

STATEMENT OF WILLIAM J. FOX
DIRECTOR
FINANCIAL CRIMES ENFORCEMENT NETWORK
UNITED STATES DEPARTMENT OF THE TREASURY

BEFORE THE
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

APRIL 29, 2004

Chairman Shelby, Senator Sarbanes, and members of the Committee, thank you for this opportunity to appear before you today to discuss the mission of the Financial Crimes Enforcement Network (FinCEN) and the important role it plays in the United States government's efforts to understand, detect, and prevent terrorist financing. This Committee's leadership on issues relating to terrorist financing and money laundering has been essential. The guidance and support you have provided to FinCEN through the years have been invaluable, and we hope we can continue to draw upon them at this critical juncture in the development of improved coordination within our government of anti-money laundering and counter-terrorism efforts.

I became FinCEN's fourth director on December 1, 2003. Before I came to FinCEN, I was working as the principal assistant to the General Counsel of the Treasury Department on issues relating to terrorist financing, which were issues that occupied a great deal of my time. Coming from the Department, I understood, to a large extent, the nature of FinCEN's responsibilities and what it was doing to carry out the obligations imposed by these responsibilities. In these five months, I have done a great deal of listening and learning from inside and outside of FinCEN. I have met extensively with the law enforcement and intelligence communities that we serve and the financial industry that we help regulate. I have met with and listened to the staffs of interested committees in the Congress – including this committee. I have met with some of my counterparts in foreign governments and communicated with many more; and, of course, I have had a continuous dialogue and received tremendous support from those at Treasury – including Secretary Snow, Deputy Secretary Bodman, and Deputy Assistant Secretary Zarate.

Let me tell you some of what I have found. I have found an organization populated with employees with diverse and highly specialized talents, who are extremely dedicated to the agency and its mission. I have found an agency that is a good steward of the human and capital resources that have been provided by the Congress. However, I have also found an agency facing many important challenges – challenges relating to the effective and efficient management of the extremely sensitive data collected under the Bank Secrecy Act; challenges relating to its analytic staff and the analytic product they produce; challenges relating to the administration of its regulatory programs under the Bank Secrecy Act; challenges relating to refocusing its important partnerships with

financial intelligence units around the world – the Egmont Group; and, challenges relating to the agency’s present organizational structure. Since each of these challenges relates to the specific topic of this hearing today, I will address each of them in this statement.

FinCEN’s mission is to help safeguard the financial system of the United States from being abused by criminals and terrorists. FinCEN works to accomplish its mission through: (1) administration of the Bank Secrecy Act – a regulatory regime that provides for the reporting of highly sensitive financial data that are critical to investigations of financial crime; (2) dissemination of the data reported under the Bank Secrecy Act to law enforcement and, under appropriate circumstances, the intelligence community; (3) analysis of information related to illicit finance – both strategic and tactical analysis; and, (4) the education and outreach provided to law enforcement and the financial industry on issues relating to illicit finance. FinCEN has many attributes that are key to understanding the agency and how it works to achieve its mission:

- *FinCEN is a regulatory agency.* FinCEN has an obligation to administer the Bank Secrecy Act, the principal regulatory statute aimed at addressing the problems of money laundering and other forms of illicit finance, including terrorist financing. It is responsible for shaping and implementing this regulatory regime and, in concert with the functional bank regulators and the Internal Revenue Service, for ensuring compliance with that regime. The agency is also charged with protecting the integrity and confidentiality of the information collected under the Bank Secrecy Act.
- *FinCEN is a financial intelligence agency.* While not a member of the intelligence community, FinCEN, with the help of the Internal Revenue Service, collects, houses, analyzes and disseminates financial information critical to investigations of illicit finance.
- *FinCEN is a law enforcement support agency.* While FinCEN has no criminal investigative or arrest authority, much of our effort supports the investigation and successful prosecution of financial crime.
- *FinCEN is a network.* We are not directed to support one agency or a select group of agencies. We make our information, products and services available to all agencies that have a role in investigating illicit finance. In fact, we network these agencies. Our technology tells us when different agencies are searching the same data and we put those agencies together – avoiding investigative overlap and permitting the agencies to leverage resources and information.

