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It is a pleasure to be back at this FIBA conference. When I first spoke here two years ago about the important partnership between the government and the financial industry in fighting illicit financial activity, I gave you my commitment that FinCEN would continue to build upon its efforts to provide you with meaningful feedback. This is an essential part of our risk-based approach: directing our collective resources where they will be most productive for AML/CFT purposes. Today, I would like to address some of the topics in focus at this year's conference, specifically trade finance and money laundering, as well as how fraud and money laundering are interconnected, and FinCEN's ongoing work in the fraud area.

Trade-Based Money Laundering

As many of you know, one of the key ways FinCEN utilizes the BSA data is to develop information on emerging trends that we are seeing to help protect your institution and improve reporting. In addition to identifying and reporting on evolving trends – such as our work over the years in the mortgage fraud area – we are also seeing that some of the trends we reported on more than a decade ago are still prevalent. However, the activity has evolved and adapted in an effort to evade law enforcement.

As a specific example, criminals continue to use trade-based money laundering systems, such as the Black Market Peso Exchange (BMPE), which FinCEN first reported on more than 12 years ago, to transfer value across international borders in attempts to disguise the illicit origins of the criminal proceeds. What we are noting in our more recent analyses, however, is that criminals have adapted their activity over the years in response to government efforts to close off these vulnerabilities.

While I know you will also hear from other experts on this during this afternoon's break-out session on trade finance and anti-money laundering (AML) risks, let me also take a step

back to discuss some of the work FinCEN has done in this area. More than 12 years ago - in November 1997 - FinCEN began highlighting trade-based money laundering, specifically the BMPE, used by drug cartels to launder the proceeds of narcotics sales.¹

As FinCEN explained in its advisory issued at the time, the BMPE was a mechanism for drug cartels to maneuver around the Bank Secrecy Act reporting requirements in an attempt to launder the cash proceeds of narcotics sales within the United States. At the same time, to circumvent Colombia's restrictive policies on currency exchange, Colombian importers (many of whom otherwise were legitimate businesses) bypassed government levies by dealing with peso brokers that dealt in the black market or parallel financial market. Colombian drug traffickers took advantage of this black market method to receive Colombian pesos in Colombia in exchange for U.S. drug dollars located in the United States.² FinCEN's advisory highlighted for banks and other depository institutions potential indicators of this activity, to help U.S. financial institutions and businesses identify this activity to aid in law enforcement investigative efforts.

FinCEN followed up with another advisory in June 1999 to convey the ongoing concern of Federal law enforcement agencies about the use of the BMPE.³ The advisory noted that while the initial focus was the misuse of depository institutions, money launderers were also placing funds with non-bank money transmitters, with the funds destined for peso exchange transactions.

The Federal Financial Institutions Examination Council BSA/AML Examination Manual, issued in collaboration with FinCEN in 2005 and twice updated subsequently, includes a section providing guidance to examiners on assessing the adequacy of bank systems to manage the risks associated with trade finance activities, and bank management's ability to implement effective due diligence, monitoring, and reporting systems.⁴ Clarifications to this section in the Manual's subsequent revisions benefited significantly from industry feedback through the Bank Secrecy Act Advisory Group, including valuable and constructive feedback from FIBA.

In a June 2006 report, the Financial Action Task Force (FATF) named trade-based money laundering as an increasingly important money laundering and terrorist financing vulnerability.⁵ The report noted that trade-based money laundering methods varied in typology from the most basic to very complex schemes. Basic schemes included misrepresenting the price and quantity of goods and services (over-and under-invoicing), and

¹ See http://www.fincen.gov/news_room/rp/advisory/pdf/advisu9.pdf

² The Black Market Peso Exchange facilitates the "swap" of dollars owned by drug cartels in the United States for pesos already in Colombia, by selling the dollars to Colombian businessmen who are seeking to buy United States goods for export. See FinCEN Advisory Issue 9, *Colombian Black Market Peso Exchange*, November, 1997. See also the "2007 National Money Laundering Strategy," Chapter 6, Trade-Based Money Laundering, <http://www.treas.gov/press/releases/docs/nmls.pdf>.

³ See http://www.fincen.gov/news_room/rp/advisory/pdf/advis12.pdf

⁴ See http://www.ffiec.gov/bsa_aml_infobase/pages_manual/manual_online.htm

⁵ See <http://www.fatf-gafi.org/dataoecd/60/25/37038272.pdf>

invoicing the same goods or services more than once (double invoicing). The illicit activity was hidden in part by the enormous volume of international trade transactions.

