



Department of Justice

STATEMENT OF

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BEFORE THE

**COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE**

FOR HEARING ENTITLED

**“COMBATTING ILLICIT FINANCING BY ANONYMOUS SHELL
COMPANIES”**

PRESENTED

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**Statement of Steven M. D'Antuono
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Before the United States Senate
Committee on Banking, Housing, and Urban Affairs
For a Hearing Entitled
“Combatting Illicit Financing by Anonymous Shell Companies”
May 21, 2019**

Chairman Crapo, Ranking Member Brown, and Members of the Committee, I am pleased to appear before you today to discuss the usefulness of beneficial ownership information to our nation's law enforcement. This hearing is an important step forward towards developing the laws needed to effectively combat illicit financing through the use of anonymous vehicles, such as shell companies, and the Federal Bureau of Investigation (FBI) appreciates being consulted on these incredibly important matters.

I. Overview

The U.N. Office on Drugs and Crimes estimates that global illicit proceeds total more than \$2 trillion annually, and proceeds of crime generated in the United States were estimated to total approximately \$300 billion in 2010. For an illegal enterprise to succeed, criminals must be able to hide, move, and access these illicit proceeds – often resorting to money laundering and increasingly utilizing the anonymity of shell and front companies to obscure the true beneficial ownership of an entity.

The pervasive use of shell companies, front companies, nominees, or other means to conceal the true beneficial owners of assets is a significant loophole in this country's Anti-Money Laundering (AML) regime. Under our existing regime, corporate structures are formed pursuant to state-level registration requirements, and while states require varying levels of information on the officers, directors, and managers, none require information regarding the identity of individuals who ultimately own or control legal entities upon formation of these entities.

Not only does the state-level regime lack beneficial ownership information, no federal-level system exists to consolidate or supplement the information that is collected under the various state regimes. Moreover, except in very narrow circumstances, current federal laws do not require identification of beneficial owners at account opening with financial institutions.

The FBI has countless investigations, spanning criminal and national security threats, in which illicit actors, operating both domestically and internationally, use shell and front companies to conceal their nefarious activities and true identities. The strategic use of these entities makes investigations exponentially more difficult and laborious. The burden of uncovering true beneficial owners can often handicap or delay investigations, frequently requiring duplicative, slow-moving legal process in several jurisdictions to gain the necessary information. This practice is both time consuming and costly. The ability to easily identify the

beneficial owners of these shell companies would allow the FBI and other law enforcement agencies to quickly and efficiently mitigate the threats posed by the illicit movement of the succeeding funds.

In addition to diminishing regulators', law enforcement agencies', and financial institutions' ability to identify and mitigate illicit finance, the lack of a law requiring production of beneficial ownership information attracts unlawful actors, domestic and abroad, to abuse our state-based registration system and the U.S. financial industry. Many of the United States' closest partners require beneficial information in order to detect illicit finance and protect their financial systems. The nations with the most effective AML and counter-terrorist financing (CFT) regimes require documentation of beneficial owners for "legal persons," generally referring to corporations, trusts, and property, held in a centralized database easily accessible by government agencies. If corporation, trust, and real property owners in the United States were required to disclose beneficial ownership, and this information was made available to regulators and law enforcement through a central repository, the United States would more vigorously be able to identify and mitigate illicit actors and protect the U.S. financial system.

I. Nature of the Problem

In recent years there have been multiple assessments, undertaken by the Financial Action Task Force (FATF), as well as the Department of the Treasury, which highlight the vulnerabilities faced by the United States as a result of a near complete lack of transparency into beneficial ownership.

Financial Action Task Force (FATF). The FBI is part of the Treasury-led U.S. delegation to FATF. The FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognized as the global AML and CFT standards.

FATF's Guidance on Transparency and Beneficial Ownership, found in FATF Recommendations 24 and 25, states that countries should take measures to prevent the misuse of legal persons [such as shell companies, corporate structures, and other entity structures] for money laundering and terrorist financing by ensuring that legal persons are sufficiently transparent. The fundamental principle is that countries should ensure that there is adequate, accurate, and timely information on the beneficial owner or owners that can be obtained or accessed in a judicious fashion by competent authorities without impediments.