FinCEN fits perfectly in the Department of the Treasury; possibly even more so after the Homeland Security reorganization rather than before that reorganization. The creation of the Office of Terrorism and Financial Intelligence within Treasury only enhances that fit. FinCEN will be able to help “operationalize” Treasury’s policy priorities on these important issues and our operational analytic work will complement

the analysis that will eventually be done in the newly created Office of Financial Intelligence. I believe this coordinated effort will lead to a greater emphasis and understanding of money laundering, terrorist financing and other forms of illicit finance not only at Treasury, but within the United States, and that will make us all safer. FinCEN will also benefit from the Department-wide, policy-coordinating role this office will provide.

FinCEN's Counter-Terrorism Strategy

The single, most important operational priority for FinCEN is counter-terrorism support to law enforcement and the intelligence community. To emphasize the importance of this work we have improved and are now implementing a comprehensive counter-terrorism strategy that draws from our analytic support to law enforcement, our regulatory tools and expertise, and our international networking capabilities. We believe the implementation of this strategy will strengthen our focus and ensure that FinCEN is more active and aggressive rather than reactive on issues relating to terrorism. The strategy has five basic components.

1. Analysis of Terrorist Financing Suspicious Activity Reports

FinCEN analyzes suspicious activity reports for both tactical and strategic value. At the tactical level, we are implementing a program in which every report that indicates a connection to terrorism is immediately reviewed and validated and then analyzed with other available information. This information will be packaged and referred to the Terrorist Threat Integration Center (TTIC), and to the JTTFs, FBI-TFOS, and other relevant law enforcement. Moreover, this information will be stored in a manner that facilitates its access and availability for analysis. Just last week this process resulted in important information being passed along to an appropriate law enforcement agency. On April 21, 2004, a bank in North Carolina contacted FinCEN's Financial Institutions Hotline regarding the suspicious financial activity of one of its customers. This person who had been a customer of the bank opened an account in 1999, and maintained an average balance of \$1200 to \$1,500 until April 14, 2004, when he deposited a total of \$84,000 in less than a week. Through analysis of all available information, we learned that this person was a foreign national wanted by United States law enforcement authorities as a "deportable felon." This matter was turned around in approximately a day.

At the strategic level, we are also devoting analysts to study Bank Secrecy Act data and all other available information to gain an increased understanding of methodologies, typologies, geographic patterns of activity and systemic vulnerabilities relating to terrorist financing. These analysts will focus on regional and systemic "hot spots" for terrorist financing, studying and analyzing all sources of information. Such focus, which produced the study mandated by the Congress on Informal Value Transfer Systems, can significantly add to the knowledge base of law enforcement. For example, we have begun a process to comprehensively study illicit trade in diamonds and other precious stones and metals and the links to terrorist finance. Although this initiative is

currently underway, in order to fully implement it, we will need to upgrade analysts' security clearances and obtain equipment appropriate for the handling of national security information.

2. USA PATRIOT Act Sections 311 and 314 Implementation

Some of the new tools afforded us through the USA PATRIOT Act are proving to be invaluable in the war against terrorist financing, particularly Section 314 of the Act. FinCEN also has initiated a program to provide the analytic, regulatory and legal resources needed to support effective implementation of Section 311 by the Treasury Department. While this program captures targets involved in money laundering and other illicit finance, I have directed my staff to give priority to the pro-active targeting of those financial institutions and jurisdictions that are involved, wittingly or unwittingly, in the financing of terror. This prophylactic measure goes to the very heart of FinCEN's mission – to safeguard the financial system of the United States from money launderers and the financiers of terror.

Building on a successful pilot program that we began with the Bureau of Immigration and Customs on a 314(a) money-laundering request, FinCEN is now dedicating several analysts to apply this program to all 314(a) terrorism requests. Specifically, the analysts will run all 314(a) terrorism-related requests against Bank Secrecy Act data concurrent with these requests being sent to financial institutions. Based on this initial data review, the law enforcement requester will then be able to request a more in-depth analysis if desired.

