



# *FedFin Client Report*

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Tuesday, January 9, 2018

## **Senate Banking Holds Listening Session on Reforming AML/CFT Framework**

Client Report: **LAUNDER123**

### **Executive Summary**

Today's Senate Banking hearing on modernizing the AML framework showed bipartisan agreement on broad principles of reform, but less consensus on critical details. Reflecting this, today's session is the first of at least two hearings. Senate Democrats led by Ranking Member Brown (D-OH) pushed hard for requiring beneficial-ownership disclosure and, while there was minor disagreement regarding details, all three witnesses agreed. Republicans did not directly embrace this, but also did not push back when Sen. Warner (D-VA) and a witness described it as the "consensus" view.

While Sen. Brown is opposed to raising currency reporting thresholds, Sen. Warren (D-MA) suggested they might be outdated and burdening small financial institutions. Chairman Crapo (R-ID) and the Ranking Member both endorsed increased information sharing among banks and law enforcement. Neither of the two bipartisan beneficial ownership bills introduced by non-committee members were discussed. One of them, S. 1717 (Rubio-Wyden) has been referred to the Banking committee; the other (S. 1454, Whitehouse-Grassley) is before the Judiciary committee.

### **Analysis**

#### ***Opening Statements***

Chairman Crapo said that the current AML framework needs to be modernized without committing himself to anything. Ranking Member Brown cited billions of dollars in fines paid by the largest banks as evidence that AML rules should not be relaxed. He embraced updating laws to require the disclosure of beneficial

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ownership information and enhancing information sharing while also safeguarding privacy.

## **Testimony**

Greg Baer of The Clearing House argued that the AML/CFT framework is outdated and driven by perverse incentives that prioritize generating reports over capturing risk. He noted that the rules for generating suspicious activity reports (SARs) are publicly known and can be exploited by criminals. He endorsed artificial intelligence as a way to innovate in this area. He also argued that the current framework has hurt international development objectives by encouraging banks to de-risk, also endorsing requiring the disclosure of beneficial ownership information.

Dennis Lormel of DML Associates said that the TCH's report on AML/CFT is a good start but could have had more law enforcement input. He stressed the value of SAR reports to law enforcement, particularly regarding currency transactions, and said that reform should largely focus on inefficiencies caused by regulators, pushing for law enforcement to be included in discussions.

Heather Lowe of Global Financial Integrity stressed that collection of beneficial ownership information is critical to combatting money laundering. This information must be made available to law enforcement and banks. While not opposed to banks transferring raw data to FinCEN, she opposes removing their responsibility for identifying AML/CFT risk because of their customer knowledge that may be unavailable to FinCEN. She also said other industries should be subjected to AML requirements and defended heavy fines for sanctions violations.

## **Q&A**

- Beneficial ownership: Sens. Brown, Warren, Warner, and Reed (D-RI) all broadly embraced requiring beneficial ownership disclosure. When pressed by Sen. Brown, Ms. Lowe said that definitions will be key in this area and criticized current customer due diligence definitions for not meeting international standards. She also criticized as inadequate Treasury efforts to allow ownership disclosure requirements to be met if a firm simply identifies a senior manager and argued against Treasury's efforts to exempt a person from ownership disclosure if their stake in a firm is less than 25 percent. Mr. Baer indicated that he supports FinCEN's final due diligence rule in this area. Sen. Reed asked how beneficial ownership should be disclosed and Mr. Baer said that the states could collect it at a firm's incorporation, or FinCEN could gather it if the states do not. He noted that others have suggested that the IRS should collect it instead of FinCEN but endorsed FinCEN as probably the

best federal option. Mr. Lormel pushed against the IRS option saying that it would hinder law enforcement by requiring warrants. While focusing on requiring disclosure to banks and FinCEN, Ms. Lowe said public disclosure has been required elsewhere and also has benefits.

- **Information Sharing:** Chairman Crapo asked about the shortcomings of the current information sharing regime; Mr. Baer said sharing a broader category of criminal offenses would make AML efforts more effective. Noting that FATF had previously considered mandating increased information sharing, Ms. Lowe cautioned that it ended up abandoning the effort because of EU privacy restrictions and advised the committee to consider this experience. Sen. Brown asked how law enforcement responds to criticism that it fails to share information with banks and Mr. Lormel said granting certain bank officers security clearances and establishing public-private working groups facilitates sharing and makes it more consistent. Sen. Warren asked how allowing banks to share data directly with FinCEN would affect law enforcement and Mr. Baer said it would benefit them and banks. Sen. Warner argued that shifting data to a central point for processing would lower compliance costs for small banks.
- **Public Private Task Force:** Sen. Schatz (D-HI) pressed for establishing a new permanent public-private group to address AML/CFT issues. Ms. Lowe argued that a temporary group would be preferable. Sen. Rounds (R-SD) asked if the U.K.'s AML task force should be replicated in the U.S.; Mr. Baer said that this could be a useful component of reform.
- **Compliance Cost:** Sens. Tillis (R-NC) and Warner expressed concern over the high cost of compliance for banks, particularly smaller ones. Sen. Cortez Masto (D-NV) echoed these concerns for the gaming industry.
- **Other Industries' AML Responsibilities:** Sen. Warner asked about proposals to have certain AML responsibilities for real estate and registered investment advisors. He also pressed for the committee to consider how cryptocurrencies interact with money laundering and Sen. Crapo agreed that the committee should look into it.