UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

HEARING:

"A Review of Current and Evolving
Trends in Terrorism Financing"

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INTRODUCTION

I would like to thank Chairman Moore, Ranking Member Biggert, and the distinguished Members of this Subcommittee for the opportunity to testify today, and, I hope, to assist the Subcommittee in understanding the extraordinary events that have led to one of the largest abuses on record of the U.S. banking system and to share some thoughts about what went wrong and what steps can be taken to prevent or at least reduce the risk of such occurrences in the future.

In 27 years of law practice, I have been involved in the investigation of some of the largest financial frauds (and instances of money laundering) in history. I served as US legal counsel to the worldwide Liquidators of the Bank of Credit and Commerce International ("BCCI"), which collapsed catastrophically in the early 1990s. Currently, I represent the Joint Official Liquidators of Madoff Securities International Limited and have also been involved in other cases involving fraud, money laundering and terror finance in the Middle East, Europe, South America, South Asia, Central Asia, and Central Africa.

The fraud that brings me before Congress today is probably larger than these, involves one of the most high risk areas of the world, and raises more fundamental concerns about the soundness of the U.S. banking infrastructure and anti-money laundering (AML) and anti-terror finance policies upon which we all rely to ensure that the American financial system is not used to facilitate criminal or terrorist activity. The fraud and money laundering that I wish to address involves the sluicing of approximately $1 trillion since September 11. It was masterminded by a Saudi named Maan Al Sanea using "The Money Exchange," a single over-the-counter money remittance company based in Al Khobar, Saudi Arabia, and shell banks and companies in Bahrain, the Cayman Islands and elsewhere. The Money Exchange ran more than $160 billion through a single bank account in New York, without any apparent scrutiny by the bank or the government of the purpose or destination of these massive movements of money. The Money Exchange was a separately operated division of a distinguished Middle Eastern trading partnership, Ahmad Hamad Algosaibi & Brothers (AHAB). The $160 billion that went through the Money Exchange's account in New York is only one part of an even larger fraud. Mr. Al Sanea employed American and British bankers who assisted in implementing the scheme. The fraud appears to have deprived its victims of more than $20 billion and involved funds transfers on a dizzying scale through the U.S. banking system. Yet there appear to have been no questions asked—not by banks, not by regulators, not by prosecutors—until the whole scheme collapsed. And even now, as the fraud has come to light, U.S. regulators and prosecutor appear willing to turn a blind eye to this enormous abuse of the U.S. banking system.

The vast sums involved here – approximately $1 trillion in transfers through New York in aid of a $20 billion fraud -- must raise fundamental concerns about the safeguards that have been put in place to prevent our banking institutions from becoming instrumentalities of terrorist financing or fraud or other financial crimes. Those who devote energy, as all of you do, to antiterrorism policy will recognize in these figures a very, very large haystack in which to detect the needle of terrorism finance. When one considers that the payments provided to failed Times Square bomber Faisal Shahzad were $5,000 and $7,000, and that the September 11 attacks required a few hundred thousand dollars – the dimensions of the challenge come very sharply into focus. We simply don't know where all the money went; but we do know this – if we could account for the vast majority of the funds, which we cannot, even a tiny percentage of $1 trillion could do incalculable damage to our country if it was sent into the wrong hands.

This is not to suggest that there is nothing that we can do because the system is so enormous and complex. Quite the contrary. These hearings today demonstrate that with vigorous oversight, searching inquiry, aggressive policies and strict, certain penalties to punish those who abuse the banking system or fail to follow the legal requirements, these challenges can be met. There are practical ways to target the suspicious haystacks and to better identify the needles within. There are constructive steps that can and must be taken to improve our chances of detecting fraud, money laundering, and terrorism finance activity within our banking infrastructure. But first, I would like to examine briefly the anatomy of this extraordinary fraud and how it depended upon the ability of an apparently super-rich Middle Eastern fraudster to use the inter-bank dollar clearing system in New York to effect giant dollar transfers for many years without meaningful supervision, oversight, or scrutiny—effectively at will. While this example is one of the largest, it only illustrates the scope of the problem and the need for action. The testimony of Simon Charlton, the lead forensic investigator into this fraud, which is also being submitted to the Committee today, will discuss the means and methods of the fraud as an illustration of the gaps in the system that need to be addressed.

