UNITED STATES DEPARTMENT OF THE TREASURY

FinCEN

FINANCIAL CRIMES ENFORCEMENT NETWORK

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Good morning. Thank you very much, Sally and thank you again, IIB for including FinCEN in an event that we consider a great venue for speaking with and learning from the international banking community.

This morning I would like to talk with you about a number of Treasury efforts that have been rolled out in the last several months:

- the final Customer Due Diligence rule;
- draft legislation requiring legal entities to provide beneficial ownership information at the company formation stage;
- the use of FinCEN's Geographic Targeting Orders, or "GTOs" and
- a few other FinCEN activities.

But instead of simply focusing on our recent efforts and what they require, I want to share with you how they developed and, in particular, how the development and rollout of each initiative demonstrates ways in which FinCEN is communicating more and more with industry. To us, building a stronger partnership with you comes at a time when the strength of that relationship could not be more critical.

Having served as the Deputy Director of FinCEN for just over a year now, and having served as the head of our Policy Division for several years prior, I have observed how FinCEN and industry have been working to understand each other better. I see us now engaging with each other more effectively than ever before. One good example of that partnership is the government and industry's work together on the Customer Due Diligence (CDD) rule.

As many of you know, on May 5th, the U.S. Department of the Treasury announced several developments focusing on strengthening financial transparency. Key among these initiatives, were the rollout of the final CDD rule and draft beneficial ownership legislation.

The CDD final rule amends existing Bank Secrecy Act (BSA) regulations to clarify and strengthen obligations of covered financial institutions, specifically banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities. The Final Rule adds a new requirement that these financial institutions know and verify the identities of the natural persons who own, control, and profit from the legal entities the financial institutions service. The Final Rule also harmonizes BSA program rules and makes explicit several components of customer due diligence that have long been expected under existing regulations.

We undertook significant engagement with industry to ensure that we got this rule right. First, in 2010, FinCEN and the Federal functional regulators issued joint guidance on this topic. The industry reaction to that guidance made it clear that we needed to work on a new rule to provide greater clarity. Two years later we issued an advance notice of proposed rulemaking, and two years after that, following an extensive outreach campaign involving roundtable discussions around the country, we issued our proposed rule in 2014. Now, two years after that proposal, which generated roughly 140 insightful comments, and which spawned further engagement with industry on anticipated costs, we issued our final rule, and industry will now have an additional two years to implement it. (With respect to those cost estimates and efforts to quantify the anticipated benefits of the rule, I want to thank Treasury's Office of Economic Policy, which produced a mandatory regulatory impact assessment for the rule. It was the first of its kind for FinCEN.)

Since we are here at IIB, I can tell you that IIB's comments on the rulemaking were among several that we responded to both after the advance notice of proposed rulemaking and the proposed rule. Here is a partial list of the ways in which IIB's comments were used to significantly shape the final rule:

- The inclusion within the definition of legal entities, legal entities formed in other jurisdictions;
- The inclusion of both an equity test and a control test in our definition of beneficial ownership;
- Our movement away from requiring institutions to identify an owner that had the highest equity stake relative to other shareholders, when no owner had an equity greater than 25 percent;

- Our application of the requirement prospectively, rather than forcing retroactive applicability with respect to existing accounts, which we believe industry can address over time;
- Optional use of a standardized format for recording beneficial ownership information, rather than making the format mandatory;
- And finally, our acceptance of a longer period for industry to implement the rule (two years, rather than one year).

In short, we can clearly demonstrate how industry's contributions to the rulemaking process, including the contributions of IIB, had an impact. Our engagement with you on this seminal rule allowed us to work together, understand each other, and ultimately come up with a better result. While we often come at issues with very different priorities and equities in mind, we ultimately want to reach the same result: combatting financial crimes and disrupting terrorist financing. In this case, we are achieving our goals through creating greater transparency, and very importantly, through the creation of a rule-based, level playing field with respect to the collection of beneficial ownership information by your institutions. As institutions implement the standards set by the new rule, we will reduce the concerns that some of you have expressed about your competitors asking fewer questions than your own institutions, or conducting weaker customer due diligence, and thereby potentially making themselves more attractive to persons seeking banking services while weakening everyone else's ability to identify bad actors.

There is no doubt to those of us in government that the CDD final rule ultimately will increase financial transparency and augment the ability of financial institutions and law enforcement to identify the assets and accounts of criminals and national security threats. We anticipate that the CDD rule will also facilitate compliance with sanctions programs and other measures that cut off financial flows to these actors.

But the CDD rule is just one piece of the financial transparency puzzle. You've heard us for several years talk about Treasury's three-prong approach to this issue:

- greater clarity in our own rules and regulatory expectations,
- broad multilateral recognition of concerns with respect to illicit use of legal entities, and
- greater transparency at the formation stage of legal entities.

With respect to the first prong, the CDD rule is part of our regulatory clarification efforts. With respect to the second prong, Treasury's work within the Financial Action Task Force has enabled us to achieve multilateral focus on the need for greater transparency regarding legal entities. With respect to the third prong, on May 5th, Treasury announced it was sending beneficial ownership legislation to Congress that would require companies to know and report

adequate and accurate beneficial ownership information at the time of a company's formation. The text of that proposed language is available through the Treasury press release posted on FinCEN's website. The legislation would authorize Treasury to require that legal entities formed or qualified to do business within the United States file beneficial ownership information with FinCEN, or else face penalties for failure to comply.

