

Statement of William J. Fox
Director
Financial Crimes Enforcement Network
United States Department of the Treasury
before the
Senate Committee on Banking, Housing, and Urban Affairs

June 3, 2004

Chairman Shelby, Senator Sarbanes, and members of the Committee, I appreciate the opportunity to appear before you to discuss the role that the Financial Crimes Enforcement Network (FinCEN) can and should play in Bank Secrecy Act compliance and enforcement matters. As I noted the last time I appeared before this Committee, we are indebted to the Committee for its leadership and commitment to furthering the efforts of our government generally, and FinCEN in particular, to understand, detect and prevent money laundering and terrorist financing through the administration of the Bank Secrecy Act regulatory regime.

As the delegated administrator of the Bank Secrecy Act, FinCEN bears responsibility for ensuring that it is implemented to achieve the ultimate goals of the Act – the institution of measures across the financial industry to prevent money laundering, terrorist financing and other financial crime, and the creation of records and reports highly useful to criminal, tax, regulatory and counter-terrorism intelligence activities. While we eagerly accept this responsibility, we discharge it in large measure through the federal functional regulators and the Internal Revenue Service, who have been delegated responsibility to examine for Bank Secrecy Act compliance.

The Bank Secrecy Act regulatory system is unique in that its implementation involves eight different federal agencies. This unusual structure is both the Bank Secrecy Act's strength and its weakness. It is a strength because it builds on the existing expertise and examination functions of the regulators who know their industries best. It is a weakness because of the risk inherent in such fragmentation and potential for lack of accountability.

Within this structure, FinCEN's task is to build on these strengths while simultaneously addressing the weaknesses. FinCEN, as the fulcrum must ensure that all those responsible are guided by the same interpretive principles and apply them in a consistent manner through a continuing dialogue among the regulators, the regulated industry, and law enforcement.

My statement today outlines our role in this process and highlights the ways in which I think we can improve this process.

I. Background

By virtue of a delegation order from the Secretary of the Treasury and a statute passed as part of the USA PATRIOT Act, FinCEN is charged with the responsibility of administering the regulatory regime of the Bank Secrecy Act. Among other things, we issue regulations and accompanying interpretive guidance; collect, analyze and maintain the reports and information filed by financial institutions under the Bank Secrecy Act; make those reports and information available to law enforcement and regulators; and ensure financial institution compliance with the regulations through enforcement actions aimed at applying the regulations in consistent manner across the financial services industry. FinCEN also plays an important role in analyzing the Bank Secrecy Act information collected to support law enforcement, identifying strategic money laundering and terrorist financing trends and patterns, and identifying Bank Secrecy Act compliance issues.

FinCEN was created as an office within Treasury in 1990. Its original mission was focused on analysis – both tactical and strategic – of data collected under the Bank Secrecy Act along with other financial data. Treasury’s Office of Financial Enforcement (OFE) was originally responsible for the administration of the Bank Secrecy Act regulatory regime. In 1994, Treasury merged OFE into FinCEN and delegated the responsibility to administer the regulatory regime to FinCEN. Treasury sought to link the analytical functions with the administration of the regulatory regime that dictated the information that financial institutions were required to record and report. Adding responsibilities for administering the regulatory regime strengthened and expanded FinCEN’s analytical and intelligence abilities.

A. Compliance Examination

While FinCEN is responsible for ensuring compliance with the Bank Secrecy Act regulatory regime, FinCEN does not itself examine financial institutions for compliance. Instead, FinCEN taps the resources and expertise of other Federal agencies and self-regulatory organizations by relying on these agencies to conduct compliance exams, through delegations of authority that largely predated FinCEN. Examination responsibility has been delegated to other federal regulators as follows:

- *Depository Institutions* – The Board of Governors of the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration have been delegated authority to examine the depository institutions they regulate for Bank Secrecy Act compliance.
- *Securities Broker-Dealers, Mutual Funds, and Futures Commission Merchants/Introducing Brokers* – FinCEN has delegated examination authority to the Securities and Exchange Commission and the Commodity Futures Trading Commission, and relies on their self-regulatory agencies (such as the NASD, the NYSE, and the NFA) to examine these entities for compliance.

