



FINANCIAL CRIMES ENFORCEMENT NETWORK
UNITED STATES DEPARTMENT OF THE TREASURY

STATEMENT OF ROBERT W. WERNER
DIRECTOR
FINANCIAL CRIMES ENFORCEMENT NETWORK
UNITED STATES DEPARTMENT OF THE TREASURY

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Chairman Shelby, Senator Sarbanes and distinguished members of the Committee, I appreciate the opportunity to appear before you today to discuss the Financial Crimes Enforcement Network's (FinCEN) ongoing initiatives and efforts to combat money laundering and terrorist financing in the post 9/11 world. This hearing is especially appropriate following yesterday's fifth anniversary of the vicious terrorist attacks against this country. As the Director of FinCEN, which is the agency responsible for administering the Bank Secrecy Act (BSA) – the United States' primary anti-money laundering/counter-terrorist financing regulatory regime, I welcome the opportunity to work with the Members of this Committee in our united fight to safeguard the U.S. financial system against financial crime. I also greatly appreciate all the support and guidance this Committee has provided over the past five years.

I am also pleased to be testifying with my colleagues from other components of Treasury. Each of these offices plays an important role in the global fight against money laundering and terrorist financing, and our collaboration on these issues has greatly improved the effectiveness of our efforts.

As you know, FinCEN's mission is to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity. FinCEN works to achieve its mission through a broad range of interrelated activities, including:

- Administering the Bank Secrecy Act;
- Supporting law enforcement, intelligence, and regulatory agencies through the sharing and analysis of financial intelligence; and
- Building global cooperation and technical expertise among financial intelligence units throughout the world.

To accomplish these activities, FinCEN utilizes a team comprised of approximately 300 dedicated federal employees, including analysts, regulatory specialists, international specialists, technology experts, administrators, managers, and Federal agents who fall within one of the following areas of expertise at FinCEN:

- **Analysis and Law Enforcement Support** – FinCEN provides federal, state, and local law enforcement and regulatory authorities with different methods of direct access to reports financial institutions file pursuant to the BSA. FinCEN also combines BSA data with all-source information to produce analytic products supporting the needs of law enforcement, intelligence, regulatory, and other financial intelligence unit customers. Products range in complexity from traditional subject-related research performed by contract analysts to more advanced analytic work including geographic assessments of money laundering threats.
- **Global Support** – FinCEN is one of more than 100 recognized national financial intelligence units around the globe that collectively constitute the Egmont Group. FinCEN plays a lead role in fostering international efforts to combat money laundering and terrorist financing among these financial intelligence units, focusing our efforts on intensifying international cooperation and collaboration, and promoting international best practices to maximize information sharing.
- **Regulatory Policy and Programs** - FinCEN issues regulations, regulatory rulings, and interpretive guidance; assists state and federal regulatory agencies in targeting and consistently applying BSA compliance standards in their examination of financial institutions; and takes enforcement action against financial institutions that demonstrate systemic non-compliance. These activities span the breadth of the financial services industry, including – but not limited to – banks and other depository institutions; money services businesses; securities broker-dealers; futures commission merchants and introducing brokers in securities; dealers in precious metals, stones, or jewels; insurance companies; and casinos.

Tying It All Together

FinCEN's goal is to increase the transparency of the U.S. financial system so that money laundering, terrorist financing and other economic crime can be deterred, detected, investigated, prosecuted – and, ultimately, prevented. Our ability to tie together and integrate our regulatory, international, and law enforcement efforts assists us to achieve consistency across our regulatory regime.

In addition, the BSA data received through Currency Transaction Reports, Suspicious Activity Reports, and other forms have proved to be highly valuable to our

law enforcement customers, who use the information on a daily basis as they work to investigate, uncover, and disrupt the vast networks of money launderers, terrorist financiers and other criminals.

