



Testimony of William J. Fox
Managing Director
Global Head of Financial Crimes Compliance
Bank of America, on behalf of The Clearing House

Before the U.S. House Financial Services Subcommittees on
Financial Institutions and Consumer Credit and Terrorism and
Illicit Finance

At the Hearing *Legislative Proposals to Counter Terrorism and Illicit*
Finance

November 29, 2017

Chairmen Luetkemeyer and Pearce, Ranking Members Clay and Perlmutter, and distinguished members of the Subcommittees, thank you for the opportunity to testify before you today. My name is William J. Fox and I am the Global Financial Crimes Compliance executive for Bank of America where I am responsible for overseeing from a compliance perspective the bank's efforts to comply with the Bank Secrecy Act and laws and administrative programs that establish and implement our nation's economic sanctions. I have served in that position since 2006. I also serve as Chair of the AML Summit group of The Clearing House, on whose behalf I am testifying today. Prior to joining Bank of America, I served eighteen years at the U.S. Treasury Department. In my last five years at the Treasury, I had the privilege of serving in roles directly relevant to the issues we are discussing today. I served as the principal assistant to General Counsel David Aufhauser, who was a lead point on coordinating the Bush Administration's terrorist financing efforts after September 11th. I finished my career at the Treasury by accepting an appointment from Secretary John Snow as the Director of the Financial Crimes Enforcement Network (FinCEN) where I served from December 2003 to February 2006.

The Clearing House commends the House Financial Services Committee and these two Subcommittees on their leadership regarding our nation's anti-money laundering and countering the financing of terrorism regime (AML/CFT regime). In a post-September 11th world, we believe it is critical to the overall health of our financial system, as well as our national security, to have a robust and effective national anti-money laundering regime that delivers a more transparent financial system and that is designed to help protect that system from abuse here in the United States and around the world. At The Clearing House we are proud of the fact that the financial information provided by our member institutions to law enforcement agencies is a source of highly valuable intelligence in their critical efforts to keep our nation safe from terrorism and criminal organizations. Financial intelligence is among the most valuable sources of information for law enforcement because money doesn't lie, money leaves a trail, and money establishes connections. It is not an overstatement to say that the intelligence provided by financial institutions under our AML/CFT regime is critically important to our national security.

The United States AML/CFT regime is primarily codified in a collection of laws commonly known as the Bank Secrecy Act (BSA). A majority of these laws were enacted in 1970. They require financial institutions to keep certain records and make certain reports to the government, including reports on cash transactions greater than \$10,000.00. The stated purpose for the establishment of the regime was to provide highly useful information to regulatory, tax and law enforcement authorities relating to the investigation of financial crime.¹ The Congress

¹ See 31 U.S.C. § 5311, which states that "[i]t is the purpose of this subchapter [the BSA] to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." Note that the last clause was added by the USA PATRIOT Act in 2001.

gave the authority to implement the regime to the Secretary of the Treasury and not to other agencies, thereby designating an agency with both financial and law enforcement expertise as its administrator. In the 1990s, the law was amended to require financial institutions to detect and report their customers' "suspicious" transactions. In addition, the Bank Secrecy Act gave the Treasury examination authority over financial institutions to assess their compliance with the law, which Treasury has since delegated to the various regulatory authorities according to institution type.² The Clearing House's member institutions can be subject to no fewer than five different regulatory authorities under the Bank Secrecy Act: the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit and Insurance Corporation, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, and the Commodities and Futures Trading Commission.

Following the tragic events of September 11th, the Congress passed and President Bush signed the USA PATRIOT Act of 2001. Title III of that Act was devoted to the financial aspects of the challenges of tracking and combating terrorism and terrorist organizations. The USA PATRIOT Act amended the Bank Secrecy Act by providing additional tools to meet those challenges, such as the authority to designate jurisdictions, persons, entities and products and services as being of primary money laundering concern. The Act also imposed additional requirements on financial institutions to, among other things, verify and record information relating to the identity of their customers; conduct enhanced due diligence on correspondent banks, private banking clients and foreign senior political figures; and to develop anti-money laundering programs with minimum requirements designed to guard against money laundering.

