company Act of 1940, as amended (the “Company Act”) without reliance on an exception from the definition of investment company) or the exemptions to registration as an “investment company” under 3(c)(5) or 3(c)(6), as these Subject Entities will not meet the criteria of the Pooled Investment Vehicle Exemption.
 - Under certain limited factual scenarios, it may be possible that a Subject Entity described in the bullet point above may qualify for another CTA exemption. Please consult a member of the Goodwin CTA working group before making a determination to rely on another CTA exemption.
 - Funds of One: If the Subject Entity itself cannot rely on the Pooled Investment Vehicle Exemption, the **Subsidiary Exemption**³ may apply if the Subject Entity is wholly-owned and controlled solely by certain Exempt Entities (e.g., Exempt Entities other than a money services business, pooled investment vehicle, entity assisting a tax exempt entity, or inactive entity). This requires confirmation from the investor regarding its exemption status.

² See Pooled Investment Vehicles Operated by Certain Exempt Entities in Exhibit A of any CTA Toolkit guide.

³ See Wholly Owned Subsidiaries of Certain Exempt Entities in Exhibit A of any CTA Toolkit guide.

- **Investment Advisers:**
 - Determine if the **Registered Investment Adviser Exemption**⁴ or the **Venture Capital Adviser Exemption**⁵ applies. If no, consider other possible CTA exemptions that may apply such as the **Public Company Exemption**⁶ or the **Large Operating Company Exemption**⁷.
 - *Relying advisers* identified as such on the Form ADV of an investment adviser registered with the SEC (an “RIA”) can rely on the Registered Investment Adviser Exemption.
- **General Partner Entities** (general partners and managing members of private funds):
 - The **Registered Investment Adviser Exemption** may apply if the Subject Entity:
 - fits within the definition of “investment adviser” under the Investment Advisers Act of 1940 (the “Advisers Act”) (e.g., under the governing agreements, the general partner is legally responsible for (i) the selection and retention of the RIA as manager, adviser or equivalent to the private fund and/or (ii) executing on the recommendations provided by the RIA); and
 - meets the relevant conditions set forth in the SEC staff’s 2005 and 2012 no-action letters to the American Bar Association (note: in most circumstances, we expect the general partners affiliated with RIAs are able to satisfy these conditions).⁸

⁴ See Investment Companies and Investment Advisers in Exhibit A of any CTA Toolkit guide.

⁵ See Venture Capital Fund Advisers in Exhibit A of any CTA Toolkit guide.

⁶ See Public Company in Exhibit A of any CTA Toolkit guide.

⁷ See Large Operating Company in Exhibit A of any CTA Toolkit guide.

⁸ In the 2012 no-action letter to American Bar Association (<https://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm>), 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:

- i. the investment adviser to a private fund establishes the [general partner entity] to act as the private fund’s general partner or managing member;
- ii. the [general partner entity’s] formation documents designate the investment adviser to manage the private fund’s assets;
- iii. 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
- iv. 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).

Goodwin Tips: While prong ii refers to the formation documents of the general partner entity, this condition can be satisfied if the governing document of the private fund either directly delegates or assigns, or gives the general partner the authority to delegate or assign, certain or all of the investment management responsibilities to the investment adviser, which typically is also accompanied by the general partner or the private fund and the investment adviser entering into an investment management or advisory agreement to that effect. Prong iii is more accurately read as the general partner acknowledging that it is subject to the Advisers Act and SEC examination if it relies on this no-action relief, rather than a condition that needs to be satisfied.

- The **Venture Capital Adviser Exemption** may apply if the Subject Entity:
 - is a vehicle set up by a venture capital fund adviser relying on Section 203(l) of the Advisers Act (a “**VC ERA**”) to act as the general partner or managing member of a venture capital fund;
 - fits within the definition of “investment adviser” under the Advisers Act; and
 - reports its beneficial ownership information in Item 10, Schedule A and Schedule B of Part 1A of the Form ADV of such VC ERA in accordance with the Form ADV FAQ.⁹

Note: This exemption is not available to a Subject Entity 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 VC ERA.

