



SHANNON HODGES	Internal Revenue Service / Criminal Investigation
JOHN IANNO	National Credit Union Administration
LES JOSEPH	Department of Justice
STEPHEN KESSELMAN	Internal Revenue Service / Small Business
BRIAN LAMKIN	Federal Bureau of Investigation
TIMOTHY LEARY	Office of Thrift Supervision
BRIDGET NEILL	Federal Reserve Board
MARTY NEVRLA	National Association of Insurance Commissioners
NINA NICHOLS	Federal Reserve Board
D. SCOTT PARSONS	Treasury / Assistant Secretary
ROBERT PASLEY	Office of the Comptroller of the Currency
DAN STIPANO	Office of the Comptroller of the Currency
LAURA WILLIAMS	Federal Bureau of Investigations

Speakers:

WAYNE ABERNATHY	Treasury / Assistant Secretary
SAMUEL BODMAN	Treasury / Deputy Secretary
STUART LEVEY	Treasury / Undersecretary for Enforcement
WILLIAM LANGFORD	FinCEN / Associate Director-RPPD
CHIP PONCY	Treasury / FATF Representative

Observers:

KEVIN DELLICOLLI	ICE
NICK HENLEY	IRS / CI
ED RODRIGUEZ	IRS
CHARLES KLINGMAN	Treasury
JOHN WAGNER	OCC

FinCEN:

Administration- FISHER, KELLY, MINOR  
 Analytics- TIEDGE, PEARLSTEIN  
 Legal-STARR, CLARK, DEL TORO, ZARATE  
 RPPD- CARBAUGH, HARRIS, IVES, RYDER, SILBERMAN, WALKER, WAXMAN

Absent:

Credit Union National Association  
 Drug Enforcement Agency  
 Florida Law Enforcement  
 International Association Chiefs of Police  
 N.Y. District Attorney  
 National Auto Dealers Association

Office National Drug Control Policy  
U.S. Postal Service  
U.S. Secret Service  
Washington Mutual Bank

The Bank Secrecy Act Advisory Group met at 9:00 a.m. in the Cash Room of the U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, D.C., William J. Fox, Chairman, presiding.

## I. Introduction

Director Fox greeted the members and introduced Wayne Abernathy, Assistant Secretary of the Treasury, who spoke about the importance of partnership between the public and private sectors.

## II. Review of Existing Organization and Future Direction

FinCEN presented a Concept Paper for reorganizing the Advisory Group generally and creating a Steering Committee to expedite the business of the Advisory Group. (Exhibit A) Among other issues discussed, several members questioned why all the banking regulators weren't represented on the Steering Committee and urged that all participate. Several members thought the Steering Committee should be smaller. Betty Santangelo and Mihal Nahari suggested that the securities, futures, broker-dealers, and investment companies should be re-considered for appropriate groupings of non-bank institutions. Barry Koch suggested switching the investment companies with futures commission merchants. Steve Ganis supported a representative of registered and unregistered investment companies, citing different roles of intermediaries and asset pools. Terry Arbit agreed. It was noted that the Steering Committee would accept input from other Advisory Group members. The Group gave unanimous support for a separate subcommittee on SAR issues.

### **Action Items:**

- FinCEN will revise the concept paper based upon input from today's discussion.
- An off-line discussion will be held to resolve the broker-dealer and futures commission merchant groupings.
- FinCEN will create a secure website so BSAAG business can be handled expeditiously.
- FinCEN will circulate a revised concept paper for review.

## III. Subcommittee on Unauthorized Disclosure of Suspicious Activity Reports

Dan Stipano and Rob Rowe presented the five recommendations from the subcommittee to the Group for approval. (Exhibit B) Several members reiterated concerns expressed at the last plenary meeting that individuals' names from the financial institutions should be removed from the SAR due to safety concerns. Alternative methods for protecting individual filers were suggested, including: designating a point of contact similar to the existing Section 314(a) list, which is maintained by FinCEN; listing a phone number that is the principal contact number for the financial institution; or maintaining a separate log of SARs filed in the institution for use by law enforcement representatives to contact individuals associated with particular SARs.

Several members expressed concern that the statute as currently written does not explicitly cover unauthorized public release of SARs by Congressional staff. It was suggested that the statute on disclosure be amended to make it clear that Congressional staff is subject to the nondisclosure provision. Director Fox stated that all apparent leaks are referred to law enforcement for investigation.

**Motion:**

- It was moved by Rick Small and seconded by Steven Eisenberg to adopt recommendations one through four of the subcommittee and to recommend to the Secretary of the Treasury that recommendation five be implemented. The motion passed unanimously.

