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Chairman Levin, Ranking Member Coburn, and distinguished members of the Subcommittee, I am Jim Freis, Director of the Financial Crimes Enforcement Network (FinCEN), and I appreciate the opportunity to appear before you today to discuss FinCEN's work in combating the flow of proceeds of foreign corruption into the United States. It is more important than ever for our government to be particularly vigilant in this area, and FinCEN continues to diligently exercise its authorities provided by Congress, and operates at a unique intersection of the law enforcement, regulatory, and international communities. My testimony today will focus on a number of strategic initiatives under which our authorities are maximized to assist in the detection and prosecution of fraudulent actors and to prevent the proliferation of foreign corruption and illicit finances into our financial system.

Background on FinCEN

FinCEN's mission is to enhance U.S. national security, detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial

systems. FinCEN works to achieve its mission through a broad range of interrelated strategies, including:

- Administering the Bank Secrecy Act (BSA) - the United States' primary anti-money laundering/counter-terrorist financing regulatory regime
- Supporting law enforcement, intelligence, and regulatory agencies through the sharing and analysis of financial intelligence
- Building global cooperation and technical expertise among financial intelligence units throughout the world

To accomplish these activities, FinCEN employs a team comprised of approximately 325 dedicated federal employees, including analysts, regulatory specialists, international specialists, technology experts, administrators, managers, and federal agents who fall within one of the following mission areas at FinCEN:

Regulatory Policy and Programs – FinCEN issues regulations, regulatory rulings, and interpretive guidance; coordinates and assists state and federal regulatory agencies to consistently apply BSA compliance standards in their examination of financial institutions; and takes enforcement action against financial institutions that demonstrate systemic non-compliance. These activities span the breadth of the financial services industries, including – but not limited to – banks and other depository institutions; money services businesses; securities broker-dealers; mutual funds; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; insurance companies; and casinos.

Analysis and Liaison Services – FinCEN provides federal, State, and local law enforcement and regulatory authorities with different methods of direct access to reports that financial institutions submit pursuant to the BSA. FinCEN also combines BSA data with other sources of information to produce analytic products supporting the needs of law enforcement, intelligence, regulatory, and other financial intelligence unit customers. Products range in complexity from traditional subject-related research to more advanced analytic work including geographic assessments of money laundering threats.

International Cooperation – FinCEN is one of 116 recognized national financial intelligence units around the globe that collectively constitute the Egmont Group. FinCEN plays a lead role in fostering international efforts to combat money laundering and terrorist financing among these financial intelligence units, focusing our efforts on intensifying international cooperation and collaboration, and promoting international best practices to maximize information sharing.

Combating Foreign Corruption

Combating foreign corruption has been a key objective for the United States government for over three decades. Beginning with the enactment of the Foreign Corrupt Practices Act[1] (FCPA) in 1977, when the United States became the first country to enforce criminal penalties against its citizens and companies that bribe foreign public officials, and continuing into the 21st century, most recently through the establishment of the National Strategy to Internationalize Efforts Against Kleptocracy,[2] the United States has explicitly recognized and acted on the need for a comprehensive global approach to combat high-level, large-scale public corruption.

[1] http://www.justice.gov/criminal/fraud/fcpa.

[2] http://georgewbush-whitehouse.archives.gov/news/releases/2006/08/20060810-1.html.

Large-scale foreign corruption by public officials is a particular threat to our democracy and the well-being of our counterparts abroad. Such illicit activity undermines financial accountability, discourages foreign investment, stifles economic performance, and diminishes trust in legal and judicial systems. Fortunately, the U.S. Congress has taken appropriate measures over the years by establishing key measures to enhance the United States' arsenal to combat foreign corruption, and our Anti-Money Laundering/Counter-Terrorist Financing (AML/CFT) measures are a critical component for preventing, detecting, and prosecuting acts of financial corruption and bribery. An inherent aspect of corruption is that criminals seek to funnel ill-gotten gains out of their homeland to hide in other places. It is in the U.S. interest to combat foreign corruption and to deprive corrupt officials' access to well-established international financial markets, including the U.S. financial system. It is also inherent that victimized countries need the help of the U.S. and other foreign governments to track down and seek to return the proceeds of corruption to their rightful owners, the people of the country.

