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Women in Housing and Finance

I was delighted when Mary Ellen's invitation arrived for lunch with Women in Housing and Finance. Your diverse network of members offers me, as FinCEN's new Director, a great opportunity to engage in a frank discussion about regulatory issues and anything else you would care to talk about today. But before I discuss our current work with regulations, I'd like to take a moment to put it all in context by briefly describing FinCEN's overall mission.

FinCEN is an agency filled with very dedicated professionals and it has a critically important mission -- to safeguard our nation's financial system from abuse by criminals and terrorists. Our job begins by administering the regulatory regime required under the Bank Secrecy Act known as the BSA. In general, the BSA requires two main things from financial institutions. One is that they have appropriate controls in place to protect themselves from those seeking to abuse financial services. The other is that they report suspicious activities and other appropriate financial information to FinCEN. In turn, FinCEN is responsible for collecting and maintaining that information, which we then make available to law enforcement. The third component of our work is analysis -- our task is to better utilize the information we collect to provide links and case referrals to law enforcement, and provide feedback to the financial community, which includes many of you. I intend to aggressively find ways to enhance the information flow you receive. In fact, Mary Ellen specifically asked that I give you some feedback today about how the information you provide assists law enforcement, and I will do that shortly.

A top priority for FinCEN right now is completing our implementation of Title III of the USA PATRIOT Act. As you know, in the immediate aftermath of September 11, Congress passed the PATRIOT Act to enhance government's ability to fight terrorism by crippling terrorist funding.

In brief, Title III of the Act sought to accomplish the following: first, to enhance our ability to share information; second, to protect the international gateways to the U.S. financial system, the correspondent account; third, to prescribe uniform customer identification verification procedures for all financial institutions opening accounts; and fourth, to expand our anti-money laundering regime to all categories of financial institutions whose services may be abused by money launderers or terrorists.

In implementing these provisions, our efforts have and continue to be guided by certain overarching principles that FinCEN and Treasury and our regulated partners have articulated and you will hear repeated many times. Your understanding of the foundation on which our country's anti-money laundering structure is built is critical, in my view, to your understanding of what we are trying to achieve. The basic building blocks are:

- enhancing the flow of critical financial information;
- focusing financial institutions' reporting on information that is useful to law enforcement and minimizes the regulatory burden imposed;
- fairly and consistently administering the regulatory regime across industry lines to prevent regulatory arbitrage;
- protecting important privacy and confidentiality interests; and
- ensuring that vulnerabilities in the financial system are addressed effectively and appropriately.

Our approach to this regulatory regime is “risk based” not rule based. We believe strongly that compliance must be risk-based in order to fairly and effectively regulate the panorama of industries represented under the BSA umbrella. A risk-based system is a challenge for both the regulated industry and the regulator. For the regulated industry, this “risk-based” system demands that financial institutions evaluate their business, including their products, distribution channels, customer base, etc., and assess their vulnerabilities to money laundering. These businesses must, then, take appropriate steps to focus compliance resources on minimizing the greatest risks. Compliance is not a “check-the-box” exercise, but rather requires financial institutions to exercise their judgment, as informed by our guidance and assistance.

We at FinCEN know that as a regulator we also have significant responsibilities in a risk-based system. We must ensure that we have made every effort to fully explain our regulations and provide well thought-out guidance and expert assistance. This guidance should be both formal and informal and should be delivered through a myriad of technologies.

Maybe most importantly, the regulator under a risk-based system must find an appropriate way to provide the regulated industry with information necessary to permit the industry to assess the risk. I am not naive. This is not easy. For example, if terrorism is our greatest threat, how does FinCEN appropriately and effectively communicate information that may be relevant, but is classified? Law enforcement is correctly reticent about sharing information outside its investigative circles. How do we get relevant information from those investigations to our industries so they can assess their risks? As difficult as this may be, FinCEN must find a way to provide the industries we regulate with information relevant to their assessment of the risk.

Since passage of the USA PATRIOT Act, we have enjoyed an unprecedented level of cooperation and assistance from industry, law enforcement, and regulators. Constant dialogue with our partners helps to produce regulations that strike a better balance between meeting our enforcement goals and minimizing unnecessary burdens placed on industry.

Also, without this support from our partners, FinCEN and Treasury would not have been able to meet the short deadlines of the PATRIOT Act. Over the past two years, we have issued 22 proposed or final regulations, and we have not finished yet. For example, working with the financial regulators, we will complete final regulations

requiring due diligence and, in some cases, enhanced due diligence, for correspondent accounts maintained for foreign financial institutions as well as private banking accounts. This is the final element of the comprehensive set of regulations designed to protect the international gateways to the U.S. financial system. We must also issue final anti-money laundering program regulations for key non-bank sectors, such as the insurance industry and dealers in precious stones, metals, and jewels, as well as complete proposed regulations for such industries as loan or finance companies and persons involved in real estate closing and settlements. Additionally, we are completing work on a final regulation requiring mutual funds and certain insurance companies to file Suspicious Activity Reports. Finally, we will issue additional customer identification regulations – which mirror the regulations issued for banks – for other financial institutions offering accounts.

I know that these regulations may affect many of you here today and may I say that we have been gratified by the informative and thoughtful comment letters we have received from industry and the practitioners who serve them, trade associations, regulators, and other government agencies. Possibly, some of you have been involved in drafting these comments. By the way, we are putting all comment letters on our website for public information. When I last checked we had posted over 50 comments on the Advance Notice of Proposed Rule on Anti-Money Laundering Programs for Persons Involved in Real Estate Settlements and Closings and over 25 comments on the Advanced Notice of Proposed Rule for Anti-Money Laundering Programs for Investment Advisors. These comments are invaluable to us as we seek to make informed and fair decisions about possible, future regulations.

Before I conclude, I'd like to give you that feedback I promised earlier. As I mentioned, information sharing with the financial community is critical and, perhaps our greatest challenge. That is why I think a very important task given to FinCEN under the PATRIOT Act is to enhance the flow of information as mandated by Section 314. Section 314 encourages development of new ways to share information about terrorists or money laundering suspects rapidly between law enforcement and financial institutions, and to enable financial institutions to share information among themselves. This communication system between law enforcement and financial institutions that can transmit names of suspects to several thousands of financial institutions and receive reports back of matches, all within a matter of days. This pointer system enables law enforcement to locate accounts and transactions of suspects so that law enforcement may then follow up with the financial institution directly to obtain the information. As of mid-January, through the section 314 process, financial institutions have helped law enforcement obtain 472 grand jury subpoenas, 11 search warrants, and three indictments since last February. That's a pretty impressive success story, and is just part of the bigger picture about how law enforcement uses the information provided by financial institutions. To provide more feedback, FinCEN publishes accounts of law enforcement cases in which such BSA forms as suspicious activity reports and currency transaction reports played key roles. You can read about these cases in our semiannual SAR Activity Review publications. Additionally, we have just started to publish more of these case histories on our website.

In conclusion, I want to leave you with a few key words that sum up what FinCEN is all about. They are partnership, information sharing, and communication. My overriding priority in the coming months and years is to ensure that these are not empty words. I will look to groups such as yours to help broaden our perspectives and knowledge about your industries and explore innovative ways to combine our collective expertise to further fortify our nation's defenses against those who would abuse our financial system. To that end, I will open up the discussion now and answer any questions you may have. And again, I sincerely thank Mary Ellen for inviting me here today and all of you for listening.