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**ASSOCIATION OF MEXICAN BANKS
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The importance of strong global partnerships to achieve our common goal of countering criminal abuse of the financial system

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Introduction

It is an honor to be back in Mexico to speak before the Association of Mexican Banks following my visit last year when I spoke about the importance of promoting information sharing in our global anti-money laundering (AML) and counterterrorism finance (CFT) efforts.¹ I would like to take the opportunity to provide you with an update on developments in that area.

To begin, however, I wanted to underscore the importance of a dialogue like this today, and the continued partnership on many different levels: between private financial actors and the government in efforts to promote market integrity and combat financial crime; among financial institutions and their global affiliates; among Mexican and U.S. regulatory and law enforcement authorities; and, of course, underscored by the common interests of Mexico and the United States as interdependent neighbors.

Beyond our shared border, our countries share many common interests. Whether we are working to fight narcotics and illicit finance, or working to stimulate economic growth, our interests are similar and we must work together. Our joint efforts to root out illicit financial activity increase confidence in and promote the integrity and stability of the financial system. Criminals and terrorists do not respect the law; they certainly do not respect national borders. They will seek to exploit the weakest link to move and launder money through any means of financial intermediation.

It is for this reason that our financial regulatory efforts in the anti-money laundering area seek to make financial institutions vigilant and hostile to abuse by criminals. In rooting out illicit

¹ See http://www.fincen.gov/news_room/speech/pdf/20081009.pdf

financial activity, we can help legitimate commerce flourish. A number of the AML regulatory issues we are facing in the United States are similar in many ways to the experiences of our Mexican counterparts.

President Obama underscored the importance of our countries' strong partnership during his remarks here in Mexico City in April of this year: "At a time when Mexico is not just a regional leader, but now a global leader, as shown by its outstanding participation in the G-20 summit and other multilateral organizations, it's critical that we join together around issues that can't be solved by any one nation... in order to promote common security and common prosperity."²

FinCEN's Responsibilities

The Financial Crimes Enforcement Network (FinCEN) is a bureau within the U.S. Department of the Treasury. FinCEN's mission is to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems. FinCEN has an important dual role as both a regulator of financial institutions and as the financial intelligence unit (FIU), which is defined as:

A central, national agency responsible for receiving, (and as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information:

- (i) concerning suspected proceeds of crime and potential financing of terrorism, or
- (ii) required by national legislation or regulation, in order to combat money laundering and terrorism financing.³

As such, we must continually work to strike the right balance to ensure that financial institutions have appropriate controls in place to protect themselves from those seeking to abuse the financial system, and law enforcement has the information it needs to deter, detect, investigate, and prosecute money laundering and other financial crimes.

FinCEN has a strong relationship with our counterpart financial intelligence unit here in Mexico, the Unidad de Inteligencia Financiera (UIF), within the Secretaría de Hacienda y Crédito Público. This is also a longstanding relationship. Fifteen years ago this month, FinCEN completed negotiations of an agreement to exchange information on financial crimes that was signed by then-Secretary of the Treasury Lloyd Bentsen together with then-Mexican Finance Minister Pedro Aspe Armella. FinCEN's ongoing work with the UIF demonstrates the mutual commitment and deep level of cooperation between our two countries.

The bilateral cooperation to exchange information relating to cross-border threats and thereby further law enforcement cooperation is leveraged through the participation of FinCEN

² See http://www.whitehouse.gov/the_press_office/Remarks-by-President-Barack-Obama-at-Welcoming-Ceremony-in-Mexico-4-16-09/

³ See Interpretive Note Concerning the Egmont Definition of a Financial Intelligence Unit, available at http://www.egmontgroup.org/files/library_egmont_docs/egmont_final_interpretive.pdf.

and the UIF in the Egmont Group of financial intelligence units from over 100 jurisdictions around the world. Representatives from FinCEN and the UIF have long been active in building this international network, and the Egmont Group is currently chaired by the head of the UIF.