Working with the Financial Services Industry to Fight Foreign Corruption

The approach of the Treasury Department, under the leadership of the Under Secretary for Terrorism and Financial Intelligence (TFI), to combating foreign corruption begins with an understanding that there is a financial component to every national security threat and that safeguarding the international financial system from all forms of illicit finance is at the forefront of protecting our national security. The effectiveness of this approach begins with understanding the scope of the problem. In combating foreign corruption, we work with the regulatory, law enforcement and intelligence communities in an attempt to better understand the flow of foreign corrupt assets, including: (1) vulnerabilities in the financial system that may be exploited by corrupt networks to move and store assets, and (2) critical financing networks for foreign corrupt

regimes. These analytical efforts inform, in turn, the systemic and targeted elements of Treasury's strategy to combating foreign corruption.

I would like to explain three components of our domestic approach to combating foreign corruption, each benefitting from and helping to advance efforts to combat money laundering and other forms of illicit finance more broadly. These are:

- Requiring financial institutions to identify and apply enhanced due diligence to private banking accounts held by or for the benefit of senior foreign political officials, commonly referred to as Politically Exposed Persons[3];
- Attuning U.S. financial institutions to risks and providing guidance with respect to suspicious activity reporting requirements regarding potential corrupt activity; and,
- Promoting the transparency of U.S. legal entities that may otherwise mask foreign corrupt activities of senior foreign political figures in the financial system.

FinCEN administers the BSA, which establishes a framework for the U.S. AML/CFT regulatory regime. Pursuant to the BSA, FinCEN issues regulations that promote transparency across the U.S. financial system and facilitate the production of information useful to law enforcement and counter-terrorism authorities in combating money laundering and terrorist financing. Section 312 of the USA PATRIOT Act (USAPA), as implemented in 31 CFR 103.178[4], requires covered financial institutions to establish a due diligence program that includes appropriate, specific, risk-based, and where necessary, enhanced policies and procedures that are reasonably designed to

[3] The terms "Senior Foreign Political Figure" and "Politically Exposed Person" (or "PEP") are often used interchangeably, particularly in international fora. However, the term PEP is not used in FinCEN's regulations and should not be confused with the definition of "senior foreign political figure" as used in FinCEN's regulations.

[4] http://www.fincen.gov/statutes_regs/frn/pdf/finalrule01042006.pdf.

enable the covered financial institution to detect and report on an ongoing basis, any known or suspected money laundering activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the U.S. by a non-U.S. person.

The rule requires enhanced due diligence for private banking accounts that are established, maintained, administered, or managed in the United States for a "senior foreign political figure." If a senior foreign political figure is the nominal or beneficial owner of a private banking account, the due diligence program that is required by the rule shall include enhanced scrutiny of the individual's private banking account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption. A senior foreign political figure means a former or current: 1) senior official in executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not); 2) senior official of a major foreign political party; and 3) senior executive of a foreign government owned enterprise. A senior foreign political figure also includes a corporation, business, or other entity that has been formed for the benefit of any such individual, and any immediate family member of any such individual, and any person that is widely and publicly known (or is actually known by the covered financial institution) to be a close associate of such individual.

FinCEN also helps to address the threat of foreign corruption by promoting more effective reporting of potential illicit activity by financial institutions. Consistent with the standard for reporting suspicious activity as provided for in 31 C.F.R. part 103, if a financial institution knows, suspects, or has reason to suspect that a transaction involves funds derived from illegal activity or that a customer has otherwise engaged in activities indicative of money laundering,

terrorist financing, or other violation of law or regulation, the financial institution should then file a Suspicious Activity Report (SAR). FinCEN has worked with law enforcement and regulatory partners to provide instructions for financial institutions on the best ways to highlight foreign corruption in SARs, thereby helping law enforcement more easily identify potential corrupt activity. These efforts include an advisory issued by FinCEN in April 2008[5] that provides additional guidance on suspicious activity reporting for foreign corruption and helps financial institutions understand how to proactively prevent senior foreign political figures from exploiting those vulnerabilities in the international financial system that allow them to disguise or otherwise facilitate illicit activities.