In its 2016 Mutual Evaluation Report (MER) of the United States' Anti-Money Laundering and Counter Terrorist-Financing regime, the FATF highlighted the lack of beneficial ownership information issue as one of the most critical gaps in the United States' compliance with FATF standards. Specifically, the MER stated that "serious gaps in the legal framework prevent access to accurate beneficial ownership information in a timely manner," and that "fundamental improvements are needed in these areas."

FATF noted that this issue can significantly mitigate law enforcement's and regulators' ability to combat illicit finance in the United States. Determining the true ownership of bank accounts and other assets often requires that U.S. law enforcement undertake a time-consuming and resource-intensive process, providing ample time for movement of funds or additional layering to conceal the ownership or location of funds. For example, investigators may need grand jury subpoenas, witness interviews, or foreign legal assistance to unveil the true ownership structure of shell or front companies associated with serious criminal conduct. The lack of a current legal requirement to collect beneficial ownership information also undermines financial institutions' ability to determine which of their clients pose compliance risks, which in turn harms banks' ability to guard against money laundering.

Furthermore, in a 2018 report titled *Concealment of Beneficial Ownership*, FATF found that, "the lack of [available beneficial ownership in select] countries is a major vulnerability, and professionals operating in countries that have not implemented appropriate regulations [...] represent an unregulated "back-door" into the global financial system."

2018 National Money Laundering Risk Assessment. This risk assessment, authored by the Department of Treasury, in consultation with the many agencies, bureaus, and departments of the federal government that also have roles in combating illicit finance including the FBI, identifies the money laundering threats, vulnerabilities, and risks that the United States currently faces. The risk assessment noted that law enforcement agencies observed that misuse of legal entities posed a significant money laundering risk and that efforts to uncover the true owners of companies can be resource-intensive, especially when those ownership trails lead overseas or involve numerous layers. The assessment further noted that the lack of obligation for certain financial institutions to identify the natural persons who control or own a corporate customer had allowed individuals to access financial services anonymously by acting through shell companies.

Specifically in the section on Vulnerabilities and Risks, the risk assessment noted that, "bad actors consistently use shell companies to disguise criminal proceeds and U.S. law enforcement agencies have no systematic way to obtain information on the beneficial owners of legal entities. The ease with which companies can be incorporated under state law, and how little information is generally required about companies' owners or activities, raises concern about a lack of transparency." Though the Assessment went on to state that the impediment merely slowed down rather than thwarted law enforcement investigations, it later noted that "complex ownership structures featuring layers of corporate entities, trusts, or nominee owners-punctuated by the involvement of foreign natural or legal persons – also present challenges."

II. Challenges for Law Enforcement

There are numerous challenges for federal law enforcement when the true beneficiaries of illicit proceeds are concealed through the use of shell or front companies. A number of these challenges are outlined below. It is important to note that while the FBI and other federal law enforcement agencies may have the resources required to undertake long and costly investigations and thus mitigate to a small degree some of the challenges, the same is often not true for state, local, and tribal law enforcement.

The process for the production of records can be lengthy, anywhere from a few weeks to many years, and this process can be extended drastically when it is necessary to obtain information from other countries, which may require a Mutual Legal Assistance Treaty (MLAT) requests to those countries. If the beneficial ownership information being sought pertains to an entity which is registered in a jurisdiction with which the United States has no bilateral MLAT, obtaining records may be impossible.

Finally, if an investigator obtains the ownership records, either from a domestic or foreign entity, the investigator may discover that the owner of the identified corporate entity is an additional corporate entity, necessitating the same process for the newly discovered corporate entity. Many professional launderers and others involved in illicit finance intentionally layer ownership and financial transactions in order to reduce transparency of transactions. As it stands, it is a facially effective way to delay an investigation.

III. Potential Solutions to Mitigate Challenges

A significant number of the challenges described above could be mitigated by requiring legal entities to disclose beneficial ownership information, and by creating a central repository of that information which would be available to law enforcement and regulators. There are numerous examples of such requirements around the world, including by some of our closest partners.

The Fourth Anti-Money Laundering Directive required European Union (EU) member states to ensure that legal entities incorporated in their territory obtain and hold accurate and current information on beneficial ownership. This beneficial ownership information was held in a central register in that member state, but the registers were not required to be public until the European Parliament adopted the Fifth Anti-Money Laundering Directive in 2018. Section 25 of the directive deals directly and unequivocally with the requirement that Member States acquire and retain corporate beneficial ownership:

(25) Member States are currently required to ensure that corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership. The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure. The globally interconnected financial system makes it possible to hide and move funds around the world, and money launderers and terrorist financiers as well as other criminals have increasingly made use of that possibility.

