2023 Delaware Law Year in Review and CTA Developments

Thursday, December 7, 2023

Speakers: Peter Murphy, Gary Lipkin & Matt Gerber

SAUL EWING LLP

1

Delaware 2023 Corporate Law Statutory Updates

SAUL EWING LLP

2

Background

- Each year, Delaware makes amendments to its corporate statutes, including the Delaware General Corporation Law (the "DGCL"), and each of its alternative entity acts, including the Delaware Limited Liability Company Act, the Delaware Revised Uniform Limited Partnership Act, and the Delaware Revised Uniform Partnership Act (collectively, "Alternative Entity Acts").
- Various stakeholders, including the Delaware State Bar Association, propose the amendments each year, with the goal of keeping Delaware at the forefront of corporate law.
- The Delaware legislature typically passes the amendments in its annual session, with the governor signing them into law each summer.
- The 2023 amendments were effective as of August 1, 2023.

SAUL EWING LLP

3

2023 DGCL Amendments – Ratification of Defective Corporate Acts

- Section 204 of the DGCL provides the procedure by which corporations may ratify a defective corporate act that is otherwise void or voidable.
  - Previously, ratification could be cumbersome and expensive, often requiring corporations to file a certificate of validation with the Delaware Secretary of State, which requires detailed information.
- The 2023 amendments streamline this process by:
  - (1) reducing the amount of information required in a certificate of validation; and
  - (2) only requiring a certificate of validation if another section of the DGCL requires a certificate to be filed for the defective act and the certificate was either not filed or must be amended.

SAUL EWING LLP

2023 DGCL Amendments – Insolvency Exception for Asset Sales

- For some time, practitioners in Delaware have debated whether there is an "insolvency exception" from the stockholder approval requirement of DGCL Section 271 for a sale of all or substantially all of a corporation's assets, which would permit an insolvent corporation to sell its assets without stockholder approval.
  - In 2022, in *Stream TV Networks, Inc. v. SeeCubic, Inc*., 279 A3d 323 (Del. 2022), the Delaware Supreme Court settled the question, holding there is no common law insolvency exception.
- In response to this decision, Section 272(b) of the DGCL has been amended, without overruling the court's opinion, to establish a safe harbor for insolvent corporations to sell mortgaged or pledged assets without stockholder approval.

SAUL EWING LLP

2023 DGCL Amendments – Insolvency Exception for Asset Sales (Continued)

- The amended Section 272(b) permits a corporation, without stockholder approval, to sell, lease or exchange its property or assets subject to a mortgage or pledge, but only if the secured party has the right under applicable law to do so without the corporation's consent, and either:
  - (1) the secured party exercises such right; or
  - (2) the board of directors authorizes an alternative transaction and the value of the secured property or assets to be disposed of in the alternative transaction does not exceed the amount of liabilities or obligations reduced or eliminated by the transaction and the transaction isn't prohibited by applicable law.
- Finally, the exception applies even if the corporation's certificate of incorporation expressly requires stockholder approval for sales of all or substantially all of the corporation's assets, and the corporation must "opt out" of Section 272(b).

SAUL EWING LLP

6

2023 DGCL Amendments – Authorization of Stock Splits & Changes in Authorized Shares

- The DGCL has long provided that certain amendments to a corporation's certificate of incorporation may be taken without stockholder approval. New Section 242(d) creates additional categories of amendments where no stockholder approval (or a lower stockholder approval threshold) is required.
- Under the new Section 242(d), no stockholder approval is required for forward stock splits (i.e., the number of shares is divided into a greater number) or increasing the authorized shares needed to do so, so long as the corporation has only one class of outstanding stock and that class is not divided into series.

