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ABA/ABA MONEY LAUNDERING ENFORCEMENT SEMINAR

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Good afternoon. It is an honor and a pleasure to be back at the American Bankers Association/American Bar Association Money Laundering Enforcement Conference. I would like to thank my good friend John Byrne for his introduction. I would also like to thank Richard Riese, Director of the American Bankers Association's Center for Regulatory Compliance, for his kind invitation to address you all today. Finally, I would like to congratulate the American Bankers and the American Bar Association on this terrific seminar. The attendance here today speaks highly about the quality of the conference as well as the importance of the topic. It is great to see so many familiar faces in the crowd.

For those of you that don't know me, I am Bill Fox and I am the Director of the Financial Crimes Enforcement Network, or FinCEN as we are sometimes better known. My agency is responsible for administering the Bank Secrecy Act, the principal anti-money laundering and counter terrorist financing regulatory regime in the United States. The mission of my agency is to "safeguard the financial system from the abuses of money laundering, terrorist financing and other financial crime." That is a pretty big mission, particularly when you consider what protecting the financial system actually entails. The global financial system, as it has evolved over the last thirty or forty years, is largely free and open. Every second of every day, transactions take place between people on opposite sides of the world in a matter of seconds with very little, if any, interference. The advent of internet payment systems and developments in communication technology are cutting edge mechanisms that today facilitate the movement of value. The financial system is part of the set of day-to-day miracles that make up our lives in the 21st Century. Administering the Bank Secrecy Act is central to achieving this mission.

Boiled to its essence, the Bank Secrecy Act's goal is to protect the U.S. financial system from money laundering and other financial crime through a system of regulatory controls and reporting aimed to increase transparency in the U.S. financial system. This increase in transparency ensures that money laundering, terrorist financing and other economic crime can be detected, investigated and ultimately disrupted or prosecuted. The regulatory regime implemented under the Bank Secrecy Act has two essential elements. First, it requires financial institutions to create a "custom made" anti-money laundering program consisting of policies, procedures and systems aimed to protect each financial institution from the risks of financial crime posed to the institution by its customer base and its business lines and products. While each anti-money laundering program should be tailor-made for each financial institution, the foundation of every solid anti-money laundering program is the implementation of systems to ensure the proper identification of customers and detect suspicious financial activity. That leads to the second element of the regulatory regime implemented under the Bank Secrecy Act, which is aimed at making information available to the government – through a system of required recordkeeping and reporting – information that is highly relevant to the detection, prevention, deterrence and investigation of financial crime.

I was recently reminded of the importance and difficulty of achieving this mission. I was sitting at my desk the other morning and I picked up my newly delivered edition of *The Economist*, which is a small part of my effort to stay abreast of what is happening in the world. I started, as I always do, thumbing through the "Leaders" section in the front, which contains several opinion pieces that often preview some of the issues tackled that week. There was a good piece on the Iraqi elections and another piece on the feared outbreak of Avian Influenza. Then I turned the page and saw it . . . a piece titled *The Lost Trail – Efforts to Combat the Financing of Terrorism are Costly and Ineffective*. After reading the headline again, the all too familiar dull ache began to form in the area [point to temples] right about here. It's the same dull ache many of you compliance officers experience when your assistant comes in and says your bank examiners have been doing some transaction testing to test your anti-money laundering program and they want to meet with you to discuss what they have found . . . and, oh by the way, they'll need about four hours. Anyway, after catching my breath, I began to read the piece . . . and if those of you that have already read the piece could bear with me, I'd like to share a portion of the first and last paragraphs with those of you that have not seen it. The article begins as follows . . .

"The best test of a regulation is that its constraints work cost-effectively against the problem it was introduced to solve. Alas, on that simple measure the elaborate efforts . . . to curb terrorism by stopping the flows of money that sustain it, must be judged a failure. Complex and unwieldy regulations have been imposed, but are not working, indeed arguably were always misguided. They should be scrapped and resources concentrated more productively elsewhere."

Later the article concludes by stating . . .

“There is no great risk in scrapping the specific rules relating to terrorist finance. Much of the information will still be captured, because parallel efforts to combat money laundering will continue (and are anyway more effective). But precious resources would be freed that could be spent elsewhere, for instance in cracking down on the use of multiple identities to commit welfare and credit-card fraud. This is worth doing for its own sake and may, incidentally, also help catch more terrorists – some recent attacks have been paid for with the proceeds of such fraud. However, loading down the world’s financial system with a heavy new regulatory burden makes little sense. . . .” *The Economist*, October 22, 2005.

The Economist, of course, is not alone. While acknowledging that “vigorous efforts to track” terrorist money flows should remain a central focus of the U.S. effort against terrorist organizations, the 9/11 Commission – particularly in its monograph on terrorist financing – questioned not only the value of U.S. efforts to disrupt funding flows, it also questioned whether the regulatory regime implemented to deter, detect, and investigate money laundering had any real value in deterring, detecting or investigating terrorist financing. After I got over my headache, I realized that these are important, timely and fair questions to ask.

Let’s add some historical context to these questions. How did we get here? For the better part of the past twenty years, the government has put significant efforts into addressing financial crime. Much of our effort was aimed to address the trafficking in narcotics plaguing the United States and Europe. The theory justifying these efforts was that the motive for most crime is profit. People believed that if we can find a way to get at this profit, we can make a dent in actual crime. We developed criminal and regulatory regimes aimed at this goal. Then we internationalized the effort recognizing, correctly, that the movement of money in the 21st Century knows no boundaries. Then September 11th occurred and, in many ways, the rules of the game changed. The President made it clear that we would attack terrorists and their organizations from every possible angle – including finance. The USA PATRIOT Act was enacted, less than two months after the attacks. It contained an entire title devoted to financial issues – many of which were aimed at strengthening and expanding the reach of the Bank Secrecy Act, a statute previously aimed principally at the problem of money laundering.