World Bank Report on Politically Exposed Persons (PEPs)

FinCEN appreciates the work that the World Bank put into its Stolen Asset Recovery policy paper on strengthening preventative measures for PEPs that was released in November 2009.[6] This paper is a valuable contribution to the public policy discussion, and we are reviewing this paper, along with colleagues in the Treasury Department and the broader government. We note that some of their findings with respect to current PEP control measures and their subsequent recommendations for strengthening controls at U.S. financial institutions are based on principles that exceed current requirements of U.S. law, such as the recommendation to subject domestic political figures to the same controls as foreign officials.

FinCEN also contends that the paper's characterization of all PEPs as high-risk customers fails to take into account the varying risk of corruption throughout all senior foreign political figures.

[5] http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2008-g005.pdf.

[6] http://siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/PEPs-ful.pdf?resourceurlname=PEPs-ful.pdf ful.pdf?resourceurlname=PEPs-ful.pdf.

Accepting that characterization and treating all PEPs equally would draw resources away from truly high-risk relationships. In the U.S., financial institutions are permitted to exercise judgment in assessing risk related to persons identified as senior foreign political figures and neither define nor treat all senior foreign political figures as posing the same level of risk. Rather, financial institutions should consider variables when assessing risk, such as the individual's position or authority, geographic locations involved, products or services used, and the size and complexity of the relationship.[7] While financial institutions in the U.S. do not have to uniformly identify all senior foreign political figures as high risk, they are nevertheless required by regulation to perform enhanced due diligence when it pertains to private banking relationships.

Furthermore, FinCEN does not concur with the assertion made by some bankers that a perceived low number of SARs (based on the data the World Bank had available in connection with the policy paper) is directly related to the low number of PEPs. We contend that this analysis does not take into account the fact that, since compliance departments of various financial institutions routinely use lists from a number of sources (e.g. OFAC's SDN list, lists provided by the EU and the UN,), many individuals and entities that appear on such lists are not conducting transactions in their own names or on their own behalf. Knowledge by reporting institutions of all possible persons and entities that may be doing business for these listed persons would be very unlikely. FinCEN's regulations define close associates as those widely and publicly known, or actually known by the financial institution.[8] As a result, it is clear that transactions involving close associates of PEPs may often be undetected, and not identified and reported as suspicious

[7] Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual, "Politically Exposed Persons," http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_087.htm.

[8] See 31 CFR 103.175(r).

transactions. However, in the U.S., financial institutions have reported transactions involving potential foreign corruption. FinCEN monitors SARs reporting suspected foreign corruption, and has on occasion made spontaneous disclosures to our financial intelligence unit counterparts.

Increased Information Sharing

FinCEN is also working with its interagency partners to develop additional ways to call attention to individuals and regimes of public corruption concern. One important initiative that we are currently enhancing is the information-sharing mechanism provided through Section 314(a) of the USAPA, which enables Federal law enforcement agencies, through FinCEN, to reach out to more than 45,000 points of contact at more than 25,000 financial institutions to locate accounts and transactions of persons that may be involved in terrorism or money laundering, including laundering of foreign corrupt assets.

There are two primary processes and related forms required from federal law enforcement officials when submitting a 314(a) request. First, the requester must complete a subject information form, which contains the identifying information of the suspects under investigation. Second, the requester must complete a certification form which provides background information on the investigation and allows FinCEN to review and determine whether the case meets the 314(a) process standards.

