

Congress Shows Interest in Anti-Money Laundering Regulatory Reform

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In its first hearing of the year, the Senate Committee on Banking, Housing, and Urban Affairs expressed support for potential reforms to the U.S. anti-money laundering (“**AML**”) and countering the financing of terrorism (“**CTF**”) framework. The hearing focused on the relationships among financial institutions, regulators, and law enforcement, and centered around one repeated refrain from both the senators and the panelists alike: the Bank Secrecy Act (“**BSA**”) and its regulations that underline the AML/CTF framework have become a burdensome, “check-the-box” system for financial institutions that should be updated to meet the illicit financing threats of the 21st century.

The senators heard testimony from three witnesses: Greg Baer, President of The Clearing House Association; Dennis Lormel, President and CEO of DML Associates (and former FBI Financial Crimes Program Chief); and Heather Lowe, Legal Counsel and Director of Government Affairs of Global Financial Integrity.

In response to the testimony, Senator Warren (D-MA) noted that “we need to rethink a lot of money laundering laws, some of which were written in the 1970s and are badly out of date.”

Below, we discuss three central themes of the hearing.

New beneficial ownership requirements. All of the panelists supported the adoption of legislation that would require the collection of beneficial ownership information at the time a company is formed, as recommended in The Clearing House Association’s February 2017 [report](#). Senator Reed (D-RI) noted that the United States is getting a reputation as “a place to go hide money,” while Senator Brown (D-OH) described the United States as “a haven for anonymous shell companies.” Baer noted that while there may be valid reasons for corporate owners to want to keep their ownership secret from the broader public, “it is difficult to imagine a valid reason why corporate owners would want to keep their ownership secret from the state incorporating them, law enforcement, and a financial institution that is legally obligated to determine that ownership in the exercise of its BSA/AML obligations.” The panelists agreed that beneficial ownership information should be required by Secretaries of State at the time of incorporation. Should this impose too great a burden on the states, they suggested that the collection of such information by the Treasury Department’s Financial Crimes Enforcement Network would be a good alternative.

Effectiveness and efficiency of AML/CTF compliance program requirements. The hearing also focused on how AML/CTF compliance burdens banks. Baer testified that the United States’ AML/CTF system is broken, describing it as “extraordinarily inefficient, outdated and driven by perverse incentives.” A core problem, according to Baer, is that today’s regime is geared toward compliance expectations that bear little relation to the goal of detecting and preventing financial crime and fail to consider collateral consequences. He discussed the immense resources banks are pouring into AML/CTF compliance, which he said are not utilized efficiently because the greatest majority of resources are not being devoted to the most dangerous financial crimes and illicit activity. In Baer’s view, large banks have been pushed away from risk-based approaches because their performance is not graded by law enforcement or national security officials, but rather by bank examiners, who focus on policies, procedures, and quantifiable metrics. Although Lormel disagreed that the system is broken, he noted that it can and should be more effective and efficient. The panelists described a “check the box” mentality by regulators, which is inconsistent with a bank’s risk-based approach. In response to the testimony, Senator Tillis (R-NC) stated that “it sounds like right now, we’re shooting a lot but not hitting the target as much as we should, and it’s costing us a lot of money.”

Baer focused on the filing of Suspicious Activity Reports (“**SARs**”) as an area that is “fantastically complex and time consuming and not terribly productive” because bank compliance officers have powerful incentives to trigger as many alerts and file as many SARs as possible, regardless of their value to law enforcement, rather than shifting resources to more serious crimes or “more innovative and thoughtful artificial intelligence ways of catching the bad guys.” He recommended that the Treasury Department set goals and priorities for SAR filings so, for example, financial institutions would not need to continue filing SARs where there is no “yield” for law enforcement. Lormel and Lowe agreed that there are inefficiencies in the SAR filing process but each emphasized the value of SARs to law enforcement agencies. They also disagreed with The Clearing House’s recommendation to raise the SAR dollar thresholds (which have not changed in 21 years). Senator Brown remarked that Congress should “focus on sharpening suspicious activity reporting and bolstering efforts by law enforcement to give banks guidance on what to look for rather than substantially raising currency reporting thresholds.” Senator Warren expressed interest in improving the SAR filing process, which might reduce costs for the banks and at the same time help law enforcement access and review relevant data more efficiently.

In addition, Senator Warner (D-VA) called attention to the growth of cryptocurrencies as an issue that the Committee should “get ahead of” as it considers other improvements to the AML/CFT framework.

Improved information sharing. The panelists spoke about the need for improved engagement and information sharing among financial institutions, regulators, and law enforcement. Baer encouraged the exchange of AML/CFT information between the government and the private sector, as well as between and among financial institutions, as a way to make financial institutions’ AML/CFT programs more effective and efficient and to assist the institutions in focusing their resources on the most serious money laundering risks. He also noted that the lack of feedback from the government makes banks reluctant to invest in new and better systems (such as artificial intelligence and machine learning) because the banks do not know whether such systems will meet examiners’ expectations. Lormel described the relationship between law enforcement, regulators, and financial institutions as a triangle with “a broken line between law enforcement and regulators.” He also acknowledged that law enforcement too seldom shared targeted information with banks on assessing customer risks.

In terms of specific proposals to improve information sharing, Lormel recommended that the United States try to replicate the UK Joint Money Laundering and Intelligence Task Force, touting it as “one of the most productive examples of public and private sector partnership, and information sharing.” Lowe added that the United States should also look to the UK’s Fintech “sandbox” as a model for regulators in dealing with new technology. (For more information on Fintech and regulatory sandbox issues, please see our posts on FinTech topics).

While the hearing covered much ground, it is just the beginning of the conversation. It is clear there is an openness on Capitol Hill to updating the AML/CFT framework and bipartisan interest in making progress on these issues. The Committee plans to hold a second hearing on BSA/AML reform initiatives later this month.

Baer’s written testimony is available [here](#), Lormel’s written testimony is available [here](#), and Lowe’s written testimony is available [here](#).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

John B. Reynolds III

+1 202 962 7143

john.reynolds@davispolk.com

Will Schisa

+1 202 962 7129

will.schisa@davispolk.com

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