- *Other Financial Institutions* – The Internal Revenue Service (Small Business/Self-Employed Division) has been delegated responsibility for examining all other financial institutions subject to Bank Secrecy Act regulation for compliance, including, for example, depository institutions with no federal regulator, casinos, and Money Services Businesses (MSBs).

Even in the absence of examiners, FinCEN has an important role in supporting the examination regime created through our delegations. FinCEN's role involves providing prompt Bank Secrecy Act interpretive guidance to regulators, policy makers and the financial services industry, and ensuring the consistent application of the Bank Secrecy Act regulations across industry lines, most notably through the rule-making process and subsequent guidance. We promote Bank Secrecy Act compliance by all financial institutions through training, education and outreach. We support the examination functions performed by the other agencies by providing them access to information filed by financial institutions in suspicious activity reports, currency transaction reports, and other Bank Secrecy Act reports. We also facilitate cooperation and the sharing of information among the various financial institution regulators to enhance the effectiveness of Bank Secrecy Act examination and, ultimately, industry compliance.

FinCEN has played a more robust role with the Internal Revenue Service to develop an examination regime for the many categories of businesses that are newly subject to anti-money laundering regulation. For example, we have worked extensively with the Internal Revenue Service to improve their examination procedures and capabilities for money services businesses,¹ including providing training, reviewing exam procedures and the setting of priorities and goals. Finally, although done only to a limited extent now, we do provide some assistance with examination targeting and prioritization.

B. Enforcement

FinCEN has retained the authority to pursue civil enforcement actions against financial institutions for non-compliance with the Bank Secrecy Act and the implementing regulations. Under the Bank Secrecy Act, FinCEN is empowered to assess civil monetary penalties against, or require corrective action by, a financial institution committing negligent or willful violations.

Generally, FinCEN identifies potential enforcement cases through (1) referrals from the agencies examining for Bank Secrecy Act compliance; (2) self-disclosures by financial institutions; and, (3) FinCEN's own inquiry to the extent it becomes aware of possible violations. Referrals from the examining agencies are regularly made to FinCEN. It should be noted that under Title 12, the banking regulators have authority to

¹ Under the Bank Secrecy Act and FinCEN's implementing regulations, any person or group of persons doing business in the United States in one of the following capacities is defined as a money services business (MSB): currency dealers or exchangers; check cashers; issuers, sellers or redeemers of travelers' checks, money orders or stored value; and money transmitters.

enforce certain regulations that fall under that statute as well as under the Bank Secrecy Act, such as the requirement that depository institutions have anti-money laundering programs. In addition, the Internal Revenue Service has authority to enforce certain Bank Secrecy Act requirements including the IRS/FinCEN Form 8300 reporting for non-financial trades and businesses, and the Report of Foreign Bank and Financial Accounts by individual and entities.

II. Efforts to Enhance Bank Secrecy Act Compliance

Much of our work within FinCEN is devoted to the goal of maximizing industry compliance with the Bank Secrecy Act regulatory regime. But as the complexity of the regulatory regime, and the obligations imposed, continue to grow, our efforts must grow as well. Below, my statement outlines my priorities within FinCEN, in the short term, to better enable us to assist the regulators in the examination process and further enhance our own capabilities to enforce the regulatory regime. I also have included a few ideas to consider as we look for ways to further enhance Bank Secrecy Act compliance and examination consistency.

