Testimony of
Pete Selenke

On Behalf of the
American Bankers Association

Before the
Subcommittee on National Security, Illicit Finance, and International Financial Institutions

Of the
House Financial Services Committee

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Chairman Luetkemeyer, Ranking Member Beatty, and members of the subcommittee, thank you for the opportunity to testify today regarding "Potential Consequences of FinCEN's Beneficial Ownership Rulemaking." My name is Pete Selenke, and I serve as Vice President and Anti-Money Laundering/Bank Secrecy Act Officer for The Central Trust Bank, a privately held $19 billion bank headquartered in Jefferson City, Missouri. As a banker with more than 32 years' experience in Bank Secrecy Act (BSA) compliance, I am personally and deeply committed to protecting the U.S. financial system, our bank and our bank customers from threats posed by bad actors, and I have seen firsthand the successes and challenges of operationalizing BSA regulations. In fact, Central Bank has received two year-end awards from Treasury's Financial Crimes Enforcement Network (FinCEN) in recognition of our work assisting law enforcement in the past five years.

Today, I am pleased to speak on behalf of Central Bank and our 3,000 employees, as well as the American Bankers Association (ABA). The American Bankers Association is the voice of the nation's $23.6 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $19.4 trillion in deposits, and extend $12 trillion in loans.

Central Bank Background

Central Bank was established in 1902 and is headquartered in Jefferson City, Missouri. We directly serve customers in 9 states, from more than 150 locations. Our parent company, Central Bancompany, has been ranked by Forbes on "America's Best Banks" list since 2009 and was named a "Best Customer Service Bank" by Newsweek magazine in 2023. We are honored by these recognitions. Central Bank was founded upon one defining principle: to always invest and support the communities we serve. We also pride ourselves on providing legendary client service, being mindful of our Midwest values and never forgetting our roots.

Introduction and Overview

Before I get to the core of my testimony, I would like to offer background about the banking industry's anti-money laundering (AML) work and support for Congress' important work to reform our nation's AML laws.

The Banking Industry's Commitment to Combatting Financial Crime

Banks are entrusted with the critical mission of taking care of our customers and helping law enforcement protect the U.S. financial system. And we take this responsibility seriously. We do this in part by designing and implementing strong AML programs. These programs allow us to cooperate and partner effectively with the U.S. government and law enforcement to increase the strength of U.S. measures to prevent, detect, and prosecute international money laundering, the financing of terrorism, and other illicit uses of the U.S. financial system. For the past fifty years bank secrecy and anti-money laundering laws and regulations have been an essential tool to help safeguard the financial system and protect against harms posed by illicit actors. However, over the last 50 years, the banking industry has changed dramatically and so have the threats by bad actors. To combat these evolving threats, ABA and its members strongly supported the enactment of the Anti-Money Laundering Act (AMLA) of 2020, the most significant overhaul of the nation's bank secrecy and anti-money laundering laws, commonly referred to as the Bank Secrecy Act (BSA), since the USA PATRIOT Act of 2001. The AMLA reflected a consensus among bankers, lawmakers and regulators that the existing anti-money laundering/countering the financing of terrorism (AML/CFT) framework was outdated and insufficient to identify and prevent 21st century criminal activity and terrorist financing.

The Costs of Financial Crime Compliance

Banks take the reforms included in the AMLA and its Corporate Transparency Act of 2019 (CTA) very seriously, as the fight against financial crime is both critical and costly. We honorably accept our patriotic duty to spend shareholder resources to achieve our country's law enforcement objectives—when those resource allocations are effective. In 2020, the U.S. Government Accountability Office (GAO) issued a report on total direct BSA compliance costs for banks, after surveying a small sample size of 11 selected banks. In its report, GAO found these costs generally tended to be proportionally greater for smaller banks than for larger banks; approximately 2 percent of the operating expenses for each of the three smallest banks in 2018, but less than 1 percent for each of the three largest banks in GAO's review.[1] A 2022 study by LexisNexis, based on a comprehensive survey of 1,088 financial crime compliance decision makers, projected the total cost of compliance related to financial crime across financial institutions worldwide as $274.1 billion, up from $213.0 billion in 2020.[2] The 2020 financial crime compliance costs in the U.S. were calculated at $35.2 billion, up from $26.4 billion in 2019. The average annual cost of financial crime compliance per organization has risen by

[1] GAO Report Anti-Money Laundering: Opportunities Exist to Increase Law Enforcement Use of Bank Secrecy Act Reports, and Banks' Costs to Comply with the Act Varied

[2] LexisNexis 2022 True Cost of Financial Crime Compliance Study – Global Summary

double-digits since the pandemic began in 2020, with U.S. financial institutions reporting the highest year-over-year dollar changes.[3] Yet the consensus of those involved in the fight against financial crime is that the ever-growing resources devoted by financial institutions has outpaced the benefit law enforcement or national security gains from the addition information.

