FACTCOALITION
Financial Accountability & Corporate Transparency

June 3, 2019

The Honorable Mike Crapo
Chairman, Committee on Banking, Housing, and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member, Committee on Banking, Housing, and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

RE: May 21, 2019 Hearing Titled "Combating Illicit Financing by Anonymous Shell Companies Through the Collection of Beneficial Ownership Information"

Dear Chairman Crapo and Ranking Member Brown,

We offer these comments for the record on behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition in response to questions and comments made at the May 21st U.S. Senate Committee on Banking, Housing, and Urban Affairs hearing titled "Combating Illicit Financing by Anonymous Shell Companies Through the Collection of Beneficial Ownership Information." We thank you for holding the hearing on this important issue.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working to promote policies to combat the harmful impacts of corrupt financial practices.[1]

A Two Prong Strategy

As the Chairman noted in his remarks, the U.S. Treasury Department began implementing a new Customer Due Diligence (CDD) Rule for financial institutions in May of 2018 which, among other responsibilities, requires those institutions to collect beneficial ownership information.[2] It is reasonable to then ask whether further legislation is needed? The answer is: yes.

The CDD Rule is a critical piece in a larger strategy to protect the integrity of our financial system from abuse and the nation from a broad array of harms.

[1] A full list of FACT Coalition members is available at http://thefactcoalition.org/about/coalition-members-and-supporters/.
[2] *See*: 81 FR 29397 *and* 82 FR 45182.

The CDD Rule codifies bank "Know Your Customer" requirements. In particular, the rule requires that banks collect information on the owners of companies for corporate accounts. Many banks already did this. The rule makes it a requirement for all banks.

However, the CDD Rule does not cover many situations and scenarios. Without further legislation, we leave loopholes in the system that undermine our anti-money laundering protections.

- Not all companies use banks. While banks are the main gatekeepers to the U.S. financial system, they are not the only ones.
- The CDD Rule does NOT cover cash purchases of real estate, airplanes, yachts, art works, jewelry, and other luxury goods.
- The CDD Rule does not cover anonymous shell companies formed in the U.S. that are used to move money from one foreign country to another in the name of the U.S. entity — thereby gaining legitimacy.
- The CDD Rule does not cover companies trading in cyber currencies, and the rules around mobile payment systems/peer-to-peer payment platforms are evolving.

Additionally, a central repository of beneficial ownership information saves law enforcement valuable time at the outset of investigations. Police and prosecutors will know exactly where and how to easily check for the ownership information of an entity that they are investigating, rather than needing to identify which of the more than 6,000 banks in the U.S. held the accounts or whether the entity even used a U.S. bank.

Acknowledgement of the need for both policies is written into the CDD Rule's preamble: "This final rule thus complements the Administration's ongoing work with Congress to facilitate adoption of legislation that would require the collection of beneficial ownership information at the time that legal entities are formed in the United States."

Only Congress can create one consistent, national standard that covers companies that bypass the U.S. banking system or exploit other openings.

Protections for Filers

We also want to address the issue of criminal violations for paperwork errors. Every bill calling for the collection of beneficial ownership information, going back more than a decade, has implicit exemptions for negligence. Only knowing and willful violations of the law are punishable. The latest version of a House bill, the Corporate Transparency Act of 2019 (H.R.2513), goes further and explicitly states that negligence is not punishable.[3] This standard provides greater protections for filers against errant prosecutions than the American Bar Association's model guidelines on money laundering.[4]

[3] *See*: Corporate Transparency Act of 2019 (H.R.2513, 116th Congress), Page 15, Lines 15–17; https://www.congress.gov/116/bills/hr2513/BILLS-116hr2513ih.pdf.

[4] *See*: "A Lawyer's Guide to Detecting and Preventing Money Laundering," *American Bar Association*, *International Bar Association*, and *Council of Bars and Law Societies of Europe*, October 2014; *accessible at* http://bit.ly/ABA-AML-Guide.

This standard is one of several provisions added over the years, through extensive negotiation, to ensure legitimate businesses are not unfairly targeted or burdened.