These two initiatives—the CDD rule and the beneficial ownership draft legislation—dovetail together. The rule focuses on *financial institutions knowing* who their legal entity customers are, *regardless of where those entities are formed*, as part of due diligence. The legislation focuses on making sure that legal entities *formed in the United States* are more transparent to law enforcement *regardless of where they conduct their financial activity*. Given the fact that illicit actors overseas can create U.S. legal entities that don't deal directly with the U.S. financial system, both initiatives are critical to aid law enforcement efforts and to safeguard the financial system.

We have drafted the legislation, but a remaining challenge for us is to find support on the Hill, among the states, and within industry. There have been several past legislative efforts that might have effectively encouraged, but not required, states to collect such information as part of company formation. But none of the prior legislative efforts have gained sufficient traction. Given the ways in which we regularly observe legal entities, such as shell companies, being used to mask identities for illicit purposes, we simply cannot abide by the status quo. None of us wants our U.S. financial system or the global financial systems, to serve as vehicles for illicit financing—whether by organized crime factions or by facilitators of terrorism. Requiring legal entities to report their beneficial ownership via a centralized database will make the information more easily available to law enforcement than would separate collection efforts undertaken by the states. FinCEN already collects, protects, and appropriately disseminates sensitive financial information useful to law enforcement, and could conceivably ensure that the beneficial ownership information was used in tandem with information already available to law enforcement in FinCEN's database. The approach is a simple, logical, and streamlined step in the right direction.

Some may say that the final CDD rule and this new legislative proposal do not go far enough. Others may say that we are going too far in our push for transparency when the vast majority of actors, whether individuals or legal entities, using the financial system are legitimate. The point is that both of these steps are balanced and reasonable efforts to make things better, and we simply cannot let the perfect be the enemy of the good. Particularly in this space where we know that nothing will ever be perfect.

This is an area where we welcome your support. When the financial sector faced the notion of stricter obligations to collect beneficial ownership under the proposed CDD rule, some

were very quick to point out that law enforcement could get such information more directly from the states if the states required it at the formation stage. But we heard very little from industry by way of support for any legislative efforts in that direction. Now that the CDD rule is finalized and we have suggested legislation putting the onus on the Federal government, rather than the states, we think it is time for the financial sector to speak up with its support.

While we have been dealing with gaps in financial transparency for a long time, in recent weeks the disclosure of the so-called "Panama Papers" —millions of leaked documents reportedly revealing the use of anonymous offshore shell companies—has brought the issues of illicit financial activity and tax evasion into the public spotlight. For both government and industry, it is in our mutual interest to create an environment in which it is harder for illicit actors to hide their financial activities behind legal entities. We also like to point out that if legal entities are required to provide beneficial ownership information to the Federal government, it will likely be easier for financial institutions to obtain similar information from the legal entities as part of the financial institutions' customer due diligence. FinCEN hopes that IIB and other highly respected financial industry organizations will become more vocal in this regard.

When you look at Treasury's proposed beneficial ownership legislation, you will also see that it contains some technical amendments to the BSA with respect to FinCEN's Geographic Targeting Order, or "GTO," authority. The amendment would allow FinCEN to use GTOs to collect targeted information, not just with respect to transactions that include cash or monetary instruments, but also with respect to transactions involving "funds" more generally. This would clarify FinCEN's ability to collect information with respect to targeted categories of transactions that do not include cash or monetary instruments, such as transactions where payments occur only via wire transfers.

FinCEN's most recent GTOs, issued in January, focus on real estate purchases and require certain U.S. title insurance companies to record and report the beneficial ownership information of legal entities making "all-cash" or rather "non-mortgaged" purchases of high-value residential real estate here in Manhattan and in Miami-Dade County, Florida. Let me explain why this is so important. When there is a mortgage involved in the purchase of real estate, existing requirements on banks and other mortgage providers help shed light on potentially illicit activity. By contrast, "all-cash" purchases can be utilized by individuals attempting to hide their assets by purchasing residential properties. In many cases, law enforcement sees criminals using U.S. incorporated limited liability companies to launder their illicit funds through the U.S. real estate market. The criminals will instruct the person involved in the settlement and closing to put the deed in the name of the shell company to hide the names of the actual owner or owners. This often dramatically increases the difficulty of tracking the true owner of a property in a transaction. The GTOs were designed to produce valuable data about some of these opaque transactions to assist law enforcement and inform our broader efforts

to identify where we see the greatest risks in the real estate sector. However, when the GTOs were announced, some were quick to point out, and perhaps even advise clients, that they could keep their real estate activities outside of the scope of the GTO by avoiding use of any form of cash or monetary instrument as part of their transactions. In other words, these advisors were pointing out the limitations of FinCEN's ability to collect information based on the confines of our current statutory authority. This shows how the statutory amendment can help FinCEN get more valuable information in the future.

