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AMERICAN BANKERS ASSOCIATION/AMERICAN BAR ASSOCIATION
MONEY LAUNDERING ENFORCEMENT CONFERENCE

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Good afternoon. It is a pleasure to be joining you today. When I spoke to you all last year, I had only been on the job at FinCEN for a short time. So now, after having a chance to meet with many of you during this past year, it is good to look out and see so many familiar faces. A big part of my discussions with you has shaped an initiative I announced here last year, so I would like to provide you with an update.

Partnership

As I noted last year, I recognize that financial institutions spend a great deal of time and money to comply with the Bank Secrecy Act (BSA). And as such, we need to ask ourselves whether the money is being spent in the right way. So the question I asked all of us last year: Is there a delta between compliance risk and illicit finance risk?

Fortunately, we have the right forum in place to explore these questions. As a part of the Bank Secrecy Act Advisory Group, known as BSAAG, we formed a subcommittee aptly named the Delta Team, to start the conversation.

Our first meeting was held in February 2013, and our second meeting in June. Unfortunately, our most recent meeting – scheduled to take place in early October – was postponed due to the government shutdown, but we will be holding our third meeting again in just a few weeks.

Since we began, we have had a broad representation from more than 40 BSAAG members – to include representatives from across the financial industry, regulators, and law enforcement.

In our first meeting, one thing we learned was that while we had intentionally held industry break-out sessions to provide a forum to discuss industry-specific concerns and ideas, there turned out to be a lot of consistency in the themes raised by the different financial industry components.

In terms of common themes, industry is looking for additional information on money laundering trends, including more specifics on schemes and methods for illicit finance and red flags. What we heard, and certainly agree with, is that this would be helpful in aligning industry efforts with law enforcement priorities.

We heard that FinCEN Advisories provide a valuable mechanism to share information on risks, and they are most useful when communicating specific information in a manner that is clearly understood by financial institutions. Drawing from this feedback, we changed the format of our most recent Advisories to provide more specific information up front, in a more streamlined format. Our goal is to communicate the subject of the Advisory quickly and clearly so that your institution can determine if it is relevant to the risks you face. We continue to welcome feedback on this new format, as we seek to maximize the utility and impact of our Advisory program.

We also heard that FinCEN needs to find ways for more dynamic, real-time information sharing, both by and between financial institutions, and also with FinCEN and law enforcement. A key aspect here is promoting information sharing between financial institutions through Section 314(b) of the USA PATRIOT Act.

As hopefully most of you know, 314(b) provides financial institutions with the ability to share information with each other on potential money laundering or terrorist financing, under safe harbor protections from liability. We heard that there was some confusion about how to participate in the 314(b) program, and who was able to take advantage of the safe harbor. As a result of this feedback, last month we issued a Fact Sheet to help promote the 314(b) program. You can find the Fact Sheet on FinCEN's website. We also have FinCEN representatives at a booth here at the conference, so if you have any questions about information sharing, or anything else, please stop by.

We also heard that some of the technical requirements associated with 314(a) and 314(b) may inhibit their utilization, and we are reviewing different ways to potentially streamline the mechanics of these programs.

As the financial intelligence unit for the United States, FinCEN must stay current on how money is being laundered in the United States, so that we can share this expertise with our many law enforcement, regulatory, industry, and foreign financial intelligence unit partners, and effectively serve as the cornerstone of this country's AML/CFT regime.

FinCEN's new Intelligence Division is positioned to do just that. In response to industry feedback on the need for more information sharing with industry, we have begun exploring new ways to expand information sharing from government to industry under 314(a) authorities in more targeted circumstances, where warranted. And our Intelligence Division is in the process

of implementing a new concept whereby our analytical products will be provided to additional partners, including industry, whenever appropriate. We are working now on developing the product line, distribution methods, and dissemination restrictions.

I should note that we are using the Delta Team to obtain industry input for Treasury's Anti-Money Laundering (AML) Task Force. As such, there is an intended overlap of Delta Team accomplishments and AML Task Force accomplishments, of which the 314(b) fact sheet is one small example.

The Delta Team is truly a massive undertaking involving input from a broad range of financial institutions: Banks, credit unions, the securities industry, casinos, credit card systems, money services businesses, precious metals, insurance, etc. It also involves the active participation of all of the federal AML regulators, and the Department of Justice.

There are several parallel work streams underway working to develop the various ideas raised during our discussions. And to do things right, we need to take a thoughtful approach. We are not prepared to announce our accomplishments right now because most of our work is still in progress. But I take the progress we have made this far as a very positive sign that we have embarked upon an important discussion, perhaps even an unprecedented form of public-private dialogue in the AML/counter-terrorist financing (CFT) space.