SAUL EWING LLP

7

2023 DGCL Amendments – Authorization of Stock Splits & Changes in Authorized Shares (Continued)

- For reverse stock splits (i.e., the number of shares is divided into a smaller number) or changes in the authorized shares in a class other than in connection with a forward stock split, the necessary stockholder vote will be reduced from a majority of outstanding shares *entitled to vote*, to a majority of votes *actually cast*, which would have the effect of causing abstentions to have no effect on a stockholder vote.
  - This will only apply if the corporation's stock is listed on a national securities exchange and continues to meet listing requirements after the split.
- Importantly, Section 242(d) still allows a corporation's certificate of incorporation to adopt a "majority of shares outstanding" vote for forward and reverse stock splits. However, a corporation must affirmatively "opt out" of the provisions of Section 242(d) in its certificate of incorporation.

SAUL EWING LLP

2023 DGCL Amendments – Stockholder Notice

- The amendments to Section 228 simplify the determination of the record date for stockholders entitled to receive notice of action by the consent of stockholders in lieu of a meeting. Under amended Section 228(e), notice of action by consent must be given to persons who:
  - (i) were stockholders as of the record date for such action by consent;
  - (ii) would have been entitled to notice of the stockholders' meeting if such action had been taken at a meeting and the record date for notice of such meeting were the same as the record date for such action by consent; and
  - (iii) have not consented to such action.
- A notice that constitutes notice of Internet availability of proxy materials under the federal Securities Exchange Act is also sufficient for notice purposes under Section 228(e).

SAUL EWING LLP

2023 Alternative Entity Act Amendments

- The Alternative Entity Statutes were each amended to clarify certain items, including:
  - An amendment to an operating agreement or partnership agreement made in connection with a merger agreement applies only to the surviving or resulting LLC or partnership, and not to an LLC or partnership that is not a surviving entity.
  - For a period of six (6) years following the effective date of a division of an LLC or LP, the prompt filing of a certificate of amendment to the certificate of division is required to reflect a change in: (a) the name or business address of the division contact or (b) the address where the plan of division is kept on file.
  - Revoking termination of a protected series or dissolution of a registered series prior to filing a certificate of cancellation with the Delaware Secretary of State is permitted, unless prohibited by the LLC's operating agreement or LP's partnership agreement.
  - A subscription for a limited liability company or partnership interest may be irrevocable if the subscription states it is irrevocable.

SAUL EWING LLP

10

A Review of Important Corporate Law Decisions from the Court of Chancery in 2023

SAUL EWING LLP

11

Anderson v. Magellan Health, Inc.,
298 A.2d 734 (Del. Ch. 2023)

- Why is this important? Abandonment of granting mootness fee awards where supplemental disclosures were merely "helpful."
- New Requirement: Mootness fees only for "plainly material" disclosures

SAUL EWING LLP

Anderson v. Magellan Health, Inc.,
298 A.2d 734 (Del. Ch. 2023)

Background:

- Centene Corp. agreed to acquire Magellan Health, Inc. in January 2021.
- Magellan had conducted a sale process in 2019 separate from the negotiations that led to the Centene deal. As part of the 2019 process, 24 prospective bidders entered confidentiality agreements containing "don't ask, don't waive" provisions.
- Confidentiality agreements executed by potential acquirers as part of an auction process typically contain "standstill" provisions that obligate the acquirer to refrain from taking actions that relate to acquisition or control of the target. A don't ask-don't-waive provision prohibits a potential acquirer from making any public or private requests to waive the standstill restrictions.
- Here, the plaintiff shareholder claimed that the don't-ask-don't-waive provisions impeded the process that led to the Centene deal and, because the provisions were not fully described in the proxy, rendered stockholder disclosures materially deficient.

SAUL EWING LLP

Anderson v. Magellan Health, Inc.,
298 A.2d 734 (Del. Ch. 2023)

Litigation and Settlement

- Plaintiff-shareholder filed suit seeking to enjoin the acquisition, claiming that the Board's disclosures did not sufficiently disclose the don't ask don't tell provisions. Plaintiff felt these provisions could have affected the sales price.
- In response, 10 days after initiation of the suit, Magellan issued supplemental disclosures providing further detail on the don't-ask don't-waive provisions. Magellan also waived its rights under three of the four confidentiality agreements in effect at the time of the supplemental disclosures. The plaintiff agreed that these actions mooted his claims and stipulated to dismissal.
- Plaintiff asked for $1.1 million in a mootness fee.