3. International Cooperation and Information Sharing

FinCEN will increase the exchange of terrorist financing investigative and analytical information with other foreign financial intelligence units around the world. We are implementing a program where FinCEN will automatically request information from relevant financial-intelligence-unit counterparts as part of any terrorism related analysis project. As part of this program, we are also upgrading our response to incoming requests for information from financial intelligence units by providing appropriate information and analysis from all sources of information.

4. Terrorism Regulatory Outreach

We will continue our work in improving our ability to provide information to the regulated community to better identify potential terrorist financing activity. One area of particular focus will be money services businesses. Money services businesses continue to require more attention and resources, and FinCEN will undertake an initiative to educate segments of the industry most vulnerable to terrorist abuse. These segments include small businesses that typically offer money remittance services, check cashing, money orders, stored value products and other informal value transfer systems. As we learned from the attacks of September 11th, funds used to finance terrorist operations can be and have been moved in small amounts using, for example, wire transfer, traveler's

check and automated teller machine services. I have directed FinCEN's Office of Regulatory Programs and Office of Strategic Analysis to enhance our outreach program that will include training on how terrorists have used and continue to use money services businesses; the reason for and importance of the registration requirement for money services businesses; and the importance of complying with the reporting requirements of the Bank Secrecy Act, especially suspicious activity reporting. We are planning to streamline suspicious activity reporting for small money services businesses with a simplified form.

5. Analytic Skill Development

As a general matter, I have directed that FinCEN make training of personnel the highest human resource management priority. The top priority of this new program will be analytic skill development relating to terrorist financing. We plan to begin by seeking reciprocal opportunities for terrorist finance analytic skill development within law enforcement, the Egmont Group, the intelligence community and the financial industry. This initiative is intended to build a foundation for continuous improvement of our analytic assets through cross training and diversification; production of joint terrorist financing threat assessments and other reports; understanding of intelligence processes; the international context of terrorist financing; and the financial industry perspective. In addition, we will need to support training focused on financial forensics, language skills, and geographically targeted studies that focus on culture, infrastructure and other unique aspects of a particular region.

I believe the full implementation of this strategy will materially assist the Department of the Treasury and the United States in addressing the financing of terror. Approaching this problem in a systemic way with dedicated resources is, in our view, the best way to make this strategy a success.

FinCEN's Near Term Challenges

As I mentioned before, FinCEN is facing a number of significant challenges. Because each of these challenges affects FinCEN's effectiveness in contributing to the important issues addressed at this hearing today, I would like to raise these challenges with the committee.

1. Security and Dissemination of Bank Secrecy Act Information

As the administrator of the Bank Secrecy Act, there is no duty I view as critical as the effective collection, management and dissemination of the highly sensitive and confidential information collected under that Act. If FinCEN does nothing else, it must ensure that data are properly collected, are secure and are appropriately and efficiently disseminated. This is FinCEN's core responsibility.

Regarding security of information, recent press reports have reported the unauthorized disclosure of suspicious activity reports. Such disclosures simply cannot be

tolerated, as they undermine the entire reporting program. Those who report this information will become increasingly reticent to file what amounts to a confidential tip to law enforcement if they believe their report will end up on the front page of the *Washington Post* or the *Wall Street Journal*. The release of this information by those to whom it was entrusted threatens everything that we all have worked so hard to build. I know I do not have to convince this Committee of the importance of this reporting system. It has yielded, and will continue to yield, information that is critical to the investigation of money laundering and illicit finance. I also wish to assure this Committee and the American people that FinCEN is acutely aware of the privacy interests implicated in this reporting and the need to guard against inappropriate disclosure of such information. Unauthorized disclosure of information will be immediately referred to law enforcement for investigation and dealt with as severely as the law permits. Our international partners who inappropriately disclose information we have entrusted to them will jeopardize our agreements to share information with them.

However, this issue goes deeper than unauthorized disclosures. In my view, FinCEN must change the way it houses and provides access to information collected under the Bank Secrecy Act. Currently, our data are accessed by most of our customers through an outmoded data retrieval system. This system does not have the robust data mining capabilities or analytical tools we employ at FinCEN. This has led many of our customers to ask for wholesale copies of the data, or direct access to the data in a way that will not permit us to perform our responsibilities relating to the administration and management of the data. Accordingly, we must create a system that provides robust data mining and analytical tools to our customers in law enforcement and that preserves our ability to: (1) effectively administer and secure the information; (2) network those persons who are querying the data to prevent overlapping investigations and encourage efficient use of law enforcement resources; and, (3) develop and provide adequate feedback to the financial industries we regulate, which will ensure better reporting. That system is called "BSA Direct."

