

Testimony of  
Dalia F. Martinez,  
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International Bank of Commerce  
On behalf of the Mid-Size Bank Coalition of America  
before the Subcommittee on Financial Institutions and Consumer Credit  
United States House of Representatives  
April 27, 2018

## **TESTIMONY AS PREPARED**

Chairmen Leutkemeyer and Pearce, Ranking Members Clay and Perimutter and members of the subcommittee, I am honored to have this opportunity to present testimony today regarding FinCEN's Customer Due Diligence Rule. I am Dalia F. Martinez, Executive Vice President and Corporate Bank Secrecy Act Officer for International Bank of Commerce. IBC Bank–Laredo is a member of International Bancshares Corporation (NASDAQ: IBOC), a \$12.2 billion multi-bank financial holding company headquartered in Laredo, Texas, with 192 branches and more than 294 ATMs serving 90 communities in Texas and Oklahoma.

I am speaking to you today representing the Mid-size Bank Coalition of America, the voice of 88 community banks with headquarters in 34 States. MBCA banks are primarily between \$10 billion and \$50 billion in assets with more than 10,000 branches in all 50 states, with deposits of \$1.2 trillion. MBCA banks represent, service, and support millions of customers.

I have held the position of Bank Secrecy Act Officer at IBC for more than 27 years. Many of our branches are located in High Intensity Drug Trafficking Areas and in High Intensity Financial Crime Areas, BSA compliance is a top priority for us, and I have seen first - hand how BSA regulations have evolved, the burden they have placed on our bank, and how these regulations have sometimes ended up harming, rather than helping, our most important asset, our law-abiding customers. I would like to focus on four points in my testimony today.

First, compliance with the CDD Rule is very expensive and burdensome. IBC has spent 2,912 hours in design and testing, and 7,859 hours in training 2,142 employees and officers preparing to comply with this regulation. These expenditures are on top of the \$5 million a year we

currently spend to comply with existing BSA/AML regulations (see Attachment A - IBC Organizational Charts). Every hour a bank employee spends on regulatory requirements that are not reasonably tailored to meet the legitimate public policy objectives of the BSA is an hour that the employee is not able to spend on another core value – helping our law-abiding customers achieve financial success.

Second, the CDD rule has many gray areas that are difficult to implement. Let me provide you an example that illustrates this. Bank front line employees, who are typically not schooled in complicated business structures, are required to capture beneficial ownership information when an account is opened, but the individual opening the account on behalf of the company is usually a control person at the company and not the actual business owner. While in some cases the controlling person may have knowledge of the ownership structure of the company, they often will not have the identification required for the beneficial ownership CDD requirement. This may result in accounts being turned away, delays in opening accounts, and exceptions that need to be tracked by the bank. And every time a bank makes an “exception,” it increases the likelihood of having that decision second-guessed later in a regulatory exam. Accordingly, the burden of obtaining the information and the compliance risk presented to the bank when the customer does not have the information readily available increases the likelihood that the bank will just not do business with that customer as part of “de-risking” (see Attachment B - Details on De-Risking).

Third, the rule puts a burden on banks to ensure the information the customer provides is accurate, but banks are not given either the tools or the guidance they need to make that determination. Specifically, under the rule, banks can rely on the information that customers disclose about the ownership structure of the bank customer only so long as the financial institution does not “have knowledge” of facts that would reasonably call into question the reliability of the information. However, FinCEN does not define “having knowledge”. Financial institutions have millions of records. Are we to comb through all our records to ensure information provided on a beneficial ownership attestation does not conflict with a document already contained in the bank’s records? Unlike some countries, the United States does not maintain a national database of business ownership information, or require such information at the time of incorporation, that a financial

institution can rely on. Tools and guidance from FinCEN designed to help banks verify customer information are needed (see Attachment C - Mexican Business Requirements and Mexican databases).