According to the 2009 International Narcotics Control Strategy Report (INCSR), it is estimated that the annual dollar amount laundered through trade ranges into the hundreds of billions.⁶ Additionally, U.S. Immigration and Customs Enforcement (ICE) reports that their trade-based money laundering case initiations have increased by 348 percent since 2004.⁷

A key investigative tool for law enforcement to identify potential trade-based money laundering activities are the Suspicious Activity Reports (SARs) that financial institutions, including many represented in this audience, file with FinCEN. Law enforcement's effective use of this tool, however, rests upon their ability to readily identify the nature of the reported activity. In many SAR filings that ultimately have been determined to be related to trade-based money laundering, however, FinCEN has seen inconsistent identification of that activity. For example, the use of the term "trade-based money laundering" or "TBML" as a key phrase in the narrative is sometimes missing.

So today, FinCEN is issuing an advisory to financial institutions to provide updated guidance to assist in their recognition of possible trade-based money laundering activity and in providing valuable information to law enforcement.⁸ This includes recommended key terms and phrases to be used in the SAR narrative. The consistent use of these terms is important for law enforcement officials when they query the BSA database or when the U.S. government reviews the aggregate data when conducting threat assessments.

This advisory also identifies activities that may be associated with trade-based money laundering as noted through a FinCEN initiative, working with the National Drug Intelligence Center (NDIC) and ICE's El Dorado Task Force⁹. These red flags may be directly linked to a misrepresentation of price, quantity or quality of merchandise involved in a trade transaction processed through a financial institution. Although the activities from this study were specifically focused on trade with Central and South America, financial institutions should consider how to apply these indicators to analogous risks globally.

Also, please keep in mind that the red flags included in the advisory identify only *possible* signs of illicit activity and must be considered in conjunction with the normal transaction activity expected for the individual customer. In particular, any of these red flags seen in conjunction with shipments of high dollar merchandise (such as electronics, auto parts and

⁶ 2009 International Narcotics Control Strategy Report, Volume II: Money Laundering and Financial Crimes, 27 February 2009, <http://www.state.gov/p/inl/rls/nrcpt/2009/vol2/116537.htm>.

⁷ The relationship, if any, between this increase and the allocation of ICE resources dedicated to the detection and investigation of TBML is unknown.

⁸ See http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2010-a001.pdf

⁹ ICE's El Dorado Task Force consists of members from more than 55 law enforcement agencies in New York and New Jersey working in partnership to target vulnerabilities and financial crimes in the New York/New Jersey metropolitan area, such as commodity-based money laundering.

precious metals and gems) to duty free trade zones, such as in the Colon Free Trade Zone in Panama, could be an indication of a trade-based money laundering or black market peso exchange activity. The list of red flags includes:

- Third party payments for goods or services made by an intermediary (either an individual or an entity) apparently unrelated to the seller or purchaser of goods. This may be done to obscure the true origin of the funds.
- Amended letters of credit without reasonable justification.
- A customer's inability to produce appropriate documentation (i.e., invoices) to support a requested transaction.
- Significant discrepancies between the descriptions of the goods on the transport document (i.e., bill of lading), the invoice, or other documents (i.e., certificate of origin, packing list, etc.).

Other potential red flags for trade-based money laundering or black market peso exchange are included in more detail within the advisory, which can be found on FinCEN's website.

In order to assist law enforcement in its effort to target trade-based money laundering and black market peso exchange activities, FinCEN requests that financial institutions check the appropriate box in the Suspicious Activity Information section of the SAR form and include the abbreviation "TBML"¹⁰ or "BMPE"¹¹ in the narrative portion of all relevant SARs filed. The narrative should also include an explanation of why the institution suspects, or has reason to suspect, that the customer is participating in this type of activity.

Intersection of Fraud and AML

I would like to turn now to the issue of fraud, which I know was also a topic of discussion at this morning's panel session.

When I spoke here two years ago, I mentioned that FinCEN had recently begun a new type of outreach to a variety of institutions to help broaden our understanding of financial industry practices, as well as what information institutions need in order to effectively implement their AML programs. We began then with some of the largest depository institutions in the United States, and this week some of the FinCEN team will continue the most recent outreach phase of one-on-one meetings with smaller depository institutions.

FinCEN found during the course of that outreach to large depository institutions in 2008 that generally speaking, the money laundering-related SAR process is managed within a bank's AML or BSA compliance group, while the fraud-related SAR processes are typically handled by other business lines within the bank, including corporate security, fraud

¹⁰ Trade-based money laundering (TBML).