Additionally, we strive to use the BSA regulatory regime as an avenue for building partnership between the government and private sector, which is critical in order to achieve the goals of the system. Specifically, we do this in two major ways:

- First, requiring financial institutions subject to the BSA to develop risk-based anti-money laundering programs tailored to their businesses, and provide guidance in this regard. Such programs include the development and implementation of policies, procedures, and internal controls needed to address money laundering, terrorist financing, and other risks posed by that financial institution's products, geographic locations served, and customer base; and,
- Secondly, requiring financial institutions to maintain records and report certain information that is important to the detection, deterrence and investigation of financial crime.

We have learned that in order for this system to work, the government must provide guidance and feedback to the industry in ways that support their understanding of potential vulnerabilities, effective ways to address those vulnerabilities and the benefits derived from information reported by them. The risk-based nature of the regulatory scheme also recognizes that financial institutions are in the best position to design anti-money laundering/counter-terrorist financing programs that address the specific risks that they face. In other words, the success of this regime depends upon the government and financial institutions acting in true partnership - each committed to the goal of taking reasonable steps to ensure that the financial system is protected from criminals and terrorists to the greatest extent possible through the development of appropriate programs and the sharing and dissemination of information.

Ensuring that we strike the right balance between the cost and benefit of this regulatory regime is, in my view, one of FinCEN's central responsibilities. Accordingly, it is vital that we continue to examine how we can more effectively tailor this regime to minimize the costs borne by financial institutions while at the same time ensuring that the law enforcement, intelligence, and regulatory communities receive the information they need.

Recent Accomplishments

Over the past year, we made great strides toward enhancing BSA compliance. For example, we signed a memorandum of understanding (MOU) with the Internal Revenue Service (IRS) to routinely exchange information about BSA examination

activities, including the identification of IRS-examined financial institutions with significant BSA compliance deficiencies. We also have similar agreements with the five federal banking agencies and have negotiated 42 memoranda of understanding – or information sharing agreements – with state and territorial supervisory agencies that examine for their own rules on BSA/anti-money laundering compliance. In addition, we collaborated with the federal banking agencies and the Office of Foreign Assets Control to develop and publish an interagency Bank Secrecy Act/ Anti-Money Laundering Examination Manual that is designed to ensure the consistent application of the BSA. Further, we extended BSA anti-money laundering program requirements to dealers in precious metals, precious stones, or jewels and certain insurance companies; finalized proposed regulations regarding due diligence requirements in connection with foreign correspondent and private banking accounts; required mutual funds and certain insurance companies to report suspicious activity; and have issued important guidance to the money services businesses industry.

FinCEN is also placing a stronger emphasis on producing more advanced analytic products rather than engaging in basic database queries. For example, analysis of BSA filing patterns enables us to conduct geographic threat assessments that assist law enforcement agencies to allocate limited resources. By identifying increases – or decreases – in filing activities, law enforcement can determine where vulnerabilities may exist and how to adjust their staffing levels accordingly. This proactive data analysis of BSA filings also supports our regulatory rulemaking process. For instance, our regulatory policy specialists are able to use the valuable data provided by financial institutions to identify where additional regulation may be needed and to identify evolving trends in illicit finance.

As the United States' financial intelligence unit (FIU), we collaborate with other FIUs worldwide to exchange information in support of international and terrorist financing cases. To that end, FinCEN developed the Egmont Secure Web to provide a secure system to exchange sensitive information with our foreign counterpart FIUs. FinCEN is currently modernizing this system to enhance its security and increase communication capabilities. FinCEN also plays a significant role in assisting other countries in developing their FIUs by providing technical assistance ranging from analytical training as well as IT and regulatory support. We also sponsor new FIUs for membership in the Egmont Group. In 2005, FinCEN hosted the 13th Plenary of the Egmont Group, which was attended by nearly 300 delegates from more than 90 FIUs from countries and jurisdictions around the world. At the Plenary, seven new FIUs were granted membership, bringing the total to 101. We will continue to work to make this network of FIUs more effective by encouraging information sharing and joint projects.

Lastly, FinCEN continued to strengthen both the policies and technology relating to the information-sharing program authorized under Section 314 of the USA PATRIOT Act. We developed and deployed a secure, web-based system for transmitting

information requests from federal law enforcement agencies to financial institutions, and for transmitting the institutions' responses to those requests. Previously, information requests were transmitted via a slower and less secure system of e-mail and faxes.