The enactment of the USA PATRIOT Act, more than 16 years ago, was the last time the Congress conducted a broad review or adopted significant amendments to our national AML/CFT regime. The current suspicious activity reporting regime remains largely unchanged since it was developed in the mid-1990s. Similarly, the large cash reporting regime remains largely unchanged since the Bank Secrecy Act was originally enacted in 1970. Just think of what has happened since that time. Today, most banking business can be conducted from your mobile phone. Both money and information move in nano seconds, and it is simple and common to move money across borders in a way never seen before. The suspicious reporting regime, which was originally based on a concept of providing law enforcement a narrative analytical lead, is today used as a data source for data mining by FinCEN and law enforcement. Even the concept of what constitutes money is evolving; today anonymous crypto-currencies are traded outside the formal financial system in a way that makes it increasingly difficult to know the source or purpose of the funds being moved. The Clearing House believes it is time to take a fresh look at our AML/CFT regime. We are fully committed to helping the Congress and various government agency stakeholders undertake this reassessment. We believe we are in a

² See 31 CFR § 1010.810(b).

moment where we can collectively make this regime more effective, efficient and relevant to the challenges we face in 2017.

While no official figures have been calculated, it can safely be estimated that The Clearing House's member institutions collectively spend billions of dollars annually discharging our responsibilities under our nation's AML/CFT regime. While financial institutions are committed to this work, we have come to believe that the mechanisms through which we discharge our responsibilities under our national AML/CFT regime are highly inefficient, and that a significant portion of what we do and what we report ultimately as effective as they could be in achieving the desired outcomes of the regime.³

To illustrate, let me give you some insight into our work at Bank of America. The goals of our financial crimes program can be articulated pretty clearly and succinctly: 1) First, be effective. That is, do all we can to protect our company by preventing the abuse of its products and services by criminals and terrorists and, at the same time make sure we get actionable information about suspected criminals and terrorists into the hands of officials who can do something about it. 2) Be efficient. Do this work in the most efficient way we can to fulfill our responsibilities to our shareholders. 3) Reduce the administrative impact these rules have on our customers who depend on financial institutions for their daily business.

To achieve these goals, I have a team of over 800 employees world-wide fully dedicated to anti-money laundering compliance, detection and investigation work, as well as economic sanctions compliance, filtering, blocking and rejecting.⁴ Today, a little over half of these people are dedicated to finding customers or activity that is suspicious. These employees train our customer-facing employees so they can escalate unusual activity; tune our detection systems to generate investigative cases; assess and analyze the financial crimes risks inherent in and the controls placed over our products and services; resolve investigative cases; and, when appropriate, report suspicious activity to the government. They also work on strategic initiatives aimed at understanding and reporting on significant financial crimes threats, such as foreign terrorist fighters; human trafficking, drug trafficking and other trans-national crime; and nuclear proliferation. The tools provided by the USA PATRIOT Act, particularly tools relating to

³ See *supra* Footnote 1. See also the FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual – 2014, Introduction on p. 7, which states that “[t]he BSA is intended to safeguard the US financial system and the financial institutions that make up that system from the abuses of financial crime, including money laundering, terrorist financing, and other illicit financial transactions . . . a sound BSA/AML compliance program is critical in deterring and preventing these types of activities at or through banks and other financial institutions.”

⁴ This number does not include other employees dedicated to anti-money laundering or economic sanctions compliance in Bank of America's lines of businesses, operations or technology teams. The over 800 employees in Global Financial Crimes Compliance at Bank of America is greater than the combined authorized full-time employees in Treasury's Office of Terrorism and Financial Intelligence (TFI) and the Financial Crimes Enforcement Network (FinCEN).

information sharing under Section 314(b), have been extremely valuable in these efforts. We have been told anecdotally by various policy and law enforcement agencies that the reporting we provide on these issues has been highly useful.

