

# Update on U.S. Government Activity Related to Company Formation



IACA Conference  
Business Organization Section  
May 16, 2007



# From Last Conference to Now

- Events
- Actions
- Where is this all going?
- Discussion
- Where do we go from here?

# Congressional Hearing

## November 14, 2006



- Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs held a hearing on disclosure of beneficial ownership



# Congressional Hearing – Testifying on behalf of Law Enforcement

- Organized Crime Drug Enforcement Task Force
- US Department of Justice
- Internal Revenue Service
- GAO
- Financial Crimes Enforcement Network





# Congressional Hearing - Testifying on Behalf of IACA





# Action by NASS

## January 2007

- Secretary of State Elaine Marshall, Chair, NASS Business Services Committee, writes to Senator Levin asking for time for the National Association of Secretaries of State to review and make recommendations on this issue



# NASS Winter Meeting

## February 2007

- Representatives from IACA, Senate Subcommittee, Delaware, ABA/NCCUSL, Financial Crimes Enforcement Network (FinCEN), Office of Foreign Asset Control (OFAC) and C T Corporation brief the Business Services Committee of NASS
- NASS organizes a Company Formation Task Force
- Senator Levin formally asks the National Governor's Association to take action



# Action by NASS

April 2007

- NASS Task Force Members reach out to ABA and NCCUSL
- ABA's Partnerships Committee and Corporate Laws Committee of the Business Law Section form separate task forces
- NCCUSL agrees to assist with drafting changes to the uniform entity laws as needed



# Legislation



- Senators Levin, Coleman and Obama file legislation entitled Stop Tax Haven Abuse Act (S. 681).



# Legislation – S. 681

- Section 203 of this act provides persons involved in forming new business entities shall be subject to the anti-money laundering obligations set forth in section 5312 (a)(2) of Title 31 of the US Code. It further requires the US Treasury to publish rules in the federal register requiring such persons to establish anti-money laundering programs.
- Sec. 203 also creates a very broad definition of formation agents as “persons involved in forming new corporations, LLCs, partnerships, trusts, or other legal entities”.



# Are They Serious?

- In 2006, the United States was cited for failure to comply with Financial Action Task Force (FATF) recommendation for timely disclosure of beneficial ownership records
- Will be evaluated again in 2008





# Are They Serious?



- 2007 National Money Laundering Strategy prepared by the United States Attorney General and Department of Treasury identifies as one of it's goals for 2007 the disclosure of ownership information in company registration – i.e., more transparency in ownership



# Are They Serious?

- European Union has adopted “Gatekeeper” rules that apply to lawyers and accountants
- Canada adopted similar rules applying to lawyers that were overturned by Canada’s Supreme Court
- Treasury adopted rules to require Gatekeepers who are defined as lawyers and accountants to monitor and report on certain activities of clients over the objection of the ABA Gatekeeper Task Force.



# What Does Sen. Levin Want?

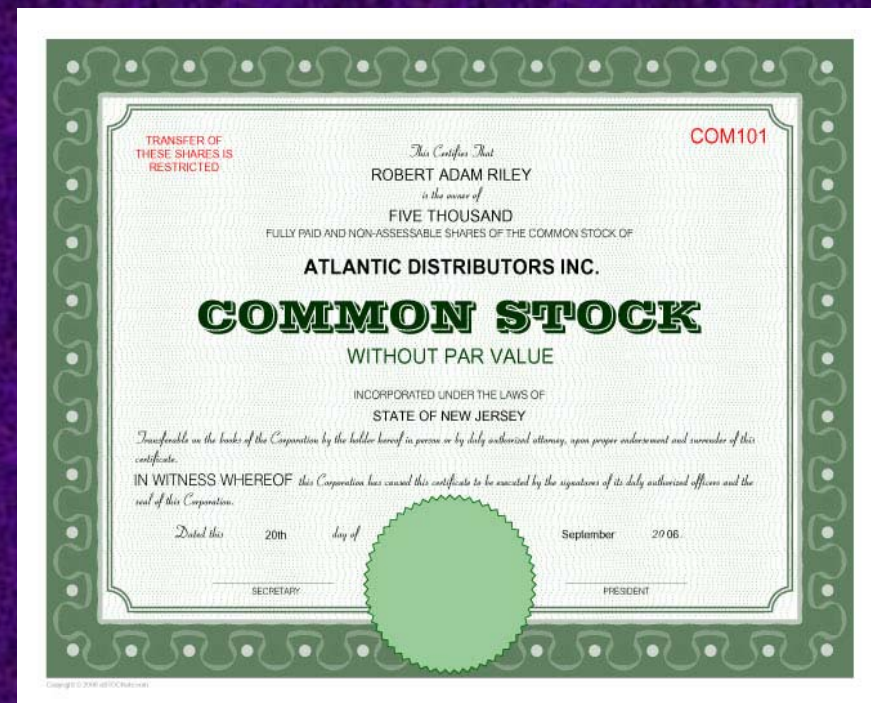
- Have Beneficial Ownership lists available to law enforcement without subpoena.
- Have a responsible person in the business formation process check the OFAC Specially Designated Nationals Watch List.



# What Does Sen. Levin Want?

## Possible Solutions to the Beneficial Ownership Issue

- Amend entity laws to require beneficial ownership lists.
- Have entities file annual reports.





# What Does Sen. Levin Want?



- Governing persons responsible for maintaining and providing lists
- Business entities must provide ownership list to Secretary of State or appropriate state official upon written request from such official



# What Does Sen. Levin Want?

## Possible Watchdog List Solutions

- Post notice of requirement to check watchdog list on States' websites
- Add a certification to formation and annual report documents that entity has complied with applicable federal law or has specifically checked the list





# Questions or Comments





# Where Do We Go From Here?

- NASS Task Force Meeting today to formulate/craft response and possible solutions
- NCCUSL and ABA ready to help with this process
- Presentation to the NASS Summer Meeting on response and possible solutions
- NASS to take formal action on Task Force Recommendations – July 2007