Our Support of the Anti-Money Laundering Act and Corporate Transparency Act Reforms

The reforms embodied in the AMLA were needed for many reasons including that: banks must know who our customers are; law enforcement needs tools to identify criminals who use and exploit shell companies to commit their crimes; burdens to the public must be minimized, and Americans' privacy rights must be protected. For this reason, ABA strongly supported the inclusion of the CTA as part of the AMLA. Congress, on a bipartisan and bicameral basis, and with the thoughtful work of members on this subcommittee, wrote and passed the CTA, carefully balancing these important priorities.

The purpose of the CTA was to "improve transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures and insight into the flow of illicit funds through those structures"[4] and to "discourage the use of shell corporations as a tool to disguise and move illicit funds."[5] Criminals, money launderers, and terrorists cannot and should not be able to hide behind shell companies. Criminals have exploited state formation procedures to conceal their identities and have used shell companies to commit crimes including terrorism, proliferation financing, drug and human trafficking, money laundering, tax evasion, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption. Law enforcement needs to know who is behind the crimes committed through these shell companies for the purpose of detecting, preventing and punishing terrorism, money laundering and other misconduct. The CTA advances the goals of detecting and deterring these bad actors by providing law enforcement with insight as to who owns or controls business entities. Banks do our part; we have been on the front lines establishing and implementing customer due diligence programs. We know and care about our customers and have seven years

[3] There is a lot of work by banks that contributes to these costs. In addition to compliance with FinCEN's BSA rules, we also stay abreast of the advisories, notices, and alerts that FinCEN issues, along with the eight AML National Priorities FinCEN published. In the last three years alone, FinCEN urged banks to increase vigilance with respect to: COVID-19 Vaccine-Related Scams and Cyber Attacks; Trade in Antiquities and Art; Online Child Sexual Exploitation Crimes; Environmental Crimes and Related Financial Activity; Elder Financial Exploitation; Kleptocracy and Foreign Public Corruption; Ransomware and the Use of the Financial System to Facilitate Ransom Payments; Jurisdictions Identified by FATF with AML/CFT and Counter-Proliferation Deficiencies; Financial Crimes Targeting COVID-19 Economic Impact Payments; Convertible Virtual Currency Scams Involving Twitter; Potential Russian Sanctions Evasion Attempts; Real Estate, Luxury Goods, and Other High Value Assets Involving Russian Elites, Oligarchs, and their Family Members; Potential Russian and Belarusian Export Control Evasion Attempts (and urged continued vigilance in a supplemental alert); Human Smuggling Along the Southwest Border of the U.S.; Commercial Real Estate Investments by Sanctions Russian Elites, Oligarchs and their Proxies; and Nationwide Surge in Mail Theft-Related Check Fraud Schemes Targeting the U.S. Mail. These are all important national security priorities, which we respond to by dedicating compliance resources to the impacted area.

[4] Pub. L. 116–283, div. F, §6002(5)(A)

[5] *Id.* at §6002(5)(B)

of real-world experience carefully designing and executing policies to comply with the 2016 FinCEN Customer Due Diligence (CDD) Rule.

In addition to our primary regulators and law enforcement, banks work cooperatively with FinCEN. We are in full support of FinCEN's mission to safeguard the financial system from illicit use and to combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. We work closely and collaboratively with the dedicated professionals at FinCEN and put substantial effort and resources toward implementing the BSA rules FinCEN issues. We have been told and understand that law enforcement finds our information and our assistance extremely valuable, but we need greater feedback about these benefits, and the feedback loops Congress enacted into law are another important objective of the AMLA.

Because we believe so strongly in the objectives of the AMLA and CTA, we want to ensure that FinCEN promulgates implementing regulations consistent with Congressional intent. To that end, we believe that in creating a beneficial ownership regime:

1) banks must be able to effectively use beneficial ownership information;
2) beneficial ownership information must be accurate to be useful; and
3) the government needs to educate reporting companies, or as we like to call them, our customers, about FinCEN and their new reporting obligations to the government.