The remaining employees on my team and the vast majority of employees dedicated to these efforts in the business and operations teams that support our program are devoted to perfecting policies and procedures; conducting quality assurance over data and processes; documenting, explaining and governing decisions taken relating to our program; and managing the testing, auditing, and examinations of our program and systems. Our focus on these processes has had positive effects; it has brought discipline and rigor to our work. We spend significant time collecting defined enhanced due diligence on broad categories of customers that have been deemed high risk in regulatory guidance manuals, while we know from our own activity monitoring of their actual behavior that many of our customers that fall into those categories do not present high risk. Today compliance requires enhanced efforts relating to these broad categories that increase compliance costs and distract from those customers that present real risk. The danger, which this testimony delves into further below, is that at some point it becomes easier to exit certain businesses, or decline to serve legitimate customers, because the benefits of serving such markets or customers are outweighed by the cost. When legitimate businesses or individuals cannot be served by mainstream financial institutions, it harms economic growth and job creation. Indeed, the Federal Financial Institutions Examination Council's (FFIEC) BSA/AML Examination Manual, which provides the blueprint for federal banking examiners to examine our programs, focuses on banks' programs, not on providing actionable, timely intelligence to law enforcement, as the critical means to deter and prevent money laundering and terrorist financing.⁵

A core problem is that today's regime is geared towards compliance expectations that bear little relationship to the actual goal of preventing or detecting financial crime. This means that one can have a technically compliant program, but that program may very well still not be effective at preventing or detecting – and reporting – suspected financial crime. These activities require different skill sets, tools, and work. All of this begs the question: what is the ultimate desired outcome for our nation's AML/CFT regime in a post-September 11th world in 2017? What does our government want from the anti-money laundering programs required by the Bank Secrecy Act in financial institutions? What does it mean to have an *effective* anti-money laundering program in a financial institution?

⁵ See the FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual – 2014, Introduction on p. 7, which states that “[b]anking organizations must develop, implement, and maintain effective AML programs that address the ever-changing strategies of money launderers and terrorists who attempt to gain access to the U.S. financial system. A sound BSA/AML compliance program is critical in deterring and preventing these types of activities at, or through, banks and other financial institutions.”

The Clearing House believes there is much work to do to improve our framework and make it both more *effective* and more *efficient*. We believe that measurable outcomes or goals should be clearly and specifically defined for each component of our nation’s AML/CFT regime (including the anti-money laundering programs in financial institutions), and then agreed upon ways to measure the achievement of those outcomes or goals should be set and reported. From these outcomes or goals, priorities should be set for the AML/CFT regime. We believe this is the best way to build a regime that is ultimately *effective* in achieving the desired outcome of a robust and dynamic national AML/CFT regime that can efficiently and quickly adapt to address new and emerging risks. For financial institutions, we believe that such an exercise would change the focus from technical compliance with regulations or guidance, to building anti-money laundering programs that achieve the desired and measurable outcomes or goals of the regime. And we believe that setting measurable outcomes or goals, and then tracking progress to the achievement of these goals, is the best way to build anti-money laundering programs and a national AML/CFT regime that are both *effective* and *efficient*.

To that end, in early 2017, The Clearing House issued a report offering recommendations on redesigning our Nation’s AML/CFT regime to make it more effective and efficient. This report reflects input from a wide range of stakeholders and recommends reform through prioritization, rationalization and innovation.⁶ Many of the concepts found in the report are reflected in the “Counter Terrorism and Illicit Finance Act,” which is one piece of draft legislation we are discussing today. Our specific proposals are set forth below.