¹¹ Black Market Peso Exchange (BMPE).

prevention, loan risk and recovery, consumer lending operations, and credit card operations.¹²

As I discussed at another meeting with Florida bankers a year and a half ago,¹³ 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. Because the financial gain of the fraudulent activity ultimately needs to be integrated into the financial system, money laundering is often a product of fraud.

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.

Customer and transactional information used for AML purposes is often the same customer and transactional information needed for fraud investigations. As a result, the resources being spent on fraud detection and prevention within financial institutions may well support the AML program, and vice versa.

FinCEN further discussed the interconnectedness of criminal activity in an analytical study we released in March 2009, which looked at the relationship between mortgage fraud and other financial crime, and identified how financial crime runs through the different financial sectors.¹⁴

Information Sharing to Fight Fraud

Because of the connection between fraud and money laundering, information sharing between financial institutions in cases of suspected fraud is critical. We recognized nonetheless that some banks in the United States were hesitant to share information under the 314(b) program as it related to transactions involving proceeds of **suspected fraud**.¹⁵ 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 is addressed to the provision that permits financial institutions, upon providing notice to FinCEN and using procedures designed to safeguard the information, to share information with one another. The guidance clarifies that the 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.¹⁶

¹² FinCEN's full Report on Outreach to Large Depository Institutions (October 2009) may be found at http://www.fincen.gov/news_room/rp/reports/pdf/Bank_Report.pdf.

¹³ See http://www.fincen.gov/news_room/speech/html/20080923.html

¹⁴ See http://www.fincen.gov/news_room/rp/files/mortgage_fraud.pdf

¹⁵ See 31 CFR § 103.110.

¹⁶ See http://www.fincen.gov/news_room/nr/pdf/20090616.pdf

We expect this guidance to result in a freer exchange of information among financial institutions for the purpose of fighting fraud. In fact, we have already begun to see SARs being filed which indicate fraud-related information sharing involving suspected check fraud, wire transfer fraud, insurance fraud, mortgage fraud, new account fraud, and consumer loan fraud.

FinCEN Working to Fight Fraud

While FinCEN's work in the mortgage fraud area has been underway for quite some time, it took on new prominence in April 2009, when Treasury Secretary Timothy Geithner announced that FinCEN, as part of a multi-agency crackdown, would undertake an advanced targeting effort to combat fraudulent loan modification schemes and coordinate ongoing efforts across agencies to investigate fraud.¹⁷ Since that time, FinCEN has been working to harness information about possible fraudulent actors for the purpose of identifying and proactively referring potential criminal targets to law enforcement agencies at the Federal, State and local levels.

At the same time, FinCEN issued an advisory alerting financial institutions to the risks of emerging schemes related to loan modifications.¹⁸ The advisory identifies certain "red flags" that may indicate a loan modification or foreclosure rescue scam and warrant the filing of a SAR by a financial institution. Examples of possible signs of fraudulent activity, such as requiring that fees be paid before services are provided, are listed in the advisory. The advisory also requests that financial institutions include the term "foreclosure rescue scam" in the narrative sections of all relevant SARs.

Today, FinCEN is also releasing the latest such analysis of mortgage fraud-related SAR filings, to include our first analysis of SARs filed since our issuance of the "red flags" guidance in April 2009 regarding loan modification fraud and foreclosure rescue scams.¹⁹ FinCEN found two types of schemes most commonly reported: First, SARs indicated that homeowners were conned into signing quit-claim deeds to their properties. The homes were then sold from under the former owners to straw borrowers and the homeowners subsequently received eviction notices. Second, other scammers falsely claimed affiliations with lenders to convince distressed homeowners to pay large advance fees for modification services, but failed to take any action on the homeowners' behalf.

Last year, President Obama signed an Executive Order establishing an interagency Financial Fraud Enforcement Task Force (FFETF) to strengthen efforts to combat financial crime in recognition of the importance of marshalling the expertise and resources from throughout the Federal government.²⁰ Announced by Attorney General Eric Holder together with Secretary Geithner and others on November 17, 2009,²¹ the task force

¹⁷ See <http://www.treas.gov/press/releases/tg83.htm>

¹⁸ See http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-a001.pdf

¹⁹ See http://www.fincen.gov/news_room/nr/html/20100218.html

²⁰ See <http://www.whitehouse.gov/the-press-office/executive-order-financial-fraud-enforcement-task-force>

²¹ See <http://www.treas.gov/press/releases/tg409.htm>

combines the collective efforts of law enforcement and regulatory agencies together with our State, local and tribal partners in a proactive approach to investigating and prosecuting fraud and financial crime.