ABUSE OF THE U.S. INTERBANK PAYMENTS SYSTEM

The overwhelming majority of the financial transactions involved in Al Sanea's scheme flowed through the United States, and in particular through the U.S. dollar clearing system in New York. Dollar transactions, U.S. correspondent bank accounts, and CHIPS were thus the indispensable instrumentality of Al Sanea's fraud. In fact, without the access to the U.S. dollar clearing system, the scheme could not have been successful. At its height, this scheme utilized at least 20 interbank accounts in Manhattan. The Money Exchange's main US dollar account was with Bank of America (BOA) in New York. The Money Exchange went to BOA and set up *its own* high-volume dollar clearing account. It told BOA up front that it expected to clear $15 billion through that account annually. BOA had full visibility into this account and direct contact with its customer, the Money Exchange.

The Money Exchange was purportedly a small walk-in money remittance business with seven branches based in the Eastern Province of Saudi Arabia. It also ran a small American Express franchise and owned a static portfolio of Saudi shares. It was not a bank; it was a basic hawala, assisting low-paid expatriate workers to transfer their modest earnings home, with a total transactional volume for its customers of perhaps $60 *million* per year in total. Nevertheless, it approached Bank of America and said it would like to open a correspondent account in order to transact $15 *billion* in payments annually. It should be noted that most remittances do not involve U.S. dollars at all, and that the sum total of *all* remittances from the entire Kingdom of Saudi Arabia amounted to about $21 billion in 2008, so it is difficult to see how this small business could legitimately generate $15 billion in transactional volume in a year.

At least four enormous red flags presented themselves on these facts: (i) a "high risk" region and country; (ii) a money remittance business that accepts money transfers for "walk-in" customers with whom it has no account relationship and no opportunity to do the due diligence necessary to understand those customers and their purposes in transmitting funds; (iii) a massive transactional volume; and (iv) a transactional volume vastly disproportionate to the customer's ostensible business.

One would expect—indeed, one would *demand*—under applicable "know your customer" and anti-money laundering and anti-terror finance rules, a very searching interrogation of this customer; a careful evaluation of its intended use of the account; of the source, destination, and business use of the funds flowing through; and, because the prospective customer is itself a financial institution serving the public, a thorough investigation of *its* anti-money laundering and know-your-customer policies.

Yet, in this case, our investigation has revealed no evidence of any significant due diligence or AML investigation by BOA of the Money Exchange in connection with the opening of the BOA account in 1998, or really at any time after the opening of the account – even after the imposition of much more strict anti-money laundering and know-your-customer requirements after the tragedy of 9/11. This is not to single out one bank, but banks are the first and most critical line of defense in the war against money laundering and terrorist finance. If I or any other small business owner walked into our neighborhood bank branch to open a business account, there would be an extensive protocol to find out what I did, what my payments in are, what my payments out are, what the pattern is and how that fits into what my business does. And if one month, I suddenly received double what I usually receive or large amounts move through my account, the bank would call me to find out what was going on. Under the US Patriot Act and post 9/11 regulations, such an inquiry would be mandatory, and critically important for an account maintained by a money service business like the Money Exchange.

BOA told AHAB's advisors last year that all of its pre-2001 records relating to the account were destroyed in the terrorist attacks on the World Trade Center and that it could not, therefore, provide any records relating to the opening of the account, although we would be quite surprised if a major national bank would have maintained its sole copy of critical records in downtown Manhattan. The Money Exchange records reveal some later due diligence in connection with proposed *loan facilities* sought by the Money Exchange from BOA. But with regard to allowing an over-the-counter remittance company in the Eastern Province of Saudi Arabia to open an account with an expected $15 billion annual throughput, there appears to have been no due diligence to speak of. Certainly, a bank can and should make inquiries regarding a customer to whom it extends credit to make sure it can be repaid. But with a customer who processes transactions for handsome fees per transaction, it appears that there was no need to ask too many questions.

There is another troubling aspect of the documentary record. In September 2006, the Manhattan District Attorney announced a settlement with BOA relating to serious AML lapses in BOA's handling of an account for a South American money remittance business. BOA "acknowledged that some of its internal anti-money laundering controls were deficient" and, in addition to paying $7.5 million to the D.A.'s office, promised to revise its AML policies, cooperate with prosecutors, and abide by any changes recommended by regulators to its compliance programs. The District Attorney, Robert Morgenthau, stated with characteristic wisdom, that "[u]nlicensed and unregulated money services businesses, foreign and domestic, pose a threat to the integrity of our nation's financial system and to our nation's safety. The banks and other financial institutions should be our first line of defense against illegal money entering the banking system. Today's settlement reminds us all of the importance of making sure that our financial institutions know the customers with whom they do business and that they adequately assess the risks associated with those customers." BOA agreed to continue working with the DA's investigation of "offshore remittance systems" including "casas de cambio, offshore money service businesses and money remitters" and their "role in international money laundering in and through New York County." The flow of funds through the BOA account in question over four and a half years was said to be "over $3 billion."