Prioritization

- ***The Clearing House believes our nation’s AML/CFT regime needs a “captain” to lead the improvement and enforcement of the regime, define measurable desired outcomes and set national priorities. We support the concept in the draft Counter Terrorism and Illicit Finance Act that would require the Treasury Secretary to set national priorities for our AML/CFT regime and study Treasury’s delegation of examination authority for complex, cross-border institutions that file a significant number of BSA reports.***

⁶ See The Clearing House, A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement, (“TCH AML/CFT Report”), (February 2017), available at https://www.theclearinghouse.org/~media/TCH/Documents/TCH%20WEEKLY/2017/20170216_TCH_Report_A_ML_CFT_Framework_Redesign.pdf. See also TCH press release “The Clearing House Publishes New Anti-Money Laundering Report,” (February 16, 2017), available at <https://www.theclearinghouse.org/press-room/in-the-news/29170216%20tch%20aml%20cft%20report>.

Our national AML/CFT regime suffers from the absence of an effective “captain” empowered to lead improvement and enforcement of the regime and to set national priorities and define desired outcomes. As referenced above, there are no fewer than eight (8) different entities with delegated responsibility to supervise, examine or audit financial institutions, as that term is defined in the Act. Each of the agencies has a different mission and focus.⁷ The banking agencies understandably tend to supervise and regulate with a view towards the safety and soundness of the institutions they regulate. The market regulators, on the other hand, regulate with an emphasis on ensuring market integrity. While the three (3) federal banking agencies have worked diligently with their counterparts to develop consistent approaches and guidance, which has been memorialized in the FFIEC BSA/AML Examination Manual, there are still significant differences in approach from each of these entities. Law enforcement authority is no less disjointed. There are five principal law enforcement agencies with authority to investigate money laundering — the Federal Bureau of Investigation, Homeland Security Investigations, the U.S. Secret Service, the Criminal Investigation Division of the Internal Revenue Service and the Drug Enforcement Administration. Each of these agencies has different albeit overlapping missions, and different priorities relating to our national AML/CFT regime.

There is evidence of how these competing and conflicting missions and priorities have negatively impacted one aspect of our global financial system: global correspondent banking, which is a principal way funds flow through the financial system. A recent set of articles in *The Economist* details the unfortunate consequences that the misalignment in AML/CFT expectations and standards has created as financial institutions have worked to balance fear of enforcement and supervisory expectations with the AML compliance costs of maintaining a global business. As the writers note, “[d]erisking chokes off financial flows that parts of the global economy depend on. It undermines development goals such as boosting financial inclusion and strengthening fragile states. And it drives some transactions into informal channels, meaning that regulators become less able to spot suspicious deals ... The blame for the damage that derisking causes lies mainly with policymakers and regulators, who overreacted to past money-laundering scandals.”⁸

The Clearing House believes that the Treasury should take a preeminent role in setting policy, coordinating and setting priorities, as well as in examining institutions’ compliance with,

⁷ Agencies with examination or audit authority are the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit and Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, the Commodities Futures Trading Commission and the Internal Revenue Service.

⁸ See “The great unbanking: swingeing fines have made banks too risk-averse,” *The Economist*, July 6, 2017, available at <https://www.economist.com/news/leaders/21724813-it-time-rethink-anti-money-laundering-rules-swinging-fines-have-made-banks-too-risk-averse>. See also “A crackdown on financial crime means global banks are derisking,” *The Economist*, July 8, 2017, available at <https://www.economist.com/news/international/21724803-charities-and-poor-migrants-are-among-hardest-hit-crackdown-financial-crime-means>.

and enforcing, our national AML/CFT regime. Treasury is uniquely positioned to balance the sometimes conflicting interests relating to national security, the transparency and efficacy of the global financial system, the provision of highly valuable information to regulatory, tax and law enforcement authorities, financial privacy, financial inclusion, and international development. Accordingly, The Clearing House supports the provision in the proposed *Counter Terrorism and Illicit Finance Act* that requires the Treasury Secretary, in consultation with law enforcement, national security, and others as deemed appropriate, to establish priorities for the U.S. AML/CFT regime, presumably in much the same way as our intelligence agencies establish priorities. These priorities would in turn be used to form the basis for the supervision and examination of financial institutions' AML programs. The priorities would also position financial institutions to detect and analyze the matters that are most important to the government. In addition, one of the key recommendations in The Clearing House report is that FinCEN should reclaim sole supervisory authority for certain large, multinational financial institutions. Accordingly, we support the provision in the bill that requires a report on the Secretary of the Treasury's delegation of examination authority for financial institutions that pose complex cross-border policy issues and file a substantial number of Bank Secrecy Act reports, which is a useful first step in this regard.