 - For any newly formed Subject Entity, the investment adviser has the option to either (i) make an Other-than-Annual Amendment to its Form ADV to include the Subject Entity’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 Subject Entity should file a BOI Report with FinCEN upon formation and, after beneficial ownership information of the Subject Entity 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.
- The **Subsidiary Exemption** may apply if the Subject Entity is wholly-owned by one or more qualified Exempt Entities (e.g., investment advisers or general partner entities that themselves qualify as Exempt Entities).
- **Upper-Tier Entities** (parent entities of investment advisers and general partner entities):
 - There are no categorical exemptions for parent companies of investment advisers or general partner entities that are themselves exempt from beneficial ownership reporting.
 - If the ultimate parent company is an Exempt Entity, then apply the specific facts to determine if the **Subsidiary Exemption** applies to the Subject Entity.
 - Consider other possible CTA exemptions that may apply to the Subject Entity.
- **Subsidiaries of Fund-Level Entities**, including special purpose vehicles and holding vehicles between fund-level entities and investments:
 - If the Subject Entity relies on Section 3(c)(1) or Section 3(c)(7) of the Company Act, is advised by an RIA or a VC ERA, and has been or will be reported on such investment adviser’s Form ADV, consider whether the Subject Entity may rely on the **Pooled Investment Vehicle Exemption**.
 - If the Subject Entity is a direct or indirect subsidiary of a fund-level entity that is exempt under the Pooled Investment Vehicle Exemption (an “**Exempt PIV**”), there is no

⁹ In the Form ADV and IARD Frequently Asked Questions (available at <https://www.sec.gov/divisions/investment/iard/iardfaq>), the SEC staff set forth how a general partner, managing member or other special purpose entity (“**SPE**”) of an “exempt reporting adviser” (including investment advisers relying on the venture capital fund adviser exemption) should respond to the questions on Form ADV, including a requirement that the filing adviser must “include executive officer and ownership information of each SPE on Schedules A and B and identify to which SPE each officer or owner relates by identifying the relevant SPE in the ‘Title or Status’ column of Schedule A.”

categorical exemption under the CTA in light of the express limitations of the Subsidiary Exemption. Consider if either (i) the **Controlled Subsidiary Position** can be relied upon (see [Attachment B](#)) or (ii) if another CTA exemption is available. If not, the Subject Entity is a Reporting Company and a BOI Report should be filed. Note that the beneficial ownership analysis (see [Attachment A](#)) should be evaluated at the subsidiary Reporting Company level (as opposed to the fund-level). If a direct or indirect parent Reporting Company of the subsidiary Reporting Company has obtained a FinCEN ID and the beneficial owners of the subsidiary Reporting Company are the same beneficial owners of the parent Reporting Company, then the subsidiary Reporting Company can report the parent Reporting Company's FinCEN ID on the subsidiary Reporting Company's BOI Report.

- If the Subject Entity is a subsidiary of a fund-level entity that is not an Exempt PIV, consider whether the Subject Entity's ownership interests are directly or indirectly owned by exempt entities of the type described in the Subsidiary Exemption (e.g., directly or indirectly owned solely by one or more exempt entities *other than* a money services business, pooled investment vehicle, entity assisting a tax exempt entity, or inactive entity). If so, the Subject Entity may rely on the Subsidiary Exemption. If not, the Subject Entity is a Reporting Company and a BOI Report should be filed. Note that the beneficial ownership analysis (see [Attachment A](#)) should be evaluated at the subsidiary Reporting Company level (as opposed to the fund-level). If a direct or indirect parent Reporting Company of the subsidiary Reporting Company has obtained a FinCEN ID and the beneficial owners of the subsidiary Reporting Company are the same beneficial owners of the parent Reporting Company, then the subsidiary Reporting Company can report the parent Reporting Company's FinCEN ID on the subsidiary Reporting Company's BOI Report.

- **Portfolio Companies:**

- Specific facts should be applied to determine if any CTA exemption is available to a portfolio company.
- For a portfolio company that is wholly-owned by an Exempt PIV and is solely controlled by a general partner, manager or investment adviser that is an Exempt Entity, the analysis above with respect to Subsidiaries of Fund-Level Entities applies.

Quick Reference Guide

This Quick Reference Guide is intended to serve as a roadmap for common CTA exemptions to be considered and should not be used as the definitive tool to determine the status of any Subject Entity.

Type of Fund Entity	Common CTA Exemptions to be Considered
Main Fund, Parallel Fund, Feeder Fund	Pooled Investment Vehicle Exemption Subsidiary Exemption
Investment Adviser	Registered Investment Adviser Exemption Venture Capital Adviser Exemption Subsidiary Exemption Consider other possible CTA exemptions (see <u>Exhibit A of any CTA Toolkit guide</u>) that may apply (e.g., Public Company Exemption, Large Operating Company Exemption, etc.)
General Partner	Registered Investment Adviser Exemption Venture Capital Adviser Exemption Subsidiary Exemption
Upper-Tier Entities	Subsidiary Exemption Consider other possible CTA exemptions (see <u>Exhibit A of any CTA Toolkit guide</u>) that may apply (e.g., Public Company Exemption, Large Operating Company Exemption, etc.)
Subsidiaries of Fund-Level Entities (e.g., Holding Vehicles between Fund and Investments and Special Purpose Vehicles below Fund Structures)	Subsidiary Exemption Pooled Investment Vehicle Exemption
Portfolio Companies	Subsidiary Exemption Consider other possible CTA exemptions (see <u>Exhibit A of any CTA Toolkit guide</u>) based on specific facts (e.g., Large Operating Company Exemption)