Literally at the same time it was under investigation and was negotiating this settlement with the DA's office, BOA was in communication with the Money Exchange, which was running about a $20 billion annual volume at that time. BOA asked the company to change its name to something without the words "Money Exchange," which might be a red flag to BOA's auditors or compliance officials. BOA also asked the Money Exchange to cease engaging in walk-in money remittance business. But this aspect appears to have been perfunctory and not to have been followed up. The Money Exchange simply proffered a new name not suggestive of money remittance services—it went from "Ahmad Hamad Algosaibi Brothers Money Exchange, Commission and Investment" to "Ahmad Hamad Algosaibi Brothers Finance, Development and Investment." It went right on doing walk-in remittance business. Its enormous movement of funds through its account at Bank of America remained unchanged. The truth is that if BOA had done its due diligence, it would have been immediately obvious that the throughput in the account actually had nothing to do with any money remittance business. And even the $15 billion a year predicted transaction volume was substantially exceeded. So BOA failed to ask why a money exchange would need to process $15 billion per year and went it started to process in excess of $20 billion or $30 billion per year, it failed to ask why there was an additional $5 or $15 billion per year in transactions. On a per transaction fee basis, this was all good, no-risk business for BOA.

The nature of the fraud required money to be cycled around, and much of the $160 billion that went through Bank of America represents debt service on and repayments of existing loans, new drawings, movements of money from the Money Exchange to other group entities also controlled by Al Sanea, and other movements, as well as some overnight placements, and most importantly the misappropriation of billions of dollars by Al Sanea. But by any measure, these are stunning dollar flows for a Middle Eastern money remittance business, even assuming it handles some transactions relating to its share portfolio or between companies within the AHAB group. The transaction volume in the BOA account is, of course, also only a fraction of the overall transaction volume relating to the fraud. We have partial sets of the correspondent account statements for other entities controlled by Al Sanea – Awal Bank and The International Banking Corporation (TIBC) – both located in Bahrain -- that suggest a combined volume of well in excess of half a trillion and probably close to one trillion U.S. dollars from mid 2003 to mid 2009 for the three entities. TIBC, for example, was the fourth largest wholesale bank in Bahrain at the time of its collapse. Yet its loan book was entirely a product of Al Sanea's fraud. Its sole purpose was to take loans from banks and then funnel the funds to Al Sanea through dummy borrowers. Awal Bank was equally a creature of Al Sanea's fraud and was, further, the bank of choice for the children of a foreign head of state who appeared to be using Awal Bank to launder funds.

As Mr. Morgenthau remarked in 2006, concerning the $19 billion in overall transaction flows revealed by his investigation of South American money service businesses that banked in New York (including one that banked at Bank of America), "[t]his enormous flow of money poses a grave risk to our security. It is also apparent that much more needs to be done, particularly by banks and other financial institutions, to know with whom they are doing business." Now the sums are much, much larger, the risks much graver, and it does not appear that more is being done. Had Bank of America taken basic steps to ascertain what the Money Exchange's business was, who its customers were, and the sources and uses of the funds, this fraud might never have happened or at least it would have been stopped much earlier. Again, I am not singling out one bank. Every bank needs to know that no matter how good the business, banks must be the gatekeeper and they must have systems and oversight that cannot be ignored. The fact that the accountholder is far away does not mean that the compliance department in the U.S. needs to do less, it probably means compliance needs to do more. Red flags must be recognized and investigated with diligence if security is to be maintained. If the region is high risk; if the financial transactions far exceed the volume that should be expected in the particular business; if the pattern of transactions is circular or otherwise suspicious; banks have to have systems in place to identify the risk factors and incentives to follow up with their customers. Anti-money laundering and anti-terror finance rules not only protect our country's security, they also protect against fraud and other criminal wrongdoing.