A. Short Term Goals

As I have explained previously, we are in the process of realigning FinCEN to position ourselves to better fulfill our mission. As part of this, we will be restructuring our regulatory section to focus resources and create efficiencies around the functions of Bank Secrecy Act examination and enforcement:

- *Creation of an Examination Program Office*

Within FinCEN's regulatory office, we will create a new program office devoted solely to the Bank Secrecy Act examination function. Currently, the affected substantive program area handles examination related issues on an ad-hoc basis. For example, individuals responsible for the Money Services Business program have taken a primary role in working with the Internal Revenue Service to develop and enhance their examination regime. The new structure will consolidate all examination support functions and better enable FinCEN to provide the necessary support to regulatory agencies conducting Bank Secrecy Act compliance exams. As an initial priority, FinCEN plans to focus on assisting the Internal Revenue Service in its examination function, particularly in light of the new regulations that FinCEN has and will issue to bring thousands of additional businesses under the Bank Secrecy Act anti-money laundering program provision.

- *Dedication of Analytical Resources to Compliance Support and Examination Targeting*

We will also be providing specific analytical support to our Examination Office. Our analysts will exploit the Bank Secrecy Act and other data to identify, review and, through the Examination Office, refer anomalies involving specific financial institutions to the appropriate regulator for review and examination. They will use the information to assist the regulators in examination targeting by identifying high-risk financial institutions or problem compliance areas to help the regulators prioritize and direct examination resources. The analysts will also work towards identifying new and emerging vulnerabilities that should be addressed through the examination process. We intend to work closely with the regulators in this process.

- *Renewed Focus and Resources to Provide Interpretive Guidance*

As the complexity of the Bank Secrecy Act regulatory regime grows, so does the need for interpretive guidance. As part of our reorganization, we are placing a renewed focus and resource commitment on the provision of guidance, both in the form of more comprehensive guidance documents as well as more immediate responses to specific inquiries. With respect to the former, we intend to begin the process of issuing staff commentaries to the various provisions of the Bank Secrecy Act. This will involve close consultation with the regulators. Separately, we look to leverage existing and develop additional industry experts to provide prompt guidance to specific questions as they arise, especially during the course of an examination. This will also require our working with the regulators to ensure that they know what mechanisms are available through which such guidance can be obtained.

- *Review Enforcement Referral Guidelines and Reporting Requirements*

To improve the Bank Secrecy Act civil enforcement process, FinCEN intends to review the utility of developing updated guidelines to assist the federal banking agencies, Internal Revenue Service and other agencies, as appropriate, in determining how and when to refer matters involving significant, alleged violations of the Bank Secrecy Act to FinCEN for consideration of civil money penalties. Currently, upon discovery of significant Bank Secrecy Act deficiencies during examination cycles, the federal banking agencies, Internal Revenue Service and the Securities and Exchange Commission rely on a memo predating the creation of FinCEN on such matters. If appropriate, we will work closely with the regulators to revise these guidelines.

In addition, the regulations delegating Bank Secrecy Act examination authority to the banking regulators provide that periodic reports shall be made, in a form and timeframe prescribed by Treasury. By memorandum, dated June 6, 1979, Treasury prescribed the form and timing of the periodic reports to be received from the banking regulators, including the number of apparent Bank Secrecy Act violations discovered during the examination process. However, since its inception such reporting has been sporadic and it has not proved helpful. As a result, FinCEN plans on reviewing the utility of receiving periodic reports, in a mutually agreed to format, to better enable FinCEN to review Bank Secrecy Act compliance and examination findings on a national basis across agency lines; such as, for example, reporting of remedial actions undertaken by financial

institutions as a result of consent orders, memorandum of understanding, board resolution, supervisory letter, or other enforcement mechanisms.

- *MSB Compliance*

A top priority for FinCEN is the prevention of the financing of terrorism. One aspect of achieving this goal is finding better ways to provide information to the regulated community to better identify potential terrorist activity. One area of particular focus in this regard will be money services businesses. Money services businesses continue to require more attention and resources, and FinCEN will undertake an initiative to educate segments of this industry most vulnerable to terrorist abuse of their financial services. These segments include small businesses that typically offer money remittance services, check cashing, money orders sales, and informal value transfer systems. Working with our colleagues in law enforcement, we hope to enhance our outreach programs to include training on how terrorists have and may continue to use money services businesses; the reason for and importance of the registration requirement; and the importance of complying with the anti-money laundering compliance program, reporting and recordkeeping requirements of the Bank Secrecy Act, especially suspicious activity reporting. In fact, suspicious activity reporting for money services businesses should be streamlined by permitting the use of a simplified form to file, which we are currently developing.