Fourth, while FinCEN has provided some guidance to banks in the form of FAQs, the FAQs in some cases are not clear, and in other cases the FAQs create an even greater burden on banks and, ultimately, bank customers. One such example is with Certificates of Deposit (CDs) that auto renew. These CDs are for a specific term and rate. Upon maturity, the CD renews and the customer never has to come to the bank as renewal information is mailed to the customer. FinCEN FAQs state that upon the first auto renewal of a CD established prior to May 11, 2018, the financial institution must obtain the beneficial ownership and CDD information. This means banks will need to contact their customers to try to obtain the beneficial ownership information. From my 39 years in banking, I can tell you customers do not update their phone numbers and email addresses with the bank on any regular basis. Therefore we will most likely have to rely on mail. If the customer does not respond to the bank's request, tracking exceptions will be required. And again, every time a bank makes an exception, the exception is tracked for BSA exam purposes and is subject to second-guessing after the fact. Again, this reality will lead to even more de-risking, which will harm bank customers, especially small business customers who are not exempt from any of these requirements (see Attachment D – Account Exception Report).

In closing, on behalf of IBC and MBCA, it is important that the committee understand the regulatory burden and costs imposed by these rules – burden and costs that ultimately affect our bank customers. Of course, whether a burden or cost of a regulation is too high depends upon the benefit of the regulation and, unfortunately, other than anecdotal information, there is just too little information about the actual benefit of the countless forms and reports that banks must file. The government does not provide any reports on the benefits being achieved from this massive reporting required by BSA. If you want specific information on what I have seen regarding law enforcement investigations, I am happy to answer these questions and any other questions you may have. Finally, it is critically important that FinCEN provide clear and effective guidance to our prudential regulators and banking compliance professionals like myself, absent this guidance the prudential regulators will be left to their own

interpretations and ultimately this will result in customers simply being driven out of the traditional banking system.

