

U.S. DEPARTMENT OF THE TREASURY

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Testimony of Under Secretary for Terrorism and Financial Intelligence David S. Cohen Before the Senate Committee on Banking, Housing, and Urban Affairs on “Patterns of Abuse: Assessing Bank Secrecy Act Compliance and Enforcement”

3/7/2013

As prepared for delivery

WASHINGTON - Chairman Johnson, Ranking Member Crapo, distinguished members of the Committee, thank you for inviting me to testify today on a core focus of our efforts at the Department of the Treasury: promoting a safe and secure financial system, and effectively combating money laundering, terrorist financing and related forms of illicit finance. I would like to commend you, Mr. Chairman, and this entire Committee for your strong leadership on this topic, including by focusing today's discussion on these critically important issues. The spate of recent high-profile enforcement actions against some of our largest, most sophisticated, and best resourced financial institutions raises troubling questions about the effectiveness of our domestic anti-money laundering and counter-terrorist financing (AML/CFT) regulatory, compliance and enforcement efforts. It is critically important to understand why these failures occurred and, even more importantly, what we can do – whether through better legislation, regulation, examination or enforcement, or through some combination of steps – to prevent the recurrence of such failures in the future.

Background

My remarks today will focus on Treasury's long-standing efforts to promote and enforce compliance with the Bank Secrecy Act (BSA) and our counter-terrorist financing sanctions programs, including new efforts under way to improve our AML/CFT regime. We share the view that there is a pressing need to improve compliance, and we are working hard at it.

To begin, I believe it is worth noting that our AML/CFT legal and regulatory regime is one of the strongest and most effective in the world. Conceived more than 40 years ago with the enactment of the Bank Secrecy Act and updated repeatedly over the past four decades through new legislation, regulations and guidance, our AML/CFT framework has evolved to better address new and different illicit finance threats.

Our AML/CFT framework has evolved, moreover, while our financial sector has maintained its place as the largest, most sophisticated, complex and efficient financial system in the world. The enormous size, scope and sophistication of our financial markets facilitate economic growth, both in the U.S. and around the world.

But that size, scope and sophistication also attracts criminals who wish to access our financial system to launder the proceeds of crime and move funds for illicit purposes. This includes money launderers, terrorists, proliferators, drug lords and organized crime figures, all of whom rely to some extent on the financial system to conduct their operations.

The BSA, and the regulations promulgated by Treasury's Financial Crimes Enforcement Network (FinCEN) and the federal functional regulators implementing the BSA and related statutes, establishes the framework for guarding the financial system from money laundering and terrorist financing. These laws and regulations work in tandem with the sanctions programs implemented by Treasury's Office of Foreign Assets Control (OFAC), particularly those that are focused on preventing financial facilitation for terrorist organizations and rogue regimes, such as Iran.

These rules aid financial institutions in identifying and managing 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. A truly robust AML/CFT 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/CFT program implementation by financial institutions, buttressed by strong enforcement efforts when those efforts fall short of the mark. When AML/CFT safeguards are not effectively implemented and compliance lags, money launderers, terrorist financiers and other illicit actors freely abuse our financial system. We have seen this happen too often, at too many financial institutions, including some of our largest banks, over the past several years.

So it is clear to us that despite the strength of our AML/CFT framework, significant design, oversight, compliance and enforcement challenges remain. I would like to turn now to the efforts the Treasury Department is taking, in collaboration with our regulatory and law enforcement partners, the financial industry, and our foreign counterparts, to strengthen the effectiveness of our AML/CFT regime.

Treasury's Ongoing Efforts to Promote an Effective AML/CFT Framework

As this Committee is well aware, a number of federal departments and agencies, as well as state and local agencies, play important roles in combating money laundering, terrorist financing and other illicit financial activity in U.S. financial institutions. The Treasury Department, through FinCEN, administers the BSA, and through OFAC, administers our sanctions programs. This includes issuing rules and guidance implementing the BSA and the executive orders that establish sanctions programs; conducting investigations into potential violations; and enforcing the relevant rules through civil proceedings. In all of these efforts, FinCEN and OFAC work closely with counterparts across the federal government and at the state and local level, including the other federal financial regulators, as well as law enforcement agencies.