B. Ideas for Enhanced Coordination

Coordination among the regulators, industry, and law enforcement is the lynchpin of effective Bank Secrecy Act compliance. Since the passage of the USA PATRIOT Act, cooperation has only improved. On our side, we have developed a much closer working and collaborative relationship with the regulators on all aspects of Bank Secrecy Act administration. This has been reflected in the process of developing the new regulations, conducting outreach and training for the industry, and focusing on specific compliance issues. Indeed, provisions of the Act such as the customer identification section required that FinCEN and the regulators issue regulations jointly.

With respect to examinations, last month the Bank Secrecy Act Advisory Group formed a subcommittee devoted to identifying ways to better ensure examination consistency among the various regulatory agencies and industries. Representatives from industry, the regulatory agencies, and law enforcement will participate. This subcommittee is yet another vehicle through which FinCEN and the regulators can address the range of examination issues with the common goal of enhancing compliance on a national basis.

In this context and elsewhere, we will all have to identify creative ways to facilitate continued cooperation. Some ideas that I hope to explore with my colleagues include:

- *Identification of Common Compliance Deficiencies*

Better identification of compliance issues revealed through the examination process on an interagency scale is an essential aspect of enhancing the overall effectiveness of the Bank Secrecy Act regulatory regime. FinCEN could serve a key role in facilitating that process by encouraging the regular sharing of common compliance deficiencies uncovered by the regulators. Summaries of deficiencies identified in financial institutions will expose areas to be addressed, interpretive questions to be answered, or even inconsistencies with the regulations themselves. Based on this information, FinCEN and the regulators would be able to focus its outreach and guidance efforts on emerging, possibly systemic problem areas affecting one or more financial industries. Similarly, regulators would be able to better focus their examination resources on such areas. This data would also enhance the ability of FinCEN and the regulators to target their examinations and develop strategic examination goals across industry lines.

- *Continued Collaboration on Examination Procedures*

To varying degrees, FinCEN has provided input into the development of examination procedures for the banking regulators and the Internal Revenue Service. In fact, FinCEN is working with Internal Revenue Service now to revise its Bank Secrecy Act Examination Manual, which guides the conduct of Bank Secrecy Act examinations and is used as a training template for Bank Secrecy Act examiners. This is an important way in which FinCEN can communicate our examination priorities to the regulators and better ensure a consistent examination process by the various agencies. We have also begun to participate on a limited scale, resources permitting, as observers in exams performed by our regulatory partners.

- *Joint Examiner Training*

As a complement to the established mechanisms through which the regulators train their examiners, we will explore joint training opportunities that will afford FinCEN the opportunity to supplement the training provided with programs specifically targeted toward our Bank Secrecy Act compliance goals, including the possibility of our participating in multi-agency anti-money laundering training at the Federal Financial Institution Examination Counsel.

We have done such training already. For example, FinCEN has conducted joint training of Internal Revenue Service examiners on various Title 31 and USA PATRIOT Act requirements in recent IRS Examiner training classes. FinCEN also will be conducting training at an upcoming meeting of Internal Revenue Service supervisory level personnel who have Bank Secrecy Act examination responsibility. By training at the supervisory level (training-the-trainer), FinCEN can leverage its limited resources to help ensure that IRS Bank Secrecy Act supervisory personnel deliver the appropriate message concerning the content of Bank Secrecy Act exams to the Internal Revenue Service field exam staff.

Conclusion

Mr. Chairman, we appreciate your Committee's continued support in our efforts to ensure the effectiveness of Bank Secrecy Act examination and enforcement programs. This concludes my remarks. I will be happy to answer your questions.