SUMMARY OF REP. WATERS' LEGISLATION, H.R. 3317, THE "HOLDING INDIVIDUALS ACCOUNTABLE AND DETERRING MONEY LAUNDERING ACT"

Key tenets of the bill

The legislation strengthens U.S. anti-money laundering laws by holding individuals accountable and addressing troubling deficiencies in current anti-money laundering and counter-terrorism financing compliance, regulatory and enforcement efforts. Specifically the bill establishes:

- Clear responsibilities and consequences for individuals who violate the law;
- A systemic approach to oversight of anti-money laundering supervision and enforcement;
- Incentives for, and protection of, information sharing among financial institutions, and with regulators, law enforcement and Congress;
- An expansion of the list of crimes considered to be a predicate offense to money laundering, including tax evasion, and an emphasis on closing loopholes;
- Modern whistleblower protections and enhanced rewards for informants;
- Enhanced coordination to identify bad actors and safeguard the global financial system.

Summary

The success of the Bank Secrecy Act (BSA) in protecting the U.S. financial system from a wide array of money laundering, drug trafficking, and terrorist financing risks relies on the behavior of financial institutions to implement appropriate policies and controls, maintain records, report suspicious activity, and exercise good judgment and prudent behavior. However, a spate of recent high-profile enforcement actions has made it clear that the consequences for non-compliance are far from adequate. Executives continue to be awarded generous compensation even after regulators identify blatant violations by their firms, and individual executives continue to escape all civil or criminal culpability, while fines levied on institutions are viewed largely as a cost of doing business.

To address these deficiencies and deter noncompliance, the legislation significantly increases the maximum civil monetary fines available to regulators to penalize negligent and willful violations of the law for both individuals and institutions. For individuals convicted of willfully evading an institution's BSA program or controls, the bill raises the current cap of five years on the maximum term of imprisonment to 20 years, ensuring parity with the prison terms for individuals convicted of laundering monetary instruments. Individual culpability is further enhanced by requiring the Department of Justice to report to Congress why it either did or did not pursue prison sentences in conjunction with any decision to enter into a monetary settlement for a violation of the BSA.

To more effectively and expeditiously pursue culpable individuals, the bill provides independent litigation authority to FinCEN's subject matter litigators. This departs from current practice where FinCEN must rely on the Department of Justice to take action. Once bad actors are identified, the legislation provides regulators with clear and unambiguous authority to remove and ban those individuals from the financial sector.

The legislation also establishes clear lines of legal responsibility for officers and employees who affect BSA compliance. To guarantee senior management is fully apprised of any anti-money laundering program concerns, senior management must certify receipt of compliance reports that identify program deficiencies. Recognizing the need to align compensation incentives with compliance, the legislation requires regulators to issue rules prohibiting compensation schemes that jeopardize compliance, and mandates that financial firms maintain the authority to claw-back pay for executives and employees who violate the law.

Just as the success of the BSA is reliant on good behavior by individual employees of financial institutions, the efficacy of the BSA also depends on regulatory and supervisory accountability. U.S. anti-money laundering efforts in recent years at times failed to recognize the cumulative effect of the violations they cited, leading them to permit massive problems to occur before any serious enforcement actions were taken. To address this shortcoming, the bill requires the inspector general of each relevant financial regulator to review the regulators' supervision activities no less frequently than once per year. The bill also requires each regulator to regularly report its supervisory activities to FinCEN, which in turn must review these reports and provide feedback to the regulators and a summary of their findings to Congress. The bill also requires regulators to incorporate BSA deficiencies into a firm's management rating.

To encourage the sharing of information related to illicit activity collected by financial institutions, the bill establishes clear protections from civil liability for institutions that report suspicious activity to regulators and also expands liability protections to cover firms that choose to share with one another information related to any crime. The bill also seeks to increase the flow of information to regulators and law enforcement by increasing the rewards available to informants and enhancing the legal protections afforded to whistleblowers.

The bill addresses a host of loopholes under the BSA that allow certain entities and individuals to escape effective oversight and accountability. This is accomplished by expanding the list of predicate offenses to money laundering to include all felonies; closing a loophole that permits commercial cash carriers to move across the U.S. border without documenting the source of the cash they are carrying; and requiring FinCEN to report to Congress on the status of, and justification for, temporary exemptions from BSA program requirements granted to some financial institutions in 2003. The bill changes current law so that independent contractors– who are often mandated by regulators to address BSA deficiencies – are held to the same enforcement standard as an officer or employee of a bank when they engage in wrongdoing.

To ensure U.S. anti-money laundering laws meet international standards, the bill requires more extensive collaboration and coordination with global partners and across federal agencies and departments to identify bad actors and safeguard the global financial system.