These standards mandate that the requester has already exhausted traditional avenues of investigation and analysis and that the investigation involves terrorism/terrorist financing and/or significant money laundering. The significance of a money laundering case may, for example, be determined upon the following factors:

- Seriousness and magnitude of suspected criminal conduct;
- Dollar amount involved;
- Whether the investigation is being conducted as part of a multi-agency task force;
- Whether the investigation is time sensitive;
- Importance of the investigation to agency program goals;
- Multi regional implications;
- Criminal organization(s) involvement; and/or
- National security implications.

The 314(a) certification form inquires as to whether the investigation involves a public or political official. If the requester indicates that it does, our process provides for a review by select members of FinCEN's senior management in order to ensure that the request meets the aforementioned standards.

Although the 314(a) program is specifically intended to support terrorist financing/terrorism and/or significant money laundering investigations, there may also be instances where a request tangentially references a suspected corrupt foreign official(s) who is implicated in the suspected money laundering activity. In this manner, the use of the 314(a) program may also, ultimately, turn out to be helpful in combating foreign corruption. That is to say, provided the overall investigative request meets the necessary core criteria of significant money laundering and/or terrorism/terrorist financing, the 314(a) system may reap benefits in combating significant

money laundering cases premised on high-level or otherwise significant instances of foreign official corruption.

Based upon its proven track record of success and pursuant to international treaty provisions, FinCEN is proposing to expand the 314(a) program to international and domestic State and local users.

International Users: In order to satisfy U.S. treaty obligations with certain foreign governments, FinCEN is proposing to extend the use of the 314(a) program to include certain foreign law enforcement agencies. On June 25, 2003, the Agreement on Mutual Legal Assistance between the United States and the European Union (U.S.-EU MLAT) was signed. Article 4 of the U.S.-EU MLAT (entitled Identification of Bank Information) obligates a requested Signatory State to search on a centralized basis for bank accounts within its territory that may be important to a criminal investigation in the requesting Signatory State. In negotiating the terms of Article 4, the United States expressly envisioned that the 314(a) program would be utilized to meet our obligations under this treaty and thus, EU member states would be able to submit case requests to the 314(a) program under these stringent guidelines. Expanding this process to include certain foreign law enforcement requesters will greatly benefit the United States by granting law enforcement agencies in the United States reciprocal rights to obtain information about matching accounts in those countries.

State and Local Users: FinCEN is also proposing to extend the 314(a) program to domestic State and local law enforcement users. Money laundering and terrorist-related financial crimes

are not limited by jurisdiction or geography. Detection and deterrence of these crimes require information sharing across all levels of investigative authorities, to include State and local law enforcement, to ensure the broadest U.S. Government action. Access to the 314(a) program by State and local law enforcement agencies will provide a platform from which they can more effectively and efficiently fill information gaps, including those connected with multi-jurisdictional financial transactions, in the same manner as federal law enforcement agencies. This expansion of the 314(a) program, in certain limited circumstances, to include State and local law enforcement authorities, will benefit overall efforts to ensure that all law enforcement resources are made available to combat money laundering and terrorist financing.

Building on its continued advancement of robust information sharing, the Egmont Group of 116 financial Intelligence Units (FIUs) has forged a consensus among its members regarding an increased focus on the fight against corruption[9]. The FIUs will continue to work with their law enforcement partners in individual cases as well as in partnership with other international stakeholders including the United Nations, the Financial Action Task Force (FATF), and the World Bank to contribute information and expertise on various anti-corruption projects, studies, and initiatives.

Identifying the Beneficial Owners of Shell Corporations

Enhancing access to beneficial ownership information in order to combat the abuse of legal entities by those engaging in financial crime is a global challenge. Heightened risks can arise with respect to beneficial owners of accounts because nominal accountholders can enable

[9] http://www.egmontgroup.org/library/annual-reports.

individuals and business entities to conceal the identity of the true owner of assets or property derived from or associated with criminal activity. Moreover, criminals, money launderers, tax evaders, and terrorists may exploit the privacy and confidentiality surrounding some business entities, including shell companies and other vehicles designed to conceal the nature and purpose of illicit transactions and the identities of the persons associated with them. Consequently, identifying the beneficial owner(s) of some business entities, trusts, and foundations may be challenging, as the characteristics of these entities often effectively shield the legal identity of the owner. However, such identification may be essential in detecting suspicious activity and providing useful information to law enforcement.