Practical Tips for Fund Manager’s CTA Compliance:

- Maintain a master list tracking the CTA status of each Subject Entity (*i.e.*, status as a Reporting Company, Exempt Entity, or CTA does not apply), specify the reasons for any particular conclusion to facilitate evaluation if facts subsequently change and update to the extent necessary if facts and circumstances arise that modify the status of a particular Subject Entity (*e.g.*, a foreign entity registers to do business in a U.S. state, the ownership or substantial control of a Subject Entity is modified in a manner such that the Subsidiary Exemption is no longer available, etc.).
- For each new Subject Entity formed in a private investment fund structure, conduct the CTA analysis based on current fund structure, facts, and circumstances at the time (*i.e.*, do not rely solely on the analysis conducted for another Subject Entity within the same fund structure).
- Implement procedures designed to alert members of the team responsible for CTA compliance of modifications to beneficial ownership, individuals exercising substantial control over Reporting Companies, and/or changes in beneficial ownership information previously reported to determine if an existing BOI Report filing may need to be amended and/or a new BOI Report needs to be filed. This may be triggered in connection with (i) a fund closing, (ii) transfers, (iii) removal or appointment of new officers and/or authorized signatories, (iv) changes in personnel, such as Investment Committee members or Portfolio Managers, (v) admission of an investor with control rights, and (vi) any other event that may change the individuals previously reported on a BOI Report or require a BOI Report.
- Implement procedures to identify and track newly formed entities that will need to be included on the Form ADV of the registered investment adviser, as this will be necessary to qualify for the Pooled Investment Vehicle Exemption, the Registered Investment Adviser Exemption, and the Venture Capital Adviser Exemption.

Attachment A: Guidance for Identifying Beneficial Owners in Private Investment Fund Structures

A **beneficial owner** is any individual who, directly or indirectly, (i) exercises **substantial control** over the Reporting Company, or (ii) **owns or controls 25% or more of the ownership interests** of the Reporting Company. *Review of beneficial owners should be done at each Reporting Company level (note that an individual that is a 25% or greater owner of or exercises substantial control over an entity above the Reporting Company might not also be a 25% or greater owner of or exercise substantial control over the Reporting Company).*

The Substantial Control Prong:

- **Substantial Control:** Individuals that exercise substantial control over a Reporting Company include:
 - Senior Officers: Individuals serving as senior officers of the Reporting Company, including the President; Chief Financial Officer; General Counsel; Chief Executive Officer; Chief Operating Officer; or any other officer, regardless of title, who performs a similar function for the Reporting Company.
 - Authority Over Appointment: Individuals who have authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of the Reporting Company.
 - Important Decisions: Individuals who direct, determine or have substantial influence over important decisions made by the Reporting Company.¹⁰
 - Other Substantial Control: Individuals may directly or indirectly exercise substantial control over a Reporting Company in other ways.¹¹
- **Important Considerations when Analyzing Substantial Control in Fund Structures:**
 - Sponsor Related Individuals: Consider which individuals related to the sponsor may exercise substantial control over the Reporting Company, such as: individuals serving as officers (of the firm and/or of any Reporting Company), directors, authorized signatories, investment committee members, portfolio managers, and others. **This list is not exhaustive.**

¹⁰ Important decisions 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; or (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. **This list is not exhaustive.**

¹¹ Other forms of substantial control (which may be direct or indirect) may include: (1) board representation; (2) ownership or control of a majority of the voting power or voting rights of the Reporting Company; (3) rights associated with any financing arrangement or interest in a Reporting Company; (4) control over one or more intermediary entities that separately or collectively exercise substantial control over a Reporting Company; (5) arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or (6) any other contract, arrangement, understanding, relationship or otherwise. **This list is not exhaustive.**

