Hughes Hubbard & Reed

# Disclosure Requirements Under New York LLC Transparency Act

Client Advisories

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**January 11, 2024 -** Following enactment of the federal Corporate Transparency Act (the "CTA"), which established an unprecedented requirement in the U.S. to disclose to the federal government the beneficial owners of certain entities, on December 22, 2023, New York Governor Kathleen Hochul signed into law the New York LLC Transparency Act (the "NYTA"). The NYTA establishes a state-level reporting regime that would increase transparency of the ownership of certain limited liability companies ("LLCs"). The NYTA will take effect on December 21, 2024. As noted below, however, Governor Hochul's approval was subject to a "chapter amendment" [1] that New York State ("NY") intends to enact prior to effectiveness to address privacy concerns.

The NYTA is broadly modeled upon the CTA. [2] Under the NYTA, an LLC must report on its "beneficial owners" (as defined in the CTA) if such LLC (1) is formed, or registered to do business, in NY and (2) meets the definition of a "reporting company" (as defined in the CTA). [3] Our prior Client Advisories on the CTA can be found here and here.

Similar to the CTA, the NYTA requires disclosure of each beneficial owner's full legal name, birthdate, business address and an identification number from an acceptable identification document (such as an unexpired driver's license or passport). [4]

Unlike the CTA, however, the NYTA requires public disclosure of names of the beneficial owners by way of a publicly searchable database maintained by the NY Secretary of State.

In order to address privacy concerns, NY is expected to amend the NYTA before it takes effect on December 21, 2024. According to an approval memo that Governor Hochul released (download a copy by clicking here), Governor Hochul secured an agreement from the NY Legislature to pass an amending bill such that beneficial ownership information would be withheld from public disclosure (the "Chapter Amendment"). The Chapter Amendment would instead establish a non-public database that is accessible only to those in government.

Noncompliance with the NYTA may have several consequences, including:

- **Loss of good standing status**: Noncompliance will, after 30 days of noncompliance, result in a "past due" status on the records of the NY State Department. As a general matter, the loss of good standing status has a number of adverse consequences, such as (1) difficulties in obtaining bank financing, (2) inability to bring a lawsuit and/or (3) the breach of such LLC's representation as to its good standing in contracts.

- **Personal liability** (i.e., piercing of the corporate veil)
- **Fees and penalties** ($250 fine after a 90-day period of noncompliance and notice of such delinquency)

As described above, NY is expected to amend the NYTA by way of the Chapter Amendment prior to December 2024; however, as of the date of this Client Advisory, NY has not finalized its exact scope and language. We expect to provide a more detailed update once a final version of the Chapter Amendment is available.

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1. A "chapter amendment" is an informal procedure in New York State by which the governor and the legislature agree, at the time the governor signs a bill, to pass an amending bill in the next legislative session in order to facilitate the legislative process.
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2. One key difference is applicability. The NYTA applies to limited liability companies only; the CTA applies to various other entities created, or registered to do business in the U.S., by the filing of a document with a secretary of state or a similar office under the law of a U.S. state or Indian Tribe (as defined in the CTA).
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3. Notably, the NYTA incorporates the 23 reporting exemptions found in the CTA, including:
- Large operating companies, defined as an entity that has:
  - more than 20 full-time employees in the U.S.,
  - an operating presence at a physical office in the U.S., and
  - more than $5 million in gross receipts/sales on its filed prior year U.S. federal income tax return (excluding gross receipts/sales from foreign sources)
- Issuers of SEC-registered securities
- SEC-registered investment companies or investment advisers
- Venture capital fund advisers
- Tax-exempt entities
- Insurance companies and certain other highly regulated entities
- Wholly owned/controlled subsidiaries of certain exempt companies
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4. There are some differences to note. The CTA requires disclosure of a residential address (not business address) and submission of a photocopy of the identification document (not merely an identification number). ↩

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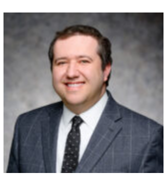

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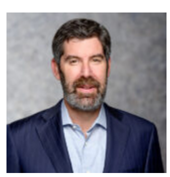

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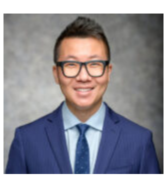

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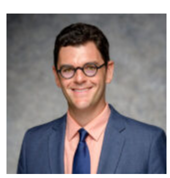

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