When fully implemented, BSA Direct will make available robust, state-of-the-art, data mining capabilities and other analytic tools directly to law enforcement. We plan to provide all access to these data through BSA Direct, working with our law enforcement customers to ensure their systems extract the maximum value from the Bank Secrecy Act reporting. We will be exploring ways to enable these agencies to integrate the Bank Secrecy Act reporting with their other systems while maintaining, and even improving our ability to audit and network the use of the data and obtain feedback concerning their value. This system will provide us the capability to discharge our responsibilities relating to the administration of these sensitive data: security and access control, networking, and feedback. This system will also significantly enhance our coordination and information sharing abilities, as well as our ability to safeguard the privacy of the information. We have already started work on this system. Based on preliminary studies, we estimate that this system will cost approximately \$6 million to build. We are in the process of developing BSA Direct with resources in the FY2005 request and the forfeiture fund.

2. Enhancing FinCEN's Analytical Capabilities

Another challenge FinCEN is facing relates to its analytic capabilities. In my view, FinCEN must move away from its current emphasis on data checks and data retrieval, and move its analytic resources toward more robust and sophisticated analysis. FinCEN had moved to data checks and data retrieval in response to criticisms about turn around on often simple requests for information. Now, as our systems improve, our customers will be able to retrieve data themselves, which will give FinCEN more time and resources for analysis.

I believe that FinCEN can and must provide value through the application of our focused financial analytic expertise to mining information and providing link analyses that follow the money of criminals and terrorists, or identify systemic or geographic weaknesses to uncover its source or the existence of terrorist networks. For example, in addition to providing geographic threat analysis for law enforcement, FinCEN has been studying systemic trends in money laundering and terrorist financing. We were instrumental in bringing the black market peso exchange system to the forefront of policy decisions, and we are focusing on other trends and patterns that we now see emerging in the global market. I recently made a trip to Dubai to participate in the growing dialogue on the potential use of diamonds and other commodities for illicit purposes, including money laundering and terrorist financing. This is part of our focus on and study of what may be another iteration of money laundering and terrorist financing – commodity-based systems.

In my view, while FinCEN still has some of the best financial analytic talent in the United States government, the challenges we face require us to further develop that talent to enable the full exploitation and integration of all categories of financial information – well beyond Bank Secrecy Act information. I have directed FinCEN's managers to concentrate on training, as well as the hiring of new, diverse financial analytic expertise.

3. Enhancing FinCEN's Technology

As I have mentioned, information sharing is critical to our collective efforts to detect and thwart criminal activity and that is why I believe enhancing our technological capabilities is extremely important. Section 314(a) of the USA PATRIOT Act allows law enforcement to query United States financial institutions about suspects, businesses and accounts in money laundering and counter terrorism investigations. FinCEN facilitates this interaction between the financial industry and law enforcement by electronically sending law enforcement requests to various banks who in turn check their records and relay the information back to FinCEN to then provide to the requestor. This saves law enforcement time and resources. We are currently enhancing the Section 314(a) electronic capabilities to allow for the originating request to be made to FinCEN via a secure website. This system is an example of how critical technology is to our law enforcement counterparts.

We must continue to work to enhance the development of the PATRIOT Act Communications System, a system that permits the electronic filing of reports required under the Bank Secrecy Act. This system was developed and brought on-line under a very tight legislative deadline. FinCEN received the E-GOV award for its work on this system. Filing these forms on-line is not only more efficient; it will help eliminate some of the data errors and omissions.

