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Memorandum for the Record

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Prepared by: John Roth
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Present, non-Commission: Judith Starr, Esq., Tom McGivern, Esq., Michael Rosenberg
Participants-Commission: John Roth and Doug Greenburg

This memorandum provides a summary of the most important points covered in the above-entitled interview, but is not a verbatim account. The memorandum is organized by subject and does not necessarily follow the order of the interview. The witness provided all of the information in this memorandum during the interview, except where noted by square brackets.

Michael Rosenberg is the Deputy Director for Enforcement at the Financial Crimes Enforcement Network (FinCEN). After receiving a BA from Lehigh and a JD from Tulane Law School, Rosenberg interned for the Department of Defense for two years. Following that, in the early 1990s, he joined FinCEN, where he has remained ever since. He has worked at FinCEN in a variety of offices, including Congressional Affairs, Investigative Support, and immediately prior to being picked for this position, in the Office of Strategic Analysis, studying non-traditional methods of moving money.

Operations is divided into four offices: Office of Investigative support (OIV), which conducts case support in reactive and proactive reports as well as conducting general law enforcement liaison; Office of Strategic Analysis (OSA), which produces long-term analytical studies, SAR analysis and advisories; Office of Regulatory Programs (ORP) which administers the BSA, conducts regulatory enforcement, outreach and guidance to financial institutions, and implementation of section 314 of the USA PATRIOT Act (USAPA); and Office of Intelligence (OI), which was the subject of a separate interview of Judith Knez, dated November 5, 2003.

Rosenberg provided a one-page outline, indicating eight different "themes" of Enforcement, which is attached. This MFR will only discuss the pertinent details of his presentation, and does not necessarily follow Rosenberg's organization.

Rosenberg's first theme involved "providing expertise to the field." Among the ways that FinCEN provides expertise to the field is with its study on Informal Value Transfer Systems (IVTS), which was required for a report mandated by section 359 of the USAPA. He described FinCEN's knowledge before the report as "awareness"

knowledge:" they knew the problem existed, like many others in the field, but they had no in-depth knowledge of the means and methods or potential counter-strategies. Rosenberg stated that as early as 1998 FinCEN was aware of hawalas, had produced a report regarding the subject and had two key employees who were experts on IVTS. When questioned, he acknowledged that the in-house experts on IVTS had left FinCEN by the time of 9/11 (one gone; one detailed to another agency), and FinCEN was not doing substantial work in the area. To understand hawalas after 9/11, FinCEN conducted direct outreach to a number of law enforcement agencies, primarily those attached to High Intensity Financial Crimes Areas task forces (HIFCAs), conducted an analysis of BSA data, and hired an academic expert for the international part of the problem (Dr. Nikos Passas from Temple University, now at Northeastern University). They also talked to a number of hawala operators as well as traditional financial institutions. FinCEN produced a report to Congress (available on their website), published materials and have conducted outreach to law enforcement agents across the country at seminars as a result of their research. They are conducting a second, similar study, involving the use of trade diversion, commodities and false invoicing as a method of terrorist financing and money laundering. In reaction to 9/11, they have also updated some materials on wire transfers and other guides for law enforcement.

Secondly, FinCEN conducts vulnerability studies, in which they analyze BSA data to assess risks of money laundering/terrorist finance in various areas. He pointed to the Russian money flow study (done in the late 1990's) and a PowerPoint presentation of money transmitters as examples of this type of work. Ongoing work includes a study of stored value and internet payment systems to engage in money laundering. A second analysis they are conducting concerns the cash letter process, in which negotiable instruments are smuggled abroad to be negotiated and then cleared in US banks. Each of these studies is being done to attempt to determine regulatory loopholes, determine future trends, and to work with the industry in an attempt to make them aware of the issues.

A third "theme" Rosenberg stressed involved enhancing ongoing law enforcement investigations, both in a proactive targeting sense as well as in conducting analysis at the request of law enforcement agencies in the field. Rosenberg indicated that such reports will describe generally the BSA data associated with a subject. This includes Suspicious Activity Reports (SAR), Cash Transaction Reports (CTR), International Transportation of Currency or Monetary Instruments Report (CMIR) and Form 8300 (cash received in a trade or business). Additionally, if requested, they will run a check of commercial databases as well as law enforcement database queries, such as from Customs, and FBI. If there are positive law enforcement hits, FinCEN will note the hits in the report, in the hope that the agencies will get together and share information.

Rosenberg was shown a couple of reports [Barakaat, RTR 03002526 and Benevolence, RTR 03002536] and asked if these were typical of the types of reports produced. He acknowledged that they were and described FinCEN's need to try to balance quality and quantity. He stated that FinCEN gets so many requests that it is tough to do very much on each individual request. Additionally, he stated that they attempt to prioritize the cases to give important ones more attention. He further stated their efforts to prioritize

were hampered because law enforcement was not open to giving feedback. Rosenberg stated a lack of feedback from law enforcement was a continual problem. When questioned, he stated that the issue had been brought up by Jim Sloan (FinCEN director) to Dennis Lormel (Chief, FBI Terrorist Finance Operations Section), for example, but no reason was given why feedback did not occur. He stated that he experienced similar problems with ICE as well. Rosenberg speculated that it was part of the agent mentality to keep things on a need to know basis.

