

THE CORPORATE TRANSPARENCY ACT A DEEPER DIVE

David H. Freedman, Esq. and Jordan M. Small, Esq.

OVERVIEW

- Reporting Deadlines Update
- Hot Topics
- Beneficial Ownership:
Practical Analysis
- Additional Considerations
- Update on Potential Changes
and Implementation



REPORTING DEADLINES UPDATE

NEWLY ISSUED GUIDANCE – REPORTING DEADLINES

Adopted on November 29, 2023, new CTA Final Rule extends the initial reporting deadlines for entities **created or registered during the 2024 calendar year** from 30 days to 90 days

UPDATED REPORTING DEADLINES

- **Existing domestic or foreign Reporting Companies formed before January 1, 2024: On or before January 1, 2025** (one year after the effective date of the CTA).
- **New domestic or foreign Reporting Companies formed during calendar year 2024: Within 90 days after its date of formation** (i.e., the filing date of its Articles or Certificate).
- **New domestic or foreign Reporting Companies formed on or after January 1, 2025: Within 30 days after its date of formation** (i.e., the filing date of its Articles or Certificate).



HOT TOPICS

GENERAL OVERVIEW

- Estimated impact on 33 million businesses
- Exists in Other Countries
- Not widely publicized
- Interest Groups are Still Fighting It - Scaremongering

GENERAL OVERVIEW

- Level of preparedness low
- Many shades of grey
- BOSS System and Forms Unavailable
- Estimated Preparation and Completion Time Unknown

CTA LITIGATION UPDATE

- National Small Business United d/b/a the National Small Business Association, et al. v. Janet Yellen, in her official capacity as Secretary of the Treasury, et al, U.S. District Court for the Northern District of Alabama, Case No. 5:22-CV-1448-LCB
- Filed in November 2022 by a small business advocacy group alleging the CTA and its regulations were unconstitutional.
- Cross motions for summary judgment and government motion to dismiss heard on November 20, 2023.
- Court decision pending.

CTA PROPOSED LEGISLATION UPDATE

- H.R. 4036 (S. 2623)(2023-2024) – Protecting Small Business Information Act of 2023
- Introduced on July 27, 2023 in an effort to delay the implementation of the CTA Regulations beyond January 1, 2024 so that all effective dates of all rules required under the CTA are harmonized
- No movement; remains in first stage of legislative process

UPDATES – UNAUTHORIZED PRACTICE OF LAW

Debates are ongoing in professional malpractice community about whether CTA analysis or advice may be the unauthorized practice of law.

UPDATES – UNAUTHORIZED PRACTICE OF LAW

- What we know:
- UPL governed by state statutes unless addressed by federal law (such as the CTA or otherwise)
- Not “on the radar” of the Michigan State Bar.
- FinCEN guidance and third party service providers contemplate accountants making filings under the CTA
- FinCEN has issued no direct guidance on the topic; not addressed in CTA

UPDATES – UNAUTHORIZED PRACTICE OF LAW

- Professional liability insurance providers such as CNA, CAMICO and McGowan Pro have written about the CTA
- There are unanswered questions regarding whether assisting a client with CTA analysis and reporting constitutes the unauthorized practice of law and whether these services fit within the definition of professional services under an accountants professional liability policy.
- Absent decisions by state bars, FinCEN or Congress, we're unlikely to have answers.
- Coverage for any claim asserted arising from CTA services will be evaluated based on the claim's underlying facts, the insured's policy language, and applicable state law at the time the claim is reported.

SINGLE MEMBER LIMITED LIABILITY COMPANIES

- Reporting Company
- Single Member LLC with no EIN
- Use SSN or Obtain EIN
- No FinCEN guidance

BENEFICIAL OWNERSHIP ANALYSIS

A REFRESHER OVERVIEW

- Reporting Company – Entity formed or registered at state level
- If the Reporting Company is not exempt from the filing requirements, (a) the *Reporting Company*, and (b) its *Beneficial Owners*, and (c) its *Company Applicant(s)*, are all required to file information together under the CTA
- Not an annual filing but there are monitoring and updating requirements
- Maddin Hauser FAQs on website under CTA blogs

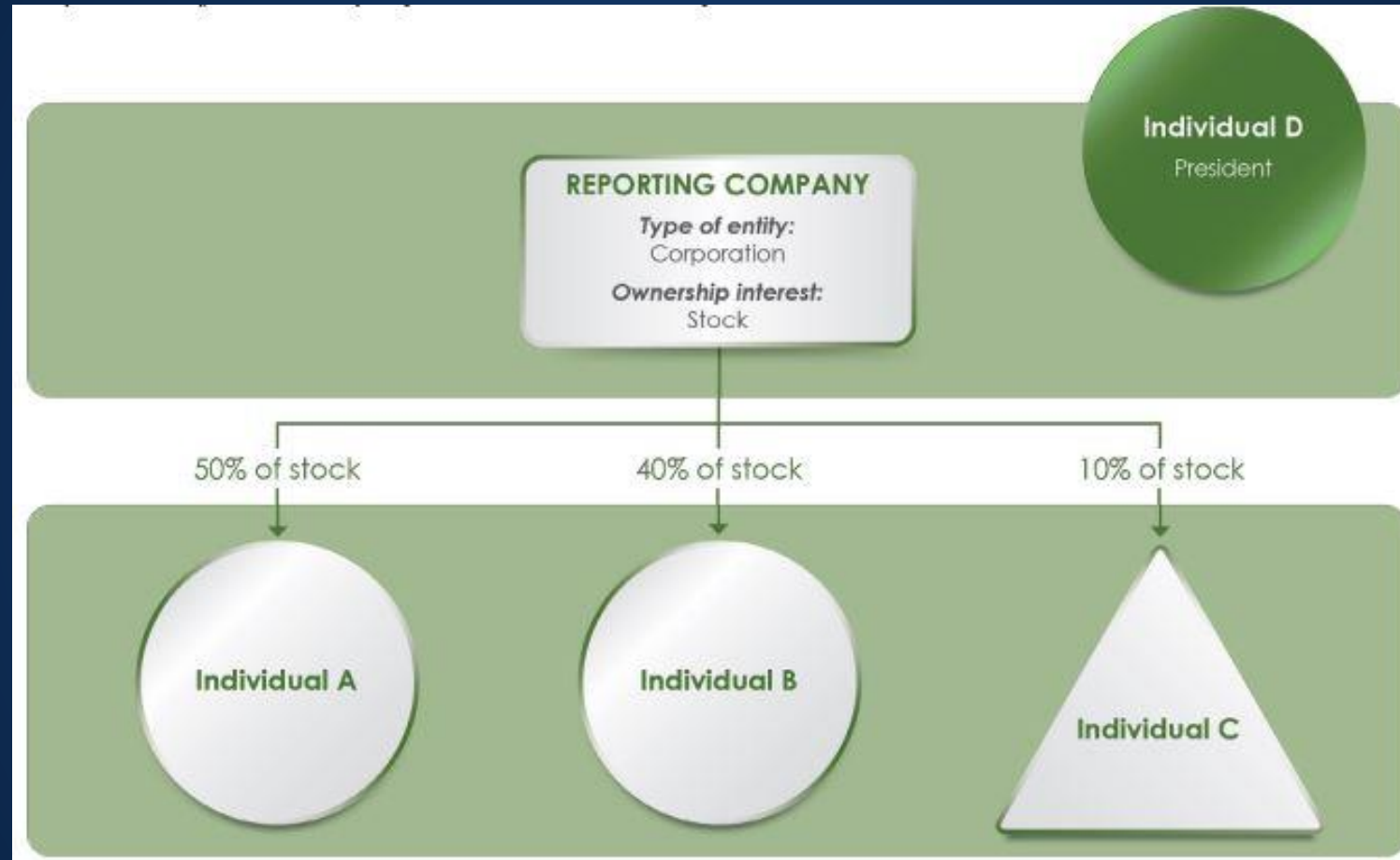
A REFRESHER ON BENEFICIAL OWNERSHIP

- A beneficial owner is any individual who, directly or indirectly, either:
 - 1) exercises substantial control over a Reporting Company, or
 - 2) owns or controls at least 25 percent of the ownership interests of a Reporting Company.
- An individual might be a beneficial owner through substantial control, ownership, or both.
- There must be at least one (1) beneficial owner, and there is no maximum number of beneficial owners who must be reported.