I think it is unfortunate in some ways that the problems of terrorist financing and money laundering get grouped together and discussed as though they are the same. While related, terrorist financing and money laundering are two very different problems that require different techniques to detect and investigate. Money laundering often involves a “forensic” exercise. With money laundering a crime has been committed, and the criminal activity has produced a significant amount of “illicit” proceeds. Money laundering involves the effort to hide or clean those illicit proceeds so they can be enjoyed or reinvested into the criminal organization. Efforts to detect or investigate

money laundering are aimed at ripping away the profit – and thereby the motive – from crime. Terrorist financing, on the other hand, involves the movement or use of often very small amounts of money intended to fund some entity or operation. The operation that is being funded has yet to be perfected. The goal of efforts against terrorist financing is often to better understand terrorists and their organizations so we can disrupt and prevent the operations they are planning to carry out.

So, is *The Economist* right? Have the regimes we have created all been for naught? Have these regimes failed? Should these regimes be scrapped and resources devoted elsewhere? Certainly not. Every day, the information produced by the regulatory regime implemented under the Bank Secrecy Act is in some way operationally helpful to law enforcement and, in the right case, intelligence services in their efforts to detect and investigate financial crime – including terrorist financing. Law enforcement and intelligence services are consistently ratifying what we know from our analysis: that information collected under the Bank Secrecy Act is critical to understanding, detecting, investigating, prosecuting and deterring money laundering, terrorist financing and other illicit finance. The Chief of the FBI's Terrorist Financing Operations Section has told me that information reported under the Bank Secrecy Act is as valuable as any other information available to his section in detecting and disrupting terrorist financing. And, law enforcement will validate the notion that there are few, if any, significant money laundering investigations that did not begin or were not enhanced by this same information.

But operational success is only one aspect of the value of our program. The regime that has been implemented has had a great deterrent effect on criminals and terrorists that attempt to use financial institutions and the financial system to their illicit ends. It has been stated publicly many times by law enforcement and policy makers that efforts against terrorist financing taken since September 11th have had the effect of chasing terrorists away from the formal financial system. Increasingly, terrorists and their operatives have begun using cash couriers, which is much more difficult and dangerous for their operations. The non-government organization sector is paying closer attention to its books, taking steps to ensure their organizations are not being abused by terrorists and their organizations. Donors who were once willing to fund extremist causes are more cautious to do so because they are frightened of being detected and ultimately associated with terrorism. All of these factors and more have had a disruptive effect on terrorist organizations, and while this disruptive effect is difficult to measure, they are real and cannot be discounted or dismissed.

Finally, the transparency added in a balanced way to the U.S. and the world's financial system by the regimes that have been implemented over the past twenty years is, in our view, an extremely healthy development. I suspect that most here would agree that the evolution of the global financial system is irreversible and, generally, a good thing not only for legitimate business but also for the human condition. We all can accept the fact that the globe is continuing to shrink. Ways to move money around the world will continue to develop and will become accessible to more and more people

around the world and I think we all agree that with the development of systems to move money, there will be more efforts to game this system for illegitimate purpose. Ensuring that our global financial system contains the appropriate level of transparency is critical to the health of that system. In other words, a clean and transparent global financial system not only helps detect and prevent crime and terrorism, it is ultimately good for business.

Notwithstanding, we must recognize that there is clearly need for improvement – not only in these regulatory regimes, but in the way the regimes are implemented – if we are ever going to achieve a clean and transparent global financial system. If we are going to make the present regime work, the government and private sector must act in true partnership. The word “partnership” gets thrown around an awful lot these days, at least in the United States, and this tends to breed a great deal of cynicism. Partnership demands a commitment on both sides. For the private sector this means a commitment to develop and implement reasonable, risk-based programs to address the risks of financial crime posed by each private sector member’s business lines and customer base. This program should result in the reporting of suspicious activity and other relevant information to the government when appropriate. The government, in turn, must educate and inform the private sector about the risk and – most importantly – be willing to share information – sometimes sensitive information – with the financial sector so they can do the jobs we have asked them to do.

Sharing relevant sensitive information with the financial sector in a deeper and richer way necessarily breaks several old and deeply entrenched paradigms. It brings the financial sector into a more collaborative relationship with the government while also minimizing the impact on legitimate commerce. The 20th Century paradigm of governments alone protecting their citizens from outside threats is no longer valid in a post-September 11th world. This paradigm simply no longer applies when enemies can melt into society and commandeer aircraft to use as missiles of devastation, or when a group of mad men board public transportation and murder innocent souls who are simply trying to live and work in the world. Good partners talk with one another. I am convinced that if we are to make the present regime work, government and the private sector need to proceed as partners on these issues.

Secondly, we must continue to monitor and assess our regime and the programs it mandates and make reasonable adjustments when required. The criminals and terrorists who are attempting to game the system are nimble and flexible. We must keep our eyes on the goal. If a particular requirement is not working to achieve the goal, we should relieve the burden. Likewise, if we need to do something in a different way to achieve the goal, we should be willing to do that.

Finally, it is also important to remember that the movement of money in the 21st Century – legitimate or illegitimate – knows no borders. Economic crime, including terrorist financing, has a global reach. Both the government and the private sector must

pursue greater international cooperation and collaboration on these issues if we are to achieve our goal of safeguarding the financial system from criminal abuse.

So what is our ultimate goal? It isn't necessarily an operational or the deterrent goal. Our ultimate goal is to work together to achieve a clean and transparent financial system. I believe it is important for the United States to be the model for this effort. Our effort is critically important to our national and economic security. And, ultimately, our effort is good for business.

Thank you very much.