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Thank you for inviting me here for the fourth, annual, Anti-Money Laundering Compliance Conference of the Securities Industry Association. I am always eager to speak with our industry partners because your insights and experiences are invaluable to our work at FinCEN. A few weeks ago, I had a great meeting here in New York City with representatives of the securities industry and was able to take back to FinCEN a heightened awareness of some of the issues confronting you as you strive to meet your regulatory obligations. I will be addressing some of those issues today. Your industry plays a vital role in the well being of our nation and the daily lives of Americans. SIA's work in strengthening public confidence in and an understanding of the securities industry has been outstanding and your cooperation with the many regulators of your industry has been exemplary. It is truly an honor to be here and to have the opportunity to listen to the insights and thoughtful recommendations of your members and guest speakers. I want to personally thank you on behalf of the Department of the Treasury and the Financial Crimes Enforcement Network for your support of FinCEN, particularly over the past two years in our work on the USA PATRIOT Act.

But before I talk about FinCEN and our plans for the future, I want to take a moment to thank those of you in the securities industry for assisting us in the fight against money laundering, even before passage of the USA PATRIOT Act. For example, some of you have filed suspicious activity reports with us for years, either since 1996, pursuant to bank regulators' rules for bank holding company affiliates, or voluntarily since 1989, pursuant to guidance issued by the New York Stock Exchange and National Association of Securities Dealers. Of course, since January of last year, all broker dealers have been required to file suspicious activity reports. Let me assure you that your reports are vital to our work at FinCEN. Through suspicious activity reports involving the securities industry, FinCEN has identified, among other things, the suspicious movement of funds internationally through wire transfers; suspicious deposits and withdrawals into and out of investment companies' accounts; and structured cash deposits under \$10,000 or cash withdrawals under \$10,000 involving investment companies' accounts.

### **Information Sharing**

Information sharing is critical to our collective efforts to detect and thwart criminal activity. It is also 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. As many of you know, 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 can transmit names of suspects to several thousands of financial institutions including broker dealers in securities, and futures commission merchants. Within days we receive reports back from industry about matches of accounts and transactions of suspects. It is then up to law enforcement to follow up with the financial institutions directly to obtain the detailed information. So far, using the 314(a) results, law enforcement has pursued nearly 1,000 items of brand new financial information – over 923 previously unknown accounts, and 73 new transactions. These investigations have resulted in over 500 subpoenas, summonses and other legal process to obtain the documentation for these matches. There have been some arrests and indictments. That's a pretty impressive success story.

The other half of section 314 enables financial institutions that are required to have anti-money laundering programs to share information among themselves. Broker dealers in securities and some futures commission merchants are registered with us to participate in this back and forth information sharing, and they are protected by a broad immunity from liability under the safe harbor provision.

As successful as section 314 is, it is just part of the bigger picture about how law enforcement uses the information provided by financial institutions. At FinCEN, we know that information sharing is not a one-way street and as FinCEN's new Director, one of my overriding priorities is to enhance the feedback we provide to our industry partners about the information you provide to us. For several years, FinCEN has published 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 some of these cases in our semiannual SAR Activity Review publications. More recently, we have started to publish many more of these case histories on our website.

To supply more timely information, FinCEN also issues advisories and bulletins, which highlight the latest information in trends and analyses, and provide alerts to financial institutions about jurisdictions that are not cooperative in anti-money laundering efforts. Topics in our advisories and bulletins have included the fraudulent use of Canada post money orders; informal value transfer systems; and suspicious activity related to automated teller machines and phone card businesses. The information our industry partners provide is used by FinCEN in identifying these trends and patterns. By the way, later today, Judith Starr, FinCEN's Chief Counsel, will be going into greater detail with you about the importance of suspicious activity reporting and how the information you provide is combined with other data and enhanced to provide vital links of criminal activity to law enforcement.

If you are interested in reading some of these publications I've mentioned, you can find them under the publications section of our website. Also, under the regulatory heading of our website, we publish answers to frequently asked questions regarding compliance with the Bank Secrecy Act and timely guidance papers on BSA regulations. We know that providing regulatory guidance is crucial to our industry partners, particularly now, with so many new requirements under the USA PATRIOT Act. This

morning, William Langford, FinCEN's Senior Policy Advisor, talked to you about why uniformity in customer identification and verification is so critical, and we are going to put out additional questions and answers on our website to guide you as we go along.

However, as much progress as we are making with these programs, it is not enough. I am beginning a dialogue with law enforcement to try and determine how we can provide those of you on the front line with sensitive information about the risks facing the financial system. As I mentioned earlier, this includes providing information about trends and patterns we are finding, but it should also include specific, sensitive information to some in our regulated industries. I am not naïve. This is not and will not be as easy as it sounds, but we must find a way to do it. For example, let's say we receive information about a particular threat or risk associated with terrorist financing. We would want to alert our industry partners in the interests of national security. But law enforcement organizations are correctly reticent about sharing information important to investigations in progress. Let me be clear, I am certainly not advocating free and public disclosure of classified material, or of important law enforcement information. I am saying, however, that we need to find a way - some way - to communicate that relevant information to our regulated industry when the situation warrants. Otherwise, how can we expect that industry to effectively assess and address its risks? Let me tell you that this is a significant priority for me and for FinCEN.