A REFRESHER ON BENEFICIAL OWNERSHIP

- When analyzing a Company's beneficial owners, we are looking for substantial control or at least a 25% ownership interest
- Maddin Hauser Infographics on substantial control and ownership interests on website under CTA blogs

SIMPLE BENEFICIAL OWNERSHIP ANALYSIS



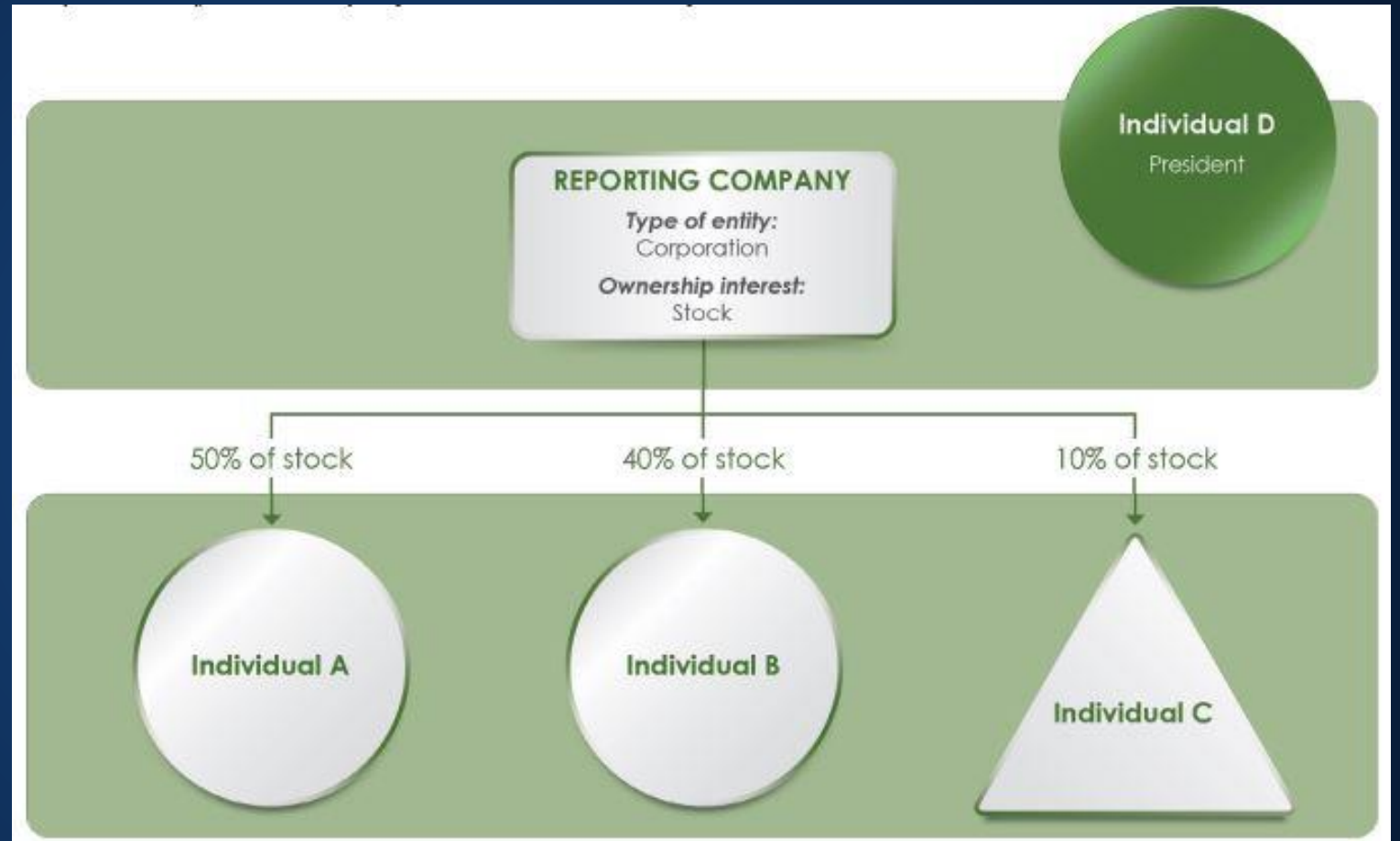
SIMPLE BENEFICIAL OWNERSHIP ANALYSIS

Individual A – Beneficial Owner by nature of at least 25% ownership interest

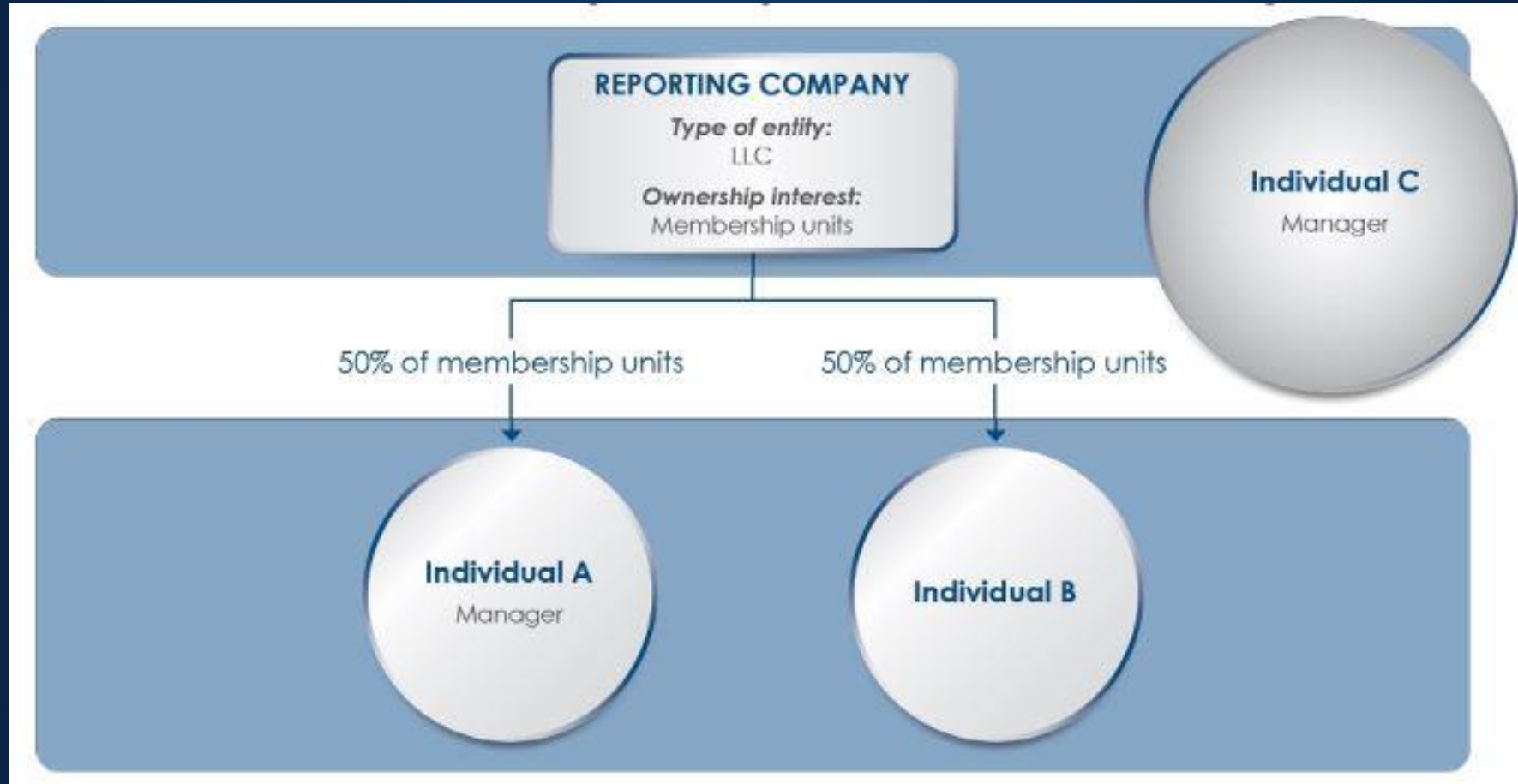
Individual B – Beneficial Owner by nature of at least 25% ownership interest