**Action Item:**

- Director Fox stated that FinCEN has begun implementation of recommendations one through four and will draft suggested language for amending the statute. The text will be distributed to the Advisory Group for comment prior to transmittal to the Secretary.

IV. Remarks-Stuart Levey

Under Secretary Levey praised FinCEN and the banking regulators for finalizing the Memorandum of Understanding, which sets terms for sharing examination information and provides for other cooperative efforts to improve BSA examinations. He noted his support for the creation of a BSAAG law enforcement subcommittee to deal with, among other things, terrorist financing issues. He reiterated that it is Treasury's challenge to balance privacy concerns with information the government wants to share with financial institutions.

V. Subcommittee on Bank Secrecy Act Examinations

Bridget Neill presented the report of the Subcommittee on Bank Secrecy Act Examinations. (Exhibit C) John Byrne suggested the need for an outlet to mediate conflicts between an examiner and a financial institution on an expedited basis. Several regulators noted that they already have a formal process that begins after formal examination findings are made. It was noted that FinCEN should improve its provision of interpretive guidance to better ensure consistency in the application of the BSA. There was general agreement that this issue should first be explored in the subcommittee. Furthermore, there was general support for making the subcommittee a standing subcommittee.

**Action items:**

- The Examination Subcommittee will be made a standing subcommittee.
- The Examination Subcommittee is tasked with exploring further the issue of the need for an outlet to raise factual conflicts concerning BSA regulatory requirements between an examiner and the institution.

## VI. FATF-Wire Threshold Subcommittee

FATF Special Terrorist Financing Recommendation VII identifies the need for jurisdictions to include originator information in all cross-border funds transfers. Initially, this ad hoc subcommittee was formed to provide factual information on the impact of lowering the thresholds in the U.S. for customer identification and travel rule requirements on cross-border funds transfers. Rick Small, co-chair, reported that the FATF cross-border wire customer identification and travel rule standards are not an issue for banks because they already have the required identification. Ezra Levine, the other co-chair, said that the \$3000 threshold was a significant issue for non-bank institutions because, if customer identification thresholds are lowered, this will result in driving transactions underground, particularly for ethnic groups. It was agreed by both chairs that the impact will be on small banks, non-banks, and law enforcement.

Chip Poncy, the Treasury FATF representative on this issue, provided an update on events in the FATF concerning interpretive guidance the FATF is preparing regarding Special Recommendation VII. He outlined the debate on whether thresholds should be part of SR VII, noting that the U.S. delegation has taken the position that FATF members should gather facts before making this decision. Clemente Vazquez-Bello addressed the issue of whether only banks conduct cross-border wire transactions. He stated that there were many debit-credit transfers for settlement of cash in Central and South America done without traditional wire transfers.

### **Action Item:**

- The FATF-Wire Threshold Subcommittee will move forward to collect facts related to the threshold issue for both the travel rule as well as the identification requirements relating to funds transfers.

## VII. Regulatory Update

William Langford briefly outlined the status of pending regulations. Rick Small asked about Section 311 relating to the Commercial Bank of Syria. Specifically, he noted the need for guidance on what financial institutions should do after a proposed rule is issued—especially one that seeks to impose Special Measure V—but before a final rule has been issued. It is a concern because examiners are asking whether the bank continues to conduct business with a primary money laundering concern after a proposed rule has been issued. William Langford explained that FinCEN has advised the industry informally that the bank must assess its own risk in light of the factual information presented in the proposed rule, but that FinCEN does not expect compliance with the proposed rule. All agreed that formal guidance is necessary. Steve Ganis commented on the difficulties in determining what level of due diligence is sufficient to avoid the

inadvertent flow-through of prohibited funds when dealing on an omnibus basis with banks known to act as correspondents for Commercial Bank of Syria.

**Action Item:**

- FinCEN will work with the other regulators to prepare guidance on a financial institution's responsibilities pending issuance of a final rule under Section 311.

VIII. Suspicious Activity Reporting Issues

William Langford presented for discussion apparent confusion in the financial industry and among regulators about the appropriate response to a National Security Letter (NSL) and whether a SAR should be filed based solely on the receipt of an NSL. The discussion led to a general agreement that a SAR should not be automatically filed based solely upon the receipt of an NSL and that a financial institution should not disclose the existence of an NSL in a SAR.

Regulators also want clarity on the obligations of the regulators and their examiners. Laura Williams stated that the FBI will work with FinCEN and the regulators to clarify the FBI's expectations. Prior to a formal clarification, financial institutions should disseminate information regarding the existence of an NSL only on a need to know basis. Regulators and financial institutions agreed that the FBI should not explicitly deny their ability to review subject accounts, however.