Rationalization

- ***The current regime needs to be rationalized in order to ensure information of a high degree of usefulness is reported to law enforcement and barriers to information sharing are removed. In addition, feedback from the government regarding the usefulness of the BSA reports financial institutions file would enable them to better tune their systems and help ensure they are focused on matters that are important to our national AML/CFT regime. The Clearing House supports the draft legislation's study of current BSA reporting requirements, enhancements to enterprise-wide suspicious activity information sharing, and inclusion of a federal beneficial ownership recordkeeping requirement.***

The Clearing House is proud that financial institutions' reporting under the Bank Secrecy Act has been highly useful to agencies that are focused on terrorism and financial crime. We also take pride in ensuring that our members' customers can conduct their financial transactions in a safe, secure and private manner. At Bank of America, we endeavor to report only when we truly believe that a customer's transactions or activity is suspicious, or when otherwise required by law. We have sophisticated systems and processes in place that assist us in identifying potentially suspicious transactions or activity. Due to our size and geographic footprint, we are among the largest filers of currency transaction reports and suspicious activity reports in the United States. Other than anecdotes about the usefulness of our reporting in particular cases (which are very much appreciated), we do not receive direct feedback from the

government on whether the bulk of our reporting is useful. At Bank of America, in order to try to measure the usefulness of our reporting, we have developed a metric tracking when we get follow-up requests from law enforcement or regulatory agencies for back-up documentation relating to our reports. Today we receive such requests in connection with roughly 7% of the suspicious activity reports we file. From my time in the government, I know that these reports are used in many different ways, some of which do not require back-up documentation requests. Based on that knowledge, I believe our reporting is far more effective than the metric noted seems to indicate. However, I do not know that for sure. This is important because we tune our systems based upon the decision to file a report. The danger of tuning systems without some validation from the ultimate users of the report is that we could be creating an echo chamber. The sharing of the general usefulness of the reporting we provide would significantly help us tune our systems more effectively. This does not have to be a complicated metric; just a simple thumbs up or down on whether a particular report was useful or not would provide meaningful assistance to financial institutions.

Measuring the usefulness of suspicious activity reporting would also help the government rationalize whether the reporting – which may be technically required under the law – is ultimately useful in achieving the goals of our AML/CFT regime. We are pleased to see the draft legislation would require a Treasury-led study to review the current reporting requirements under our AML/CFT regime.

The authorized and appropriate sharing of information between the government and the private sector as well as the sharing of information between and among financial institutions is critical to efforts to address terrorism and financial crime. We commend the Treasury, FinCEN, and other law enforcement agencies that have supported and facilitated innovative initiatives taken by financial institutions, including ours, to address problems like terrorism, human trafficking and other transnational crime. Such information sharing not only makes our programs more effective and efficient, it focuses our resources on what we believe are the most important matters. This sharing also helps us focus on people and entities that are attempting to abuse the products and services of our institutions, which is where our focus should be. We support the efforts to remove unnecessary barriers to information sharing, including those in the proposed legislation that would remove barriers to the sharing of information related to suspicious activity across financial institutions and within financial institutions on an enterprise-wide basis.

Relatedly, there are interesting public-private sector partnerships forming in various countries around the world. One such program is the UK's Joint Money Laundering and Intelligence Task Force (JMLIT), which brings together the private sector and financial law enforcement to address significant matters relating to financial crimes. Bank of America, and other major U.S. banks operating in the United Kingdom participate in the JMLIT, and we can

attest to its effectiveness. This program, and others like it, could be instructive as the United States works toward enhancing the effectiveness of its AML/CFT regime.