The Fifth Directive requires public access to data on the beneficial owners of most legal entities, with the exception of trusts, through the use of a central register. The access to data on the beneficial owners of trusts will be accessible without any restrictions to authorities, Financial Intelligence Units, banks and other professional sectors subject to anti-money laundering rules, as well as other persons who can demonstrate a legitimate interest in the trust data. The directive also addresses the necessity to share the information between member states, in order to ensure

the effective monitoring and registration of information on beneficial ownership. EU Member States have a January 2020 deadline to implement the direction into national law.

The United Kingdom (UK) has enacted perhaps the most robust beneficial ownership legislation to date. The UK has registers of beneficial ownership for three different types of assets: companies, real property, and trusts. Information on the beneficial ownership of companies is publicly available. For property owned by overseas companies and legal entities, the public beneficial ownership database is set to launch by 2021. The register for trusts is not public, but is available to law enforcement.

In July 2017, bilateral agreements between the UK and the Crown Dependencies and Overseas Territories related to the sharing of beneficial ownership information went into effect. These Crown Dependencies and Overseas Territories include the Isle of Man, the British Virgin Islands, the Cayman Islands, and many others. Under the terms of these agreements, UK law enforcement has access to company beneficial ownership information in support of investigations. This information must be made available within 24 hours of a request. Our colleagues at the UK's National Crime Agency have continually noted the immense value of such information in their investigations.

These frameworks can provide valuable insight into the critical aspects of a successful system for maintaining, accessing, and sharing accurate beneficial ownership information.

IV. Examples of Cases Hindered by Obscured Beneficial Ownership Information

As referenced above, the FBI continues to have a plethora of investigations, spanning criminal and national security investigations that have been impacted by the use of shell or front companies by bad actors. Examples of several such instances can be found below, categorized by crime problem:

Kleptocracy. Recently, in a joint FBI and Internal Revenue Service – Criminal Investigations (IRS-CI) investigation, the Department of Justice filed civil forfeiture complaints aggregating to \$1.7 billion brought under the Kleptocracy Asset Recovery Initiative related to the 1Malaysia Development Berhad (1MDB) investigation. From 2009 through 2015, more than \$4.5 billion in funds belonging to 1MDB was allegedly misappropriated by high-level officials of 1MDB and their associates. 1MDB was created by the government of Malaysia to promote economic development in Malaysia through global partnerships and foreign direct investment. The associated funds were intended to be used for improving the well-being of the Malaysian people. However, using fraudulent documents and representations, the co-conspirators allegedly laundered the funds through a series of complex transactions and shell companies with bank accounts located in the United States and abroad. These transactions allegedly served to conceal the origin, source and ownership of the funds, and ultimately passed through U.S. financial institutions to then be used to acquire and invest in assets located in the United States and overseas.

Included in the forfeiture were multiple luxury properties in New York City, Los Angeles, Beverly Hills, and London, mostly titled in the name of shell companies, as well as

paintings by Van Gogh, Monet, Picasso, a yacht, several items of extravagant jewelry, and numerous other items of personal property. The investigation into the location and holders of the assets associated with the alleged IMDB scheme was made much more difficult by the shell companies with connections in foreign destinations.

Drug Traffickers, Political Corruption, and Tax Evasion. Perhaps the most public revelation into alleged illicit actors' use of shell companies to conceal ownership was the former Panamanian law firm Mossack Fonseca. Documents from the firm were leaked by an anonymous source to the International Consortium of Investigative Journalists (ICIJ). These documents, referred to as "the Panama Papers," purport to show how Mossack Fonseca engaged or facilitated international financial crimes, including alleged money laundering and tax evasion, using shell companies and nominees. Several prominent foreign politicians were identified as clients of Mossack Fonseca, leading to multiple heads of state resigning. Mossack Fonseca opened thousands of shell companies for their customers, for whom they could many times not even identify. These customers, at times, allegedly included known international narcotics traffickers.