I. Use: Banks must be able to use beneficial ownership registry information for all BSA compliance purposes.

Congress explicitly intended for the beneficial ownership information included in the registry to be accessed by banks, with their customers' consent, for purposes of complying with the "customer due diligence requirements under applicable law."[6] This directive is broad and clear. However, in the proposed rule FinCEN issued last December, the use restrictions FinCEN placed on this information make this beneficial ownership registry information useless to banks. Why is this?

FinCEN's program requirements mean banks must establish and implement anti-money laundering programs, customer identification program (CIP), including as a customer due diligence (CDD) program, and with respect to certain correspondent accounts for foreign banks, banks must have enhanced due diligence (EDD) policies, procedures, and controls. Although each of these programs are distinct requirements, they must work together.

First, banks must establish a CIP. The four minimum elements of a CIP require banks to collect four pieces of identifying information about new customers, including name, date of birth, address, and identification number. Banks must also establish risk-based procedures to verify the identity of the customer within a reasonable period of time after account opening. For legal entity customers, documents the bank may use include those showing the legal existence of the entity,

[6] https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf

such as certified articles of incorporation, an unexpired government-issued business license, a partnership agreement, or a trust instrument.

Second, banks must establish a CDD program. Banks must identify and verify the identity of beneficial owners of legal entity customers who own, control, and profit from companies. Banks must establish written policies and procedures reasonably designed to: 1) identify and verify the identity of customers; 2) identify and verify the identity of each beneficial owner[7] of a legal entity customer identified to the bank, according to risk-based procedures, to the extent reasonable and practicable; 3) understand the nature and purpose of customer relationships to develop customer risk profiles; and 4) conduct ongoing monitoring to identify and report suspicious transactions, and on a risk basis, to maintain and update customer information. FinCEN published a certification form in Appendix A to the CDD rule, to assist banks comply with these requirements. Critically, the bank may rely on the work of another regulated and AML (and CDD)-compliant financial institution, including any of the bank's affiliates.

Third, banks are required to conduct EDD under certain circumstances which require engagement with foreign banks.

The purposes of these AML/KYC requirements are clear – banks should know who their customers are and understand the nature and purpose of customer account relationships. Yet FinCEN's proposed beneficial ownership access rule makes this harder, not easier.

FinCEN proposes that banks can use beneficial ownership registry information to support only CDD program compliance — not the CIP program, sanctions compliance, or compliance with any other related law. In its NPRM, FinCEN stated it considered allowing banks to use beneficial ownership registry information for broader purposes — complying with CIP requirements, for example — but rejected that idea, on the basis that this limited use will be "be easier to administer, reduce uncertainty about what [financial institutions]…may access BOI under this provision, and better protect the security and confidentiality of sensitive BOI by limiting the circumstances under which FIs may access BOI."[8] However, this is not consistent with the purposes of the CTA to "facilitate the compliance of [banks] with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements."[9] Furthermore, since the inception of the CDD Rule, FinCEN indicated banks should use beneficial ownership information "including for compliance with OFAC-administered sanctions."[10] FinCEN subsequently advised that the information banks collect about their customers should be used for developing a baseline for customer activity to use for possible suspicious activity reporting.[11]

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[7] Of course, in this context, a "beneficial owner" means any individual who owns 25% or more equity interest of a legal entity customer, directly or indirectly, as well as a single individual with significant responsibility to control, manage, or direct a legal entity customer, and an individual who controls the legal entity opening accounts. *See* CDD Final Rule, 31 CFR 1010.230(d)

[8] Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 87 FR 77404 (December 16, 2022)

[9] Section 6402(6)(b)

[10] FinCEN FAQs, FIN-2016-G003, Question 23 (July 19, 2016)

[11] FinCEN FAQs, FIN-2018-G001, Question 36 (April 3, 2018)

Thus, ABA strongly opposes these limitations, and does not believe they will accomplish the stated purpose of safeguarding beneficial ownership registry information.

Second, by limiting the use purpose so dramatically, and requiring all sharing be limited to people physically present in the U.S., this rule is substantially more limited than the sharing that the current CDD rule allows, with the result the proposed rule essentially bans sharing. FinCEN explicitly recognizes the value of allowing banks to rely on other banks, including its own affiliates, to gain the information necessary for CDD purposes.[12] Prohibiting banks from sharing BOI outside of the United States is contrary to the information sharing goals of the AMLA and enterprise-wide compliance. However, FinCEN's proposed access rule cuts off that important information exchange, by preventing banks from even distributing beneficial ownership registry information to other internal divisions within the bank (use limitation), let alone sharing it with its affiliates, foreign divisions, or other financial institutions, as well as any investigators or vendors who are not located in the U.S. (geographic limitation). This approach makes it harder for banks, and duplicates effort, expense, and paperwork.[13] These AML/KYC programs work best when they work together, and a bank has the flexibility to implement risk-based procedures. The proposed restrictions will impede banks' ability to conduct effective CDD on their customers and undermine the efficiency and effectiveness of BSA/AML compliance.