PROBLEMS AND SOLUTIONS

U.S. anti-money-laundering and anti-terror finance policy is a two-part defense, involving pre-event diligence by banks (backed by regulatory oversight and supervision) and post-event law enforcement where that diligence fails to detect or prevent money laundering. No system can protect itself from dirty money, fraud, or terror finance without diligent banks implementing their policies strictly and without consideration of how much profit the business generates. No system can protect itself without bank regulators that care as much about the abuse of the system as about the quality of the bank's assets. Clearly, the diligence element has failed here. If BOA could not or did not identify a problem on these facts, it is difficult to have high confidence in what Mr. Morgenthau called our "first line of defense." And if the regulators are not providing an essential check to ferret out accounts that have the red flags of money laundering, then the United States banking system will be the bloodstream that sustains global crime. It doesn't matter if the money is drug money from Latin America or terror finance from the Middle East or human trafficking profits from Southeast Asia or Southeast Europe. Dollars are the most common and important currency in the world and dollars all come through the United States. It is the responsibility of the United States banks and regulators to police the system with diligence.

I do not mean to single out BOA. Some banks do better than others, but the problem is systemic, and lies in the fact that the policeman is heavily incentivized to look the other way. I speak periodically to groups of bankers overseas about U.S. AML compliance, and we hear the same thing on both sides of the ocean: compliance officials within banks want to do their jobs but are too often regarded as the "Anti-Business Department" and marginalized from the important decision processes. Part of the goal of AML policy is to strengthen the hand of these good people in the internal debate that occurs within banks. There is also the problem of dollar accounts opened in New York for foreign clients when the New York office has no real relationship with the client and the relationship officer is based elsewhere. In this case, although bank officials in New York were designated for the account, the relationship was centered in London and the Middle East. Circumstances such as these complicate the compliance relationship between bank and customer: relationship managers based elsewhere do not have the same incentive to ensure the customer's compliance with U.S. banking regulations, and U.S. bank officials may be wary of damaging a business relationship based in an overseas office.

We have seen some movement by regulators recently to put teeth into administrative fines and thus equalize the incentive structure. But we are not yet there. Although fines involving numbers such as half a billion dollars sound impressive, they have to be evaluated by reference to the underlying business, and that business is extremely lucrative. They also have to be evaluated in terms of the rigor of the regulatory regime; the likelihood that the bank gets caught is as important as the amount of the fine. The bottom line is that fines are still viewed by banks as unlikely to occur, and if they do occur, they are a cost of doing business, and, until that changes, banks will not be good policemen. In this context, it is impossible to ignore that BOA took steps to suppress any red flags that might have been raised by the Money Exchange account at the very time that Mr. Morgenthau's office was investigating its compliance policies. So, at the time that BOA's incentive to police its accounts was at its height, it focused its attention instead on preserving its business relationship. Asking a customer to change its name to avoid scrutiny is not a discharge of a bank's Know Your Customer obligations. It is the very opposite.

Our regulatory regime also needs to make clear that if banks agree to open dollar accounts for customers, it doesn't matter if the relationship is based elsewhere, that customer must be subject to all of the scrutiny and rigor applied to someone who walks off the street in midtown Manhattan. Indeed, when the customer is in a high-risk part of the world, the customer should be scrutinized even more closely. With correspondent banking, due diligence in respect of the customer's customers is even more important. Out of sight out of mind is a recipe for disaster in international banking.

We are not aware of any investigations ongoing by the relevant regulator here: the Office of the Comptroller of the Currency (OCC). Nor are we aware of activity at FinCen concerning these events. We have met with officials at the Department of the Treasury and offered our assistance. I hope that that offer will be taken up.

Our experience on the second line of defense, criminal investigation and prosecution, has also been illuminating—and sobering. We understand that Congressman Peter King wrote to the Department of Justice, but we have received no requests for further information since then. All the prosecutors with whom we have spoken have raised similar concerns: (i) the case is large and complicated; (ii) it will be expensive and resource-intensive to investigate and charge; (iii) witnesses and documents are in many foreign countries (though all of our client's documents are available as are many of the key individuals who have cooperated with our investigation); (iv) the scheme involved a number of other jurisdictions, including Switzerland, Saudi Arabia, Bahrain and the Cayman Islands; and (v) the victims are primarily outside the United States.