- Members of Advisory Board / Limited Partner Advisory Committee: If (i) no member has a veto or blocking right and (ii) rights of the Advisory Board / LPAC are limited to standard rights, including waiving conflicts, investment restrictions, approval of affiliate transactions and consulting with the general partner / investment adviser, it is reasonable to conclude that such members do not exercise substantial control over an entity within the fund structure solely by virtue of serving as a member of the Advisory Board / LPAC. Members of Advisory Boards / LPACs with greater rights and/or a member that holds a veto or blocking right may be considered to exercise substantial control and requires further analysis.
- Investors with Blocking or Veto Rights:
 - Step 1 – Identify any Investors that Exercise Substantial Control over applicable Reporting Company. Examples may include:
 - If an investor holds a contractual right (under the governing documents of the fund, a side letter or otherwise) or holds a voting interest that would allow such investor to: (i) block, veto or otherwise control any Important Decisions (see list in footnote 10) made by the applicable Reporting Company being analyzed or (ii) remove/replace the general partner, investment adviser or senior officer of the applicable Reporting Company being analyzed, then such investor would likely be deemed to exercise substantial control over the Reporting Company.
 - If, by virtue of the percentage voting interest held by an investor, such investor can (i) block an amendment to the governing documents of the Reporting Company or (ii) vote to remove the general partner, manager or a senior officer of the Reporting Company, then such investor would likely be deemed to exercise substantial control over the Reporting Company.
 - Step 2 – Identify and Collect Beneficial Ownership Information from Individuals Related to Investor:
 - If the investor that exercises substantial control over the Reporting Company is an individual, then collect beneficial owner information from such individual and include in the BOI Report.
 - If the investor that exercises substantial control over the Reporting Company is an entity, identify any individuals that exercise substantial control (as determined under the CTA) over such investor's interest in the Reporting Company, collect beneficial owner information from each such individual and include in the BOI Report. For any entity, the expectation is that at least one person exercises substantial control over such entity.

The 25% Beneficial Ownership Prong:

- **Ownership Interests:** Individuals who directly or indirectly own or control 25% or more of the ownership interests of the Reporting Company.
 - Conduct 25% ownership testing at the Reporting Company level itself (note that an individual that owns 25% or more of an entity above the Reporting Company may not own 25% of the Reporting Company).
 - The Goodwin standard form Subscription Agreement will be updated to include an additional attachment designed to facilitate identification of individuals that own 25% or more of fund-level entities.

- “Ownership Interests” include:
 - Any equity, stock or similar instrument;
 - Preorganization certificate or subscription;
 - Transferrable share of or voting trust certificate or certificate of deposit for an equity security, interest in a joint venture, or certificate of interest in a business trust;
 - Capital or profits interests;
 - Instruments convertible into the foregoing (e.g., SAFE, convertible note, etc.);¹²
 - Warrants or rights, and options or privileges to acquire or sell a share or interest in a Reporting Company;
 - Any put, call, straddle, or other option or privilege of buying any ownership interest in a Reporting Company (except to the extent that such option or privilege is created and held by a third party without the knowledge or involvement of the Reporting Company); and
 - Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.¹³
- **Special Rule: Individuals Holding Interests in a Reporting Company Exclusively through Exempt Entities:**
 - If an individual is a beneficial owner of a Reporting Company **exclusively** by virtue of the individual’s indirect ownership in the Reporting Company through one or more exempt entities, the Reporting Company may include the names of the exempt entities in lieu of information of the individual.
 - The portfolio company cannot rely on this special rule if (i) the individual also directly, or indirectly through a non-exempt entity, holds any interest in such portfolio company and (ii) such individual owns or controls 25% or more of the ownership interests of the Reporting Company.
 - The portfolio company cannot rely on this special rule if the individual exercises substantial control over such portfolio company (e.g., by serving on the board of directors, etc.).
- **Debt:** Considered an ownership interest only if it enables the holder to exercise the same rights as an equity interest, including the right to convert the debt instrument into equity or other ownership instrument.
- **Calculating Ownership:** Total ownership interest that an individual owns or controls, directly or indirectly, is calculated as a percentage of the total outstanding ownership interests.

¹² Convertible securities are analyzed on an as-converted basis, assuming that only the subject individual’s convertible securities have been converted for purposes of the calculation.

¹³ A person may have a direct or indirect ownership or control of ownership interests through any contract, arrangement, understanding, or relationship, including (1) joint ownership of an undivided interest; (2) through another individual acting as a nominee, intermediary, custodian, or agent on behalf of an individual; and (3) through ownership or control of one or more intermediary entities.