The Department of the Treasury has been focused for several years on the question of how best to enhance access to beneficial ownership information to combat the abuse of legal entities. As mentioned in Assistant Secretary David Cohen's testimony before the full Senate Committee on Homeland Security and Government Affairs back in November, we are currently pursuing a three-pronged approach to advance these interests. Our approach generally balances the need to enhance access to beneficial ownership information of legal entities with the need to maintain efficient processes in creating legal entities and in promoting access to financial services. Our comprehensive approach includes the following elements:

- ***Enhance the availability of beneficial ownership information of legal entities created in the United States:*** Promote legislation that requires (1) the submission of beneficial ownership information at the time of company formation; (2) the obligation to keep that information updated throughout the entity's existence; and (3) the availability of that information upon proper request by law enforcement. To ensure compliance, the

legislation must impose significant penalties for failure to abide by these requirements. We are focusing our current efforts on working with our interagency partners and the Congress to draft legislation that effectively and efficiently accomplishes these goals.

- ***Clarify and strengthen customer due diligence requirements for U.S. financial institutions with respect to the beneficial ownership of legal entity accountholders:*** Treasury is currently working with the federal financial regulatory agencies to consider guidance for U.S. financial institutions that will clarify when and how financial institutions should identify and verify beneficial ownership as a component of conducting customer due diligence of accountholders that are legal entities. We are also working with the regulatory and law enforcement communities, and consulting with the private sector, to determine whether and, if so, how such due diligence requirements should be strengthened through rulemaking or otherwise.

- ***Clarify and facilitate global implementation of international standards regarding beneficial ownership:*** In 2003 the Financial Action Task Force (FATF) reviewed and updated its 40 Recommendations for jurisdictions to implement appropriate countermeasures against money laundering. Three of those Recommendations – Recommendations 5, 33, and 34 – specifically address obtaining beneficial ownership information. These Recommendations, however, have created implementation challenges for the overwhelming majority of jurisdictions around the world. As we move forward in addressing the issue of beneficial ownership in the United States, we are also working with our counterparts in the FATF to ensure that its standards evolve in a way in which compliance is both achievable and effective. Even if we make progress

domestically, failure to achieve consistency internationally will merely shift the problem to another jurisdiction and fail to address the problems that flow from lack of beneficial ownership transparency.

With respect to senior foreign political figures seeking to access the U.S. financial system, as mentioned previously, FinCEN regulations require that special rules be applied towards private banking accounts opened by or established for these individuals. A review of private banking account relationships is required in part to determine if the nominal or beneficial owners are senior foreign political figures, and a covered institution's inability to identify its customers, including the beneficial owners of an account or a business, could be viewed as a violation of the requirements of 31 CFR 103.178. Covered institutions should establish policies, procedures, and controls that include reasonable steps to ascertain the status of a nominal or beneficial owner as a senior foreign political figure. This may include obtaining information on employment status and sources of income, as well as consulting news sources and checking references where appropriate. Such accounts require, in all instances, enhanced due diligence that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

The Application of AML Rules to the Real Estate Industry

In terms of background, FinCEN's approach to the risks of money laundering in the real estate industry continues to evolve and be guided by the insights from our law enforcement partners and from our analysis of the risks and vulnerabilities to money laundering and related financial crime. FinCEN's largest focus of law enforcement support continues to be fighting fraud in residential mortgages, the proceeds of which – like any other fraud – are often laundered through the financial system. The magnitude of such criminal behavior has significantly exceeded what

we have been able to discern in terms of proceeds of crime being laundered through the purchase of real estate[10].

