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BANKTHINK TIME TO BRING BSA INTO THIS CENTURY

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As the Bank Secrecy Act approaches its 50th anniversary, legitimate questions have arisen about the efficacy of anti-money-laundering requirements and the burden of compliance. The pace of technological advances in the financial services industry, coupled with the negative consequences of skyrocketing compliance costs, make this a good inflection point to assess the current state of the regulatory regime and explore ways in which it could be improved.

The BSA was enacted in 1970 primarily as a means to deter and prevent tax evasion. Since then, it has transformed into one of the main weapons in the fight against narcotics trafficking, money laundering and post-Sept. 11, terrorist financing. Dozens of regulations have been written to implement the statute, many of which have been part of banks' compliance routine for years.

The suspicious-activity reporting system, once viewed as a modern successor to the old criminal referral system, is itself more than 20 years old, and the current approach to reporting suspicious transactions seems rooted in 20th-century concepts and technology. In an era when funds can be moved around the world in the blink of an eye, it can take many months from the point of detection through investigation to making a decision about a SAR.

Consequently, compliance with the BSA has become extremely expensive and burdensome. Large institutions spend upward of a \$1 billion annually on

BSA compliance, and employ thousands of BSA compliance specialists to review alerts. But the burden is felt disproportionately by smaller institutions that cannot afford sophisticated software or to hire an army of compliance specialists. Those institutions are faced with difficult choices that could influence their business strategies and ultimately affect their financial condition.

The consequences of getting it wrong can be severe. Virtually all of the largest institutions in the U.S. are under formal enforcement actions for BSA violations. Some are also under deferred prosecution agreements. The size of civil money penalties for BSA violations has grown astronomically, and is compounded when penalties are assessed simultaneously by multiple agencies. Many smaller institutions are also under enforcement actions and have been assessed penalties. In addition to formal actions, banks of all sizes are subject to informal actions, matters requiring attention and regulatory criticism.

In this environment, it is little wonder that banks and other institutions have become extremely risk averse. This has led to the widespread "de-risking" of accounts. Money services businesses have been particularly hard hit. Foreign banks have also been affected, and even some of the most venerable institutions, with longstanding correspondent relationships, have found it difficult to access the U.S. financial system.

This status quo should be acceptable to no one. The time has come to conduct a serious review of the current BSA regime, with an eye toward making changes that will result in providing better and timelier information to law enforce-

ment, as well as meaningful reductions in the cost and burdens of BSA compliance to institutions.

A top-to-bottom review of all BSA regulations would be a good start. The earliest of those regulations were written decades ago, and were aimed at addressing problems from a different era. Regulations that are outdated or no longer serve a useful purpose should be modified or rescinded.

The system would also benefit from greater information-sharing. The government should take steps to further promote information-sharing among financial institutions, within banking organizations, and between financial institutions and the government.

Finally, the public and private sectors should work together to explore ways that technology can be used to improve the efficacy of the system and mitigate costs. Tools such as artificial intelligence, blockchain protocols and other forms of 21st-century technology will soon be able to identify suspicious transactions with greater precision and timeliness than is possible today. The government can play a key role in helping make this vision a reality by signaling that it is receptive to innovation in the BSA area.

Real change is never easy, and the barriers to modernizing the BSA and making it more effective should not be underestimated. But the difficulty of achieving these goals is not an excuse for inaction. In an area such as BSA compliance, where law enforcement and national security matters are implicated, the stakes are high. Now is the time for government leaders, working in collaboration with the private sector, to act before it is too late.