Individual C – Not a Beneficial Owner due to less than 25% ownership interest

Individual D – Beneficial Owner by nature of substantial control (material decision making powers)



SIMPLE BENEFICIAL OWNERSHIP ANALYSIS

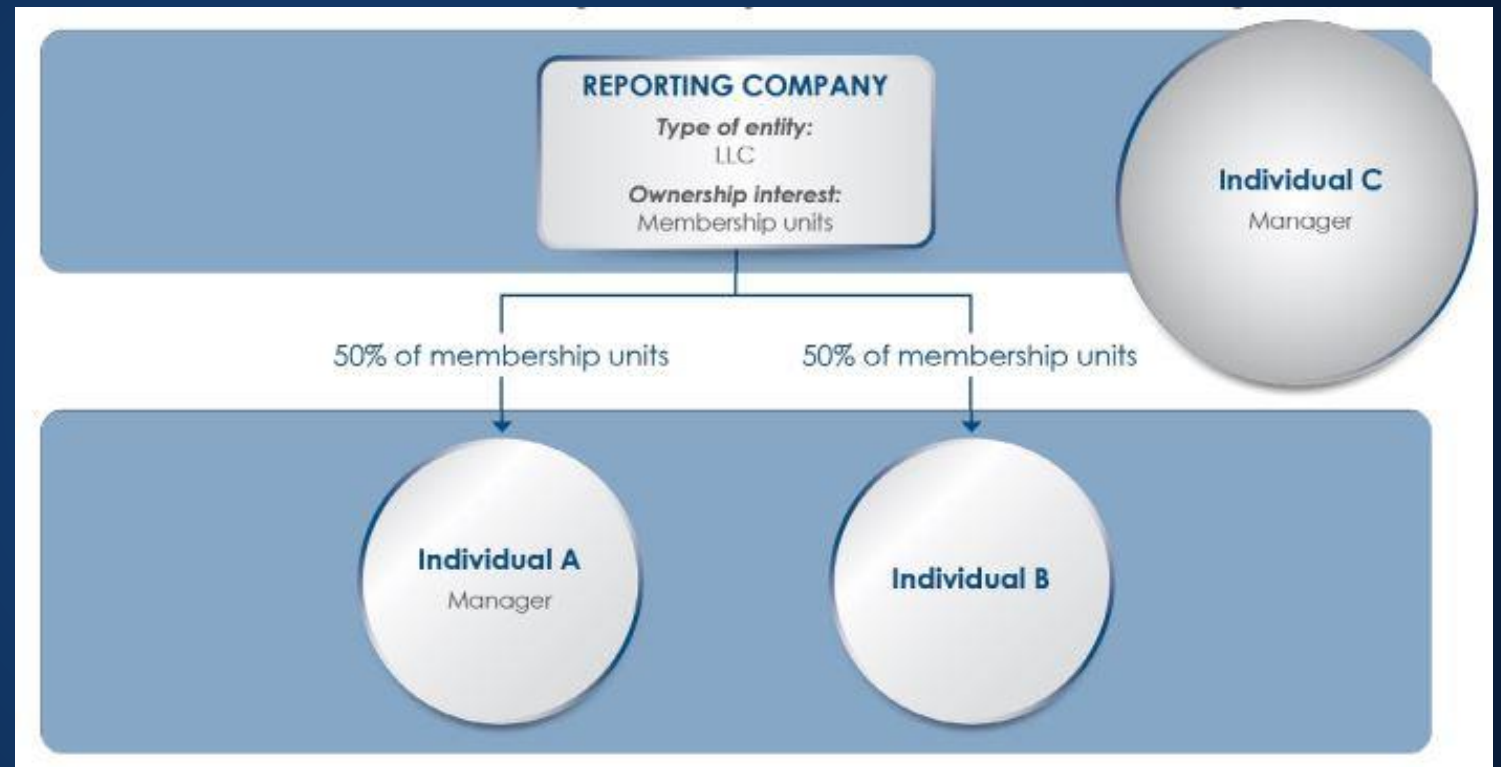


SIMPLE BENEFICIAL OWNERSHIP ANALYSIS

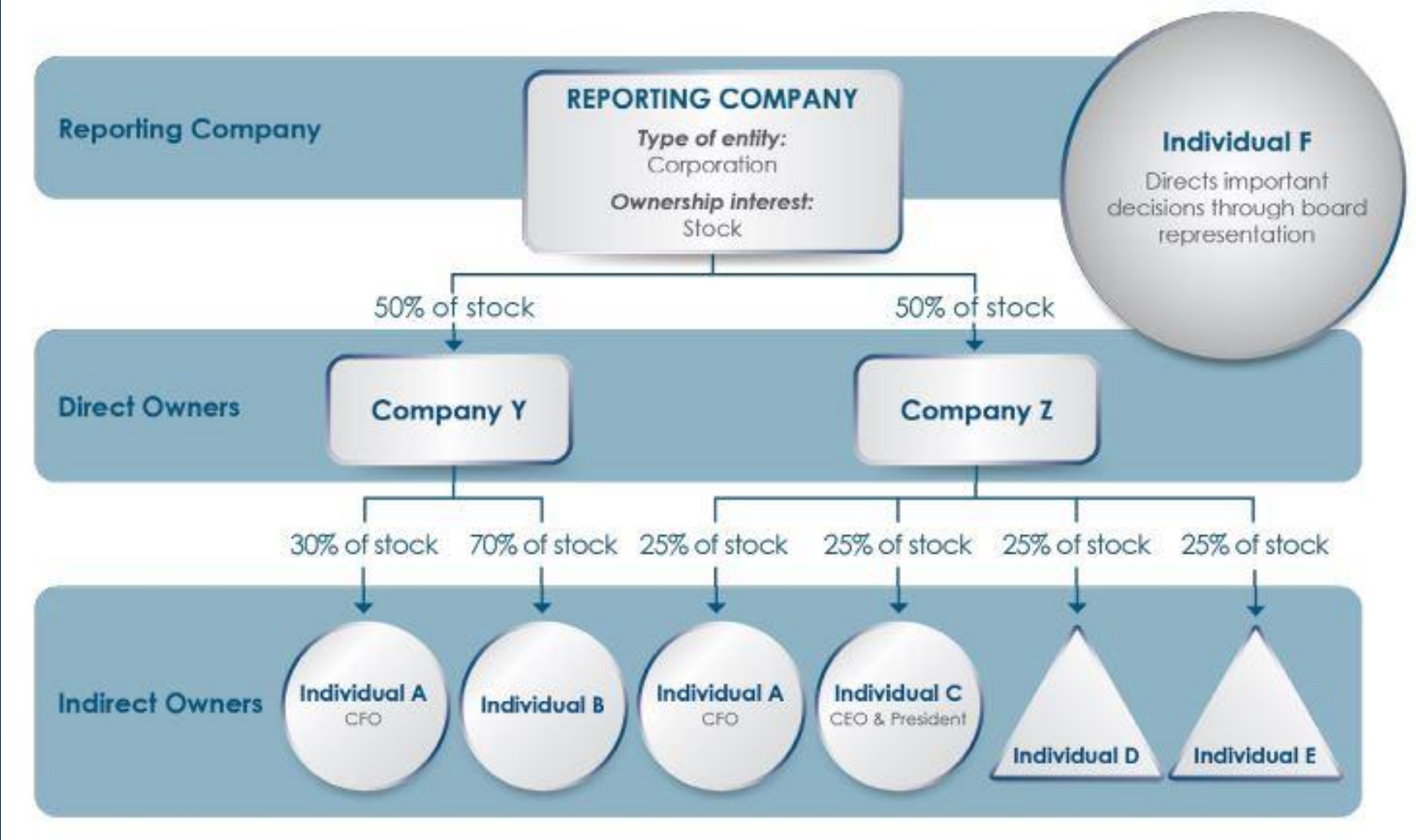
Individual A – Beneficial Owner by nature of at least 25% ownership interest