Mossack Fonseca was not just for international clients. A significant number of their clients were allegedly Americans or individuals involved in U.S.-based commerce. When a regulator or law enforcement official looked up the names of the shell entities in state-held registries, they would find the registered Agent as the law firm or one of its subsidiaries, not a true owner or anyone actually associated with the entity. In many instances, a U.S. regulator or law enforcement entity was precluded from identifying the beneficial owner even via legal process as Mossack Fonseca could not or would not provide the information. These anonymous shell companies allegedly used the U.S. financial system for their anonymous owners' benefits.

Mossack Fonseca also had U.S.-based subsidiaries that established thousands of U.S.-based shells in Nevada, Florida, Wyoming, and likely other states. When officials scrutinized a shell company created by one of the Mossack Fonseca subsidiaries, all that the investigator could learn was that the Agent was "MF Nevada" or the like. Thereafter, the subsidiary Mossack Fonseca entities made it difficult to obtain any additional information. This, of course, made investigating the shell entities extremely time-consuming, inefficient, and difficult.

Sanctions Evasion. Another example of note is the Karl Lee investigation. Li Fangwei, a/k/a Karl Lee, and several of his Chinese shell and front companies were designated by the Department of the Treasury's Office of Foreign Assets Control (OFAC) as the principal supplier to the Government of Iran's ballistic missile program. He owned a graphite and metallurgical production factory in Dalian, China and was supplying Iran with various military and metallurgical items. Lee used his Chinese shell and front companies to surreptitiously exploit the U.S. financial system to supply weapons of mass destruction to Iran. Lee was indicted on seven counts of International Emergency Economic Powers Act (IEEPA) violations, money laundering, and related schemes. Approximately \$7 million was seized from U.S. based correspondent bank accounts associated with Lee's foreign based accounts. Some of Lee's attempted sales involved U.S. businesses, who were unaware of the Lee's role as beneficial owner of the concealed Chinese shells.

During the Karl Lee investigation the FBI faced numerous hurdles due to the litany of overseas shell corporations. Attempting to unravel Lee's shell network that had penetrated the U.S. financial system delayed the investigation many months and nearly proved insurmountable. One major challenge was that most of the U.S. based correspondent banks did not collect basic know your customer information for the shell corporation accounts and permitted transactions to be blindly conducted. Thankfully, one bank did collect this information, which enabled the FBI to start to unravel Lee's illegal proliferation and use of the U.S. financial system. This fundamental information proved crucial to the investigation but only existed by chance, not by legal requirement.

Crimes Against Children/Human Trafficking. In April 2018, the Department of Justice announced the seizure of Backpage.com, the Internet's leading forum for prostitution ads, including ads depicting the prostitution of children. In 2018, seven defendants were charged with 93 counts of prostitution related charges, money laundering, and transactional money laundering. Eventually, the government seized over \$140 million worth of USD and bitcoin.

Approximately 97% of Backpage's revenue came from selling ads related to prostitution, which included children and victims of human trafficking. In approximately 2015, major credit card providers stopped allowing transactions with the site and almost no banks would provide banking services for Backpage. The owners and operators of the website turned to opening shell companies in the United States, Europe, Asia, and South America in order to continue to operate as a company. Eventually, Backpage's entire revenue stream was predicated on concealing the receipt of money from people purchasing advertisements. The owners opened shell companies in order to obtain bank and merchant accounts. Backpage also accepted pre-paid gift cards and digital currency, which it then sold and exchanged for cash, then moved into bank accounts of the shell companies in order to fund its operation.

Unwinding these shell companies and their bank accounts took many months due to the lack of readily available beneficial ownership information. Additionally, had the banks known who the beneficial owners of the shell companies were, they likely would not have provided banking services and the revenue platform would have been eliminated. Thus, the criminal activity could have been starved of income and the abuse of children and human trafficking victims could have been halted years earlier than it was.