With regard to data analysis and enhancements, Rosenberg indicated that FinCEN is making great strides to further improve. Currently, BSA data is handled by the IRS Detroit Service Center, which controls the methods of access to the data. Essentially, under the current system, BSA information can be accessed through the "Gateway" system, which is limited in the number of ways information can be retrieved [see Treasury IG report # OIG-99-032, *The Financial Crimes Enforcement Network Suspicious Activity Reporting System*, January 25, 1999]. Additionally, each different database must be accessed separately, which involves querying data a number of different times (4 SAR databases, 2 CTR databases, a CMIR database, and FBAR database and an 8300 database). Within FinCEN, the process is much easier because they can use the SQS system, which allows for enhanced functionality and allows searches to be conducted in a more flexible manner (by geography, for example, or the industry, the institution, or the violation type). It also allows for searches across the narrative field, which is very useful. Additionally, FinCEN sponsors a "platform" program, which gives locally based law enforcement agencies access to the system in a manner similar to that of FinCEN employees. This allows locally based agencies to use the SQS system and act as a liaison for their agency or police department.

FinCEN is improving the functionality of access to system. A program called "BSA Direct" is being developed which will allow a single point of contact. This was initiated as a result of a recognition of the limitations of the Gateway system, and is expected to correct many of the limitations inherent in the system. It should increase user friendliness, give immediate and more simplified access and place all BSA data together. It will also allow the user to search the narrative field, plus allow them to "drill and slice" the data in ways that they could not before. Additionally, it will allow the user to port directly to a program called "visual links," which allows for a graphical depiction of the relationships between persons and accounts. Additionally, FinCEN is developing something called ASIS, which is an access database that will allow other types of data manipulation to take place. Notwithstanding the improvements, FinCEN continues to train users on Gateway, likening the process to fixing the airplane while still flying it. Rosenberg also highlighted the public-private partnership with BENS and the Warton School of Business [see interview of K. Varney, September 10, 2003], in which they are attempting to create an idealized design of a suspicious activity report, work on SAR reporting system improvements, and survey the law enforcement and financial community.

Rosenberg's fifth point involved what he termed outreach to the law enforcement community. Specifically, FinCEN is on a number of law enforcement working groups

formed to solve particular issues. For example, FinCEN participates in working groups relating to the use of the internet in terrorist finance, with a black market peso exchange working group headed by ONDCP, and with a drug trafficking/financial information working group called project fusion.

Rosenberg's sixth theme involved the regulatory outreach that FinCEN conducts with the financial community. He cited trend studies and guidance regarding SARs contained within FinCEN's semi-annual publication on SARs. Additionally, in response to industry input, they are moving to make their SAR studies more detailed. Rosenberg also noted the Bank Secrecy Act Advisory Group, which is a meeting of regulators, law enforcement and industry that takes place twice each year. It has recently been expanded to include industries not previously regulated, such as securities broker-dealers and the like. FinCEN also assists in reaching out to money services businesses (MSBs), which is a huge newly regulated financial segment. In response to a question, Rosenberg stated that the IRS was very understaffed for this mission, both in attempting to audit the MSBs who have registered as well as attempting to identify the unlicensed informal value transfer outlets currently operating. Rosenberg described the MSB industry as a huge vulnerability. He also noted that the vast array of financial industries now regulated as a result of the USAPA, including casinos, securities exchanges, insurance, the travel industry, pawn brokers, require a more significant outreach. Rosenberg described their efforts as piecemeal, but that they "were getting out there the best we can." He also noted that FinCEN operates a regulatory help line and operated a 1-800 number so that banks could report suspicious activity related to terrorist financing. They received 802 referrals during the time period that line was operational.

Rosenberg considers the USAPA section 314(a) process of notification a FinCEN success story. [In describing this area, Rosenberg was assisted by FinCEN general counsel Judith Starr, who joined in and added comments]. FinCEN determined that the general language of 314 allowed them to set up a system in which FinCEN would "blast fax" law enforcement queries to many different financial institutions at the same time and require them to search their records to determine whether they would have any pertinent records. If law enforcement gets a positive response from an institution, they can follow up with a subpoena to determine the content of the records the financial institution is holding. To date, there have been 142 requests from law enforcement (57 of them related to terrorism), and financial institutions have made over 6,000 positive responses. Rosenberg and Starr stressed the massive number of financial institutions in the network – over 29,000 as of September of 2003. Under the current process,[1] an inquiry is sent by FinCEN every two weeks, requiring a two week response time by the banks. Additionally, if there is an emergent situation, a request can be sent any time, with as fast a turnaround time as is necessary. Such expedited requests have to be approved by

[1] Starr indicated that the initial 314 process did not work very well, in that the requests were not vetted and the banks were not prepared. In response, FinCEN imposed a moratorium on new requests and formed a law enforcement/industry working group to develop new procedures. Now, all requests are vetted through the ASAC as well as the agency representatives at FinCEN, and are to be used only for major money laundering and terrorism cases.

FinCEN's general counsel, and have been used several times so far, with successful results.

Rosenberg noted that his seventh theme, international cooperation, was largely covered by William Baity [see, Memorandum for the Record, November 5, 2003].

Lastly, Rosenberg's final theme, relating to assistance to the military, involves a future classified project to assist the military.