As an aside, these efforts put us in a good position to address an emerging issue as a result of the new approaches by certain states with respect to marijuana. As many of you know, Deputy Attorney General James Cole recently issued a memorandum to all United States Attorneys outlining Department of Justice policies regarding the enforcement of the Controlled Substances Act in circumstances where state law has legalized and is attempting to regulate marijuana. We understand that industry is calling for additional clarity on how DOJ's policy pertains to the federal regulatory oversight of depository institutions providing banking services to duly operating, state regulated marijuana dispensaries. The issue is a complicated one given that federal law still applies in those states. We have already initiated discussions with our DOJ colleagues. The topic will be raised at our upcoming BSAAG discussions in December, where we will have the opportunity to explore together what are the best areas of financial industry and government focus in this regard.

FinCEN Reorganization

The issues raised within the Delta Team also helped inform FinCEN's reorganization that went into effect in June. Most notably, I felt it was important to bring FinCEN's focus back to our stakeholders. While previously FinCEN was organized by stakeholder, it was clear from our discussions both internally at FinCEN, as well as with our law enforcement, regulatory and industry partners, that we could serve our stakeholders better if FinCEN was organized by function.

Those of you here today are likely very familiar with the work taking place within FinCEN's policy area. The rules issued by FinCEN's Policy Division help financial institutions identify and manage risk; provide valuable information to law enforcement, and create the

foundation of financial transparency required to deter, detect, and punish those who would abuse our financial system. It is, of course, critical that we design our laws and rules, as well as our oversight and examination efforts, to address the spectrum of risks that we face.

But the laws, rules and compliance manuals can only do so much. When AML/CFT safeguards are not effectively implemented and compliance lags, money launderers, terrorist financiers and other illicit actors freely abuse our financial system.

A truly robust AML framework – one that hardens our financial system against the unrelenting efforts of money launderers, financial criminals, sanctions evaders, and other illicit actors – requires effective AML program implementation by financial institutions that understand what is at stake not only for them, but for the financial system as a whole.

And where this understanding is lacking, strong enforcement efforts may be needed. Not only do such actions correct the bad behavior of those on the receiving end, they also ensure that financial institutions that have been diligent in their efforts do not lose business to competitors seeking to cut corners with respect to AML.

Enforcement

So, as part of our reorganization, FinCEN established a stand-alone Enforcement Division to ensure that we are fulfilling our key role in the enforcement of our AML regime. Our Enforcement Division serves as the primary action arm for asserting our regulatory authorities against jurisdictions and financial institutions that are of primary money laundering concern outside the United States, as well as civil enforcement of the BSA at home. FinCEN has broad ground to cover with a small, but dedicated, staff.

Recently, given some of the issues that have been discovered in a few large banks, there have been calls for more accountability on the business side of an organization when AML compliance fails. There have also been calls for a focus on individuals, as well as institutions.

As Director, I feel it is imperative that not only should those who violate the BSA be ***held accountable***, but those who violate the BSA must ***take responsibility***.

In the past, financial institutions or individuals that were assessed a civil money penalty by FinCEN were permitted to consent to the assessment "without admitting or denying" the facts alleged in FinCEN's assessment. But shortly after becoming Director, I felt it was important to reconsider this approach. In our most recent actions, the financial institutions have not been permitted to neither admit nor deny the facts. Acceptance of responsibility and acknowledgment of the facts is a critical component of corporate responsibility.

FinCEN intends to make use of our broad enforcement authorities to ensure that those who violate the BSA are held accountable. We must employ all of the tools at our disposal and hold accountable those institutions and individuals who allow our financial institutions to be vulnerable to terrorist financing, money laundering, proliferation finance, and other illicit

financial activity. For example, the BSA provides FinCEN with the broad authority to obtain injunctions against persons it believes have violated, are violating, or will violate, the BSA.

We are particularly cognizant of our enhanced role with regard to nonbank financial institutions, such as casinos and money service businesses, for which we serve as the sole civil enforcement authority of the BSA. And FinCEN's enforcement role is a role you should want us to play. We know there is a cost to compliance, and we know you are paying it, so I think we can all agree that there should be an equal playing field.

Virtual Currency

I'd also like to discuss virtual currency, as this has been a hot issue this past year, and I expect it will continue to be so for the foreseeable future.

In March, FinCEN issued interpretive guidance to bring clarity and regulatory certainty for businesses and individuals engaged in money transmitting services and offering virtual currencies.