I would like to update the Committee on Treasury's ongoing efforts to implement and enforce the BSA and our sanctions programs, as well as new work under way to improve our AML/CFT regime, including renewed focus at FinCEN on BSA enforcement; the creation of an interagency AML Task Force; our strategy to enhance financial institutions' customer due diligence efforts; and the continued development of strong international standards on combating money laundering and the financing of terrorism and the proliferation of weapons of mass destruction (WMD). Each of these efforts is aimed at improving financial transparency through better regulations, better oversight, better compliance and better enforcement.

FinCEN and OFAC Enforcement Efforts

Turning first to FinCEN's and OFAC's ongoing enforcement efforts:

As I noted, in administering the BSA, FinCEN investigates and pursues enforcement actions against financial institutions for violations of the BSA and its implementing regulations. Most recently, in December 2012, FinCEN assessed a \$500 million civil monetary penalty against HSBC Bank USA N.A. for willful violations of the BSA. Among other things, FinCEN determined that HSBC lacked an effective AML program and systematically failed to detect and report suspicious activity. FinCEN joined OFAC, the Office of the Comptroller of the Currency, the Federal Reserve and the Department of Justice in what amounted to the largest combined bank settlement in U.S. history, totaling more than \$1.9 billion in penalties and forfeitures for HSBC's conduct that exposed the U.S. financial system to severe abuse. Also, in November 2012, FinCEN joined the FDIC and the Department of Justice to assess concurrent civil money penalties of \$15 million against First Bank of Delaware for violations of the BSA and its AML requirements.

These and other recent FinCEN enforcement actions highlight many of the key vulnerabilities in our financial system that the BSA was designed to address, including misuse of correspondent banking relationships, private banking accounts, financial activity undertaken by non-bank financial institutions, and the use of non-transparent legal entities to move funds. While these enforcement actions reaffirm the importance of imposing additional due diligence requirements on higher-risk activities, they also underscore that existing requirements and controls may not be sufficiently robust.

For its part, OFAC administers and enforces financial, economic and trade sanctions to advance key foreign policy and national security goals, including sanctions against targeted foreign countries and regimes, terrorists, international narcotics traffickers, and those engaged in activities related to WMD proliferation. OFAC aggressively pursues investigations and enforcement actions against both U.S. and foreign financial institutions that violate U.S. economic sanctions laws and regulations.

Between June and December 2012 alone, OFAC reached settlements with four separate foreign financial institutions for a combined total of more than \$1.1 billion related to almost 24 thousand apparent violations of our sanctions programs involving Burma, Cuba, Iran, Sudan, and Libya. Total related sanctions and AML enforcement actions involving those institutions, including OFAC's settlements, amounted to \$2.76 billion. They followed several other record-breaking enforcement actions related to the "stripping" of sanctions-related information from international payment messages that resulted in almost one billion dollars in OFAC settlements as part of almost \$1.7 billion in fines and forfeitures involving financial institutions. (Appendix I to this testimony contains a compendium of recent OFAC and FinCEN enforcement actions.)

It is important to note that the conduct at issue in these "stripping" investigations primarily occurred prior to 2009 – that is, before most of OFAC's "stripping" settlements were concluded and published – and that these rigorous enforcement actions appear to have had a significant compliance and deterrent effect on global financial institutions. Of course, Treasury will continue to penalize banks for conduct that violates our sanctions programs, whenever it occurs, and will be particularly aggressive with regard to any institutions found to be engaging in the type of conduct that has been the subject of these well-publicized enforcement cases.

In their civil enforcement investigations, both OFAC and FinCEN often work closely with criminal agencies, including the Department of Justice and state and local criminal prosecutors. Neither OFAC nor FinCEN, however, possesses the authority to bring criminal charges, nor does Treasury see it as our role to influence or seek to direct the decision whether to prosecute in any given case. The decision whether to bring criminal charges is the exclusive prerogative of criminal prosecutors. Nonetheless, Treasury strongly supports vigorous law enforcement across the board – by our counterpart federal regulators, by federal criminal law enforcement, and by the relevant state and local authorities.

FinCEN's Renewed Focus on Enforcement

FinCEN, as the administrator of the BSA, plays a critical role in our fight against money laundering and terrorist financing in the United States and around the world, and over its twenty-plus year history, it has been at the heart of our nation's efforts to combat illicit finance. I would like to highlight two FinCEN initiatives that will position the agency to be even more effective in enforcing the BSA in the years to come.

