

Memorandum

To: USAFL Board of Directors

From: James P. Martin, USAFL Secretary

CC: USAFL File

Date: March 21, 2024

Re: U.S. Corporate Transparency Act (CTA)

The purpose of this memorandum is to memorialize our discussion and analysis pertaining to the U.S. Corporate Transparency Act (CTA),ⁱ its Beneficial Ownership Final Ruleⁱⁱ and their associated considerations pertaining to the United States Australian Football League, Inc. (USAFL).

Brief Answer

USAFL, as a organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, is excluded from the reporting requirements under the CTA.

Background

The CTA requires certain business entities to report their direct and indirect human beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury. The CTA is intended to combat the use of “shell” companies in the commission of money laundering, financial fraud and other domestic and international illicit activity and corrupt practices. However, the reach of the CTA is much broader, and includes incorporators, organizers, financial institutions, state and tribal government agencies and others dealing with many U.S. business entities, including business entities formed prior to the CTA’s enactment.

The CTA establishes certain human, beneficial ownership disclosure, reporting, records retention and information dissemination requirements and obligations, all with far reaching implications to the business community. A “reporting company”ⁱⁱⁱ is a corporation, limited liability company or other similar entity that is created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe, provided that it does not fall within specific excluded categories.

Each report for a reporting company delivered under the CTA, in accordance with the CTA’s corresponding regulations, is required to identify each human beneficial owner who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control^{iv} over the reporting company, or (ii) owns or controls not less than 25 percent of the ownership interests^v of the reporting company.^{vi}

The reporting requirements under the CTA took effect on January 1, 2024. Reporting companies formed before January 1, 2024 will have one (1) year from that date to make their initial report, and reporting companies formed on or after January 1, 2024 will have ninety (90) days from formation to make their initial report.

With the foregoing in mind, I have provided the following entity specific analysis as to the “reporting company” or “excluded” status of USAFL. I have based my assessment in this memorandum on oral and written information provided by USAFL, as well as a review of the USAFL’s 501(c)(3) determination letter.

Analysis

USAFL is an organization that is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of such Code) and exempt from tax under section 501(a) of such Code.^{vii} As such, it is exempt from the reporting requirements of the CTA.

Conclusions

I have based the foregoing analysis on discussions with USAFL’s board of directors, as well as a review of the USAFL’s 501(c)(3) determination letter.

ⁱ §§ 6401 – 6403 under Title LXIV of the National Defense Authorization Act for Fiscal Year 2021 (Establishing Beneficial Ownership Information Reporting Requirements).

ⁱⁱ Beneficial Ownership Information Reporting Requirements, 87 FR 59498 (Final Rule 9/30/2022).

ⁱⁱⁱ See 31 U.S. Code § 5336 (a)(11); 31 CFR 1010.380(c). It is important to note that these are “reporting companies” as defined in the CTA only, and not “reporting companies” obligated to file reports under Sections 13 or 15(d) of the Securities Exchange Act. Ironically, reporting companies under the CTA sweep in many “private” business entities not previously subject to federal disclosure obligations.

^{iv} See § 5336(a)(3)(A)(i); 31 CFR 1010.380(d)(1).

^v See § 5336(a)(3)(A)(ii); 31 CFR 1010.380(d)(2).

^{vi} See § 5336(a)(3)(B); 31 CFR 1010.380(d)(1) (regarding persons excluded from the definition of “beneficial owner”: (i) a minor child, (ii) an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual; (iii) an individual acting solely as an employee of an entity and whose control over or economic benefits from such entity is derived solely from his or her employment status; (iv) an individual whose only interest in an entity is through a right of inheritance; or (v) a creditor of an entity).

^{vii} See § 5336(a)(11)(xix) – (xx); 31 CFR 1010.380(c)(2)(xix) – (xx). (“The term “reporting company”— ... (B)does not include— ... (xix) any— (I) organization that is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of such Code) and exempt from tax under section 501(a) of such Code, except that in the case of any such organization that loses an exemption from tax, such organization shall be considered to be continued to be described in this subclause for the 180-day period beginning on the date of the loss of such tax-exempt status; ... (xx) any corporation, limited liability company, or other

similar entity that — (I) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in clause (xix); (II) is a United States person; (III) is beneficially owned or controlled exclusively by 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence; and (IV) derives at least a majority of its funding or revenue from 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence;...”)