and substantial control as a Manager (subject to Operating Agreement)

Individual B – Beneficial Owner by nature of at least 25% ownership interest

Individual C – Beneficial Owner by nature of substantial control (subject to Operating Agreement)



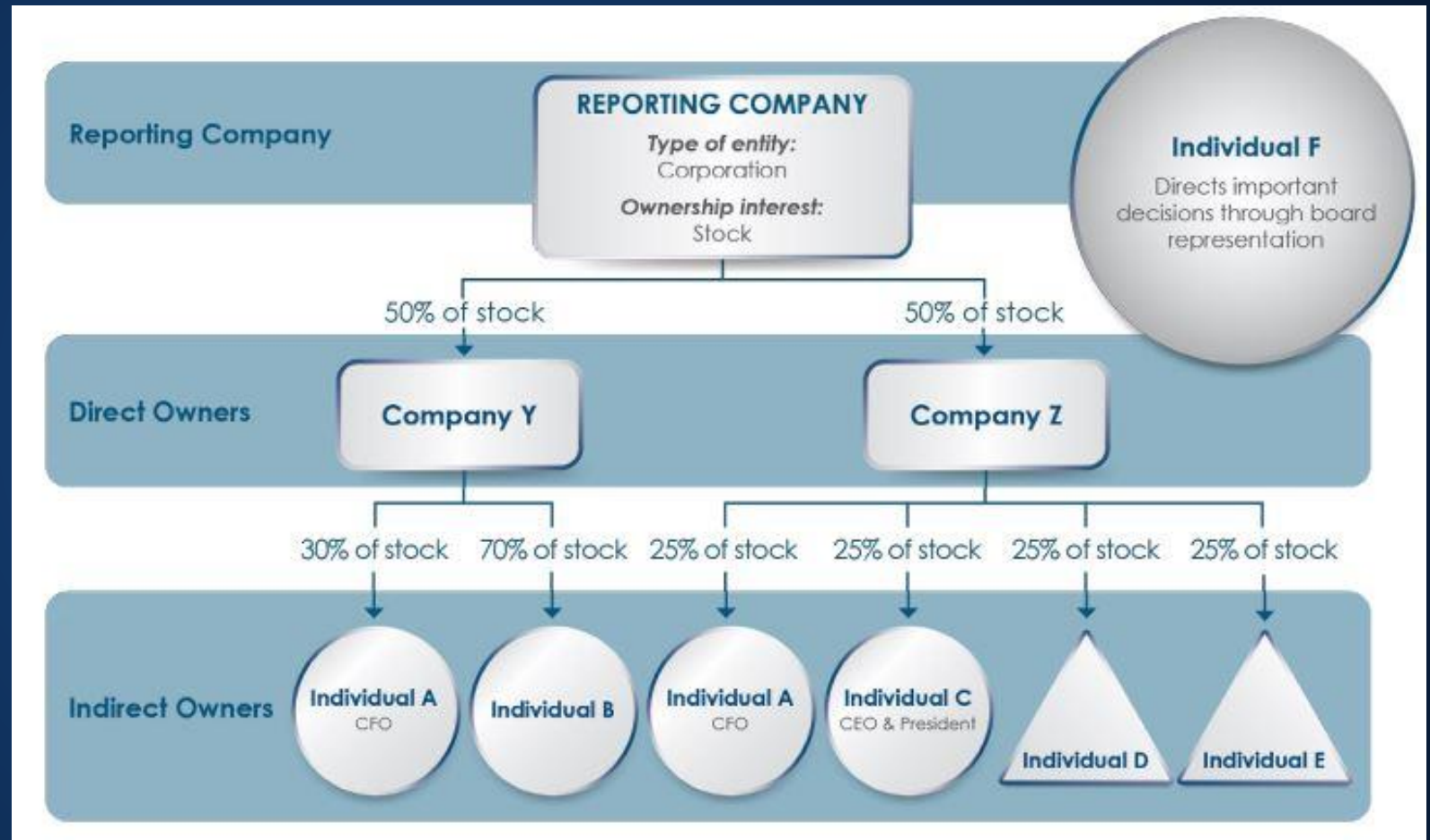
COMPLEX BENEFICIAL OWNERSHIP ANALYSIS



COMPLEX BENEFICIAL OWNERSHIP ANALYSIS

Company Y and Company Z:
Beneficial Owners?