SAUL EWING LLP

14

Anderson v. Magellan Health, Inc.,
298 A.2d 734 (Del. Ch. 2023)

Court's Decision on Mootness Fee

- Awarded Mootness Fee: $75,000 instead of the $1.1 million sought.
- Rationale: Waivers and disclosures not materially significant for a higher fee. The Court essentially found that the litigation did not actually result in more money to the Company.
- Shift from "helpful" to "plainly material" disclosures for fee eligibility.

SAUL EWING LLP

15

Anderson v. Magellan Health, Inc.,
298 A.2d 734 (Del. Ch. 2023)

Implications and Trends

- Part of a broader effort to curb excessive M&A litigation where a merger would be announced, proxies would be sought, and a lawsuit would be filed for breach of fiduciary duty seeking injunctive relief to block the suit.
- Companies would then settle and issue supplemental disclosures, mooting the litigation.
- The shareholder would then seek fees for merely "helpful" supplemental disclosures.
- The intention here is to discourage meritless M&A litigation
- Emphasis on stringent scrutiny for mootness fees in future cases
- Signal for potential plaintiffs and attorneys about the non-viability of weak cases

SAUL EWING LLP

In re Oracle Corp. Derivative Litigation,
2023 WL 3408772 (Del. Ch. May 12, 2023)

- Why is this important?
  - This case provides a blueprint for consummating transactions with a fiduciary on both sides. Mere potential for control not enough to apply entire fairness in a merger transaction.
- Allegations:
  - Oracle acquired Netsuite and overpaid for it due to Larry Ellison's conflict of interest.
  - Ellison is the founder, director and officer of Oracle; as well as a 28% stockholder of Oracle and 47% stockholder of NetSuite.

SAUL EWING LLP

In re Oracle Corp. Derivative Litigation, 2023 WL 3408772 (Del. Ch. May 12, 2023)

Legal Standard for Controller Status

- Definition: Minority stockholder deemed a controller if they exercise voting and managerial power equivalent to majority control
- Scope: General control of the corporation or specific control over the transaction
- Transaction would be governed by the business judgment rule unless Plaintiff could show that Ellison was a "controller" on both sides of the deal or that Ellison misled the SLC and/or Board.
- Here, Ellison did not exercise hard control over Oracle, owning only 30% of the stock. He similarly relinquished executive control years earlier.

SAUL EWING LLP

18

In re Oracle Corp. Derivative Litigation, 2023 WL 3408772 (Del. Ch. May 12, 2023)

Oracle's Transaction Process

- Key Elements:
  - Control of the transaction by a special committee.
  - Ellison's recusal on both sides.
  - Strict adherence to rules of recusal
  - Ellison barred from even discussing the transaction
  - Committee and Oracle Employees: Involved in negotiations only under committee direction and informed of Ellison's recusal.

SAUL EWING LLP

19

In re Oracle Corp. Derivative Litigation,
2023 WL 3408772 (Del. Ch. May 12, 2023)

Key Takeaways for Corporate Transactions

- Using a SLC to effectively handle potential conflicts of interest
- Crucial in managing transactions with *potential* controlling parties
- Adherence to recusal is key to maintaining integrity and fairness in corporate transactions.
- The Court found that Oracle used a well-functioning SLC.

SAUL EWING LLP

20

Milhollan v. Live Ventures, Inc.,
2023 WL 2943237 (Del. Ch. Apr. 13, 2023)

- Why important?
  - Exclusive forum clause in merger agreement does not convey jurisdiction.
- Case Background:
  - Allegation: Buyer failed to make timely indemnity holdback payment to former stockholders.
  - Plaintiff's Claim: Exclusive forum clause in merger agreement as basis for Chancery Court's jurisdiction.
  - Clause in Question designated the Court of Chancery of Delaware for disputes.

