

DRAFT

SUMMARY OF THE UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT

All domestic filing entities are prohibited from issuing certificates of bearer shares and are required to include in their initial public organic document (IPOD) filed in the office of the Secretary of State (SOS) a statement declaring whether or not the entity is a “conventional privately-held entity” (CPE).

A CPE is an entity that has no more than 50 interest holders. In addition to that ownership test, there are several exceptions. The most significant are: (i) highly regulated business entities such as depository institutions, insurance companies, public utilities, securities and commodity brokers or dealers, and registered investment companies and investment advisors; (ii) a majority owned subsidiary of one of those highly regulated entities; (iii) entities in which an entity with more than 50 interest holders holds more than 25% of the outstanding interests; and (iv) tax exempt entities that have filed a current Form 990 or 990-EZ with the Internal Revenue Service.

A CPE must file an initial information statement (EIS) in the SOS at the same time the CPE files its IPOD. The EIS must contain the name and business or residential address of the CPE’s “record contact” (RC) and “responsible individual” (RI). Changes in the RC and RI must promptly be filed in the SOS. The RI and RC must sign the EIS or a statement of change and these signatures must be notarized. An enacting state can elect to have the EIS treated as a confidential document to be disclosed only to authorized agents of law enforcement agencies and other specified agencies and committees.

An entity in existence when the Act becomes effective has 2 years from the effective date to amend its IPOD to state whether or not it is a CPE and if it is, to file in the SOS the required information concerning its RI and RC.

The RC must seek to obtain specified information about the ownership and control of a CPE upon receiving a subpoena or summons from a federal law enforcement authority, federal agency or committee or subcommittee of the United States Congress or a request by a federal agency on behalf of another country (“appropriate request”) (AR). States have the option of expanding the list of persons who can make ARs to include state and local law enforcement authorities, state agencies and state legislatures.

The CPE must provide the RC on a timely basis: the name and last known address of each interest holder and transferee; the name and address for each governor; any records regarding the process by which governors are elected or otherwise designated; the voting power of each interest holder; and the names of the individuals responsible for preparing this information. The CPE must include a certification, signed under penalties of perjury, that the information accurately reflects its current records.

DRAFT

Non-US entities that become interest holders or transferees of a CPE must provide the CPE with a certification, signed under penalties of perjury, stating the name and address of a RI. If a RI's principal residence is outside the US, the RI must provide a photo I.D. to the CPE. If the principal residence of a governor is outside the US, the governor must provide a photo I.D. to the CPE.

A RI is defined as an individual who, directly or indirectly, participates in the control or management of a CPE. A RI can be anyone associated with the CPE that meets the definition. He or she may, but need not, be a governor or have agency authority to bind the CPE to third parties. The purpose of having a RI is to have an individual who has detailed knowledge about a CPE that federal law enforcement officials and others who are entitled to make ARs can talk to about the entity and its operations.

A RC is liable for recklessness, intentional misconduct, or criminal conduct. A RI could be held liable for perjury if it turns out that he or she does not meet the qualifications of a RI and also may be held liable for refusal to comply with a AR subpoena or summons.

The enacting state's attorney general can bring a proceeding to dissolve a CPE for materially failing to provide the AR information requested by the RC or for issuing bearer certificates. The SOS must administratively dissolve an entity for failure to designate in its IPOD whether or not it is a CPE or if the SOS records do not show a current RC or RI for 60 consecutive days. Reinstatement is possible if the deficiencies are corrected.

Filing fees for the various documents required to be filed by the Act are authorized. The fees are required to be deposited in a restricted account that can only be used for administration of the Act.

The SOS can refuse to file any document required by the Act that does not comply with the Act. The SOS does not have any responsibility to verify any information submitted in any document filed pursuant to the Act.