Cross-Border Wire Feasibility Study

Section 6302 of the Intelligence Reform and Terrorism Prevention Act of 2004 (S.2845, Pub.L.No. 108-458, Dec. 17, 2004) directs the Secretary of the Treasury to prescribe regulations to require the reporting to FinCEN of certain cross-border electronic transmittals of funds to help detect and prevent the proceeds of financial crimes and terrorist financing from flowing across America's borders. The Act requires the Secretary to issue these regulations by December of 2007, if he can certify that the technical capability to receive, store, analyze, and disseminate the information is in place prior to any such regulations taking effect. Finally, the Act also requires that, in preparation for implementing the regulation and data collection system, the Treasury Department study the feasibility of such a program and report its conclusions to Congress.

For the purposes of this study, FinCEN has engaged members of the financial services industry, the federal financial regulatory agencies, and federal law enforcement agencies through the Bank Secrecy Act Advisory Group¹, which includes representatives of the U.S. financial services industry, law enforcement, and federal and state financial regulatory agencies. We have also engaged separately with our partners in the law enforcement community, through meetings with their representatives and through the distribution of surveys to those agencies, in order to assess what value might be derived from such reporting in the context of their missions. And we have conducted similar meetings with our regulatory partners.

Canada and Australia already require the reporting of cross-border wire transfers to their Financial Intelligence Units (FINTRAC and AUSTRAC, respectively). In that regard, both FINTRAC and AUSTRAC have provided us with extensive assistance through demonstrations of their respective reporting systems and sharing their views of best practices and lessons learned from the design and implementation of their regimes.

Through these efforts, FinCEN has identified the potential value in collecting cross-border electronic wire transfer information and potential avenues for combining that data with other BSA data. FinCEN has also identified a number of policy-related

¹ Congress established the Bank Secrecy Act Advisory Group (the "BSAAG") in 1992 to enable the financial services industry and law enforcement to advise the Secretary of the Treasury on ways to enhance the usefulness of Bank Secrecy Act reports. Since 1994, the Advisory Group has served as a forum for industry, regulators, and law enforcement to communicate about how law enforcement uses Suspicious Activity Reports, Currency Transaction Reports, and other Bank Secrecy Act reports and how FinCEN can improve the reporting requirements to enhance their utility while minimizing the burden on financial institutions.

concerns implicated by the proposed requirement, which arose from feedback FinCEN has received from numerous financial industry representatives and the five federal banking agencies. Chief among these concerns is how to protect the privacy of individuals about whom we collect information. Another significant concern are the costs U.S. financial institutions may incur in complying with such a reporting requirement. Last, there is some concern about the potential impact of the proposed reporting requirement on the day-to-day operations of electronic funds transfer systems in the United States. Our feasibility study will outline these issues and propose an approach for resolving them.

BSA Direct

We have also taken steps to address significant issues that have arisen over the past year. One such matter involved certain aspects of our BSA Direct project. BSA Direct is an overall umbrella project with several components, including: retrieval and sharing, electronic filing, and secure access. The electronic filing and secure access components of BSA Direct have been operational for a number of years. The retrieval and sharing development began conceptually in September of 2003, with a contract awarded on June 30, 2004. The retrieval and sharing (R&S) component of BSA Direct was, in part, aimed at improving authorized users' access and ability to analyze the BSA data. It was designed to apply data warehousing technology to structure the data in a single, integrated, secure web-based environment, and provide sophisticated business intelligence and other analytical tools in a user-friendly web portal. Under this design, law enforcement and regulatory agencies would gain easier, faster data access and enhanced ability to query and analyze the BSA data - improvements that were expected to lead to increased use of the BSA data and enhancements of its utility.

On March 15, 2006, I notified Congress of my intent to issue a temporary 90-day "stop-work" order on this project. This action was necessary due to the project's inability to meet performance milestones. An assessment team, comprised of management, analysts, technology specialists, and independent consultants, was created shortly after the issuance of the stop-work order to assess and refine core requirements for BSA information retrieval, dissemination, sharing, and analysis; to determine whether this component of BSA Direct could be salvaged and/or leveraged by other alternatives; and to define the best path to ensure business continuity.