As I talk about GTOs, I want to highlight that they and other FinCEN information collection activities show how a close working relationship with industry yields better results in an operational context, just as it does in the rulemaking context.

Before FinCEN issued the real estate GTOs, and because we made the decision not to make the existence or terms of those GTOs confidential, we worked with industry up-front to understand the types of information we could get, which helped target our information collection to what would be most valuable, while imposing minimal burden. Through advanced engagement with the relevant industry actors, we understood the utility of making the real estate GTOs public and providing specific guidance on compliance weeks ahead of the March 1 effective date. Just as important, we were able to provide context with respect to our goals and explain to industry the value of the information that they would be providing. In doing so, we developed a stronger partnership with industry and created connections that we can benefit from in the future.

Another example of public/private success in the GTO space involves our efforts to shed light on a complex trade based money laundering (TBML) scheme. TBML remains a primary method for drug trafficking organizations to move and launder their illicit funds. In conjunction with a GTO issued in April 2015, FinCEN has encouraged financial institutions to use the 314(b) mechanism to share information with each other to combat TBML in the Miami area involving certain electronics businesses. (By way of background, 314(b) essentially involves sharing of information among financial institutions themselves, while 314(a) involves sharing between industry and government.)

In this instance, close contact with industry in the formation and aftermath of the GTO has been instrumental. For instance, some of the money launderers used different financial institutions for different parts of the money laundering scheme. FinCEN's efforts to bring the financial institutions together allowed them to identify the network and typology of the scheme that involved shell companies across the globe, including in the Middle East and Latin America. This type of cooperation gets results. In April 2016, the *South Florida Business Journal* reported that the Miami GTO data contributed to the arrest and pending arrests of 22 alleged co-

conspirators in a complex money laundering scheme with ties to the Sinaloa cartel that involved 11 Miami businesses.

Yet another example of closer and productive engagement with industry involves specific information requests FinCEN makes in connection with its Foreign Financial Agency regulations implemented under 31 C.F.R. § 1010.360. Under a regulation issued under that authority, FinCEN is able to identify particular "Foreign Financial Agencies," or FFAs, and impose additional reporting requirements on U.S. financial institutions about their transactions with the designated foreign financial entities.

FinCEN may require the U.S. financial institutions to report to FinCEN several different types of information related to an FFA. FFA regulations serve to aid FinCEN with information-gathering; they are not derogatory or punitive; and they are not based upon the conduct of the identified foreign institutions. Ultimately, the FFA regulations help improve our insight into foreign banks and other financial institutions in order to identify and evaluate any changes in banking activity.

As with the GTOs, how we work with industry is as important as what this information collection enables us to do. When we are seeking information with respect to FFAs, we first identify the U.S. institutions that are most likely to have reportable information and then reach out to them in connection with establishing the requirement. As we have done in the GTO context, this outreach provides the financial institutions with additional context for the requirement, and provides them with an understanding of how valuable the information they provide will be. I have had the opportunity to sit in the room or participate in calls in which the FinCEN team explains to industry what we are doing and what will be required. I have also seen how the FinCEN team has responded to observations and suggestions from industry in these contexts and has worked to continually improve our processes. Again, by establishing a stronger relationship, we end up with better results, and through these reporting requirements we are able to further identify illicit networks and take steps with others to address them. With respect to FinCEN's ongoing anti-terrorism efforts, these critical partnerships have been particularly effective.

So in wrapping things up, I have spoken about how we have worked with you in the rulemaking process. I have encouraged you to work with us and support Administrative efforts in the legislative context with respect to requiring legal entities to report beneficial owners to FinCEN. I have described with some level of detail how we are working together more effectively to obtain targeted information in direct support of operational efforts. All of this demonstrates that FinCEN's commitment to working with you is rooted in our culture and rooted deeply within our staff.

In fact, as part of my closing, I want to share with you that the Partnership for Public Service, a nonprofit, nonpartisan organization that believes good government starts with good people, has recognized one of FinCEN's own as a finalist with respect to this year's Samuel J. Heyman Service to America Medals. Affectionately called the Sammies, the Service to America Medals are known as the "Oscars" of government service. After a vigorous nationwide selection process, Richard May, FinCEN's Director of the Office of Special Measures within our Enforcement Division, was named a finalist earlier this month at a special ceremony on Capitol Hill. Rich is one of our leading advocates for partnering with industry, and he and his team are the driving force behind the GTOs and other special measures I described earlier. The Partnership for Public Service will announce its winners at a gala event in September. I encourage to you look at the Partnership for Public Service website to read more about the Sammies, and Rich, and his efforts at building bridges with you to go out and get the bad guys.

Whether it is with me, with Rich, or with other dedicated FinCEN staff and our Treasury colleagues, I encourage you to keep our conversation going—particularly with respect to support for the beneficial ownership legislation. Not every regulator can brag that the information it collects is used to combat financial crimes and counter the financing of terrorism. But we can because of you. Please know that FinCEN depends on you, the institutions you represent, and the key feedback and financial intelligence they provide. We depend on you; we are grateful; and we will continue to work on strengthening our relationship with you.

Thank you.

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