

TESTIMONY OF

Jacob Cohen

**Former Director, Office of Stakeholder Engagement, Financial Crime Enforcement
Network (FinCEN)**

BEFORE THE

**United States House of Representatives Committee on Financial Services
Subcommittee on National Security, International Development, and Monetary
Policy**

**“Promoting Corporate Transparency: Examining Legislative Proposals to Detect
and Deter Financial Crimes”**

PRESENTED at 2129 Rayburn House Office Building, Washington DC 20515

**March 13, 2019
2:00pm**

Chairman Cleaver, Ranking Member Stevers, and distinguished Members of the Subcommittee on National Security, International Development and Monetary Policy, I am honored by your invitation to testify before you today.

Today, I want to share my views on the importance of providing FinCEN and the Department of the Treasury with the appropriate resources to expand engagement and collaboration efforts with domestic and international stakeholders. While I will focus my remarks on FinCEN engagement efforts domestically, I will also touch upon Treasury engagements with foreign counterparts through its Attaché and technical assistance programs.

The increasing globalization of financial crime, sophistication of criminal actors, and complexities in AML/CFT regimes around the world requires focused and sustained engagement by FinCEN with U.S. financial institutions and other stakeholders. Expanding FinCEN's engagement, collaboration, and information sharing efforts with the private sector will enable FinCEN to continue adjusting to ever evolving threats, producing actionable financial intelligence and reporting to our public sector partners, while ensuring that the United States continues to have one of the most effective Anti-Money Laundering / Combating the Financing of Terrorism (AML/CFT) regimes in the world.

My testimony draws from the experience I have gained over the past eight years working to shape and implement initiatives to combat financial crimes and other national security threats with the Department of the Treasury, across the U.S. government, with experts and stakeholders in the international AML/CFT community, and the private sector.

Importance of Engagement

The current AML/CFT landscape in the United States and around the world is complex, dynamic, and requires FinCEN and its private sector partners to constantly adapt. The global dominance of the U.S. dollar generates trillions of dollars of daily transactions through U.S. financial institutions, creating significant exposure to potential illicit financial activity and other crimes. This places FinCEN and U.S. financial institutions at the forefront of combating financial crimes. To continuously adapt to the ever-evolving threats to our financial system, FinCEN must have the resources to regularly and systematically engage with financial institutions and other stakeholders.

As the former Director of the Office of Stakeholder Engagement within FinCEN's Liaison Division, I oversaw FinCEN's outreach efforts domestically and internationally. My focus was on developing collaborative partnerships with regulators, industry, law enforcement agencies, and foreign financial intelligence units (FIUs) to identify areas for mutual collaboration and maximize the use of financial intelligence to combat threats to our financial system. In this role, I found that FinCEN had limited resources to systematically engage and collaborate with the private sector given the scope of FinCEN responsibilities and the number of threats facing our financial system. As you consider how to strengthen FinCEN's ability to deter, detect, and disrupt all forms of illicit

financial activity, I urge you to support greater engagement, collaboration, and information sharing by FinCEN with the private sector.

FinCEN plays an often understated, but outsized role in protecting the integrity of our financial system. Created in 1990, FinCEN's mission is to safeguard the financial system from illicit use, combat money laundering, and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. To fulfill this mission, FinCEN serves two roles. First, as the financial intelligence unit for the United States, FinCEN is responsible for the collection, analysis, and dissemination of financial intelligence to law enforcement agencies and other relevant authorities. Second, as the lead AML/CFT regulator for the federal government, FinCEN is responsible for implementing, administering, and enforcing the Bank Secrecy Act (BSA), the United States' primary AML/CFT regulatory regime.

Current Engagement Efforts

To effectively carry out these roles, FinCEN engages and shares information with the private sector domestically through a variety of mechanisms, including Bank Secrecy Act Advisory Group (BSAAG) meetings, sharing information through public and non-public advisories to financial institutions, and select speaking engagements. However, these engagement efforts are not sufficient to keep up with the challenges facing industry and the increasing calls from the private sector for more information so it may better detect and deter financial crimes.

A key mechanism FinCEN uses to engage with industry is the BSAAG meetings. Held twice a year, BSAAG meetings allow FinCEN and other regulators to have frank discussions with a cross-section of industry representatives regarding the health of the U.S. BSA/AML regime. These meetings facilitate discussions on money laundering risks compared to regulatory obligations, feedback to industry on the use of SARs, and other areas that may require regulatory clarity or an advisory. These meetings with public and private sector stakeholders are tremendously valuable in assessing the effectiveness of the BSA/AML regime and represent the foundation of FinCEN's efforts to promote consistency across our regulatory regime, build collaborative partnerships with industry, and protect the U.S financial system. However, engagement with a small fraction of financial institutions twice a year is not sufficient to generate the level of collaboration, continual exchange, and learning that FinCEN and the private sector need to engage in to stay abreast of emerging threats, and identify innovative approaches to continuously update and modernize our BSA/AML regime.

Another important mechanism FinCEN uses to communicate with industry is through its Financial Institutions Advisory Program. FinCEN issues public and non-public advisories to alert industry of specific suspicious activity possibly related to money laundering or terrorist financing. These advisories often contain illicit activity typologies, red flags to facilitate monitoring, and guidance on complying with FinCEN regulations to address threats and vulnerabilities. Advisories provide valuable and actionable information to financial institutions that allows them to enhance their AML monitoring systems and

produce more valuable reporting. Generating these advisories requires significant FinCEN engagement with law enforcement agencies and financial institutions, among other agencies and stakeholders. Due to limited resources dedicated to engage stakeholders, not to mention limited analytical support, FinCEN publishes advisories infrequently. This is evidenced by the low number of threat specific advisories issued by FinCEN in 2016, 2017, and 2018 when it issued 2, 5, and 3 advisories, respectively. Notably absent during the past three years were FinCEN advisories on human trafficking, trade based money laundering, fentanyl, and virtual currencies, among others.