As of April 19, 2004, 1.2 million Bank Secrecy Act forms had been electronically filed through this system. We now support nearly 1,100 users, which include 15 of the top 25 filers of Bank Secrecy Act information. These top 25 filers accounted for approximately 50% of all Bank Secrecy Act forms filed in fiscal year 2003. While this is all good news, the bad news is that the current number of forms filed electronically remains quite small on a percentage basis. The 1.2 million forms filed represents only approximately 5% of the universe of all Bank Secrecy Act reports filed. I have directed our PATRIOT Act Communications System team to reach out to the financial industry and determine what needs to be done to convince them to file electronically. As we learn about what is holding institutions back from filing, I have directed our team to work closely with system developers to build the system stability and tools necessary to improve the overall percentage of filing.

FinCEN presently lacks the capacity to detect Bank Secrecy Act form filing anomalies on a proactive, micro level. BSA Direct, which will integrate Bank Secrecy Act data (including currency transactions reports, currency transaction reports by casinos, and currency transaction reports by casinos – Nevada) into a modern data warehouse environment, will include tools to flag Bank Secrecy Act form filing anomalies for action by FinCEN and/or referral to appropriate authorities. In the meantime, FinCEN is developing a request to the Detroit Computing Center to provide periodic exception reports on financial institutions whose Bank Secrecy Act form filing-volume varies beyond prescribed parameters during prescribed time frames. While we will not be able to conduct the sophisticated monitoring that will be available with BSA Direct, this interim step should produce an alert in the event of a catastrophic failure to file forms, as was experienced in the Mirage case in which the Mirage Casino in Las Vegas failed to file over 14,000 currency transaction reports in an 18-month period.

4. *Enhancing FinCEN's Regulatory Programs*

The administration of the regulatory regime under the Bank Secrecy Act is a core responsibility for FinCEN. Given the nature of our regulatory regime – a risk-based regime – our partnership with the diverse businesses in the financial services industry is the key to our success. I must tell you that it is my perspective that the financial industry is generally a model of good corporate citizenship on these issues. The industry's diligence and commitment to the recordkeeping and reporting requirements of the Bank Secrecy Act is by and large outstanding. The industry's cooperation with FinCEN in implementing many of the provisions of the USA PATRIOT Act has strengthened the foundation of our efforts to safeguard the financial system from criminal abuse and terrorist financing. I have met with many of our industry partners in the last several

months, both old and new, and I have been struck with how concerned they are that the information they provide is helpful and that it is being reviewed and used. In turn, FinCEN is committed to enhancing the guidance they need as they strive to meet the requirements and objectives of new regulations.

The challenge before FinCEN on this issue is simple: we must ensure the remaining regulatory packages required by the USA PATRIOT Act are completed and implemented. Moreover, as we work with our regulatory partners to implement this regulatory regime, we must provide constant feedback and guidance. We have asked the industry to create anti-money laundering programs that are risk-based – custom tailored to each institution based upon the business in which that institution engages and the customers that institution has. We must find ways to help the industry define that risk. Development of secure web-based systems that will foster the communication discussed above is a step in the right direction. But we must continue to find new and better ways to reach out to the industry. They understand the threat money laundering and illicit finance poses to our financial system and they are willing to help.

Perhaps the most significant challenge lies in ensuring that financial institutions are appropriately examined for compliance. As you know, we have issued and will continue to issue anti-money laundering program regulations that will bring new categories of businesses under this form of Bank Secrecy Act regulation for the first time. This reflects the judgment of this Committee embodied in the USA PATRIOT Act, as well as ours, that to effectively guard against money laundering and the financing of terrorism, we must ensure that industries with potential vulnerabilities are taking reasonable steps to protect themselves.

But the expansion of the anti-money laundering regime comes with the additional responsibility and challenges of examining thousands of businesses for compliance. We have relied on the Internal Revenue Service to examine those non-bank institutions. The addition of the insurance industry and dealers in precious stones, metals, and jewels, two categories of financial institutions for which we will shortly issue final anti-money laundering program regulations, will themselves stretch the resources of agencies responsible for examination. We must find ways to ensure that these regulatory programs are implemented in a fair and consistent manner that is focused on achieving the goals of the Bank Secrecy Act. Although difficult, this is an issue that must be resolved.