These concerns are understandable, but they do not justify or excuse inaction. The US banking system was at the heart of the fraud. The United States *alone* possesses the resources and the tools to protect the global financial system from the perils of international financial crime, money laundering and terror finance. This fraud involves more than a dozen countries around the world—the United Kingdom, Switzerland, the Cayman Islands, Saudi Arabia, Bahrain, Qatar, Kuwait, Oman, the United Arab Emirates, France, Germany, Luxembourg, and Liechtenstein. Each of them has only a piece of the fraud; each can plausibly claim it only has the ability to see and investigate a small piece of a larger global problem; each can claim that some other country has the greater responsibility. But if international fraudsters and money launderers can cross borders with the click of a mouse and the response is a collective, "it's not our responsibility," this is a recipe for disaster. If the United States does not take on this responsibility, it will both undermine its own security and fail to do its part for global security interests. We would send a message to the world that it is OK to run a Madoff-sized fraud, with our banking infrastructure as its principal instrumentality, with impunity, so long as the fraudster operates from many jurisdictions and defrauds primarily foreign parties. That may be the easy response, but it is not a response whose consequences we can accept. Saudi Arabia is an important ally in the fight against terror finance and has its own interests in stopping money laundering. I have no doubt that if the U.S. underlined the importance of getting to the bottom of this massive abuse of the U.S. financial system that was engineered by Maan Al Sanea in Saudi Arabia, Saudi Arabia would certainly cooperate.

Legislation was introduced last year and is now pending before the Financial Services Committee that would impose severe legal disabilities on offshore banking centers for allowing their banking infrastructure to be used as an instrumentality of fraud. It seems to me that we can't have it both ways. If we expect other countries to regulate their banking systems so as to prevent or detect frauds that occur outside their borders, we must take on the same obligations. If there is a growing international norm of responsibility and reciprocal cooperation among nations to prevent money laundering, the United States must be at the forefront of that evolving ethos. And that means aggressively prosecuting people who commit fraud using our banking system.

I do not think that extensive new legislation is needed. The critical need is for strong oversight and firm priorities, together with clearly defined responsibilities and accountability. The potential for regular and aggressive criminal prosecution may also change a bank's incentives. The existing federal money laundering statute at section 1956 of the Federal Criminal Code is in fact very well tailored to this situation. It specifically provides that frauds that occur abroad trigger the statute and that money laundering is a chargeable offense in the United States if *any* part of the laundering transaction took place in the US. That occurred here, in spades: Al Sanea provided false balance sheets to banks, transacted with them using forged signatures, and drew on trade finance facilities based on wholly fictitious transactions—among other things—to the tune of tens of billions of dollars. Al Sanea set up correspondent accounts in New York and rolled hundreds of billions of dollars' worth of dirty dollar transfers through them.

Many commentators have remarked upon a pendulum-like movement in AML policy over time. If the Patriot Act marked the most recent upswing, I think it is fair to say we are on the backswing today. Indeed, in preparing for this hearing, I reviewed the excellent minority staff report prepared under the direction of Senator Levin entitled "Correspondent Banking: A Gateway of Money Laundering." It observes that "[c]orrespondent accounts in U.S. banks give the owners and clients of poorly regulated, poorly managed, sometimes corrupt, foreign banks with weak or no anti-money laundering controls direct access to the U.S. financial system and freedom to move money within the United States and around the world." It further observes that, although banks extending credit to a foreign financial services institution will normally conduct due diligence into the correspondent's "management, finances, business activities, reputation, regulatory environment, and operating procedures," such due diligence often "does not occur where there are only fee-based services, such as wire transfers or check clearing." The report concludes that poor AML compliance in correspondent banking puts or financial system and our nation at risk. These findings and conclusions, published on February 5, 2001, unfortunately are no less true today, almost ten years later, when we have learned with great regret how prescient that report was.

One must acknowledge, in fairness, that the Treasury and Justice Departments have a lot on their plates at the moment. But we have to be able to do more than one thing at a time. Powerful tools exist to address money laundering right now. They are not being used, in my view, as vigorously and consistently as they could be. In this case, we have discovered an international fraud of perhaps unprecedented proportions, involving close to a trillion U.S. dollars transiting CHIPS in Manhattan to and from Saudi Arabia and Bahrain, as well as London, Geneva, the Cayman Islands, and a number of other ports of call. We are prepared to provide full and extensive cooperation and assistance to any and all authorities that may decide to investigate this extraordinary criminal enterprise. We hope that they will.

I hope that my testimony and submissions have been helpful to the Subcommittee. We are submitting, along with this written testimony, a small selection of documents that may assist the Subcommittee in understanding Mr. Al Sanea's underlying fraud. We stand ready to assist the Subcommittee's work in whatever manner may be helpful. Thank you.