Turning to developments on the regulatory side, both of our countries agree that money services businesses (MSBs) can play a vital and central role in the financial lives of people around the world. For many people, MSBs offer a convenient place to cash a check or send money abroad to family and friends through money transmitters. These businesses also have responsibilities to comply with laws and regulations that protect the financial system as a whole from criminal abuse, and to make available information that supports law enforcement's investigatory efforts.

FinCEN has proposed to revise the definition of an MSB by describing with more clarity the types of financial activity that will subject a business to Bank Secrecy Act implementing rules.⁴ FinCEN issued a Notice of Proposed Rulemaking in May 2009 and is currently in the process of reviewing the comments received on the proposal to determine the appropriate next step.⁵

FinCEN also recognizes that stored value cards, and similar payment innovations, offer opportunities for the unbanked and under-banked to access the formal financial system. However, we also understand that without proper safeguards, these new payment methods can be abused for illicit purposes. What is important here is to deter the use of unlicensed and unregistered financial services providers. FinCEN is currently drafting a rule that will provide better insight into stored value and oversight of various actors in the prepaid market.

I understand that Mexico is dealing with similar issues and is working to enhance the supervisory structure of casas de cambio, as well as smaller, retail MSBs such as centros cambiarios. So this again is an area of mutual interest where we are both working to ensure access to financial services by the underbanked and promote legitimate remittance flows.

Private-Public Sector Partnership

Our respective governments also recognize the importance of a strong partnership among the public and private sectors to achieve our common goal of countering criminal abuse of the financial system.

Just last week, I spoke in Washington, DC at the American Bankers Association / American Bar Association annual money laundering enforcement conference where FinCEN released a report summarizing outreach FinCEN conducted with some of the United States' largest financial institutions. This specific outreach on a face-to-face basis with individual institutions was meant to supplement interactions with multiple institutions in conferences and sessions such as here today.

⁴ See http://www.fincen.gov/news_room/nr/pdf/20090512.pdf

⁵ See <http://edocket.access.gpo.gov/2009/pdf/E9-10864.pdf>

FinCEN's goal in conducting the outreach was to broaden our understanding of financial industry practices, and the information institutions need in order to effectively implement their AML programs. The report summarizes the information FinCEN gleaned from candid conversations with individual financial institutions to better understand the practical implications of FinCEN's regulatory requirements and ways that, working together with the financial industry, the common goal of protecting the financial system from the abuses of financial crime can be better achieved.⁶

One particular area of FinCEN focus in recent years in which our interests are very closely aligned with the financial industry has been with respect to fraud in residential real estate mortgages. FinCEN's mortgage loan fraud studies have proven to be very helpful tools to assist financial institutions in identifying this type of activity. Some banks have noted they changed some of their processes related to risks of fraud in mortgages following their review of FinCEN's analytical products on mortgage fraud, including the analytical study released in March 2009 looking at the interconnectedness between mortgage fraud and other financial crime, and how financial crime runs through the different financial sectors.⁷

FinCEN's work in this area illustrates that while fraud and money laundering are often viewed as separate criminal enterprises, acts of fraud and acts of money laundering are often quite interconnected. The financial gain of the fraudulent activity ultimately needs to be integrated into the financial system, so money laundering is often a product of fraud.

And from a due diligence perspective, information financial institutions have available and collect to comply with their anti-money laundering program requirements in many ways mirrors the information they would already be gathering for anti-fraud purposes. As a result, the resources being spent on fraud detection and prevention within financial institutions may well support the AML program, and vice versa.

Update on SAR Sharing

I would now like to update you on my comments from last year concerning the issue of sharing SARs (the term used in the U.S. for suspicious transaction reports) and SAR information among affiliates of financial institutions, and the importance of SAR confidentiality. Last year, I discussed how FinCEN and its U.S. regulatory colleagues have long recognized that in order to discharge their oversight responsibilities for enterprise-wide risk management, financial institutions required to file SARs may need to share the SARs, or information about the SARs, within their corporate structure. For example, head offices, controlling entities or parties, or parent entities, may have a valid need to review an internal unit's compliance with legal requirements to identify and report suspicious activity.

