UNITED STATES DEPARTMENT OF THE TREASURY

FinCEN

FINANCIAL CRIMES ENFORCEMENT NETWORK

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ABA/ABA MONEY LAUNDERING ENFORCEMENT CONFERENCE
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Good afternoon. Thank you to the American Bankers Association and the American Bar Association for inviting me to join you again this year. I know Acting Under Secretary Adam Szubin just outlined for all of us how we at Treasury are approaching the topic of de-risking, and so I would like to spend a few minutes framing FinCEN's work in this area.

MSB Supervision

Unsurprisingly, assertions of de-risking have been an ongoing topic of discussion as we engage with our industry, regulatory, and law enforcement partners, particularly within our Bank Secrecy Act Advisory Group (BSAAG). In fact, the issue is one of four strategic priorities that BSAAG members identified and adopted in May 2015 to guide their areas of primary focus. BSAAG members have begun to discuss and identify the factors that lead U.S. banks to terminate relationships. One area of focus has been the ability of money services businesses (MSBs) to obtain and retain banking relationships. And one initial question has been the level of anti-money laundering (AML) supervision experienced by the MSB sector and the extent to which banks can rely on that supervision. So, let me start with this issue.

Like with banks, supervision of the MSB industry is performed at both the state and Federal level and involves both MSB principals and agents. Let me take a moment to describe the difference between a principal and an agent from our perspective. An MSB principal is the owner or controlling person of the MSB and must register with FinCEN. A principal MSB may provide its services through numerous agent relationships, and per the regulations, the principal is required to maintain a list of these agents. A person that serves solely as an agent of an MSB principal is not required to register, but to the extent that the company conducts MSB activities outside of the agency arrangement, the company must register as an MSB.

State authorities primarily focus their exams on MSB principals. For those MSB principals operating in more than one state many of these exams are done with teams of examiners from more than one state. Large MSBs are examined, on average, every 12-18 months by state examination authorities. It is not uncommon for some of the largest MSBs to undergo more than ten regulatory examinations per year. And for some of the largest MSBs, there are examiners in-house each month.

At the federal level, FinCEN has delegated its examination authority for MSB compliance with the federal AML regulatory regime, under the Bank Secrecy Act (BSA), to the Internal Revenue Service (IRS). In contrast with state authorities, the IRS focuses its resources primarily on agent examinations, with an average of about 8,000 examinations taking place each year. IRS uses a risk-based approach to selecting MSBs for exams each year. FinCEN also provides exam referrals to IRS based on our own intelligence analysis.

IRS has an extensive training program for its examiners, and FinCEN often participates in, or otherwise contributes to, these training programs. In the virtual currency space, FinCEN worked recently with IRS to design and implement a training program for IRS examiners. Many of the state examiners also attend AML training programs provided to bank examiners, such as courses offered at the Federal Financial Institutions Examination Council (FFIEC) and the Conference of State Bank Supervisors (CSBS).

We are seeing a significant improvement in coordination among the state regulators, as well as between the state and Federal regulators, on MSB examination issues, including the fact that we are beginning to coordinate exam schedules and have initiated some exams which include examiners from several states, together with FinCEN. We are also considering, along with our examiners from IRS, joint state and IRS exams.

FinCEN does not expect banks to serve as the de-facto regulator of other parts of the financial industry, including MSBs. The more that both banks and bank examiners understand precisely how the landscape for oversight in the industry has evolved, both with respect to a stronger examination regime and with respect to the monitoring activities of principal MSBs over their agents, the more banks and their examiners will come to understand that banks are not expected to supervise MSBs.

Likewise, banks are not to be held responsible for an MSB's AML program. Both the MSB principal and any agents that they may have are responsible for these programs. And, the MSB principal's *own* AML program must include the monitoring of its agents. Banks, of course, still have obligations, as they do with respect to any customer, to know their customer and its business model. In many instances, this will lead to an extensive dialogue and sharing of information between the bank and its customer. A bank will want to know about an MSB's geographic and demographic focus, the nature of its products and services, and its anticipated

volume of activity, among other things. But this does not mean that a bank is responsible for knowing its customers' customers. Understanding a customers' customer base is one thing, but knowing a customers' customer is another, and we have repeatedly confirmed that the latter is not an obligation under the BSA.