SAUL EWING LLP

21

Milhollan v. Live Ventures, Inc.,
2023 WL 2943237 (Del. Ch. Apr. 13, 2023)

Key Ruling and Takeaway:

- Court held that it lacked jurisdiction to hear the action.
- Chancery Court's Jurisdiction is limited to cases involving equitable rights or remedies without adequate legal remedy.
- Breach of contract claim seeking money damages alone (like you see in the typical earnout case) is outside Chancery Court's jurisdiction.
- Forum Selection Clauses cannot override statutory or legal jurisdictional requirements.

SAUL EWING LLP

22

Milhollan v. Live Ventures, Inc.,
2023 WL 2943237 (Del. Ch. Apr. 13, 2023)

- What about 8 *Del. C.* Section 111 of the Delaware General Corporation Law, which generally grants the Court of Chancery jurisdiction to hear matters involving the interpretation, enforceability or validity of merger agreements?
- Only where at least one of the parties is a Delaware corporation.
- Neither company was a Delaware company. *See Darby Emerging Mkts. Fund, L.P. v. Ryan*, 2013 WL 6401131, at *7 (Del. Ch. Nov. 27, 2013) ("To the extent Section 111 is ambiguous with respect to its application to foreign entities, the synopsis appears to resolve that ambiguity by limiting Section 111's application to Delaware corporations."); 1 Robert S. Saunders *et al.*, *Folk on the Delaware General Corporation Law* § 111.01 (7th ed. 2022) ("The application of section 111 is limited to Delaware corporations.").

SAUL EWING LLP

23

In re Neworld Energy Holdings, LLC,
2023 WL 5529689 (Del. Ch. Aug. 24, 2023)

- Why is this important?
  - Statutory dissolution claims of a Delaware LLC are arbitrable.
- Ruling:
  - LLC Agreement contained an arbitration clause for disputes relating to the LLC.
  - Court held that this includes claims for statutory dissolution.
  - Even where, as here, the LLC Agreement excepted arbitration where there were requests for equitable relief, the Court held that did not apply to statutory dissolution requests.
  - So keep this in mind when drafting ADR provisions in the LLC agreements.

SAUL EWING LLP

Simeone v. Walt Disney Co.,
302 A.3d 956 (Del. Ch. 2023)

Background and Context:

- The lawsuit involved a Disney stockholder's demand to inspect Disney's books and records related to its opposition to Florida's "don't say gay" law.
- Disney's public opposition led to alleged retaliation by Florida's government, including changes to the Reedy Creek Improvement District (RCID).

SAUL EWING LLP

Simeone v. Walt Disney Co.,
302 A.3d 956 (Del. Ch. 2023)

Disney's Initial Response and Stockholder's Demand:

- Disney provided documents on corporate policies and board-level decisions but declined to produce director-independence questionnaires and email communications.
- The stockholder sued in the Delaware Court of Chancery for further inspection.

SAUL EWING LLP

Simeone v. Walt Disney Co.,
302 A.3d 956 (Del. Ch. 2023)

Court of Chancery's Decision:

- The court rejected the lawsuit based on multiple grounds.
- First, the stated purpose not the stockholder's own.
- The court found that the stated purpose for inspection reflected the agenda of the stockholder's counsel, not the stockholder himself. The stockholder testified he didn't care about this until he was solicited by an attorney at the Thomas More Society, who wanted to see if Disney breached its fiduciary duties. The stockholder only wanted to know who made the decision at Disney to oppose the Florida law.

SAUL EWING LLP

Simeone v. Walt Disney Co.,
302 A.3d 956 (Del. Ch. 2023)

No Proper Purpose for Inspection Demand:

- Even when investigating corporate wrongdoing, merely disagreeing with a board's business decision does not constitute evidence of wrongdoing warranting an inspection.
- The Court emphasized that a board's decisions on public policy issues are legitimate business judgments.
- The Court highlighted the board's responsibility in setting corporate policy, including public positions on political issues.
- It acknowledged that boards can consider interests of corporate stakeholders, like employees, when making decisions to build long-term value.