## **Attachment A**

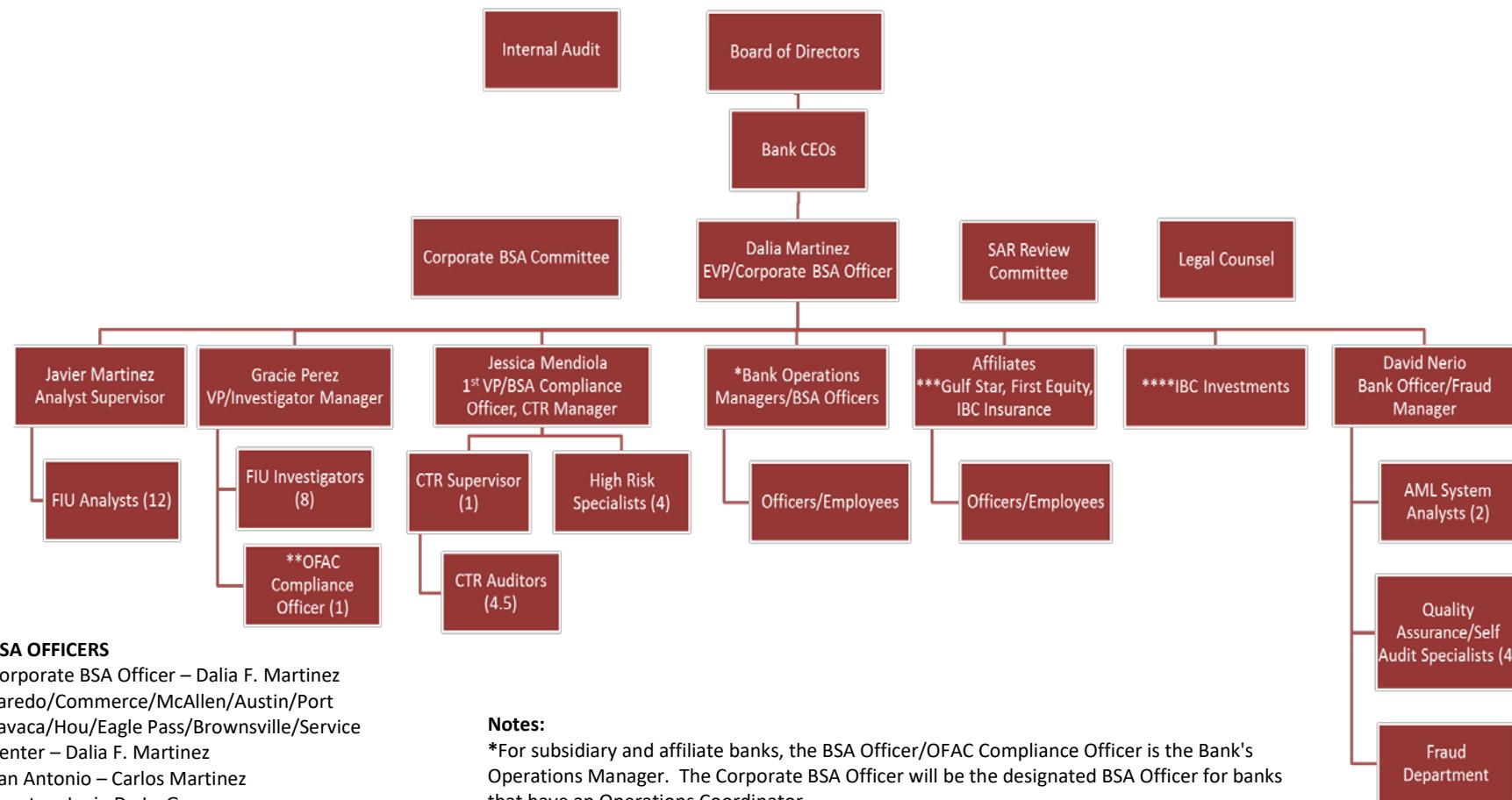
### **Organization Charts**

IBC has 43.50 full time equivalent employees that work directly with BSA regulations. We have four bank officers that oversee this program with a combined experience of 64 years. We have an additional 9 bank officers that have an indirect role in ensuring BSA compliance for the company and they oversee a total of 197 employees that also have indirect responsibility for BSA Compliance. Therefore the direct and indirect number of IBC officers and employees for managing the BSA program is 249.50 FTEs. This does not include the various staff members that work the front line that must be trained on an annual basis on BSA regulations including detecting and reporting suspicious activity.

**The salary expense alone for BSA compliance is approximately \$5,000,000.**

<b>Corporate BSA Committee Member</b>	<b>Division</b>	<b>Number of Officer/Employees</b>
<b>Gilbert Cruz</b>	Corporate Credit Management	12
<b>Eliza Gonzalez/Barbara Saenz</b>	Funds Transfer	13
<b>Lupita Garcia</b>	Foreign Operations	6
<b>Gerald Schwebel</b>	Corporate International	32
<b>Anna Mercado</b>	Trust	5
<b>Ramiro Herrera</b>	Internal Audit	9
<b>Jonathan Paillette</b>	Treasury Management	25
<b>David Nerio</b>	Fraud	10
<b>Gabriela Holloway</b>	Compliance	6
<b>Becky Banda</b>	Litigation	8
<b>Becky Banda</b>	Quality Control	42
<b>Kevin Mullins</b>	Electronic Banking (ACH, Digital, Electronic Services)	39
<b>Total Members with indirect BSA Roles 10</b>		207

## International Bank of Commerce/Commerce Bank Financial Intelligence Unit (FIU) Organizational Chart 2018



**Attachment B****Details on De-risking**

IBC has a strong record of BSA compliance. Despite this fact year after year a BSA examination brings additional burden to the bank. Regulators evaluate the banks processes for detecting suspicious activity. The bar of monitoring high risk accounts is extremely high. The regulations require a bank to maintain a system for monitoring and detecting suspicious activity. However, banks must establish procedures for monitoring high risk accounts. In every examination an examiner chooses to direct the bank on what the bank must retain in the bank records to 'prove' monitoring has occurred. This expectation varies from exam to exam and varies from examiner to examiner.

In many cases examiners' high expectations increase the cost and burden to the bank. As a result of this increased cost and burden, the bank de-risks accounts. We have de-risked in the area of most of our high risk accounts. By this I mean that we have maintained the accounts we currently have but we no longer allow NEW high risk accounts. An example of this is foreign correspondent banks, as these accounts close we do not open new foreign correspondent relationships.

De-risking has resulted in several thousand accounts being closed by IBC during the last 5 years. The Beneficial Ownership-Customer Due Diligence rule could lead to further de-risking.

## Attachment C

### **Mexican Business Requirements and Mexican databases**

Since the US has no government registries that provide Beneficial Ownership information, banks have no way of verifying the information provided. Below is an example of how this is handled in Mexico. I am not advocating the U.S. adopt this method I am merely pointing out that if other countries such as Mexico and the U.K. have been able to establish national registries the U.S. should be able to accomplish this as well. It has been said that establishing a national registry would be disruptive, I submit to you that every new regulation that is introduced into the banking system is disruptive not only to the banking system but more importantly to consumers.