Although the internal sharing of information underlying the filing of a SAR generally has never been prohibited under the BSA, it is understood that the sharing of a SAR itself may provide greater efficiency than the development of new processes solely to share the underlying information. Industry has repeatedly told us of the impracticality of being able to share only the

⁶ See http://www.fincen.gov/news_room/rp/reports/pdf/Bank_Report.pdf

⁷ See http://www.fincen.gov/news_room/rp/files/mortgage_fraud.pdf

underlying information regarding a report of suspicious activity. FinCEN currently affords “safe harbor” for the sharing of such information between institutions, as it relates to money laundering or terrorist financing, under its 314(b) voluntary sharing provisions.⁸

We recognize the importance of institutions communicating with each other with respect to illicit activity, which by its very nature will rarely impact only a single institution. In order to facilitate greater efficiency in this and other industry best practices, FinCEN desires to open the door to such sharing in every way possible that would not ultimately compromise the confidentiality afforded SARs.

As discussed last year, FinCEN and the U.S. Federal Banking Agencies in 2006 issued joint guidance specifying that, subject to certain exceptions or qualifications, a U.S. branch or agency of a foreign bank may share a SAR with its head office outside the United States and a U.S. bank or savings association may disclose a SAR to its controlling company, no matter where the entity or party is located.⁹ At that time, we deferred taking a position on whether a depository institution is permitted to share a SAR with affiliates and directed institutions NOT to share with such affiliates. Of course, such unilateral acts allowing banking operations in the United States to share with foreign headquarters have limited effect so long as there is a lack of reciprocity from other countries.

In 2006, FinCEN also issued guidance in consultation with the staffs of the Securities and Exchange Commission and the Commodity Futures Trading Commission determining that, subject to certain exceptions or qualifications, a securities broker-dealer, futures commission merchant, or introducing broker in commodities may share a SAR with parent entities, both domestic and foreign.¹⁰

Since my visit here last October, FinCEN proposed amendments to the SAR regulations in March 2009 to expand the confidentiality of SAR information, along with a parallel proposed guidance document on SAR sharing to ensure that the appropriate parties, but only those parties, have access to SARs.¹¹ Among other things, these proposals clarify the responsibilities of both government employees and financial institutions to protect this information. Law enforcement investigators should receive higher caliber information from SARs, and corporate affiliates are able to share information with each other about dangerous customers who can harm the institution’s bottom line or reputation.

The issues surrounding SAR sharing are challenging. This point has been reiterated by banks and government officials around the world. In June 2009, FinCEN issued a statement following the annual plenary meeting of the Egmont Group, held in Doha, Qatar. The Egmont Group is an international network of financial intelligence units from more than 100 jurisdictions. The statement noted that the guidance that FinCEN has proposed to facilitate SAR sharing among domestic affiliates is a *first step* toward raising awareness and removing some of the impediments that are preventing nations across the globe from fulfilling some of the

⁸ See 31 CFR § 103.110 (b)

⁹ See http://www.fincen.gov/statutes_regs/guidance/pdf/sarsharingguidance01122006.pdf

¹⁰ See http://www.fincen.gov/statutes_regs/guidance/pdf/sarsharingguidance01202006.pdf

¹¹ See http://www.fincen.gov/news_room/nr/pdf/20090303.pdf.

Financial Action Task Force principles designed to protect corporations, institutions, and financial markets. The G-20 leaders have also noted the need to promote greater sharing of AML-CFT information across jurisdictions.¹²

The G-20, in its Declaration from November 15, 2008 on the occasion of the Summit on Financial Markets and the World Economy, issued its Action Plan to Implement Principles for Reform, including a section specific to “Promoting the Integrity in Financial Markets.” The action plan states, “National and regional authorities should work to promote information sharing about domestic and cross-border threats to market stability and ensure that national (or regional, where applicable) legal provisions are adequate to address these threats.”¹³

As FinCEN works to develop a better understanding of how laws in foreign jurisdictions may presently, or in the future, ensure the confidentiality of U.S. SARs, FinCEN’s proposed rule on confidentiality will enable us to consider further circumstances under which sharing within a corporate organizational structure is consistent with the purposes of the BSA. In proposing the guidance on sharing, FinCEN specifically sought comment from industry that may be helpful in this regard.