By limiting the use of beneficial ownership registry information so severely, and to remain compliant with the rule's requirements,[14] are united in agreement they cannot, and will not, use the beneficial ownership registry. We do not believe this is an outcome Congress or FinCEN intended, and it is certainly not what banks want. Moreover, unless the rule is changed, banks need the rule to state that banks are not required to consult the registry and that regulators will not penalize banks for failing to do so.

II. Accuracy: Banks should be able to rely on this information, just as Congress intended.

Even if the use purposes are expanded, and the geographic restrictions lifted, there is no point to the beneficial ownership registry if banks cannot rely on the information contained in it. Congress explained that the purpose of the CTA was to "improve transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures and insight into the flow of illicit funds through those structures" as well as "discourage the use of shell corporations as a tool to disguise and move illicit funds." If the beneficial ownership information in the registry is not accurate, the registry does nothing to increase transparency. Frankly, a U.S. government registry full of inaccurate information would decrease transparency, make it harder for banks to meet their KYC obligations, and make it harder for law enforcement to stop criminals from hiding behind shell companies.

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[12] CDD Final Rule, 31 CFR 1010.230(j)

[13] Notably, FinCEN already contemplates that for legal entity customers who opened new accounts after the CDD rule went into effect, banks must retain up to three sets of information. *See* FinCEN FAQs, FIN-2018-G001, Question 9 (April 3, 2018).

[14] In lieu of these significant restrictions, FinCEN may, for example, leverage technology to protect this information.

Both Congress and the Executive Branch have underscored the importance of ensuring that information provided by federal agencies to the public is useful and accurate. In fact, the Information Quality Act, requires the Office of Management and Budget (OMB) to promulgate guidance to agencies ensuring the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. OMB's Federal Data Strategy[15], as well as the agency specific guidelines published by Treasury[16] and FinCEN[17], confirm that data should be appropriate, accurate, objective, accessible, useful, understandable, and timely. These guidelines discuss principles of utility and objectivity. Utility involves the usefulness and availability of the information to its intended audience. Objectivity involves a focus on ensuring that information is accurate, reliable, and unbiased. These principles make sense. Banks, and the public more broadly, need to be able to trust information that federal agencies supply.

Just this year, the Financial Action Task Force (FATF) updated its beneficial ownership recommendation to state that beneficial ownership registries must include "adequate, accurate and up-to-date information."[18] FATF learned from the experience of other countries' implementing beneficial ownership recommendations that information must be accurate to be useful.

The drawbacks of an inaccurate registry are very clear to ABA member banks. By way of example, when a bank opens an account for a new customer, the bank first collects information for CIP purposes. Then, for CDD purposes, the bank must identify and verify the identity of each beneficial owner of a legal entity customer identified to the bank, according to risk-based procedures. Once the new beneficial ownership reporting requirements go into effect, if the information in the registry does not match the information in the bank's own records, many problems arise.

Banks believe there will inevitably be inaccuracies and inconsistencies, unless FinCEN, or the federal government ensures the information is reliable. Why is that? Criminals will try to evade reporting requirements or submit misleading information.

In addition, even law-abiding companies may have challenges complying, which may result in inaccurate information being reported in the registry. Banks have years of experience collecting beneficial ownership information, as it is defined in the current CDD rule,[19] and banks hire and employ dedicated BSA/AML compliance staff, who are trained on the CDD rule. Nevertheless, novel questions continually arise about beneficial ownership requirements, and FinCEN periodically publishes new FAQs[20] and hosts a dedicated hotline to respond to these questions.

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[15] OMB's Federal Data Strategy

[16] Treasury's Information Quality Act Guidelines

[17] FinCEN's Information Quality Act Guidelines

[18] FATF March 10, 2023 Update to Recommendation 24

[19] The CDD Rule had a compliance date of May 11, 2018, but banks engaged in planning to comply once the final rule was published.

[20] FinCEN CDD Rule Resources

In contrast, customers, especially the small businesses that are the lifeblood of Central Bank and our nation's economy, may have never had to grapple with questions about who their "beneficial owners" are — which are different than the "beneficial owners" defined by the new reporting rule. There will be confusion, innocent mistakes, and different judgement calls by our customers when they report – provided they even know they need to report.