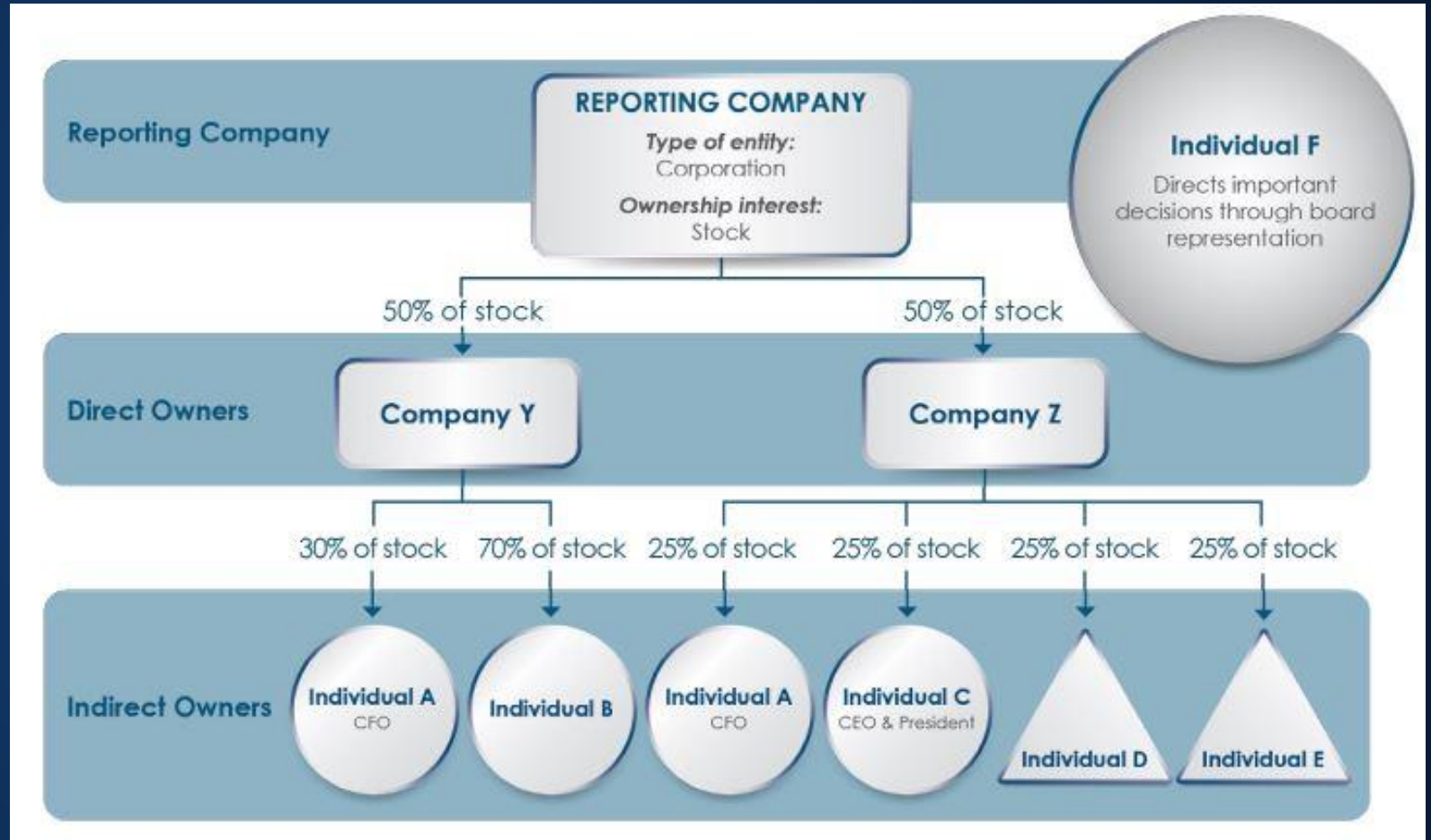
No, despite at least 25% ownership interest, Beneficial Owners must be individuals



COMPLEX BENEFICIAL OWNERSHIP ANALYSIS

Individual A – Beneficial Owner by nature of at least 25% ownership interest and substantial control

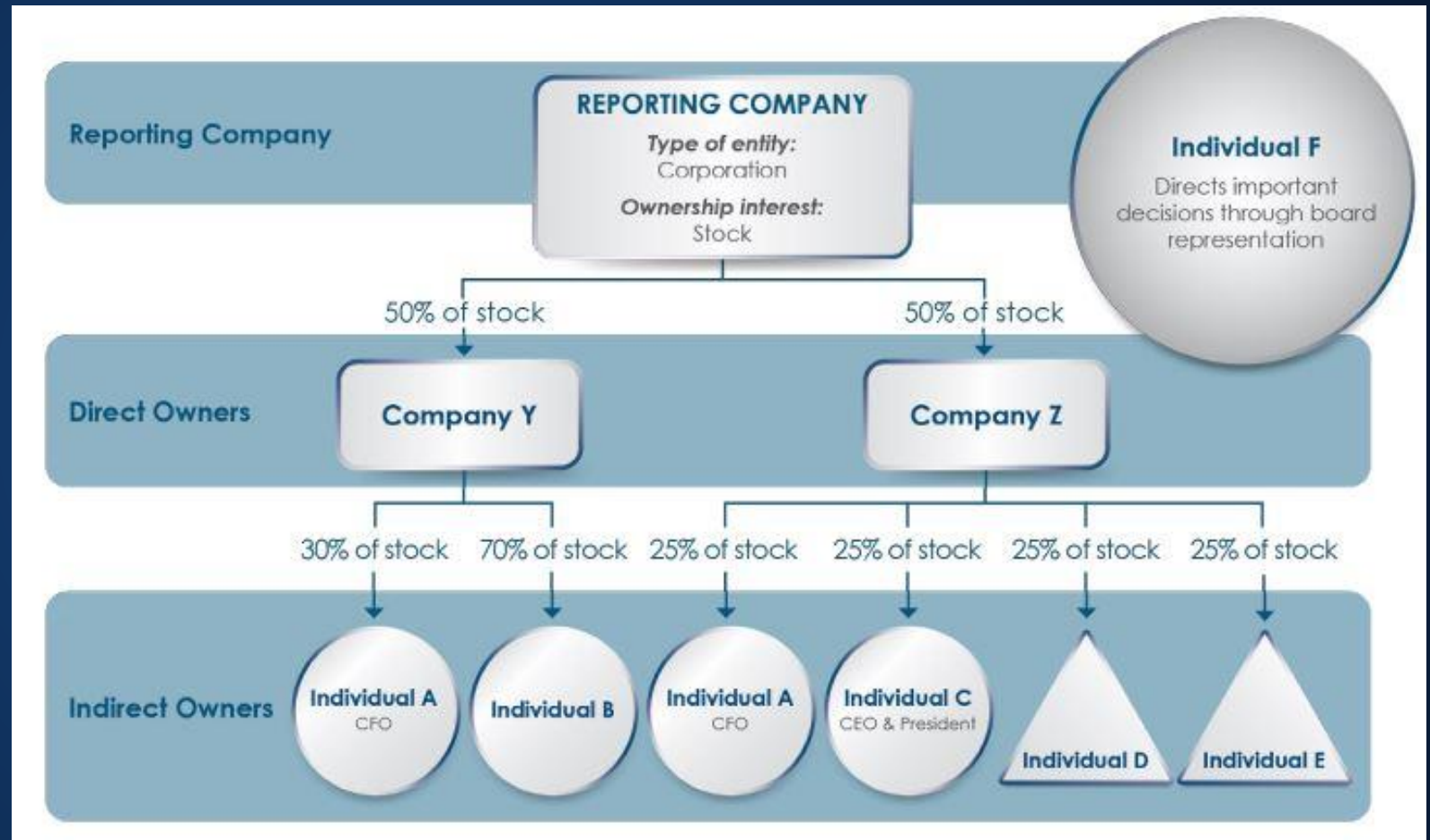
- 27.5% ownership interest in the Reporting Company (15% through Company Y (30% x 50%) and 12.5% through Company Z (25% x 50%))
- Senior officer – by definition as CFO exercises substantial control