#### **Beneficial Owners**

Each Mexican State has their own Public Registry

When an entity is considering changes, a shareholder's meeting (Asamblea) is announced through Secretaria de Economia, <https://psm.economia.gob.mx/PSM/>

Any Beneficial Ownership Change requires to be conducted through a "Notario Publico" and the Acta de Asamblea is filed with the Public Registry.

All entities, with the exception of non-profits and dba's, are required to indicate the beneficial owners and percent of ownership on the Acta Constitutiva when entity is formed and on an Acta de Asamblea for any BNF changes made after formation.

## Attachment C

TYPE OF FOREIGN BUSINESS ENTITIES		
TYPE OF BUSINESS	DESCRIPTION	
SA	Sociedad Anonima	
SA DE CV	Sociedad Anonima de Capital Variable	
SA INSTITUCION DE BANCA MULTIPLE	Sociedad Anonima Institucion de Banca Multiple	
SAB DE CV	Socedad Anonima Bursatil de Capital Variable	
SAPI DE CV	Sociedad Anonima Promotora de Inversion de Capital Variable	
SC	Sociedad Civil	
S DE RL	Sociedad de Responsabilidad Limitada	
S DE RL DE CV	Sociedad de Responsabilidad Limitada de Capital Variable	
S DE RL MI	Sociedad de Responsabilidad Limitada MicroIndustria	
SC DE RL	Sociedad Civil de Responsabilidad Limitada	
SC DE RL DE CV	Sociedad Civil de Responsabilidad Limitada de Capital Variable	
SCL	Sociedad Cooperativa Limitada	
SCL DE CV	Sociedad Cooperativa Limitada de Capital Variable	
SPR DE RL	Sociedad de Produccion Rural de Responsabilidad Limitada	
SPR DE RL DE CV	Sociedad de Produccion Rural de Responsabilidad Limitada de Capital Variable	
ARIC	Asociacion Rural de Interes Colectivo de Responsabilidad Limitada	
NON PROFIT		
AC	Asociacion Civil	NON-PROFIT ASSOCIATIONS
AR	Asociacion Religiosa	RELIGIOUS ENTITIES/CHURCH