Further, the vast majority of these small businesses pose limited risk, yet if the data they provided to FinCEN's registry differs from that Central Bank collected we may be expected, or required, to expend resources on investigating and resolving technical or ministerial discrepancies. It does not make sense to divert resources away from priority areas that benefit law enforcement and national security to investigate and resolve the differences that will arise when, for example, some control persons report business addresses and others report residential addresses, or when a customer moves without updating driver's license information. These are resources that should be used for more important priorities, like suspicious activity reporting and fraud prevention.

As a practical matter, what does this mean for banks? It means that instead of streamlining work and ensuring that all banks can look to a single registry for authoritative beneficial ownership information on reporting companies, each bank will have to comply with all existing KYC requirements, plus establish what effectively amounts to a fourth program, with a different beneficial ownership definition, at least until the CDD Rule is revised as Congress required. Instead of reducing effort, staff, and paperwork, banks will be required to do more work, potentially even conduct further investigation than our risk-based approach to BSA compliance requires, to resolve discrepancies. Given all this, it just does not make sense for Central Bank, or any other ABA member bank, to access the registry.

The bottom line is – the registry must be accurate and authoritative to be useful to banks or law enforcement, just as Congress intended. Banks want the registry to be useful. Given the enormous number of reporting companies, making the registry accurate must be the federal government's responsibility. However, if the registry is not accurate and authoritative, banks must not be required to access it, and should not be held liable by our regulators for not seeking out beneficial ownership information.

III. Education: The federal government needs to educate the newly regulated public about rules that require the public to act, especially given the significant penalties for non-compliance.

Even if the use and accuracy issues are resolved, the beneficial ownership information registry must contain complete information to be effective. One question we have asked ourselves is – how will our customers, many of whom will suddenly become "reporting companies," as of January 1, 2024 — five months from now — know about this rule?

At Central Bank, we want to help our customers. Our customers are car repair shops, restaurants, small retail businesses, and service providers. As their community bank, we help our customers grow their businesses, manage their money, and help finance their dreams. We helped our

customers weather the pandemic and disbursed Paycheck Protection Program funds, while working hard to reduce fraud.

We will certainly do our part. As one example, when we onboard new customers we could include this reporting requirement in the information we share with them, or post information on portals. But there are clear limitations as to what we can do. For example, when customers have questions about how to interpret the rules, we will not have the answers. Even FinCEN acknowledges as part of its rulemaking that there will be "circumstances in which reporting companies are structured or managed in a way that generates more complexity or uncertainty regarding the scope of the application of the rule."[21] The newly regulated public must know about FinCEN in order to go to FinCEN to ask these questions.

Banks which are among the financial institutions FinCEN regulates, must stay abreast of new rules, even if our small business customers generally do not. And that makes sense, because until now, they have not had to do so. The CTA is a big expansion of FinCEN's regulatory mission, so FinCEN must educate small businesses as to who they are and what they do. Congress did not delegate the responsibility for informing the public of beneficial ownership reporting requirements to banks – and for good reason, because banks are not equipped to do this. It just is not possible for us, or any bank, to take on the government's responsibility to educate reporting companies about FinCEN and this new reporting rule. There is no way around it – FinCEN needs to educate the public right away.

The bottom line is – without an awareness campaign, new "reporting companies" are not going to know they have new reporting requirements, or why. If our customers do not know about the rule, they will not know they need to comply with it, which means they will be in a position to violate the rule. We take care of our customers, and we think of them as the good guys. The last thing we want is to see any rule risk turning good guys into bad guys because they failed to comply with a law they were not aware existed.

Conclusion

As BSA/AML professionals, my colleagues and I have dedicated our careers to protecting the integrity of the U.S. financial system from bad actors and taking care of our customers. We want nothing more than for the AMLA and CTA to achieve its goal of modernizing our nation's Bank Secrecy Act rules so that the resources dedicated by banks can more effectively and efficiently support law enforcement's work to prevent financial crime and terrorism. ABA believes that the rules must be revised to meet the purposes of the CTA and AMLA, to be consistent with congressional intent, and to reduce costs and burdens on banks, not increase them. Banks need to be able to use accurate information to meet broader BSA/AML program requirements. The government database should be a reliable and authoritative source of information. And the government needs to educate the public about new legal obligations to report it, especially when there are serious penalties for non-compliance. We look forward to contributing to these important changes and working with the dedicated professionals at FinCEN to make these rules

[21] Beneficial Ownership Information Reporting Requirements, 87 FR 59498 (September 30, 2022)

work for law enforcement, for banks, and for our customers. I look forward to answering your questions.