Leveling the Playing Field

Ensuring that the MSB industry has access to the financial system is an issue that will continue to be a priority at FinCEN. But in addition to focusing our efforts on MSBs, FinCEN is using the BSA data to conduct sectoral analysis of each and every financial sector. Building on the National Risk Assessment, working with our stakeholders in the BSAAG, and relying heavily on the BSA data we collect, FinCEN is doing a deep dive to uncover the risks, vulnerabilities, and gaps in each financial sector, within sectors, and across sectors. This also supports our ongoing efforts to level the compliance playing field across all financial sectors in the AML arena.

FinCEN looked at two years of BSA filings. And we are now working to analyze filings to develop baseline SAR filing trends across the different reporting sectors.

Investment Advisers

I mentioned that our sector analysis helps in identifying gaps in AML coverage. In August, FinCEN proposed a rule to include investment advisers in the definition of "financial institution" under the Bank Secrecy Act. The proposal would require investment advisers to establish AML programs, report suspicious activity, file CTRs, and keep records relating to the transmittal of funds.

Requiring investment advisers to establish AML programs and file reports of suspicious activity would bring them under similar regulations as other financial institutions subject to the BSA, such as banks, mutual funds, broker-dealers in securities, MSBs, and insurance companies.

Closing this gap is important. Investment advisers are on the front lines of a multi-trillion dollar sector of our financial system. If a client is trying to move or stash dirty money, we need investment advisers to be vigilant in protecting the integrity of their sector.

The proposal would apply to investment advisers that are required to be registered with the U.S. Securities and Exchange Commission (SEC), including advisers to certain hedge funds, private equity funds, and other private funds.

The comment period on the proposed rule closed on November 2, 2015. FinCEN received 33 comments, including one from the American Bankers Association, which are

available for public review on regulations.gov. And while we are still in the process of reviewing the comments that were submitted to determine our next step in the rulemaking process, we appreciate everyone who took the time to comment and participate in the process.

Crowdfunding

FinCEN has also been working with the SEC to address a regulatory gap in the definition of broker or dealer in securities. On October 30, 2015 the SEC released its final Crowdfunding Rules, which exempt funding portals from having to register as broker dealers with the SEC.

As a result, funding portals, which allow startups and small businesses to raise funds by offering and selling securities through crowdfunding, will no longer fall under the definition of broker or dealer in securities for purposes of the BSA.

The SEC agrees with FinCEN that this opens a gap in our regulatory coverage that needs to be addressed to prevent these new entities from being used as vehicles for money laundering and other financial crimes. Therefore, FinCEN plans to issue a Notice of Proposed Rulemaking in the very near future that would amend the definition of brokers or dealers in securities to include funding portals, ensuring that funding portals will be covered by BSA requirements.

Virtual Currency

In the virtual currency area, we continue to work closely with our delegated BSA examiners at the IRS and launched a series of supervisory examinations of this industry earlier this year.

As with our BSA supervision of other parts of the financial services industry, these exams will help FinCEN determine whether virtual currency exchangers and administrators are meeting their compliance obligations under the applicable rules. Where we identify problems, as we did earlier this year in conjunction with the U.S. Attorney's Office in San Francisco in a parallel enforcement action against a virtual currency company, we will use our supervisory and enforcement authorities to appropriately penalize non-compliance and drive compliance improvements.

Casinos

In addition to our virtual currency enforcement efforts, FinCEN's oversight role focuses on compliance in all of our regulated industry sectors. Nowhere is this more important than in those sectors of the financial industry where FinCEN is the only Federal regulator with AML enforcement authorities, such as casinos and card clubs.

Over the past two years, we have taken enforcement actions against a wide range of financial institutions and individuals covered by the BSA, including casinos and a casino employee. FinCEN's enforcement actions were for willful violations of BSA program,

reporting, and recordkeeping requirements. The violations were severe and systemic reflecting substantial program deficiencies, and extensive reporting failures. And the financial institutions' subject to these actions often lacked any meaningful culture of compliance.

We hope that our enforcement actions will not only bring willful violators into compliance, but will also serve to educate financial institutions and the public. We take great care to ensure that the facts underlying our actions are clearly articulated in our Assessments. Through them, the financial industry can spot trends in compliance as well as weaknesses that should help financial institutions self-identify areas for corrective actions and industry-wide issues that may require future attention.

Following FinCEN's enforcement actions and examinations, and as part of the sectoral analysis I mentioned earlier, we are seeing an increase in BSA reporting by casinos. We are pleased that many casinos are taking advantage of voluntary information sharing under the 314(b) program. Under Section 314(b) of the USA PATRIOT Act, financial institutions are granted authority to share information amongst themselves related to money laundering and terrorist financing. This information sharing provides a safe harbor that offers protections from liability.