Disclosure Requirements Would Have an Impact

Some have said that disclosure legislation would not be effective because criminals will simply lie. While there is no doubt that criminals such as El Chapo (the notorious drug cartel leader) and Viktor Bout (the infamous illegal arms dealer) will not willingly list themselves on corporate formation papers, the rules will provide important protections to our financial system and assistance to law enforcement.

- Currently law enforcement has no information regarding company ownership. Requiring the listing of at least someone is a piece of evidence — a place to start — that they did not have before.
- The law would cut off access to the financial system through legitimate channels. Currently, lawyers and other corporate formation agents do not have to ask and, therefore, can and do legally assist criminals who hide behind shell companies by filing papers and managing illicit funds. Global Witness, the anti-corruption organization and FACT Coalition member, did an undercover investigation in 2014 during which someone posed as an agent of a foreign government official and asked a set of lawyers in New York City about moving what were clearly shady funds into the country. All but one explained how they would use anonymous companies to do so. Under current law, they did nothing illegal.[5] If they were required by law to obtain the beneficial ownership information, none would have even entertained taking on the client.
- Not all criminals are smart. Data from the Treasury Department's experience with Geographic Targeting Orders (GTOs) — a pilot program that collects beneficial ownership information on entities involved in high-end, all-cash-financed real estate deals in certain U.S. metropolitan areas — suggest that there are some who will list themselves. In an early look at the GTOs, 30 percent of the covered transactions involved individuals on whom a Suspicious Activity Repot (SAR) was previously filed.[6]

The collection of beneficial ownership information is not merely a paperwork exercise. A second review of GTO data found that transparency had a measureable impact. According to a 2018 study by the Federal Reserve Bank of New York with the University of Miami, *Anonymous Capital Flows and U.S. Housing Markets*, "After anonymity is no longer freely available to domestic and foreign investors, all-cash purchases by corporations fall by approximately 70%...".[7]

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[5] Steve Kroft (60 Minutes), "Anonymous, Inc.," *CBS News*, January 31, 2016; *accessible at* https://www.cbsnews.com/news/anonymous-inc-60-minutes-steve-kroft-investigation/.

[6] Steve Hudak, "FinCEN Targets Shell Companies Purchasing Luxury Properties in Seven Major Metropolitan Areas," *FinCEN*, August 22, 2017; https://www.fincen.gov/news/news-releases/fincen-targets-shell-companies-purchasing-luxury-properties-seven-major.

[7] Hundtofte, C. Sean and Rantala, Ville, "Anonymous Capital Flows and U.S. Housing Markets" (May 28, 2018). University of Miami Business School Research Paper No. 18-3. Available at SSRN: https://ssrn.com/abstract=3186634 or http://dx.doi.org/10.2139/ssrn.3186634.

The U.K. Experience

The United Kingdom implemented the first beneficial ownership registry, and their experience can be instructive. Global Witness also did an analysis of the U.K. data in 2019.[8] Among the many findings was the successful early collaboration between Companies House (the government agency hosting the beneficial ownership registry) and law enforcement.

They found:

- "…a huge spike in Suspicious Activity Reports filed by Companies House, with 2,264 reports being filed between April 2017 and April 2018, as compared with 426 reports the preceding year."
- "…enquiries from law enforcement to Companies House for help in investigations increased from an average of 11 requests per month to 125 per month in the last three years. While the increase has slowed, it continues to grow by more than 50% (2017/18)."
- A "major drop" in U.K.-incorporated "vehicles previously associated with crime: After becoming part of the new transparency rules, incorporation levels of Scottish Limited Partnerships — a vehicle previously implicated in countless money laundering scandals — plummeted by 80% in the last quarter of 2017 from their peak at the end of 2015. [Global Witness's] analysis this year [in 2019] confirms it remains at historically low levels."

We appreciate the opportunity to offer these comments. We hope they are helpful and we look forward to working with you and the Committee in making progress on this important issue.

Should you have any questions, please feel free to contact Clark Gascoigne at +1 (202) 810-1334 or cgascoigne@thefactcoalition.org.

Sincerely,

Gary Kalman
Executive Director

Clark Gascoigne
Deputy Director

[8] *Global Witness*, "Getting the UK's House in Order," May 6, 2019; https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/getting-uks-house-order/.