SAUL EWING LLP

28

28

Simeone v. Walt Disney Co.,
302 A.3d 956 (Del. Ch. 2023)

Implications of the Decision:

- The decision underscores the importance of a stockholder's genuine purpose in seeking corporate records.
- It differentiates between poor business decisions and actions rising to the level of a breach of fiduciary duty.
- Emphasizes that boards should make key policy decisions, potentially considering broader stakeholder interests.
- The court's ruling serves as a precedent for assessing the legitimacy of stockholders' motives in book and record inspection demands.
- Reinforces the principle that corporate boards have the discretion to make decisions on social and political issues as part of their business judgment.

SAUL EWING LLP

29

29

In re McDonald's Corp. S'holder Derivative Litig.,
289 A.3d 343 (Del. Ch. 2023)

- Why is this important?
  - Vice Chancellor Laster's ruling in this case marks a significant decision, determining for the first time that corporate officers owe oversight duties akin to those of directors under the *Caremark* decision.
  - Rejection of the argument that officers don't owe oversight duties.
  - Officers' duties include establishing reasonable information systems and responding to red flags within their domain of responsibility.
- Scope of Oversight Duties:
  - The court emphasized the context-driven nature of these duties.
  - Different officers have different areas of responsibility (e.g., CFO for financial oversight).

SAUL EWING LLP

30

In re McDonald's Corp. S'holder Derivative Litig.,
289 A.3d 343 (Del. Ch. 2023)

Pleading Breach of Oversight Duties:

- Breach of oversight duties requires allegations of disloyal conduct amounting to bad faith.
- Not an easy claim to make. For a red flags claim, plaintiffs must show that the officer was aware of misconduct evidence and failed to take action.

Allegations in McDonald's Case:

- Plaintiffs alleged existence of red flags indicating sexual harassment at the company.
- The global chief people officer was accused of ignoring these red flags and engaging in harassment himself.

SAUL EWING LLP

31

In re McDonald's Corp. S'holder Derivative Litig.,
289 A.3d 343 (Del. Ch. 2023)

Derivative Nature of Oversight Claims:

- Oversight claims against officers are derivative, meaning the board controls such claims unless demand futility or wrongful refusal is demonstrated.
- The court also concluded that allegations of sexual harassment by an officer constitute a breach of duty of loyalty, as such actions are disloyal and in bad faith.

SAUL EWING LLP

32

In re McDonald's Corp. S'holder Derivative Litig.,
289 A.3d 343 (Del. Ch. 2023)

Implications:

- This clarifies the oversight responsibilities of corporate officers.
- It underscores the importance of officers in maintaining corporate ethics and compliance within their areas of control.
- The ruling may prompt a reevaluation of the roles and responsibilities of corporate officers in oversight.
- The decision underscores the evolving expectations of corporate governance and the need for proactive management of corporate compliance and ethics.

SAUL EWING LLP

33

ArchKey Intermediate Holdings Inc. v. Mona, 302 A.3d 975 (Del. Ch. 2023)

Why is it important?

- This case provides further guidance on distinguishing between independent expert or accountant provisions and arbitrator provisions.
- This case highlights the complexities in drafting and interpreting post-closing purchase price adjustment clauses in private company acquisition agreements.
- The dispute primarily revolved around whether a dispute resolution mechanism in an acquisition agreement constituted an expert determination or an arbitration, something that we see routinely in the Court of Chancery.

SAUL EWING LLP

ArchKey Intermediate Holdings Inc. v. Mona, 302 A.3d 975 (Del. Ch. 2023)

Expert Determination vs. Arbitration:

- Extremely common issue.
- Confusion often exists between these two methods of dispute resolution.
- Arbitration is a more formal process, akin to a judicial proceeding, whereas expert determination is an informal process focused on resolving specific factual issues. Arbitrators can usually make legal decisions, whereas independent accountants or experts usually cannot.
- An independent expert is usually retained only to make certain decisions relating to simple accounting such as coming up with the proper determination of working capital and making adjustments.