Title III of the USAPA amended the BSA by requiring that all financial institutions establish minimum AML programs and amended the definition of "financial institution" contained in Section 5312(a)(2) of the BSA. Included in the definition of "financial institution" is the phrase "persons involved in real estate closings and settlements." On April 29, 2002, and again on November 6, 2002, FinCEN temporarily exempted several BSA-defined financial institutions, including "loan and finance companies" and "persons involved in real estate closings and settlements," from the requirement to establish an AML program.[11] The purpose of the temporary exemption was to enable Treasury and FinCEN to study the affected industries and to consider the extent to which AML requirements should be applied to them, taking into account the specific characteristics and vulnerabilities of the exempted financial institutions.

On April 10, 2003, FinCEN issued an Advance Notice of Proposed Rulemaking (ANPRM) regarding AML requirements for persons involved in real estate closings and settlements.[12] The 2003 ANPRM noted that the BSA has no definition of persons involved in real estate closings and settlements, that FinCEN had not had occasion to define the term in a regulation, and that the legislative history of the term provides no insight into how Congress intended the term to be defined. The 2003 ANPRM noted that real estate transactions can involve multiple persons,

[10] http://www.fincen.gov/mortgagefraud.html.

[11] See 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (Apr. 29, 2002, as amended at 67 FR 67547 (Nov. 6, 2002) and corrected at 67 FR 68935 (Nov. 14, 2002)).

[12] 68 FR 17569 (Apr. 10, 2003).

including: real estate agents, banks, mortgage banks, mortgage brokers, title insurance companies, appraisers, escrow agents, settlement attorneys or agents, property inspectors and other persons directly and tangentially involved in property financing, acquisition, settlement, and occupation. As with most programmatic regulations, the definition of a specific term or name usually is the key factor that determines the scope of the regulations and, with any exemptions, the persons that must comply with the specified program requirements.

The 2003 ANPRM noted that the participants involved in real estate transactions, and the nature of their involvement, could vary with the contemplated use of the real estate, the nature of the rights to be acquired, or how these rights are to be held, *i.e*., for residential, commercial, portfolio investment, or development purposes. The 2003 ANPRM expressed FinCEN's views as to guiding principles that should be considered in defining persons involved in real estate closings and settlements. Any definitions or terms that define the scope of the rule should consider: (1) those persons whose services rendered or products offered in connection with a real estate closing or settlement that can be abused by money launderers; (2) those persons who are positioned to identify the purpose and nature of the transaction; (3) the importance of various participants to successful completion of the transaction, which may suggest that they are well positioned to identify suspicious conduct; (4) the degree to which professionals may have very different roles, in different transactions, that may result in greater exposure to money laundering; and (5) the relative costs and benefits to financial institutions, regulators and law enforcement.

FinCEN's analysis and study of the real estate industry led us to focus attention on the insidious problem of mortgage fraud. FinCEN first focused on analyzing trends and patterns related to mortgage fraud back in 2002 in the context of efforts to identify areas of potential concern in the

sales and management of real estate. As we continued to follow the trends in SAR reporting from 2003 into 2004, FinCEN analysts noted a dramatic increase in the number of filings indicating suspected mortgage fraud, leading us to drill down more closely into this area. For our first detailed study focusing exclusively on mortgage fraud, published in November 2006, we proceeded to go back to take a closer look at all of the mortgage fraud filings since the inception of the SAR reporting requirements, analyzing 10 years of mortgage fraud reporting data nationwide, and we explained a range of fraudulent schemes in an effort to provide the financial industry with red flag indicators that could help them protect their financial institutions and their customers from being victims of fraud. Further FinCEN analysis highlighted the continued dramatic increase in SARs reporting mortgage fraud through 2008, and also demonstrated the relationship between mortgage fraud and other financial crimes.

In July 2009, FinCEN announced that it is considering applying AML program and SAR regulations to non-bank residential mortgage lenders and originators by issuing an ANPRM. As primary providers of mortgage finance who generally deal directly with consumers, non-bank mortgage lenders and originators are in a unique position to assess and identify money laundering risks and possible mortgage fraud while directly assisting consumers with their financial needs and protecting them from the abuses of financial crime. FinCEN's mortgage loan fraud analysis showed that non-bank mortgage lenders initiated many of the mortgages that were associated with SAR filings.