COMPLEX BENEFICIAL OWNERSHIP ANALYSIS

Individual B – Beneficial Owner by nature of at least 25% ownership interest

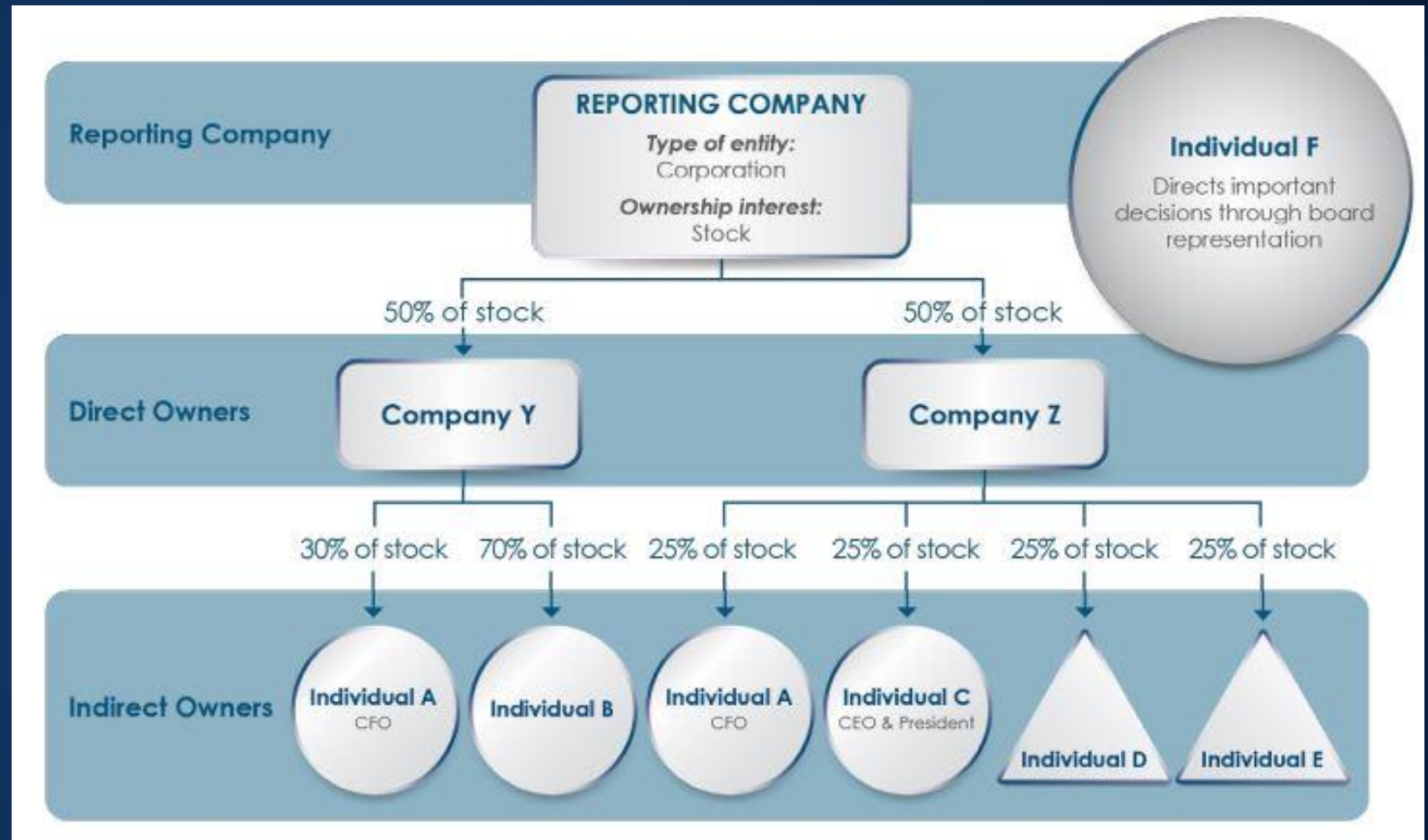
- No indication that Individual B exercises substantial control (not a senior officer or director)
- 35% ownership interest in the Reporting Company through Company Y (70% x 50%)



COMPLEX BENEFICIAL OWNERSHIP ANALYSIS

Individual C – Beneficial Owner by nature of substantial control

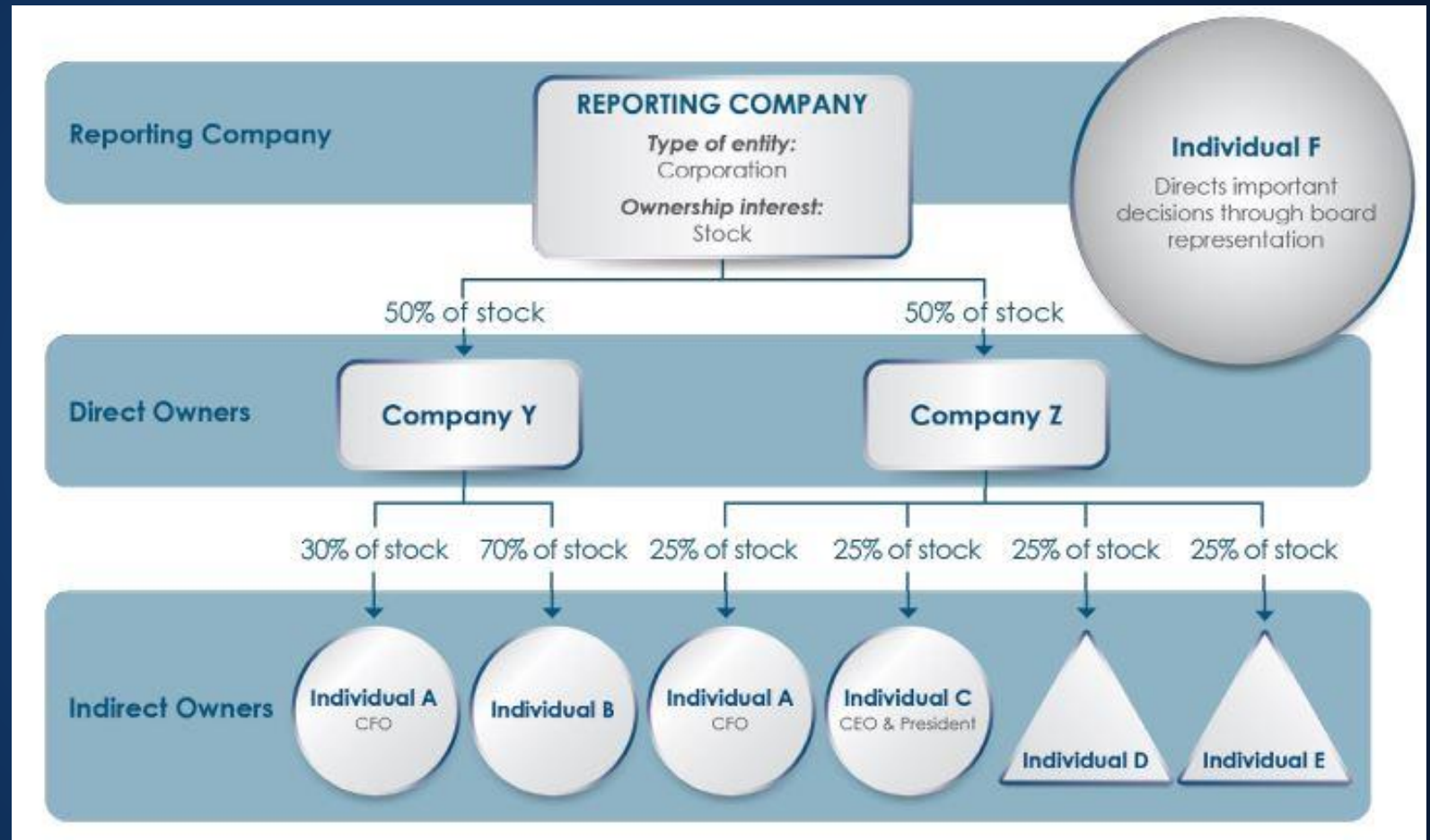
- Senior officer – by definition CEO and President exercises substantial control
- 12.5% ownership interest in the Reporting Company through Company Z (25% x 50%) not enough to be Beneficial Owner solely by nature of ownership interest