## Secretaria de Economia

Web site: <https://psm.economia.gob.mx/PSM/>

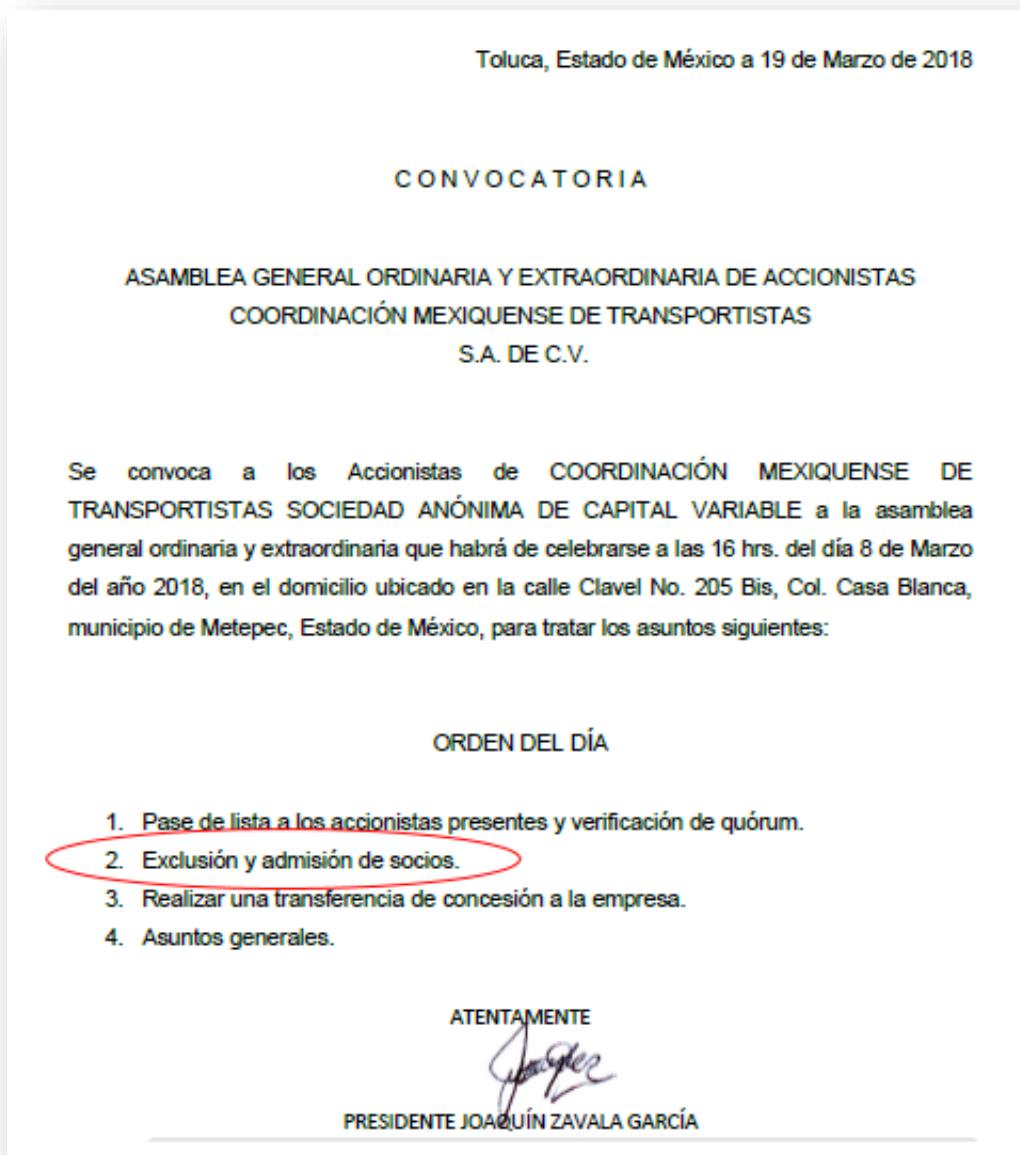
Example: Notice of shareholder's meeting related to BNF Owner change

The screenshot shows a search result for "RESULTADO DE LA BÚSQUEDA". The results are filtered by "Mostrando 621-632 de 632". The columns include: Denominación o Razón Social, Tipo de Publicación, Nombre de la Publicación, No. Publicación, Fecha, and Texto de la Publicación. One result is highlighted with a red oval around the text "Convocatoria de Asamblea General Ordinaria y Extraordinaria de Accionistas".

RESULTADO DE LA BÚSQUEDA					
Mostrando 621-632 de 632					
Denominación o Razón Social	Tipo de Publicación	Nombre de la Publicación	No. Publicación	Fecha	Texto de la Publicación
COORDINACION MEXIQUENSE DE TRANSPORTISTAS SA DE CV	Convocatoria para Asambleas Generales	Convocatoria de Asamblea General Ordinaria y Extraordinaria de Accionistas	2018-0000001721	19/02/2018	

## Attachment C

Actual notice & agenda, in this example, deleting and adding new owners



**Attachment D****Account Exception Report**

Currently it is rare that a business account presents their business documents at account opening. This is not a Customer Information Program (CIP) requirement therefore banks are allowed to open the account and track these exceptions until we obtain the necessary business documents. The beneficial ownership – CDD rule requires beneficial owners to be identified at the time the account is open. This assumes the information cannot be obtained AFTER the account is open. This will result in accounts not being opened at the time the customer is present.

Alternatively, customer due diligence requires banks to understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile and conducting ongoing monitoring. If the individual opening the account cannot provide the purpose of the account including the level of activity expected in the account this will most likely be tracked as an exception by banks until they obtain documentation necessary to satisfy this request. Two things will most likely occur:

- 1) Customers will be slow in providing the required information and eventually banks will decide to close the account because of the risk posed to the bank.
- 2) Examiners will demand more and more documentation to satisfy this request. This will inevitably lead to increased cost and burden on banks resulting in closing of accounts.

Ultimately both of these examples will result in small business customers that are not exempt from these regulations being displaced from the banking system.