This action marks the first step in an incremental approach to implementation of AML regulations for loan and finance companies that would focus first on those business entities that are engaged in residential mortgage lending or origination and are not currently subject to any

AML program requirement under the BSA or other Federal law. FinCEN is developing a Notice of Proposed Rulemaking (NPRM) as a next step toward applying BSA requirements to the non-bank mortgage industry, with the scope and form of this proposal shaped by the comments received from the ANPRM. In keeping with an incremental approach, we will consider further steps in applying BSA requirements to additional participants in the real estate and finance sectors as information about vulnerabilities develops.

With respect to real estate settlement attorneys as an essential part of the real estate industry, a common theme among the comments received from the ANPRM on persons involved in real estate settlements and closings was the notion that imposing AML requirements on real estate settlement lawyers would seriously undermine the attorney-client privilege and the right to client confidentiality. Specifically, an AML program obligation would: (1) impose on real estate attorneys a duty to conduct due diligence on the identity of their clients, compromising the trust between the attorney and client and discourage clients from communicating fully and frankly with their attorney; and (2) impose on real estate attorneys an obligation to report suspect transactions to law enforcement authorities – thereby nullifying the rights of client confidentiality and attorney-client privilege.

The Treasury Department worked collaboratively with the Financial Action Task Force and the American Bar Association in developing Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing for Legal Professionals. This Guidance was developed by the FATF in close consultation with representatives of the legal and notarial profession. This guidance supports development of a common understanding of what the risk-based approach involves, outlines high-level principles involved in applying the risk-based

approach, and indicates good practice for governments and legal professionals in the design and implementation of an effective risk-based approach. In furtherance of this objective, we have been highlighting the issue domestically with the American Bar Association. We continue to work with them in creating a voluntary "good practices" document which continues to be discussed within the appropriate committees within the American Bar Association's structure.

While FinCEN will continue to consider appropriate regulatory actions to address vulnerabilities, including further application of anti-money laundering requirements where appropriate, we will focus as well on immediate steps to mitigate vulnerabilities, such as initiatives detailed above to improve transparency in the corporate formation process and provide further guidance to financial institutions on the need to obtain beneficial ownership information as part of existing anti-money laundering obligations, and are continuing to engage internationally to pursue global solutions.

Strengthening the Anti-Corruption Provisions in the FATF 40+9 Recommendations

Following the recent meeting of the G-20 Leaders in September 2009, a public statement was released asking the FATF to help detect and deter the proceeds of corruption by prioritizing work to strengthen standards on customer due diligence, beneficial ownership, and transparency. The United States is working with other FATF-member jurisdictions and organizations to draft a paper outlining what the FATF is doing to combat corruption and further steps the organization could consider. The paper will be presented at the upcoming FATF Plenary in February.

Conclusion

The U.S. government has identified foreign corruption as a national security threat, developed a necessary comprehensive strategy to combat it, and as a result the Treasury Department's efforts

to combat foreign corruption have increased significantly over the last several years. The evolution of TFI at Treasury has enabled us to contribute more effectively to this strategy, including through systemic and targeted financial measures, as well as through outreach to international counterparts, and our partners in the private sector. These efforts have established a sound foundation for developing and applying financial authorities to combat foreign corruption. As we continue to focus on executing our strategy, we must increase global public awareness of the threat posed by foreign corruption so that our efforts to combat this threat become a priority for all nations. We must also continue to promote international standards for financial transparency and strong anti-money laundering regimes that protect our global financial system from abuse, including through implementation of standards requiring enhanced due diligence of PEP accounts to combat public corruption, and to continue to develop and apply targeted initiatives that effectively identify foreign corrupt regimes and networks. Thank you for the opportunity to testify before you today. I would be happy to answer any questions you may have.