SAUL EWING LLP

ArchKey Intermediate Holdings Inc. v. Mona,
302 A.3d 975 (Del. Ch. 2023)

The Archkey Decision:

- Here, Vice Chancellor Laster ruled that the mechanism in the Stock Purchase Agreement was an expert determination, not an arbitration provision, even though the agreement used the term "arbitrate". It is important to looks beyond the terms used to see what was intended to be resolved.
- The Court provided guidance on interpreting "past practices" and GAAP compliance in the context of preparing an adjusted closing balance sheet, and held that disputes relating to these specific disputes are likely to fall under the purview of an independent expert.

SAUL EWING LLP

36

ArchKey Intermediate Holdings Inc. v. Mona,
302 A.3d 975 (Del. Ch. 2023)

Implications for Transactional Lawyers:

- The case serves as a cautionary tale for transactional lawyers to clearly define and understand the terms used in drafting acquisition agreements, particularly regarding dispute resolution.
- The decision underscores the need for precision in language to avoid unintended legal interpretations.
- For corporate litigation practitioners, it's a reminder that even if a dispute resolution clause is not a bonafide "arbitration clause," that does not mean that you cannot seek to stay litigation to have the proceeding go forward before the independent accountant in the first instance.

SAUL EWING LLP

37

Understanding the Corporate Transparency Act (CTA)

SAUL EWING LLP

38

Bottom Line Up Front:

- **Simply**: The federal government wants to connect a human being to each entity formed or registered in the US.
- **More Precise**: The CTA requires all **reporting companies** identify their **beneficial owners** and their **company applicants**.
- These are substantive legal questions that may require legal analysis and/or an opinion of counsel.

SAUL EWING LLP

39

Corporate Transparency Act (CTA)

- CTA establishes uniform **beneficial ownership information** (BOI) reporting requirements for certain business entities.
- A BOI report must be filed with the Financial Crimes Enforcement Network (FinCEN) –
  - Private high security database: Beneficial Ownership Secure System (BOSS)
  - Limited access (e.g., law enforcement and national security)

SAUL EWING LLP

Corporate Transparency Act (CTA) Goals:

Congress enacted the CTA to:

- Align U.S. law with international disclosure requirements.
- Close gaps in the AML/CTF framework due to states not collecting Beneficial Ownership Information (BOI) on legal entities
- Protect U.S. national security and financial systems from illicit use
- Provide essential information to national security, intelligence, and law enforcement agencies

SAUL EWING LLP

Who Needs to Report?

Domestic Reporting Companies

- Corporation, LLC, or other entity created by filing a document with a SOS (or similar office)

Foreign Reporting Companies

- Corporation, LLC, or other entity created under foreign law and registered in US by filing a document with a SOS (or similar office)

"Other entities"?

- LLP, LLLPs, STs, BTs, most LPs – FinCEN expects so
- SPs, GPs, trusts – FinCEN expects not

SAUL EWING LLP

Who Does Not Need to Report BOI?

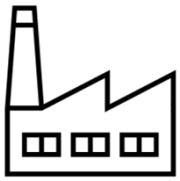
1. Securities Exchange Act issuer
2. Governmental authority
3. Bank
4. Credit Union
5. Depository institution holding company
6. Money services business registered with FinCEN
7. Broker/Dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment Company or investment advisory registered with SEC
11. Venture capital fund advisor
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Public accounting firm
16. Public utility
17. Financial market utility
18. Pooled investment vehicle
19. Tax exempt entity
20. Entity assisting a tax-exempt entity
21. Large operating company
22. Subsidiary of certain exempt entities
23. Inactive entity

SAUL EWING LLP

Exemption: "Large Operating Company"

Any entity that:

- Employs 20+ full time employees in the U.S., and
- Filed a Federal income tax or information return in the U.S. for the previous year demonstrating over $5 million in gross receipts or sales; and
- Has an operating presence at a physical office in the U.S.