FinCEN is playing an active role within the FFETF at both the committee and working group level, building upon our experience in fighting financial crime and longstanding relationships in sharing information with hundreds of other government agencies. In the months since the task force's formation, we've seen an even greater willingness among Federal, State and local law enforcement to come together, share experiences, and leverage resources in these important efforts.

Support to Florida

While FinCEN is working to support efforts combating mortgage fraud throughout the country, I'd like to update you briefly on some specific efforts we have underway here in Florida.²² Since late last year, FinCEN has been partnering closely with the HUD Office of Inspector General (OIG) and the United States Secret Service in a coordinated, ongoing, proactive operation to support the efforts of law enforcement in Florida to combat mortgage-related fraud.

In December 2009, FinCEN representatives traveled with the HUD-OIG and the Secret Service throughout the state of Florida, conducting training and outreach to multiple Attorney General offices and Federal law enforcement partners, including visits to Tallahassee, Tampa, Fort Lauderdale and Miami. This training and outreach effort was designed to educate law enforcement and regulators on mortgage fraud, reverse mortgage fraud and foreclosure rescue fraud, and on how FinCEN could help investigators proactively identify emerging schemes and potential targets, and support their ongoing efforts.

The FinCEN, Secret Service, and HUD-OIG partnership in Florida will specifically help law enforcement proactively identify and combat newly emerging frauds involving Home Equity Conversion Mortgages (HECM), a subset of reverse mortgages insured by HUD's Federal Housing Authority. As many of you know, the HECM is an option that can give senior citizens greater financial security by providing access to some of the equity in their homes. Many seniors use this money to supplement Social Security, meet unexpected medical expenses, or make home improvements.

HECM fraud often involves activity seen in other mortgage-related frauds, such as inflated appraisals and property flipping. HECM fraud also can involve crimes unique to the reverse mortgage industry, including cross-selling of other financial products not in the best interests of seniors, and outright thefts of proceeds. It is often difficult to discern that a fraud has even occurred until the victim is deceased, since a HECM loan is not due as long as the borrower is living in the house and abides by the conditions of the loan. And the

²² For a previous discussion of FinCEN mortgage fraud analysis related to Florida, see http://www.fincen.gov/news_room/speech/html/20080923.html

most troubling aspect of HECM fraud is that it takes advantage of our nation's senior citizens who have worked hard over their entire lives to own their homes.

To combat these frauds head-on, FinCEN is working closely with HUD-OIG and the Secret Service to proactively analyze the BSA data and identify hot-spots of suspected HECM and other mortgage fraud activity, providing law enforcement with a more defined battleground to direct their resources.

These efforts are but one example of how FinCEN is networking with Federal, State, and local law enforcement in greater ways than ever before - to tackle a specific type of activity - in addition to providing support to individual investigations and prosecutions.

Conclusion

Members of the Florida International Bankers Association come from 18 countries around the world, and you all know the importance of fostering strong global business partnerships. Our anti-money laundering efforts must be globally focused as well. As I testified before Congress just two weeks ago, we must continue to promote international standards for financial transparency and strong anti-money laundering regimes that protect our global financial system from abuse.²³ Enhanced information exchange with foreign law enforcement, including FinCEN with its counterpart financial intelligence units, is necessary to combat criminals who respect neither laws nor borders. The recent expansion of our 314(a) program to fulfill U.S. treaty obligations and make this powerful tool available to certain other countries (as well as to state and local law enforcement) is an important step in this direction.²⁴

Whether your part of the banking business is international, focused on global trade or local, based on residential mortgage lending, you can play an important role in protecting the integrity of the financial system. What brought us all here today is that we have a mutual concern about the issues being touched on at this conference. In fighting mortgage related-fraud, it is particularly clear that our interests are closely aligned: banks want to avoid a credit loss on a fraudulently obtained loan, and law enforcement wants to deter and hold accountable those who seek to criminally abuse institutions and their customers. But all of our AML/CFT efforts are meant to promote market integrity; by ferreting out illicit actors, we seek to promote and foster legitimate economic activity.

I am convinced that our strong partnership against financial crimes is key to protecting the integrity of our financial system and achieving our collective goals.

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²³ See http://www.fincen.gov/news_room/testimony/pdf/20100204.pdf

²⁴ See http://www.fincen.gov/news_room/nr/html/20100205.html