Finally, we support Congressional efforts to enact legislation that establishes a beneficial ownership reporting requirement on closely held, non-transparent legal entities. Financial institutions will soon be required to collect such information from their customers, yet the Federal Government, and importantly law enforcement, still does not have ready access to such information to assist them with their investigations. Financial institutions could utilize copies of their customers' filing documents to assist them with their customer due diligence efforts. Ultimately, this gap must be filled in order to address the flaws in the current regime – something The Clearing House is pleased to see has been incorporated into the draft AML/CFT legislation. We also support the inclusion of access to reported information for financial institutions to assist them with their customer due diligence compliance efforts.

Innovation

- ***One of the most pressing needs related to our national AML/CFT regime is to enable financial institutions to innovate their anti-money laundering programs. To that end, The Clearing House supports language in the draft bill encouraging innovation within an AML program as well as the provision requiring FinCEN to institute a no-action letter like process.***

One of the most pressing needs we face in enhancing our national AML/CFT regime is to enable financial institutions to innovate their anti-money laundering programs and coordinate that innovation with their peers. Let me give you an example, at Bank of America we have implemented robust transaction monitoring, sophisticated screening and filtering, and intelligence systems and processes all of which assists us in detecting suspicious activity and complying with our nation's economic sanctions. In 2010-11, we developed an innovative way to process and connect the disparate "events" that are produced by these systems, as opposed to reviewing each "alert" from these systems and resolving them in the order in which they were generated. This enabled us to create investigative cases that contained more holistic information about potentially suspicious activity and connect parties that were previously unconnected. This innovation allowed us to push more information through our systems that could be efficiently processed by machines. We also kept the "events" live for a much longer period of time, understanding that money laundering generally involves patterns of behavior, not single events. Since 2010-11, we have taken steps to significantly improve the stability and performance of our systems; however, we have found further innovation challenging to achieve. One reason for this is that changes to the parameters of our systems are now subject to the same validation rigor employed against complex economic models. These changes to our systems, which used to take weeks, now take anywhere from nine months to a year to implement. The same employees

whose expertise is needed to innovate are the employees who are now required to validate the changes we would like to make to our parameters. Like most financial institutions, we have begun to pilot innovative technologies commonly referred to as artificial intelligence. But in order to make AI work, you need the substantive expertise to develop the innovative processes. We think Christopher Mims aptly described the limitations of today's sophisticated algorithms in his article titled "Without Humans, Artificial Intelligence is still Pretty Stupid" in the *Wall Street Journal*.

The Clearing House supports language in the draft bill encouraging innovation within an AML program. We also support the bill's efforts to require FinCEN to institute a no-action letter like process, similar to the process instituted by the Securities and Exchange Commission. While rulemaking and the issuance of guidance are cumbersome processes that do not always promote innovation or dialogue with the industry, a no-action letter process could be more effective. It would allow individual financial institutions to ask particular questions about actions they plan to take, thereby spurring innovation; provide quick answers, thereby nurturing innovation; and increase the flow of information from industry to FinCEN.

Financial institutions need to be able to innovate alone or in concert with their peers as new technologies emerge that allow for both efficiency gains and improved threat assessments. Advances in technology have the potential to truly change the way in which institutions approach illicit finance threats, which can only enhance our nation's AML/CFT regime. It will be important for the government to encourage this innovation and provide responsible yet sufficient leeway to test and utilize these new systems and processes.

A focus on achieving measurable outcomes established for financial institutions' anti-money laundering programs will only encourage and enable this innovation. Another way to say it is that the government should define WHAT needs to be accomplished. The financial institutions should be given the freedom to figure out HOW to accomplish the WHAT in the most effective and efficient way that focuses on the people and entities attempting to abuse the system, and protecting their innocent customers.

I thank you for the opportunity to testify before you today on these important issues. The Clearing House stands ready to assist your efforts to modernize and enhance the effectiveness and efficiency of our nation's AML/CFT regime. We look forward to working with you on this important endeavor. I am happy to answer any questions you may have.