SAUL EWING LLP

44

44

Reporting Requirements

Initial BOI Report will include:

- Information on the Reporting Company
- Information on every Beneficial Owner
- Information on every Company Applicant

SAUL EWING LLP

45

45

Reporting Company Info:

- Legal name used to establish the entity
- Any trade name or "DBA"
- Complete current address consisting of:
  - If in US, the street address of such principal place of business; and
  - In all other cases, the street address of primary location in the US
- State of formation or foreign registration
- IRS Tax ID number (and EIN);

SAUL EWING LLP

46

Beneficial Ownership Info:

- The full legal name of the individual
- The date of birth of the individual
- A complete current address of the individual's residence
- A unique identifying number and the issuing jurisdiction from:
  - A non-expired passport, driver's license, or identification document issued to the individual by the U.S. or foreign government.
- An image of the document containing unique ID number.

SAUL EWING LLP

47

Who is a Beneficial Owner?

31 CFR 1010.380(d):

Beneficial owner . . . means any individual who, directly or indirectly, either:

- Exercises substantial control over such reporting company

OR

- Owns or controls at least 25% of the ownership interest of such reporting company

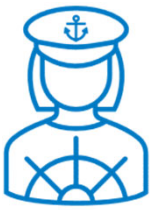
SAUL EWING LLP

48

48

What is Substantial Control?

- Senior Officers – (President, CFO, GC, CEO, COO, or similar function)
- Individual with Authority to Appoint Senior Officers
- Important Decision-Maker
- Any other form of Substantial Control



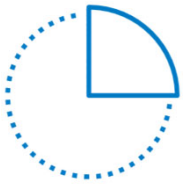
SAUL EWING LLP

49

49

What is Considered an Ownership Interest?

- "[A]n arrangement that establishes ownership rights in the reporting company."
- E.g., equity, stock, voting rights, or any other mechanism to establish ownership.



SAUL EWING LLP

Who is a Company Applicant?

Reporting applies to companies created *on or after* January 1, 2024

The individual who directly files the document creating the company
AND
The individual who directs or controls filing of document creating the company.

Examples:

- Attorney + Paralegal
- Business Formation Services - Directly involved in filing formation documents

- Same information required as Beneficial Owners except:
  - Address Requirement:
    - Company applicant who forms or registers an entity in the course of such company applicant's business, the street address of such business

SAUL EWING LLP

When is the Initial Report Due?

Created before January 1, 2024:

- File on or before January 1, 2025

Created on or after January 1, 2024:

- File within 90 calendar days* of earlier of:
  - Date received actual notice of creation (or registration of a foreign entity) or
  - Date SOS first provides public notice of creation (or registration of a foreign entity)

Once exempt but no longer

- File within 30 calendar days after no longer meeting exemption criteria

SAUL EWING LLP

When do you Need to Update or Correct a BOI Report?

Updates

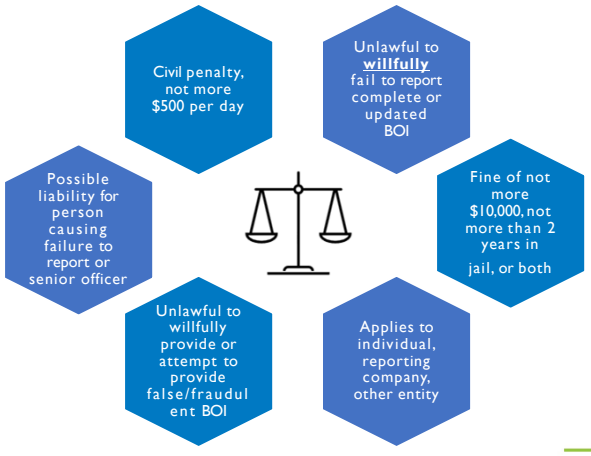
- File within 30 calendar days after the following change occurs:
  - Change in information for reporting company or a beneficial owner
  - If reporting company qualifies for exemption after filing initial report
- Company applicant information may not have to be updated

Corrections

- If report contained inaccurate information at the time of filing on company, BO, or company applicant
- File within 30 calendar days after company becomes aware of or has reason to know of inaccuracy

SAUL EWING LLP

What are the Penalties?