COMPLEX BENEFICIAL OWNERSHIP ANALYSIS

Individuals D and E – not Beneficial Owners

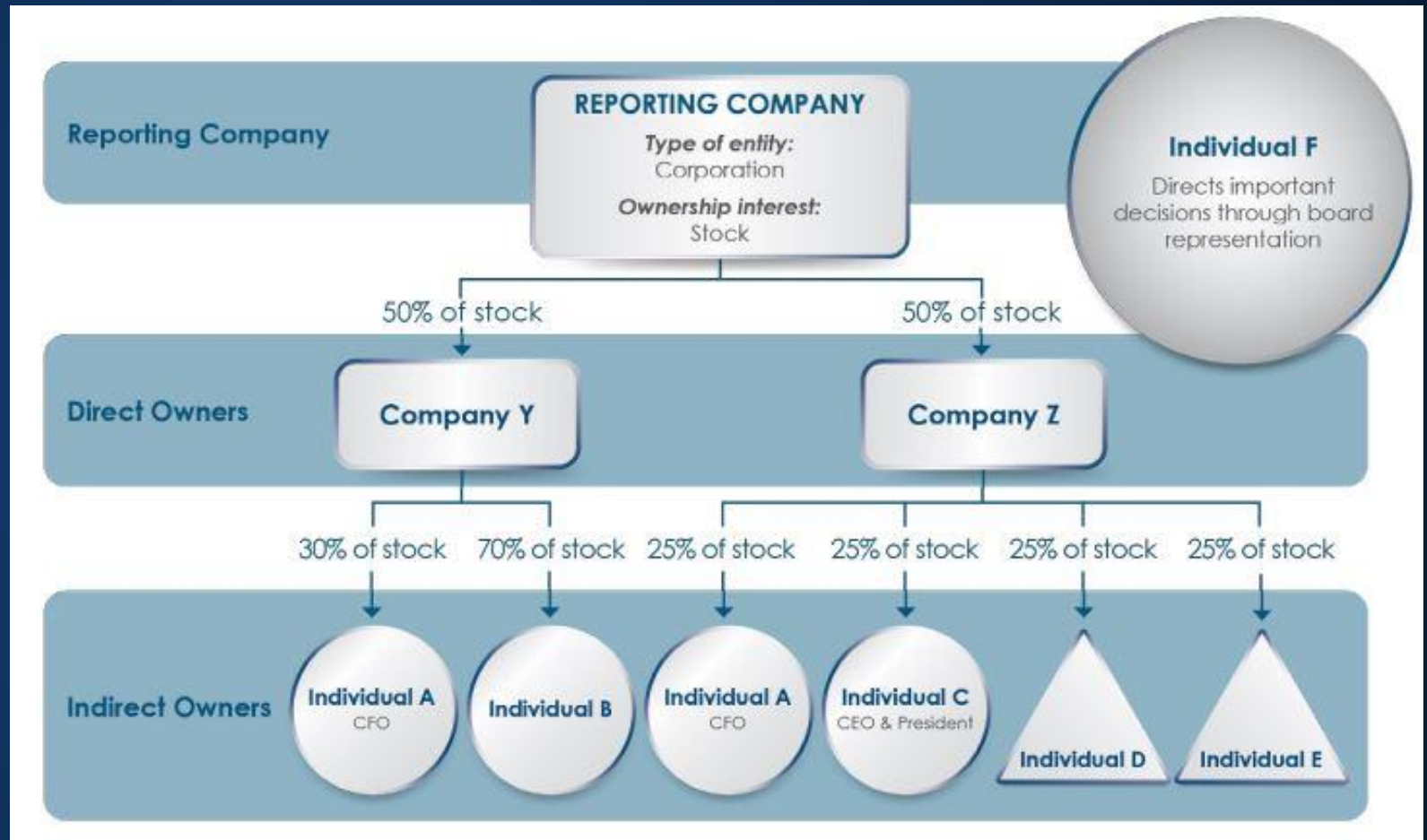
- No indication that Individuals D and E exercise substantial control (not senior officers or directors)
- 12.5% ownership interest in the Reporting Company through Company Z (25% x 50%) not enough to be Beneficial Owner solely by nature of ownership interest



COMPLEX BENEFICIAL OWNERSHIP ANALYSIS

Individual F – Beneficial Owner by nature of substantial control

Member of Board of Directors—by definition exercises substantial control in most circumstances. Title not sufficient enough, must look at powers and actions. In this instance, “directs important decisions through board representation”. In some instances if the director exists in name only, he or she will not be a beneficial owner due to lack of substantial control.



REMINDER – BOI REPORT INFORMATION

Beneficial Ownership Information under the Act includes, for each beneficial owner (including company applicant):

- a) full legal name;
- b) date of birth;
- c) generally, a current residential address;
- d) unique ID number from a non-expired U.S. passport, state driver's license or other state or local government issued photo ID; and
- e) image of the document showing the unique ID number

CTA – ADDITIONAL CONSIDERATIONS

A REFRESHER ON COMPANY APPLICANTS

Company Applicants are individuals who help to create or register a new Reporting Company

A REFRESHER ON COMPANY APPLICANTS

A Company Applicant is:

1. The individual who directly files the document that creates or registers the company; and
2. If more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.

Company Applicants must be individuals. There can be no more than two (2) Company Applicants.

A REFRESHER ON COMPANY APPLICANTS

- Only applies to Reporting Companies filed or created on and after January 1, 2024.
- A Reporting Company filed or created prior to January 1, 2024 does not have to file any information regarding its Company Applicants.
- The Company Application information is a one-time filing and does not need to be updated.

A REFRESHER ON COMPANY APPLICANTS

Could I be a Company Applicant?

- Yes, FinCEN has acknowledged that “[a]n accountant or lawyer could be a company applicant, depending on their role in filing the document that creates or registers a reporting company.”
- If more than one person is involved in the filing of the creation or registration document, an accountant or lawyer may be a company applicant if they filed the document or they were primarily responsible for directing or controlling the filing.

FINCEN IDENTIFIERS

- A “FinCEN identifier” is a unique identifying number that FinCEN will issue to an individual or reporting company upon request after the individual or reporting company provides certain information to FinCEN.
- An individual or reporting company is not required to obtain a FinCEN identifier.
- An individual or reporting company may only receive one FinCEN identifier.
- A Reporting Company may include FinCEN identifiers in its BOI report instead of certain required information about beneficial owners or company applicants.

FINCEN IDENTIFIERS (CON'T)

- Individuals may electronically apply for FinCEN identifiers.
- In the application, an individual must provide the same four items of personal information and image reporting companies submit about beneficial owners and company applicants in BOI reports.
- After an individual submits an application, the individual will immediately receive a FinCEN identifier unique to that individual

FINCEN IDENTIFIERS (CON'T)

- A Reporting Company may request a FinCEN identifier when it submits a BOI report by checking a box on the reporting form.
- Once a beneficial owner or company applicant has obtained a FinCEN identifier, reporting companies may report it in place of the otherwise required four items of personal information about the individual in BOI reports.