I have heard that despite the protections offered, some banks are not responsive to requests from casinos to share information, which is concerning. When a financial institution provides notice to FinCEN of their intention to share, FinCEN validates the registration before it is approved. Once approved, the financial institution is provided access to the most current 314(b) list of participants, which is used by the financial institution to validate that they are sharing with a legitimate participant. FinCEN's 314 Program Office is also available to assist with any questions you may have about the 314(b) program. We appreciate and encourage everyone's efforts to share information across the financial industry to help safeguard our financial system.

Real Estate

Lastly, in the real estate area, BSA analysis continues to show corrupt politicians, drug traffickers, and other criminals using shell companies to purchase luxury real estate. We see wire transfers originating from foreign banks in offshore havens where shell companies have established accounts. The criminals will instruct the person involved in the settlement and closing to put the deed in the name of the shell company, thereby hiding the names of the actual owner or owners.

The BSA established AML obligations for financial institutions, including institutions involved in real estate transactions. By including these businesses in the BSA's definition of financial institution, Congress acknowledged the potential money laundering and financial crime risks in the real estate industry.

In the real estate finance area, relatively recent FinCEN regulatory initiatives established AML requirements for non-bank lenders and originators as well as the government-sponsored entities that issue mortgage-backed securities. Based on statistics from the National Association of Realtors, as of August 2015, about 78% of real estate purchases were financed with some type of mortgage, so our current regulatory structure captures this activity.

However, we have not issued rules for the broader category of "persons involved in real estate closings and settlements." As a result, real estate purchases that do not involve a mortgage issued by a bank or non-bank lender are not subject to BSA requirements, although such transactions may be covered by criminal money laundering statutes. Again, the National Association of Realtors estimates that about 22% of real estate transactions were "all cash," meaning "not involving a mortgage" and it is this 22% that has our attention.

FinCEN has had productive discussions with different state regulatory partners seeking to understand regulatory and licensing coverage in this area. There are obviously many complexities in this area. To name just a few:

- There is considerable variation in how state regulation is organized and the types of real estate transactions that are permitted in each state;
- There are significant inconsistencies even within certain states, with some states regulating real estate closings at the municipal level, rather than at the state level;
- Some states require an attorney at closing; others allow either an attorney, a real estate broker, or a bank controlled escrow account to manage the closing process; and
- Although title insurance is not required to close a real estate transaction, the vast majority of home purchases obtain title insurance, which requires a title agent be part of, and generally manage, the closing process. Generally, title insurance is regulated at the state level.

So it is clear that as we navigate these many, complicated issues we must continue engaging with our regulatory, law enforcement, and real estate industry partners as we determine where there is the most significant risk, if additional AML requirements are needed, and how best to get at any identified vulnerabilities with the least amount of burden.

Conclusion

Achieving this balance, where we identify and close gaps without imposing undue burden, is an issue that resonates with each and every rulemaking we undertake. From my perspective, this is particularly true in our ongoing work with respect to the finalization of the Customer Due Diligence (CDD) rule. Based on the comments that we received following our proposal, we continue to work to get a better understanding of the costs associated with the rule. We are doing this so that when we issue the final rule, our balancing of costs and benefits will be well understood, notwithstanding some of the general difficulties associated with quantitative

assessments when dealing with the fight against money laundering, terrorist financing, and other illicit activity.

I want to conclude today with reminding you that none of what we do at FinCEN would be possible without the financial industry doing its part. Given the contributions that you make to AML/CFT regime, I think that you deserve to hear a "thank you" from government more often than you do, and that the thanks should not just be coming from FinCEN. With this in mind, I want to mention that last May, FinCEN held its first Law Enforcement Awards ceremony to recognize six criminal cases where the BSA data played a significant role in successful prosecutions. At the ceremony we asked industry, through relevant trade associations, to help us present the awards.

The success of those six prosecutions is a huge credit to the 49 financial institutions who filed BSA reports tied to these cases. And I am sure there are those of you in this room that personally played a role in those reports being filed. If you did, you would have received a separate letter from FinCEN thanking you for your efforts. And whether you were one of those 49 financial institutions contributing to those six cases or not, rest assured that you are making significant contributions to other cases, as well as to our ability to identify illicit actors and deter them from using our financial system in general. So, I want to thank all of you for your efforts. I know it's not always easy, but you are making a difference.

Thank you again for allowing me to speak with you today.

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