SAUL EWING LLP

Preparing for 2024

- Client Notification – Engage with CTA Team to identify clients who should receive notice and err on the side of inclusion.
- Engagement and Intake – When requested, engaging clients (and documenting) in concert with CTA Team
- Information Collection – Gather client information to analyze CTA application and prepare BOI Report if requested.
- Filing with FinCEN and Record Storage – FinCEN will not provide access to prior filings.
- Ongoing Compliance and Updates – Changes in beneficial ownership through transactions, changes in trustees and beneficiaries

SAUL EWING LLP

Thank You! Questions?

Peter Murphy
1201 North Market Street
Suite 2300 • P.O. Box 1266
Wilmington, DE 19899
T: (302) 421-6850 • F: (302) 421-6813
Peter.Murphy@saul.com

Gary Lipkin
1201 North Market Street
Suite 2300 • P.O. Box 1266
Wilmington, DE 19899
T: (302) 421-6808 • F: (302) 421-6813
Gary.Lipkin@saul.com

Matthew Gerber
1201 North Market Street
Suite 2300 • P.O. Box 1266
Wilmington, DE 19899
T: (302) 421-6821 • F: (302) 421-6813
Matthew.Gerber@saul.com

SAUL EWING LLP

56

Baltimore
1001 Fleet Street
9th Floor
Baltimore, MD 21202
T: (410) 332-8600 • F: (410) 332-8862

Boston
131 Dartmouth Street
Suite 501
Boston, MA 02116
T: (617) 723-3300 • F: (617) 723-4151

Chesterbrook
1200 Liberty Ridge Drive
Suite 200
Wayne, PA 19087
T: 610.251.5050 • F: (610) 651-5930

Chicago
161 North Clark Street
Suite 4200
Chicago, IL 60601
T: (312) 876-7100 • F: (312) 876-0288

Fort Lauderdale
200 E. Las Olas Blvd.
Suite 1000
Fort Lauderdale, FL 33301
T: (954) 713-7600 • F: (954) 713-7700

Harrisburg
Penn National Insurance Plaza
2 North Second Street, 7th Floor
Harrisburg, PA 17101
T: (717) 257-7500 • F: (717) 238-4622

Los Angeles
1888 Century Park East
Suite 1500
Los Angeles, CA 90067
T: (310) 255-6100 • F: (310) 255-6200

Miami
701 Brickell Avenue
17th Floor
Miami, FL 33131
T: (305) 428-4500 • F: (305) 374-4744

Minneapolis
33 South Sixth Street
Suite 4750
Minneapolis, MN 55402
T: (612) 225-2800 • F: (612) 677-3844

New York
1270 Avenue of the Americas
Suite 2800
New York, NY 10020
T: (212) 980-7200 • F: (212) 980-7209

Newark
One Riverfront Plaza
1037 Raymond Blvd., Suite 1520
Newark, NJ 07102
T: (973) 286-6700 • F: (973) 286-6800

Orange County
5 Park Plaza
Suite 650
Irvine, CA 92614
T: (949) 252-2777 • F: (949) 252-2776

Philadelphia
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102
T: (215) 972-7777 • F: (215) 972-7725

Pittsburgh
One PPG Place
Suite 3010
Pittsburgh, PA 15222
T: (412) 209-2500 • F: (412) 209-2570

Princeton
650 College Road East
Suite 4000
Princeton, NJ 08540
T: (609) 452-3100 • F: (609) 452-3122

Washington, D.C.
1919 Pennsylvania Avenue, N.W.
Suite 550
Washington, DC 20006
T: (202) 333-8800 • F: (202) 337-6065

West Palm Beach
515 N. Flagler Drive
Suite 1400
West Palm Beach, FL 33401
T: (561) 833-9800 • F: (561) 655-5551

Wilmington
1201 North Market Street
Suite 2300 • P.O. Box 1266
Wilmington, DE 19899
T: (302) 421-6800 • F: (302) 421-6813

SAUL EWING LLP

57