

## Congress Eyes Modernization of Bank Secrecy Act and Beneficial Ownership Disclosures

**A** SIGNIFICANT AND MUCH-NEEDED UPDATE to the U.S. anti-money laundering (AML) laws is one of the few remaining legislative efforts that may get across the finish line during this election year. Legislators from both parties recognize that the current AML system is inadequate to meet the evolving challenges presented by terrorist organizations, international drug and human traffickers and domestic criminal enterprises. Disagreement about one key issue, however, appears to be holding up progress on reform legislation: how, when and to whom a company must disclose its beneficial owners. Changes to beneficial ownership rules could have significant impact not only on financial institutions, which currently must collect the information, but also on businesses in all industries and of all sizes, especially those that prefer or find it necessary to transact with a degree of anonymity.

### CURRENT LAW: THE BANK SECRECY ACT AND THE CUSTOMER DUE DILIGENCE

**RULE:** The centerpiece of the *Bank Secrecy Act* (BSA) is a financial institution's obligation to file Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs) with the Financial Crimes Enforcement Network (FinCEN), a division of the Treasury Department charged with coordinating an interagency effort to detect and combat money laundering. Presently, financial institutions file a CTR for each transaction over \$10,000, regardless of whether the transaction is routine or out of the ordinary. They file a SAR for each transaction in excess of \$5,000 that the bank, following its policies and procedures, concludes may be suspicious.

The primary criticism of the current AML system from both the law enforcement and financial institution perspectives is that it is inefficient because BSA compliance is monitored by bank regulators who grade financial institutions based on how well they follow internal procedures, not on how valuable their information is to law enforcement. In 2017, depository institutions alone (other financial services companies, including money services businesses and securities brokers, are required to file SARs, as well) spent billions of dollars on AML compliance and filed more than 900,000 SARs with FinCEN. Only a small fraction of those SARs were evidence of actual money laundering, but the sheer volume of SARs demonstrates the current system's incentive for a financial institution to over-file SARs lest its pru-



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dential regulator conclude that it has too high of a SAR-triggering threshold in its internal AML policy.

The most recent update to AML rules went into effect on May 11. FinCEN's new Customer Due Diligence (CDD) rule requires a financial institution to identify and verify a company's "beneficial owner" when the company opens a new account and monitor the account for changes in beneficial owner. While many law enforcement groups support the rule because of the transparency it yields, other constituencies, including small businesses and finan-

cial institutions, point to compliance difficulties and high associated costs. Increased AML compliance costs have caused some financial institutions to consider "de-risking"—terminating all customer relationships in geographies or industries that may have a higher incidence of illicit finance, regardless of whether a particular customer is a good actor—which would cut off mainstream banking services for developing countries, underserved communities and legitimate international transactions.

### LEGISLATIVE PROPOSALS TO MODERNIZE BSA AND BENEFICIAL OWNERSHIP RULES:

Lawmakers have filed several bills to update the BSA/AML framework and address the use of anonymous shell companies in illicit finance. Representative Stevan Pearce (R-New Mexico) has introduced the *Counter Terrorism and Illicit Finance Act* (H.R. 6068, 115th Congress), which would:

- ▶ Update the dollar amount filing thresholds for CTRs and SARs;
- ▶ Require a formal interagency review of the BSA to generate proposals that ensure that information financial institutions provide is of a "high degree of usefulness" to law enforcement;
- ▶ Permit financial institutions to share SARs with foreign branches and affiliates;
- ▶ Create a no-action letter process at FinCEN; and
- ▶ Encourage the use of technological innovations in AML reporting.

*Continued on page 8*



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**LOUISIANA Union Savings and Loan Association Merges with Hibernia Bancorp**

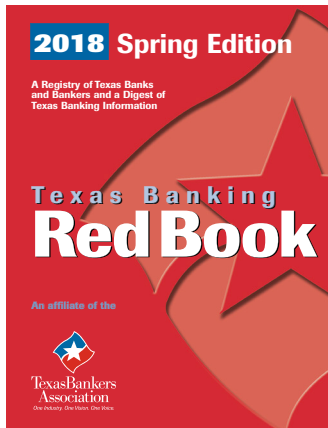
New Orleans-based **UNION SAVINGS AND LOAN ASSOCIATION** announced on July 2 that it has completed its merger with **HIBERNIA BANCORP INC.** and its subsidiary, **HIBERNIA BANK**. Under the terms of the agreement, shareholders of Hibernia Bancorp will receive consideration of \$32 cash per share. In connection with the consummation of the merger, Union Savings and Loan Association is changing its name to Hibernia Bank.

The transaction results in a full-service community bank with more than \$200 million in assets and five offices throughout the New Orleans area. “The combined bank will enable us to better serve our customers with a greater array of products and services,” says **STEPHEN H. SCHONBERG**, president and CEO.

Union Savings and Loan Association was advised by FIG Partners LLC and the law firm of Luse Gorman PC. Hibernia Bancorp Inc. was advised by Banks Street Partners LLC and the law firm of Silver, Freedman, Taff & Tiernan LLP.

Founded in 1886, Union Savings and Loan Association provides services to savings and mortgage customers in several parishes across the New Orleans metropolitan area. As the new Hibernia Bank, it will operate from its main office on Carondelet Street and five branch offices in Harahan, Metairie, Old Metairie, the Carrollton neighborhood and downtown New Orleans. Schonberg, a third-generation bank president, will serve as president and chief executive officer of Hibernia Bank. 🏠

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**Bank Secrecy Act continued from page 3**

An earlier “discussion draft” version of the same bill contained a provision that would have required a company to file beneficial ownership information with FinCEN at the time it was incorporated in a state—a proposal very similar to the *Corporate Transparency Act of 2017*, introduced in the House (H.R. 3089, 115th Congress) by Representative Carolyn Maloney (D-New York) and in the Senate (S. 1717, 115th Congress) by Senator Ron Wyden (D-Oregon). Senator Sheldon Whitehouse (D-Rhode Island) has offered a similar proposal called the *TITLE Act* (S. 1454, 115th Congress), which would require a corporation to disclose its beneficial owners to a state government at the time of incorporation.

The House Financial Services Committee has held hearings on BSA modernization. It was scheduled to consider the *Counter Terrorism and Illicit Finance Act* on June 14, but consideration was postponed over concern for lack of support from committee members and law enforcement because the proposed legislation did not update beneficial ownership rules. The Senate Banking

Committee, too, has held BSA/AML hearings, at which the topic of beneficial ownership has been thoroughly discussed. While the beneficial ownership issue appears to be a holdup at the moment, members of both parties agree on the need to update our BSA/AML framework.

If members of Congress, law enforcement, financial institutions and the business community can reach a compromise on beneficial ownership, legislation could move very quickly through both chambers and potentially become law, even with the legislative calendar becoming more challenging as midterm elections approach. 🏠

*Travis Norton, of counsel for Brownstein Hyatt Farber Schreck, draws on a wealth of private- and public-sector legal and policy experience in his government relations practice. Prior to joining the firm, Norton served as staff director of the Senate Banking Committee’s Housing Subcommittee, tax counsel to Senator Tim Scott (R-South Carolina) and general counsel for the House Financial Services Committee. Originally from upstate New York, Norton lives in Falls Church, Virginia.*