The guidance explains how FinCEN's "money transmitter" definition applies to certain exchangers and system administrators of virtual currencies depending on the facts and circumstances of that activity. Those who use virtual currencies exclusively for common personal transactions like buying goods or services online are not affected by this guidance.

FinCEN's guidance explains that administrators and exchangers of virtual currencies have registration requirements and a broad range of AML program, recordkeeping, and reporting responsibilities. Those offering virtual currencies must comply with these regulatory requirements, and if they do so, they have nothing to fear from Treasury.

Those who are intermediaries in the transfer of virtual currencies from one person to another person, or to another location, are money transmitters that must register with FinCEN as MSBs, unless an exception applies.

The guidance clarifies definitions and expectations to ensure that businesses engaged in similar activities are aware of their regulatory responsibilities and that all who need to, register appropriately.

Since the guidance was issued in March, I am pleased to report that some virtual currency exchangers have registered with FinCEN as MSBs. I do, however, remain concerned that there appear to be many domestic virtual currency exchangers that have not taken this step. FinCEN has begun an outreach effort to virtual currency exchangers that have a domestic presence to outline their BSA requirements, and to offer assistance on the registration process. And if a business does not believe they are required to register, we are asking them to contact FinCEN so we can gather additional information in order to make that determination.

The decision to bring virtual currency within the scope of our regulatory framework should be viewed by those who respect and obey the basic rule of law as a positive development

for this sector. It recognizes the innovation virtual currencies provide, and the benefits they might offer society.

Several new payment methods in the financial sector have proven their capacity to empower customers, encourage the development of innovative financial products, and expand access to financial services. We want these advances to continue. However, those institutions that choose to act outside of their AML obligations and outside of the law have and will continue to be held accountable. FinCEN will do everything in its regulatory power to stop such abuses of the U.S. financial system.

E-Filing Update

I began my remarks today speaking about our partnership efforts as it relates to our work within the Delta Team, and I'd like to conclude today with a quick update on one last area where I feel financial institutions have really partnered with us and stepped up to the plate: E-Filing.

First, some numbers to put things into perspective: On average, FinCEN collects about 55,000 BSA reports each day from approximately 154,000 e-filing users. These users come from nearly 52,000 financial institutions, as well as about 46,000 individual e-filers.

One of the biggest benefits of e-filing is it allows FinCEN to take all of the reports your financial institutions file – approximately 190 million BSA records - and make them immediately accessible to nearly 9,000 federal, state, and local law enforcement and regulatory users. And these users are actively utilizing the information you are providing by making approximately 18,000 queries of the BSA data each and every day.

When I spoke before you last November, mandatory e-filing had been in place for several months. But although e-filing had been required since July 1, 2012, we were still seeing only about 88 percent of BSA reports filed electronically. FinCEN has worked hard this past year to conduct outreach to those who had not yet made the transition. I am pleased to report that as of October 2013, the e-filing rate for standard BSA reports filed by financial institutions, such as SARs and CTRs, is close to 100 percent. However, if we factor in FBARs and 8300 reports, the e-filing rate dips to 97 percent.

So while we've had great success in the e-filing area, one area where we are continuing to work so we can get our e-filing percentage up even higher is with the FBARs.

In July, responding to the needs of many filers who submit FBARs jointly with spouses, or wished to submit them via third-party preparers, FinCEN introduced FinCEN Form 114(a), also known as the *Record of Authorization to Electronically File FBARs.* I know issues surrounding FBARs might not impact many of you, but for the third-party preparers, such as accountants, attorneys, tax practitioners, and filers here today, we are hoping that this new form will aid in the FBAR filing process for you and your clients.

In addition, an FBAR batch e-filing capability is now available for testing. These new capabilities, and the ability for filers to test their batch files, are available on the BSA E-Filing

Test site. The revised electronic FBAR and batch capability became available for general use on September 30, 2013.

It is in everyone's best interest to have FBARs filed electronically, and we continue to work closely with software developers who wish to develop FBAR e-fling solutions for their customers. The development of electronic FBAR filing software is key to reducing the number of paper reports filed by individuals.

Conclusion

In closing, I'd like to thank you all for playing an important role in building the strong public-private partnerships that are so vital to our collective efforts. Whether you are serving as the compliance officer within your financial institution, working as an examiner to ensure adequate BSA safeguards are in place, participating on the Delta Team, or utilizing the BSA data filed by financial institutions to investigate criminal activity, your role is essential.

That is why being here today, where we can all learn how to better work together, is so important. Keeping this dialogue going will benefit all of us. And I am certainly committed to maximizing our ability to be effective partners and colleagues.

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