First, FinCEN has recently completed a multi-year IT Modernization Program, which is on-time and on-budget. This project will enhance FinCEN's ability to analyze illicit financial activity and conduct enforcement investigations. It will also better serve the various agencies that work with FinCEN and rely – sometimes heavily – upon BSA data in conducting their own money laundering and terrorism cases. For example, last year the Federal Bureau of Investigation reported that 37% of its pending counter-terrorism cases had associated BSA records. A key component of FinCEN's modernization project is a powerful new search tool to access BSA data, called FinCEN Query. Since it was activated last September it has been used 920,000 times by 6,400 users. This is a strong start and we expect the utility of this tool to grow as more of our law enforcement and intelligence partners who rely on BSA data adopt and gain facility with the new search tool.

Second, FinCEN's new Director, Jennifer Shasky Calvey, is in the midst of a thorough review of FinCEN's operations as she and her new management team at FinCEN consider how FinCEN can better organize itself to execute its mission even more effectively, including enhancing its compliance and enforcement functions. Since taking up her post, Director Calvey has met with virtually every employee of FinCEN, as well as with FinCEN's law enforcement and regulatory partners, industry stakeholders and Congressional staff, as she explores the appropriate steps to take.

Director Calvey is particularly focused on ensuring that FinCEN fulfills its key role in the enforcement of our AML/CFT regime, including by employing all the tools at the agency's disposal to 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. Some of these tools have been used in the past – such as imposing special measures under Section 311 of the USA PATRIOT Act against entities determined to be primary money laundering concerns – and we intend to continue the aggressive use of these tools in the future.

We also intend to make use of additional tools at FinCEN's disposal to ensure that those who violate the BSA are held accountable. 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. Likewise, the BSA allows FinCEN to impose civil penalties not only against domestic financial institutions and non-financial trades or businesses that willfully violate the BSA, but also against partners, directors, officers and employees of such entities who themselves actively participate in misconduct. Although FinCEN has employed these tools only occasionally in the past, in the future FinCEN will look for more opportunities to impose these types of remedies in appropriate cases.

New Initiatives to Improve the AML/CFT Framework

Let me now turn to the several initiatives we are pursuing to look at our AML/CFT framework and consider where improvements can be made. At the heart of this task is a goal of ensuring that our AML/CFT obligations and actions are directing financial institutions to address the real, prevailing illicit financing risks that they face.

FinCEN's "Delta Team"

FinCEN recently organized a group dubbed the "Delta Team" under the auspices of the Bank Secrecy Act Advisory Group (BSAAG). The Delta Team includes representatives from the financial services industry, financial regulators, and law enforcement with the common mission of examining any gaps between illicit finance risks and compliance efforts. Their objective is to develop recommendations to close any gaps in order to enhance the effectiveness of our AML/CFT regulatory regime. The Delta Team had its first meeting last month, and I understand the discussions produced a number of interesting ideas that will be explored further in the ongoing dialogue.

The AML Task Force

Treasury also has recently convened a broad interagency group, known as the AML Task Force, to look in depth at the entire AML/CFT framework. Along with Treasury, the AML Task Force is comprised of senior representatives from each of the regulators with responsibility to combat money laundering – that is, FinCEN, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Commodity Futures Trading Commission, the Securities and Exchange Commission and the Internal Revenue Service – as well from the Justice Department’s Criminal Division.

The Task Force’s objective is to take a step-back look at our AML/CFT framework – from the legal and regulatory foundation, to the compliance and examination function, to the enforcement efforts – to take stock of which components of our regime are working well, which are not, how the different parts are working together, and to assess how the entire enterprise is operating. The Task Force will look at the mechanisms by which illicit finance risks are identified, and how statutory and regulatory requirements are adapted to address these risks. It will evaluate information sharing, supervision, and enforcement practices and processes to determine if there are ways to better inform, assess, encourage and, as necessary, compel financial institution compliance.

In all of its work, the Task Force will be informed by the specific deficiencies identified in the recent bank enforcement cases. The goal is to develop recommendations, and find solutions, to address any gaps, redundancies or inefficiencies in our AML/CFT framework, and to ensure that truly effective AML/CFT compliance is made a priority within financial institutions.