5. *Enhancing FinCEN's International Programs*

FinCEN's international initiatives and programs are driven by a stark reality: finance knows no borders. Next year will mark the tenth anniversary of the founding of the Egmont Group. The Egmont Group is an international collection of “financial intelligence units” – entities, which, like FinCEN, are charged with the collection and analysis of financial information to help prevent money laundering and other illicit finance. The Egmont Group has achieved remarkable growth since its inception in 1995. Membership has risen from six charter members to eighty-four.

The Egmont Group serves as an international network, fostering improved communication and interaction among financial intelligence units (FIUs) in such areas as information sharing and training coordination. The goal of the Group is to provide a forum for FIUs around the world to improve support to their respective governments in the fight against financial crimes. This support includes expanding and systematizing the exchange of financial intelligence information, improving expertise and capabilities of personnel employed by such organizations, and fostering better and more secure communication among FIUs through the application of technology.

Egmont's secure web system permits members of the group to communicate with one another via secure e-mail, posting and assessing information regarding trends, analytical tools, and technological developments. FinCEN, on behalf of the Egmont Group, maintains the Egmont Secure Web. Currently, seventy-six of the eighty-four members (90%) are connected to the secure web site. I am very pleased to announce that FinCEN will launch a new and more efficient secure web site for Egmont in June. We expect this new site will generate more robust usage, which will enhance international cooperation between members.

FinCEN has played a significant role in the growth and health of the Egmont Group and it maintains bilateral information sharing agreements with financial intelligence units around the world. However, in my view, this program has not received the priority it should have in recent times. Merely because of the simple statement I made earlier – that finance knows no borders – we must step up our international engagement with our counterparts around the world. Our plan is to do three principal things:

1. Lead the Egmont Group to begin focusing on actual member collaboration. Egmont members should be collaborating in a more systemic way together to address issues relating to terrorist financing, money laundering and other illicit finance at both a tactical and strategic level.
2. Enhance the FinCEN analytical product we provide to our global counterparts when asked for information. Today, we are principally providing the results of a data check. We think we owe our colleagues more. As noted before, we will also be making more requests for information and analysis from our partners – particularly when the issue involves terrorist financing or money laundering.
3. Foster exchanges of personnel with financial intelligence units around the world. We have already begun discussions with certain counterparts about such an exchange and we are hopeful we can begin this program soon. The benefits of this type of exchange are obvious. It is the best way we can learn together how to address a truly global problem.

FinCEN will also enhance its support for Treasury policy officials' work in the Financial Action Task Force (FATF) and FATF regional bodies. We will continue our work with the State Department in the drafting and editing of the "International Narcotics

Control Strategy Report.” Finally, we will continue our important efforts on financial intelligence unit outreach and training. Presently, we are working with the United Arab Emirates on a South Asia FIU Conference for Afghanistan, Bangladesh, India, Maldives, Pakistan and Sri Lanka.

Additionally, FinCEN has given its support and participation to the "3 + 1" Working Group on terrorist financing in the Tri-border Area. The issues of information sharing and the bolstering of FIUs in the participating states of Argentina, Brazil and Paraguay are critical issues for the U.S. delegation to the “3+1” Working Group led by the Department of State’s Office of Counter-Terrorism.

6. *FinCEN’s Organizational Structure*

We presently are working closely with Treasury on our efforts to more effectively marshal our resources at FinCEN. I have proposed a realignment of FinCEN that reflects my priorities to enhance FinCEN’s analytical component and improve its focus and services devoted to outreach, education and technology to both its clients and the community related under the Bank Secrecy Act. We have briefed your staff on our proposals and received valuable feedback, which we have incorporated.

Essentially, we are proposing to pull out the non-analytical functions presently entangled in FinCEN’s analytical units so that those managers and analysts can focus exclusively on analysis. We are proposing to combine all client services and systems under a single manager in order to ensure that our technology is coordinated and better focused on serving its users. Similarly, I want FinCEN’s organizational structure to highlight the importance of education and training of our law enforcement clients and the regulated community. Only by working closely and cooperatively with these groups can FinCEN truly understand what services it must provide and what requirements it must meet to assist in the detection, prevention and dismantling of terrorist financing.

Conclusion

Mr. Chairman, we look to this committee for your continued support as we endeavor to enhance our contributions to the war on financial crime and terrorist financing. This concludes my remarks today. I will be happy to answer your questions.