Enhancing Engagement Efforts

The Treasury Department and FinCEN play a key role in protecting the integrity of our financial system and combating national security threats. Today, I would like to express my strong support for a few provisions in the discussion draft, “To make reforms to the Federal Bank Secrecy Act and anti-money laundering laws, and for other purposes” that I believe will enable FinCEN and Treasury to continue to meet the challenges facing our financial system.

Domestic Liaison Program

The breadth and scope of FinCEN’s responsibilities require ongoing engagement and collaboration with stakeholders beyond the beltway. I believe that providing FinCEN with the resources to establish a Domestic or Regional Liaison Program would allow FinCEN to meaningfully and systematically engage with financial institutions, large and small, federal, state, local and tribal partners, and non-traditional stakeholders like non-governmental organizations. The benefits of such a program would be substantial. Specifically, Domestic Liaisons in cities such as Miami, Los Angeles, San Francisco, Chicago, New York, and Dallas would allow FinCEN to:

- Readily identify region specific illicit finance risks working with industry and law enforcement agencies to potentially issue region or industry specific advisories or geographic targeting orders;
- Partner with federal law enforcement agencies and task forces on cases of strategic importance;
- Receive regular feedback from financial institutions regarding the operations of the U.S. BSA/AML regime;
- Communicate priorities and guidance more directly and with greater frequency to stakeholders;
- Stay abreast of opportunities and challenges of BSA/AML-related innovation.

On this last point I would add that as banks and non-bank financial institutions pursue innovative change, early engagement would allow for a better understanding of their approaches, as well as provide a means to discuss expectations regarding compliance and risk management. Monitoring industry developments throughout the country and encouraging responsible innovative approaches in BSA/AML compliance programs will enable FinCEN to stay at the forefront of BSA/AML-related innovation.

FinCEN Exchange Program

In December 2017, FinCEN launched the FinCEN Exchange Program to enable greater information sharing between the public and private sectors. FinCEN and U.S. law enforcement agencies rely on financial institutions to file SARs and other reports to identify and disrupt illicit financial activities. However, in many cases, financial institutions do not have adequate information about the nature of the illicit financial activity and as a result are unable to produce actionable information about the threats of greatest concern. Sharing information about specific threats would enable FinCEN and law enforcement to provide guidance that would permit financial institutions to more effectively allocate limited resources to identify and report illicit financial activity. This two-way sharing of information would also create a positive feedback loop allowing FinCEN to share the typologies learned from these exchanges with the broader financial community, enabling other financial institutions to identify and report similar activity.

This important initiative should be supported with dedicated resources for FinCEN to conduct the necessary research and analysis, and to increase its engagement with U.S. law enforcement agencies and the private sector. Moreover, supporting the Domestic Liaison Program would enable the FinCEN Exchange Program to inform and shape its information sharing efforts to address the needs or threats faced by financial institutions in regions where FinCEN has a domestic liaison.

International Engagement

Treasury Attaché Program

The U.S. Department of the Treasury engages with foreign counterpart agencies, foreign financial institutions, and foreign companies to advance U.S. sanctions policy, advocate for the implementation of international AML/CFT standards, and combat financial crimes threats. Treasury Attaches play a key role in advancing these efforts. However, limited resources and the small footprint of the Attaché program forces Treasury to play a zero-sum game, essentially closing programs in countries that might still offer significant value when a new program elsewhere is required. The Treasury Attaché program covers only a small fraction of the overseas presence of U.S. law enforcement and other U.S. agencies. Allocating resources to place more Treasury Attaches in countries of strategic importance to the United States would be a welcomed step.

Technical Assistance

The Treasury Department, through its Office of Technical Assistance (OTA) promotes compliance with international standards and best practices, in particular the Financial Action Task Force (FATF) Recommendations, aimed at the development of effective AML/CFT regimes. OTA's Economic Crimes Team provides technical assistance to foreign counterpart regulatory, law enforcement, financial intelligence units, and judicial authorities tasked with ensuring a safe, sound and transparent financial system. These

efforts are particularly valuable when OTA works with countries of strategic importance to the United States. OTA's approach entails strengthening and integrating the work of the entire spectrum of AML/CFT stakeholders, but with a specific focus on the financial intelligence units as the lynch pin of an effective AML/CFT regime. As a result, this engagement enables FinCEN to engage in more productive information sharing relationships with FIU partners around the world.

Conclusion

The current AML/CFT landscape is complex and requires focused and sustained engagement by FinCEN with its domestic and global partners. While these proposals would enhance FinCEN's ability to increase industry engagement, without the proper resources to support these new requirements you will be placing additional burdens on an already resourced strained Bureau.

From my experience, one of the greatest challenges for FinCEN has been its ability to hire and retain mission critical staff. FinCEN is at a disadvantage because it competes for the same intelligence, policy and enforcement experts with the Federal Banking Agencies (FBA), Law Enforcement, and Intelligence Community that have either higher salaries, special hiring authority, or both. The proposal included in the discussion draft to allow the Director of FinCEN to set salaries at the levels of the FBAs will position FinCEN to better compete for quality candidates; however, I would also urge this Committee to consider providing FinCEN special hiring authority to recruit high quality candidates for mission critical, hard-to-fill positions. This would go a long way to ensure FinCEN is best positioned to achieve continuous collaboration and information sharing with the private sector to effectively address emerging challenges, while simultaneously identifying new approaches to combat financial crimes.

Thank you for the opportunity to testify today and for your continued efforts to strengthen Treasury and FinCEN's efforts to protect our financial system. I look forward to your questions.