Enhancing Customer Due Diligence

Financial transparency depends, at the most basic level, on effective customer due diligence – that is, the steps taken by financial institutions to know their customers. Poor or weak customer due diligence may permit illicit actors to access the financial system undetected, and to engage in transactions that financial institutions may fail to identify as suspicious.

Current law, however, explicitly requires financial institutions to conduct in-depth customer due diligence – in which the true beneficial owner of an account is identified – in only certain limited circumstances. Because we believe that a broader obligation for financial institutions to conduct in-depth customer due diligence may be warranted, Treasury has embarked on a rule-making process to consider whether to impose an explicit, enhanced customer due diligence requirement.

We believe that a rule that clarifies and strengthens customer due diligence requirements for U.S. financial institutions, including an obligation to identify beneficial owners, would advance the purposes of the BSA by assisting law enforcement in their financial investigations. Moreover, such a requirement would assist financial institutions in their assessment and mitigation of risk, as well as facilitate their compliance with existing BSA requirements and U.S. sanctions programs. And it would assist in reporting and investigations in support of tax compliance.

Due to the importance of this issue, as well as its implication for all corners of our financial system, we took the unusual step of issuing an Advance Notice of Proposed Rulemaking (ANPRM), and then embarked on an unprecedented industry outreach program to discuss the proposed rule in series of public forums with a broad range of stakeholders, including Congress; law enforcement; community, regional, national, and international banks; money service businesses; broker-dealers; futures commission merchants; and other interested parties. These engagements highlighted the challenges associated with achieving clear and harmonized customer due diligence expectations while also leveraging best practices to minimize burden.

All the information gathered, through written comments as well as public engagements, has informed the development of a proposed customer due diligence rule, which we anticipate publishing for further notice and comment in the near future.

International Efforts to Strengthen the Global AML/CFT Framework

Our domestic work to strengthen the integrity and transparency of our financial system, and refine and improve our AML/CFT framework, is bolstered and extended by our efforts to work with international partners to strengthen AML/CFT regimes abroad. Given the global nature of money laundering and terrorist financing, and the increasing interrelatedness of the global financial system, a secure global framework is essential to the integrity of the U.S. financial system.

Treasury, along with others in the federal government, works closely with international counterparts to strengthen the global AML/CFT framework and promote implementation and enforcement of effective AML/CFT measures worldwide. To this end, we engage several intergovernmental and international organizations, such as the Financial Action Task Force (FATF), the IMF, the World Bank, the United Nations, and various FATF-style regional bodies, to develop, assess and facilitate implementation of effective AML/CFT laws around the world.

In recent years, within the FATF, we have helped lead efforts to revise and strengthen the global AML/CFT standards, including by incorporating measures to combat proliferation financing, tax evasion, and sanctions evasion. We have also led efforts to focus the next round of jurisdictional assessments on effectiveness and implementation, in addition to technical compliance with the global standards. Most recently, we have secured the FATF’s commitment to examine challenges of global compliance as a priority matter for all jurisdictions, within a broader agenda focusing on enhancing the effectiveness of AML/CFT regimes in combating the threats we face.

Through these efforts, we have established both a necessary foundation and a common set of expectations that will enable us to focus ongoing and future global AML/CFT efforts on the primary challenges we face in combating illicit finance and enhancing financial integrity. These challenges include the substantive areas of concern highlighted in recent bank enforcement actions, such as sanctions compliance (including by intermediary financial institutions), customer due diligence, AML programs, and correspondent controls. They also include cross-cutting AML/CFT issues such as enhancing information sharing to facilitate enterprise-wide risk management within global financial institutions, and aligning investigative, supervisory and compliance resources to focus on priority illicit financing risks and vulnerabilities. Thus, as we examine these issues with a view towards improving the effectiveness of our own AML/CFT regime, we are also working internationally to inform and strengthen similar efforts in other financial centers.

Conclusion

The United States is home to one of the strongest anti-money laundering and counter-terrorist financing regimes in the world. But clearly, there is work to be done to make our AML/CFT regime more effective and to elicit better compliance from financial institutions. We all have an interest in enhancing the effectiveness of our framework and better protecting our financial system from abuse. I look forward to working with this Committee on these critical issues, and would be pleased to answer any questions you may have.

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