The group called for explicit guidance in writing on the following:

- Is there is an obligation to perform an account review upon receipt of an NSL or grand jury subpoena?
- Does the receipt of an NSL trigger an automatic requirement to file a SAR?
- If a financial institution wants to close an account, should it first contact the person who issued the NSL?
- Is there an obligation to notify one's regulator of the existence of an NSL or grand jury subpoena?

**Action Items:**

- An ad hoc subcommittee was created to collect information on these issues, consisting of Laura Williams-FBI, Les Joseph-Justice, and other interested members.
- FinCEN and the regulators will develop guidance on this matter in consultation with law enforcement.

IX. Remarks-Samuel Bodman

Deputy Secretary Bodman stated that it is a good idea to expand the Advisory Group to new industries. John Byrne urged him to reinforce with bank executives how important compliance with the BSA is for financial institutions. Alan Sorcher asked the Deputy Secretary and regulators to better appreciate that many judgment calls must be made on subjective compliance matters. Clemente Vazquez-Bello emphasized the need for

balance in our regulatory approach so that we do not inappropriately drive legitimate business off shore.

### Suspicious Activity Reporting Issues (continued)

William Langford led a discussion on sharing SARs with foreign parents and affiliates. It was noted that if SARs are shared with persons outside of the U.S., it is not clear that a financial institution can prevent the disclosure of the SAR as is required by U.S. law. The Advisory Group agreed that sharing of underlying factual information is not addressed by the SAR confidentiality provisions. It was mentioned that the Basel Committee had produced a paper on the subject. Others emphasized that good risk management requires sharing of this information, not the actual SAR. Regulators also expressed concern about sharing with an affiliate or other financial relationship.

#### **Action Items:**

- These matters will be referred to the newly created SAR Reporting Subcommittee for action.
- FinCEN will utilize the Egmont Group to obtain further information about practices concerning the sharing of SARs or the underlying data.
- FinCEN will seek to issue revised SAR guidance concerning OFAC matches by the end of November.

### X. Cash Transaction Reporting Exemption Subcommittee:

William Langford outlined the progress of the CTR Subcommittee as well as the subcommittee's goals. (Exhibit D) The subcommittee will publish an interim report by the end of the year. With respect to the question of the CTR filing threshold, Jim Richards suggested the lowering of thresholds because debit and ATM card use lessens the legitimate need for large cash withdrawals. Several members disagreed with lowering the threshold due to inflation since the threshold was established. Director Fox assured the Group that Congress wanted an inquiry into all solutions. Lisa Arquette asked for a report on law enforcement use of CTR data. Laura Williams stated that the FBI was starting to gear up to more effectively use the CTR data, especially in the terrorist financing context, and that they would require some time, perhaps a year or two, to provide a report on CTR utility. Several speakers emphasized that the subcommittee cannot wait that long. Director Fox emphasized that FinCEN's Analytics section can assist the subcommittee in its work. It was suggested that someone publish a list of Fortune 500 companies to be exempted. Clemente Vazquez-Bello said that using the Fortune 500 list will not work because franchises cannot be exempted. Betty Santangelo offered giving exemption numbers to financial institutions. Les Joseph commented that SARs based on structuring to avoid CTR requirements provide good leads for law enforcement. While U.S. Attorneys do not have the resources to pursue every structuring case criminally, some districts have set up task forces that will seize funds that have been structured into bank accounts as an alternative enforcement action. Several members offered a variety of possible considerations and solutions. Director Fox emphasized the



need to identify all potential solutions and all measures of CTR utility before the issuance of the interim report.

**Action Items:**

- Any member who has not participated in the CTR Subcommittee who has ideas should submit them to FinCEN as soon as possible.
- The CTR Subcommittee will prepare and submit an interim report to the Director of FinCEN prior to the end of the year. The report will be circulated to the Advisory Group before presentation to the Director.
- The report will recommend, among other things, that the subcommittee's work is not yet done and that additional tasks will be completed.

XI. New Business/Open Discussion

Alan Sorcher asked whether anyone knew of new legislation affecting the BSA that Congress was considering. Director Fox noted the existence of H.R.10, which contains a provision that would allow FinCEN to require the production of cross-border wire transfer data. He also noted the existence of a bill that would amend Section 311 of the Patriot Act that was stuck in committee.

Ezra Levine discussed his view that state-level BSA style regulation is quite problematic. He urged federal preemption or at least a policy statement urging consistency. Director Fox said that FinCEN will contact those states to explain the importance of consistency and consider other steps to improve consistency.

Barry Koch also discussed separate state SAR rules on separate forms, not just sharing of the federal forms.

Director Fox referred these matters to the Non-bank Subcommittee that is being formed.

The meeting was adjourned at 4:30 p.m.