On July 10, 2006, the assessment team reported its findings and concluded that BSA Direct R&S was a partially built system that integrated a number of best-in-class products that did not, in its present state, function well together. As a result, the system could not be deployed to any of FinCEN's users in the short term. Moreover, FinCEN, the contractor, and our external consultants could not definitively predict how close the system was to meeting the envisioned requirements or the time, resources, and risks involved in completing the system.

Based on these findings, the assessment team recommended that FinCEN terminate the existing contract, assess immediate needs, and plan for new capabilities. Based on the underlying information and analysis, I supported this recommendation and, therefore, on July 13, 2006, I terminated the BSA Direct R&S contract.

As we move forward, FinCEN will initiate a re-planning effort for BSA Direct R&S, to address strategic, technical, and resource planning issues, as well as stakeholder analysis. In addition, we will continue our efforts with the Internal Revenue Service to implement WebCBRS as an immediate means of meeting internal and customer needs for BSA data query and analysis tools.

Money Services Businesses

Another significant issue that FinCEN has faced and continues to face relates to the money services business industry. There has been mounting concern among FinCEN and others at the Department of the Treasury, various financial regulators, and the money services business industry regarding the ability of money services businesses to establish and maintain banking services. Many banks have expressed an uncertainty with respect to the appropriate steps they should take under the BSA to manage potential money laundering and terrorist financing risks associated with this industry. At the same time, the money services business industry has expressed concern that misperceptions of risk have unfairly led to labeling them as “unbankable.”

Individual decisions to terminate account relationships, when compounded across the U.S. banking system, have the potential to result in a serious restriction in available banking services to an entire market segment. The money services business industry provides valuable financial services, especially to individuals who may not have ready access to the formal banking sector.

Consequently, it is important that we maintain the ability of money services businesses that comply with BSA requirements and related state laws to do business through the formal financial system, subject to appropriate anti-money laundering controls. Equally important is ensuring that the money services business industry maintain the same level of transparency, including the implementation of a full range of anti-money laundering controls, as do other financial institutions. The risk of money services business account relationships being terminated on a widespread basis is that many of these businesses could go “underground.” This potential loss of transparency would, in our view, significantly damage our collective efforts to protect the U.S. financial system from financial crime – including terrorist financing. Clearly, resolving this issue is critical to safeguarding the financial system.

In March of 2005, the Non-Bank Financial Institutions and the Examination subcommittees of the Bank Secrecy Act Advisory Group jointly hosted a fact-finding meeting to solicit information from banks as well as money services businesses on

issues surrounding the provision of banking services to the money services business industry. Subsequently, in April of 2005, FinCEN and the federal banking agencies issued interagency guidance to the banking industry on the provision of banking services to domestic money services businesses. FinCEN issued a companion advisory to money services businesses on what they should expect when obtaining and maintaining banking services.

Currently, based upon what we learned at the March 2005 meeting, and in subsequent discussions with other federal and state regulators, law enforcement, and the industry, we have developed and are implementing a three-point plan for addressing these issues:

1. Guidance -- that outlines with greater specificity BSA compliance expectations when banks maintain accounts for money services businesses.
2. Education -- that provides banks and bank examiners enhanced awareness of the operation of the variety of products and services offered by money services businesses and the range of risks that each may pose.
3. Regulation -- that strengthens the existing federal regulatory and examination regime for money services businesses, including coordinating with state regulators to better ensure consistency and leveraging of examination resources.

With respect to the issues surrounding the provision of banking services to money services businesses, we are considering additional actions, guidance, and outreach necessary to address this issue. For example, in March of 2006, we published an advance notice of proposed rulemaking to seek additional information from the banking and money services business industries on this issue. The comment period, which closed in July, provided us a number of insights that we will consider as we move forward on this issue.

In conclusion, Mr. Chairman, we are grateful for your leadership and that of the other Members of this Committee on these issues, and we stand ready to assist in your continuing efforts to ensure the safety and soundness of our financial system. Thank you for the opportunity to appear before you today. I look forward to any questions you have regarding my testimony.