Healthcare Fraud. On April 9, 2019, FBI and Department of Justice officials announced the disruption of one of the largest Medicare fraud schemes in U.S. history. An international fraud ring allegedly bilked Medicare out of more than \$1 billion by billing it for unnecessary medical equipment – mainly back, shoulder, wrist, and knee braces, as part of Durable Medical Equipment (DME) orders. The alleged illegal activity in this scheme included medical equipment companies that paid a firm in the Philippines to recruit individuals, who were Medicare patients and may or may not have had a medical need for the braces. The companies then allegedly paid doctors kickbacks to telemedicine companies that arranged for doctors to prescribe unnecessary braces “without any patient interaction or with only a brief telephonic conversation with patients they had never met or seen.” Some of the telemedicine companies concealed these kickbacks by using fraudulent invoices and having the payments made to shell companies, which were located in foreign countries and established in the name of nominee

owners. Some of the 130 DME companies associated with the investigation also were valueless shell companies used to conceal the true owner-operators of the businesses. The DME companies at times hired legal counsel and some of the owners used straw individuals to establish new DME companies when Medicare would perform audits of their illegitimate DME business practices. The DME owners would merely move its existing business into the new DME company and establish new bank accounts under the new DME name. During its operation, DME representatives provided banks with the names of the straw individuals, purporting to be the owners of the business. By doing this, the financial institutions were unable to easily flag the routine fraudsters as such.

The proceeds of this fraudulent scheme were allegedly laundered through international shell corporations and used to purchase exotic automobiles, yachts, and luxury real estate in the United States and abroad. The massive, months-long investigation known as “Operation Brace Yourself” spanned 20 FBI field offices and involved several partner agencies, including the IRS Office of the Inspector General, the Department of Health and Human Services’ Office of the Inspector General, Center for Medicare and Medicaid Services, U.S. Secret Service, and the Department of Veterans’ Affairs.

Investment Fraud. In a joint FBI, IRS-CI, and U.S. Postal Inspection Service case, six individuals were ultimately charged in 2009 for their part in running a \$168,000,000 hard-money lending Ponzi scheme. The scheme involved the use of opaque corporate structures and shell entities to conceal fraud and self-dealing. Duane Slade, Guy Williams, and Brent Williams were the primary executives that created complicated investment structures and used shell companies to divert investors’ assets. Money was siphoned from the primary investment fund into related shell companies, which were actually owned by the executives of the primary investment firm, unbeknownst to the investors. These executives were then able to convince multiple investors to purchase equity into what amounted to valueless shell entities. The executives even contrived a loan of investors’ money from the primary investment to one of the shells. Though no money actually changed hands, the executives paid themselves a \$400,000 fee for arranging the loan. Due to the convoluted nature of these interrelated shell companies and investment products, dozens of citizens were defrauded out of their life savings. Had either the citizens or the banks which provided banking services had a clearer picture of who owned which entities, the fraud may have been prevented. Finally, the multi-year, multi-agency investigation took countless days and hours of investigation, during which the subjects continued to dissipate assets unknown to law enforcement.

Drug Trafficking and Money Laundering. The Trevino-Morales brothers, alleged to be the head of the Los Zetas Mexican drug cartel, were indicted in Texas for their roles in using the race horse industry and shell companies to launder millions of dollars in drug proceeds. Miguel Trevino-Morales, the alleged head of Los Zetas, claims to have killed 385 U.S. citizens during his association with the cartel. The brothers structured drug proceeds into anonymous or straw shell company bank accounts within the U.S. financial system. The Trevino-Morales brothers would then purchase vast numbers of race horses from auctions on behalf of the shells, then sell the horses between the shells in order to make the deposits of vast sums of drug proceeds into their bank accounts look legitimate. Finally, if one of the race horses started winning money, they would back-date a sale of the horse into the known entity of the brother not outwardly

associated with the Los Zetas, who would then deposit the winnings in furtherance of the drug enterprise.

The wide use of shell companies, in both the United States and Mexico, made it nearly impossible for banks and investigators to associate the drug cartel with horses and bank accounts. If not for solid witness testimony and extremely diligent forensic accounting, it would have been difficult to prove the case. In total, 10 defendants were found guilty of money laundering related charges, a money judgement of \$60 million was rendered, 522 race horses were seized (and sold for \$12 million), two U.S. based horse ranches were seized as well as two airplanes used by the cartel.

V. Conclusion

I want to thank the Committee for holding this hearing and for calling attention to the threat posed by obscured beneficial ownership. The United States needs effective legal tools to directly target these types of fraudulent schemes and protect the integrity of the U.S. financial system from similar schemes. Together with our domestic and international law enforcement partners, the FBI is committed to continuing this conversation with Congress and looks forward to developing and strengthening beneficial ownership laws.