SUBSIDIARY EXEMPTION

- An entity is exempt from reporting if its interests are controlled or wholly owned, directly or indirectly, by certain types of exempt entities, including:
 - Securities issuers
 - Governmental authorities
 - Banks
 - Credit unions
 - Investment companies
 - Public accounting firms
 - Tax exempt entities
 - Large operating companies

THE CTA AND TRUSTS

Certain individuals may be Beneficial Owners through a trust's ownership interest in a Reporting Company

THE CTA AND TRUSTS

If a Trust owns 25% or more of a Reporting Company, then:

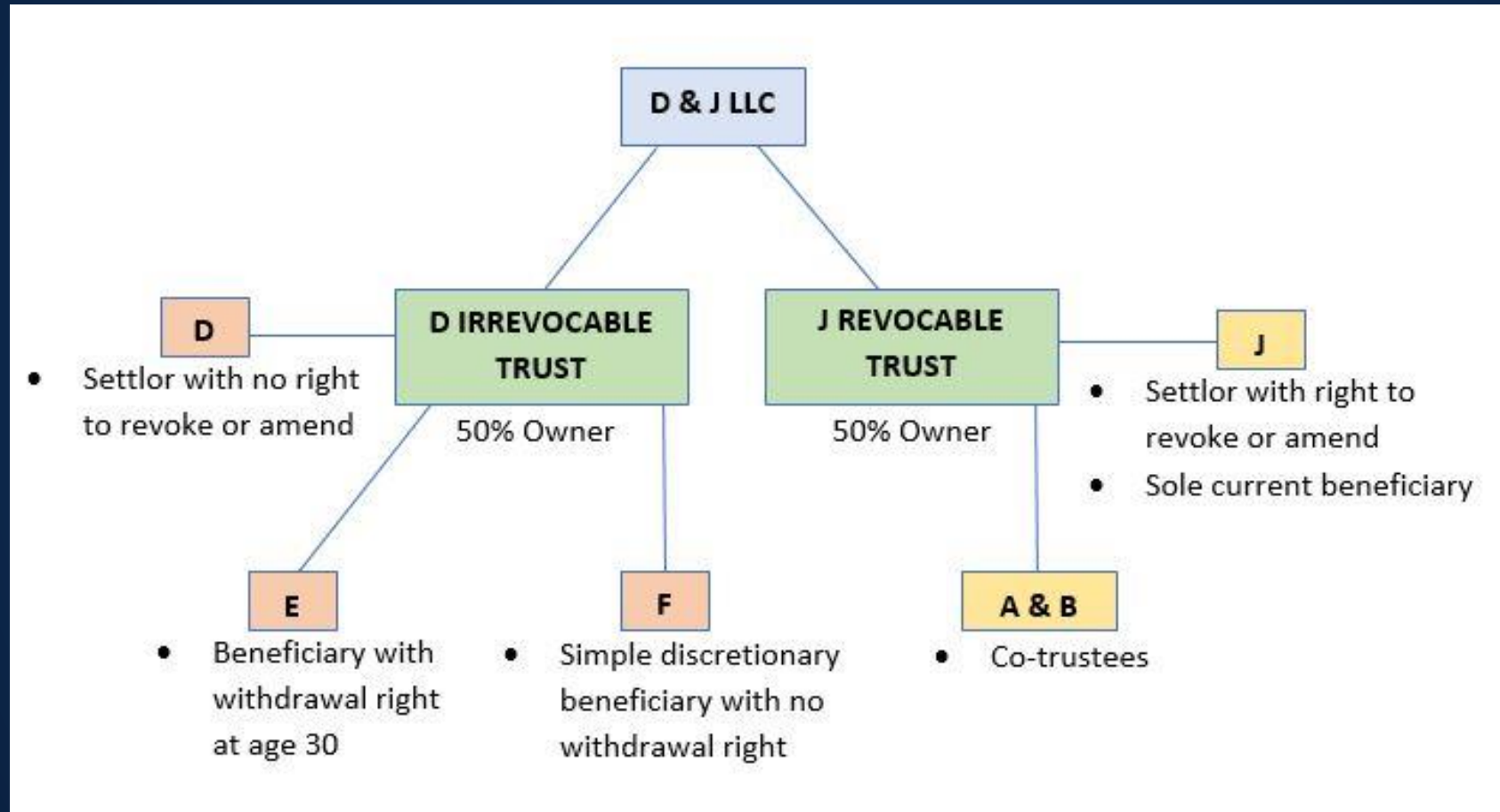
- A trustee or other individual with the authority to dispose of trust assets;
- A beneficiary who is the sole permissible recipient of trust income and principal or who has the right to demand a distribution of or withdraw substantially all of the trust assets;
- A grantor or settlor who has the right to revoke or otherwise withdraw trust assets;

may **all be Beneficial Owners of the Reporting Company**

THE CTA AND TRUSTS

- Individuals may directly or indirectly exercise substantial control. Individuals can exercise substantial control through contracts, arrangements, understandings, relationships, or otherwise.
- A trustee of a trust or similar arrangement may exercise substantial control over a reporting company.
- This will be a case-by-case analysis.

THE CTA AND TRUSTS – PRACTICAL EXAMPLE



THE CTA AND TRUSTS – PRACTICAL EXAMPLE

- David and Jordan own D & J, LLC, which provides DJ services to weddings
- David's irrevocable trust, The D. Irrevocable Trust, and Jordan's Revocable Trust, the J. Revocable Trust, each own 50% of the company, which is a non-exempt Reporting Company

THE CTA AND TRUSTS – PRACTICAL EXAMPLE

- The Trustees of the J. Revocable Trust are J, A, and B
- J is the sole current permissible beneficiary of Trust
- J is the settlor with the right to revoke or amend Trust

- The sole trustee of the D. Irrevocable Trust is E
- E and F are beneficiaries
- E has a withdrawal right at age 30
- F is a simple discretionary beneficiary with no withdrawal right

THE CTA AND TRUSTS – PRACTICAL EXAMPLE

- As Trustees, J, A, and B are all beneficial owners who must report BOI
- D is not a beneficial owner by nature of being the settlor of the D. Irrevocable Trust with no right to revoke or amend
- As Trustee, and as a beneficiary with withdrawal rights, E is a beneficial owner who must report BOI
- F is a beneficiary with no withdrawal rights and is not a beneficial owner and does not need to report BOI

PENALTIES FOR NONCOMPLIANCE

- Willful failure to report complete or updated ownership information to FinCEN will carry civil and criminal penalties
- Civil penalties of up to \$500 for each day that the violation continues
- Criminal penalties including up to two years imprisonment and a fine of up to \$10,000

PENALTIES FOR NONCOMPLIANCE - ISSUES

- Who is responsible for paying these penalties?
 - FinCEN notes: “Senior officers of an entity that fails to file a required BOI report may be held accountable” for failure.
- What if an individual in a Reporting Company fails to provide information or provides false information?
 - 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



UPDATES ON IMPELEMENTATION

AREAS OF UNCERTAINTY

- What will the forms look like?
- How long will filings actually take?
- What will the filing actually look like?
- What will the review and correction process consist of?

ASSISTING ACCOUNTING FIRMS

- We would be happy to speak with you about the CTA and its impact on your clients and/or your accounting firm.
- We can assist you and your clients with anything you might need to help comply with the CTA.
- We are regularly monitoring these matters, have established a CTA resource blog page on our website and will be adding to and updating our CTA blog page as needed.
- We encourage you to monitor our firm's CTA blog page for such information and updates.

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THANK YOU



Jordan M. Small, Esq.

Associate

(248) -351-7001

(248)-925-6068 Cell

jsmall@maddinhauser.com



David H. Freedman, Esq.

Shareholder

(248) 351-7011

(248) 359-7546 Fax

dfreedman@maddinhauser.com



Maddin Hauser

Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

28400 Northwestern Hwy. Southfield, MI 48034

p (248) 354-4030 f (248) 354-1422 maddinhauser.com