Sharing of Information Among Unaffiliated Financial Institutions

Another area of recent FinCEN activity that I thought might be of interest to many of you, based on conversations we had in the context of last year’s Association of Mexican Banks conference, and the changes to article 115bis of the Mexican banking law and its implementing regulations, is with respect to the sharing of information about specific risks among banks that are not affiliated. For example, this might include sharing of information among members of a banking association or by one bank initiating a transaction to inform the recipient bank of a concern with respect to an underlying customer whose activity might be suspect. In the United States, we have a specific legal authority under section 314(b) of the USA PATRIOT Act of 2001, under which FinCEN has implemented regulations to allow such sharing of information as an exception to any applicable obligation to protect personal and commercial information related to a bank’s customer.¹⁴

Some banks in the United States were hesitant to share information under the 314(b) program as it related to ***suspected fraud***. As a result, on June 16, 2009, FinCEN issued guidance to clarify the scope of permissible sharing covered by the section 314(b) safe harbor. The guidance clarifies that financial institutions, upon providing notice to FinCEN and using procedures designed to safeguard the information, are permitted to share information with one another. Sharing of information is permitted to identify and report activities, such as suspected fraud - or other specified unlawful activities (SUAs) (the predicate offenses for money laundering) - if they suspect there is a nexus between the suspected fraud or other SUA and possible money laundering or terrorist financing activity.¹⁵ We expect this guidance to result in further exchange of information among financial institutions for the purpose of fighting fraud.

¹² See http://www.g20.org/Documents/g20_wg2_010409.pdf, Key Message #38

¹³ See http://www.g20.org/Documents/g20_summit_declaration.pdf

¹⁴ See 31 CFR § 103.110

¹⁵ See http://www.fincen.gov/news_room/nr/pdf/20090616.pdf

Conclusion

It has been a great pleasure for me to be here today to discuss our strong partnership in furthering important global initiatives to combat illicit activity, and I look forward to ongoing close collaboration in these areas.

There is no one regulation, no one law enforcement initiative, no one agency that can solely address internal threats facing our global financial system. But it is the sum of our collective efforts that is greater than the parts. The global community has FinCEN's commitment that it will continue to bring its unique authorities to bear on multiple fronts: On the regulatory side FinCEN will work to close loopholes that allow criminals to prey on innocent consumers. With the financial community FinCEN will work to ensure they remain vigilant and continue providing law enforcement with the lead information they need to aggressively root out fraud while promoting legitimate economic activity and growth.

We are also continuing to explore new ways in which our two countries can continue to foster our dynamic relationship. FinCEN will continue to build upon its excellent relationship with the UIF in support of law enforcement. But we as financial intelligence units remain cognizant that we are in turn dependent upon the vigilance of private financial institutions and their efforts to report appropriate information to the government. By facilitating sharing of information among banks, both within a corporate structure and among unrelated entities, we hope, first, to protect the banks from criminal abuse, and, second, to provide the government with the information it needs to track down the criminals and thereby protect all citizens.

I would like to conclude my remarks today with a final quote drawn from President Obama's remarks during his visit to Mexico City this past April: "If we continue to draw strength from our common aspirations and purpose from our common objectives, if we continue to act...in a spirit of mutual responsibility, mutual respect, and mutual interest, then that is a truth that we will uphold together in the months and years to come."¹⁶

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¹⁶ See http://www.whitehouse.gov/the_press_office/Remarks-By-President-Obama-At-Dinner-With-President-Calderon-4/16/2009/