### **Regulatory Program**

Of course, FinCEN would be powerless to collect the information we need from you and in turn, provide feedback, without the authority of the Bank Secrecy Act, better known as the BSA. In 1994, the Secretary of the Treasury gave FinCEN the responsibility for administering the BSA, the statute that assists in the safeguarding of our financial system through recordkeeping, reporting, and anti-money laundering program requirements. Our role as administrators of the BSA includes issuing the implementing regulations; ensuring the collection of required information; maintaining that information in a database that is fully accessible to law enforcement and the regulators; and, assisting law enforcement and the intelligence community with our analysis of available information. Our approach to regulation is risk-based. In other words, we believe effective implementation of the BSA – as amended by the PATRIOT Act – must be predicated upon a financial institution's careful assessment of its vulnerabilities to money laundering and other financial crime. Based upon your knowledge of your industry, you can build an anti-money laundering program that makes sense for your institution and its customers. This is “advanced” regulation, if you will – requiring a serious commitment on behalf of the regulated industry as well as the regulator. It is not a “rule-based” approach, where the regulator gives the regulated a laundry list of tasks to be checked off. The financial community spans a broad horizon of service providers, and even within those sectors each institution must weigh its vulnerabilities according to its lines of business, types of customers, and geographic locations served.

This approach requires a commitment on behalf of the regulated industry. The industry must – from the very top of the organizations – seriously assess the risks it has

for money laundering and other financial crime. Then the organization must design and implement a plan – within the guidelines and guidance provided by the regulator – that will address and minimize those risks. While this approach is, in some ways, more challenging for financial institutions, let me submit to you that this approach is also more challenging for the regulator. In order for this system to work, the regulator must provide constant guidance of all sorts – formal and informal – using every technology available to us to reach the regulated industry. We have a responsibility under this approach to provide you with “guideposts,” within which you can design your program. It also requires that our regulatory regime must never become static. We must continually critically assess our regime and ensure that it addresses – in the broadest sense – the risks posed to our system.

## **Consistency**

Not only must we continue this dynamic, we must also find a way to further encourage consistency in the examination process. This presents one of the greatest challenges in moving the theory of risk-based regulation into the reality of daily practice. When drafting regulations that articulate the overarching framework and standards to be met, it is much easier for us to remain faithful to the risk-based principle. We build into our regulations the appropriate, discretionary latitude that enables you, the industry, to meet those standards in an efficient manner that is tailored to your operation.

Examiners, on the other hand, must focus on the specifics. Examiners have the challenging task of evaluating whether your policies and procedures, which you have adapted to your operation, meet these regulatory standards. There will be a constant tension between developing consistent review criteria to judge compliance with the regulations and maintaining the flexibility necessitated by the risk-based model. The challenges multiply as the obligations and compliance programs become more complex.

Our role as administrator of the BSA is to work with our regulatory partners and you to facilitate consistency in the application of our regulations and fulfillment of the pledge of risk-based compliance. We have worked side-by-side with your regulators to develop these new Patriot Act regulations that reflect our collective judgment that compliance should be risk-based. One of my priorities as Director of FinCEN is to spend time listening to examiners in the various industry sectors to understand their problems and their perspectives. We all need to pause and look at every aspect of the various stages in the regulatory process, and make sure they are producing the best possible results with the least possible burden.

What SIA is doing in this conference is exactly what we all need to be doing. You are looking at various provisions that affect or will affect your industry, and you are taking the time to listen to a variety of experienced speakers who bring new insights and clarity to the issues. This morning, it has been very informative and encouraging for me to hear about your work and experiences in preparation of the final regulations under Section 312 requiring due diligence for correspondent accounts maintained for foreign financial institutions as well as private banking accounts. As you know, this is the final

element of the comprehensive set of regulations designed to protect the international gateways to the U.S. financial system. We are working hard to complete that rule and hope to have it published soon.

Of course, of particular interest to many of you, is our work on final regulations on suspicious activity reporting for mutual funds, and our final anti-money laundering program regulations for non-bank sectors. These regulations 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. I think some of the most recent postings, which will be of interest to you, are comments about anti-money laundering compliance programs for commodity trading advisors and investment advisors.

### **Conclusion**

In closing, I hope I leave you with the impression that my overriding priorities in the coming months and years are to continue to raise the bar with respect to the products and services FinCEN delivers, and with respect to the need for consistency and balance in the regulatory regime. Our business is to reinforce the defenses of financial institutions against criminal abuse and provide meaningful information to law enforcement to more effectively detect and prosecute those who would harm our country. We all have significant responsibilities in this fight and I intend to ensure that FinCEN does its part in providing the tools we all need to meet the challenge.