Opening Statement of Tom Firestone for Senate Committee on the Judiciary Hearing entitled "Combating Kleptocracy: Beneficial Ownership, Money Laundering and Other Reforms" on Wednesday, June 19, 2019 at 10:00 a.m.

I would like to thank the members of the Committee for giving me the opportunity to participate here today.

My name is Tom Firestone and I am a partner in the Washington, D.C. office of Baker McKenzie. Prior to joining Baker in 2012, I spent 14 years with the U.S. Department of Justice, half as a federal prosecutor in the Eastern District of New York, where I specialized in the investigation and prosecution of transnational organized crime and half as the DOJ representative at the US Embassy in Moscow, where I focused on technical assistance programs designed to support the rule of law. At Baker, my work is focused on anti-corruption and helping businesses invest in emerging markets in a way that is compliant with all applicable laws.

The issues that the Committee is addressing are extremely important. Corruption prevents economic development and robs people of opportunity. It is also a national security risk. Kleptocratic regimes initiate foreign conflicts as a way to divert popular attention from their own corruption and avoid sharing wealth and power with their people.

Lack of transparency and opaque corporate structures facilitate corruption. The heart of corporate compliance, whether anti-corruption compliance, anti-money laundering compliance, or sanctions compliance, is third party due diligence. This involves review of a prospective partner's business and reputation, which of course requires disclosure of the beneficial ownership of the partner. In other words, in order to know whether a business partner is a government official, a criminal, a Specially Designated National subject to sanctions, or simply untrustworthy, one must know who the business partner is. When the system works, transparency minimizes the risk that good companies will partner with bad companies and disincentivizes bad actors from using U.S. corporate vehicles. Conversely, anonymous corporate structures defeat the valuable purposes of third party due diligence and allow the unscrupulous to hide their identities as well as their ill-gotten gains. Despite taking the lead in international anti-corruption efforts, U.S. law still provides fertile opportunities for corporate anonymity and we have been criticized by international institutions, like the Financial Action Task Force, for this. By failing to keep pace with international standards in this area, we undermine our attempts to promote global transparency, which only hurts honest businesses.

With respect to protecting honest businesses, I would also like to say a few words about the demand side of bribery. Bribery requires a bribe giver and a bribe taker. Some companies pay bribes willingly, but many are the victims of extortion. The US government has done an excellent job of using the Foreign Corrupt Practices Act to attack the supply side of bribery. However, it has done much less to attack the demand side. There are many reasons for this. One of them is the simple fact that while U.S. law criminalizes the *giving* of bribes to foreign government officials, it does not criminalize the *receipt* of bribes (or even the demand for bribes) by those same foreign government officials. In this respect, we are, once again, out of step with international standards. For example, the UK Bribery Act, like anti-corruption legislation in many European countries, criminalizes foreign bribe giving *and* foreign bribe receiving. As a result of this gap in our law, such cases are rarely charged. When they are brought, they are charged under other, ancillary statutes, such as money laundering. This just provides unnecessary opportunities to the defense to challenge the charges. A statute criminalizing foreign bribe receiving, analogous to our statute criminalizing domestic bribe receiving, would help to remedy this problem.

One of the great virtues of the Foreign Corrupt Practices Act is that it allows US companies to resist bribe demands on the grounds that they could be prosecuted if they pay. How much more powerful would that message be if they could tell the bribe demanders that they too could also be prosecuted? And how much more powerful would it be if that statement were backed up by real cases?

In conclusion, I would like to say that the Committee is doing important work to reduce opportunities for corruption and I will be glad to answer any questions that the members may have.