- Calculations are performed at the present time, and any options or similar interests of the individual are treated as exercised.
- For reporting companies that issue capital or profit interests, the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests in the entity.
- For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage is the greater of:
 - (1) The total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, and
 - (2) The total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interest.
- **If the facts and circumstances do not permit such calculations to be performed with reasonable certainty, then any individual who owns 25% or more of any class or type of ownership interest of a Reporting Company shall be deemed to own or control 25% or more of the ownership interests of the Reporting Company.**

Trusts:

- A trustee or other person with authority to dispose of trust assets is considered to have ownership or control (such as a distribution adviser, trust protector, or other designated representative, whether acting in a fiduciary capacity or not).
- A beneficiary is considered to own or control ownership interests held by the trust if the beneficiary is the sole permissible recipient of trust income and principal or has the right to demand distribution or withdrawal of substantially all trust assets.
- A grantor or settlor having the right to revoke the trust or withdraw trust assets is considered to own or control ownership interests held in the trust.

Exemptions from the definition of “Beneficial Owner”:

- A **minor child** (as determined under the law of the state or tribe where the Reporting Company is created or first registered), though the information of the parent or guardian of the minor child must be reported.
- An individual acting as a **nominee, intermediary, custodian, or agent** on behalf of another individual.
- An individual acting **solely as an employee** of an entity (other than an employee who is a senior officer).
- An individual whose only interest in an entity is through a **future right of inheritance** (as opposed to a present interest that person already acquired through inheritance).
- A creditor of a Reporting Company whose rights or interests are **solely for the payment of a predetermined sum of money or a loan covenant or similar right** associated with the right to receive payment that is intended to secure or enhance the likelihood of repayment.

Attachment B: Guidance for Considering the Controlled Subsidiary Position

Caution: The Controlled Subsidiary Position is based on the use of the word “controlled” in the CTA itself and FinCEN’s implementing regulations, but is not fully or expressly described in either the statute or the regulations. As such, it is 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 an Exempt PIV, the Subject Entity is not categorically exempted under the Subsidiary Exemption.
- However, if the Subject Entity is (i) a subsidiary of an Exempt PIV and (ii) directly or indirectly controlled solely by certain entities described in the Subsidiary Exemption that are themselves exempt from filing a BOI Report (*i.e.*, the general partner, managing member, manager and/or investment adviser is an Exempt Entity relying on the Registered Investment Adviser Exemption or the Venture Capital Adviser Exemption) (each such general partner, managing member, manager and/or investment adviser, an “Exempt Controlling Entity”), then it may be reasonable for the Subject Entity to take the position that it should be exempt from beneficial ownership reporting under the Subsidiary Exemption if the filing of a BOI Report by the Subject Entity would only require disclosure relating to one or more Exempt Controlling Entities (the “Controlled Subsidiary Position”).
- **The Controlled Subsidiary Position should not be relied upon to the extent that any individual other than beneficial owners of the Exempt Controlling Entities would need to be identified as beneficial owners of the Subject Entity on its BOI Report but for the Controlled Subsidiary Position.**
- The examples below illustrate common fact patterns that may arise in connection with analyzing the status of a Subject Entity that is a subsidiary of an Exempt PIV:
 - For a Subject Entity that is wholly-owned by an Exempt PIV and controlled solely by the Exempt PIV’s Exempt Controlling Entity(ies), it may be reasonable to rely on the Controlled Subsidiary Position and not file a BOI Report for the Subject Entity.
 - For a Subject Entity that is wholly-owned by multiple Exempt PIVs with the same Exempt Controlling Entity(ies) and is controlled solely by such Exempt Controlling Entity(ies), it may be reasonable to rely on the Controlled Subsidiary Position and not file a BOI Report for the Subject Entity.
 - For a Subject Entity that is wholly-owned by multiple Exempt PIVs that are unaffiliated and is controlled solely by one or more Exempt Controlling Entities, it may be reasonable to rely on the Controlled Subsidiary Position and not file a BOI Report for the Subject Entity.
 - For a Subject Entity that is majority owned by an Exempt PIV and controlled solely by such Exempt PIV’s Exempt Controlling Entity(ies), with a minority stake (less than 25%) owned by an individual with no control rights, it may be reasonable to rely on the Controlled Subsidiary Position and not file a BOI Report for the Subject Entity.
 - For a Subject Entity that is majority owned by an Exempt PIV and controlled by such Exempt PIV’s Exempt Controlling Entity(ies), with a minority stake (less than 25%) owned by an individual with some control rights, the analysis turns on whether such

individual exercises “substantial control” over such entity (see Attachment A). It is more difficult to conclude that such Subject Entity can rely on the Controlled Subsidiary Position, and if such individual exercises “substantial control” over the Subject Entity, then Subject Entity should file a BOI Report.

- For a Subject Entity that is majority owned by an Exempt PIV and controlled by such Exempt PIV’s Exempt Controlling Entity, with a minority stake (but 25% or greater) owned by an individual with some control rights, then if no other exemption is available to such Subject Entity, the Subject Entity should file a BOI Report.

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