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***The role of the FIU in combating transnational organized crime,
including working within government, with overseas governments and with business***

It is a pleasure to be here to participate in this Anti-Money Laundering and Counter-Terrorism Financing (AML/CFT) Conference as the flagship AML/CFT event in Australia and the Asia-Pacific region in 2011. Although I join you today from literally halfway around the world, I am going to focus my remarks on an issue that affects each one of us very closely – the threat of transnational organized crime (TOC). The boundaries of what can be described as transnational organized crime are not fixed,¹ but the term likely brings to you images of traditional global drug trafficking, the tragedies of human trafficking, or modern trends in cyber crime or investment fraud schemes.

In virtually every jurisdiction we focus police powers and law enforcement resources to protect our people against serious and organized crime. When we add the word transnational, this aspect takes the threat to a different order of magnitude, not only in terms of the bad acts, but also in the challenges to address them, since unlike these criminal activities, our police authorities reflect the contours of our jurisdictional borders. A colleague from the U.S. Department of Justice testified last week about the challenges in prosecuting transnational organized crime: “while the effects are felt here in the United States, the perpetrators, witnesses and evidence reside abroad, often in jurisdictions unable or unwilling to cooperate with our investigative efforts.”²

¹ See Appendix for a description at the beginning of the U.S. National Strategy Against Organized Crime.

² [Statement of Assistant Attorney General Lanny A. Breuer](#) before the Senate Judiciary Subcommittee on Crime and Terrorism, November 1, 2011. Mr. Breuer elaborated further: “Take a few simple examples.

And the threat of transnational organized crime is only growing. In recognition of this threat, and the need to draw across a range of governmental authorities as well as call upon partners overseas to combat this threat, the United States Government in July of this year announced a comprehensive strategy to combat transnational organized crime. I would like to provide you a brief overview of that strategy, but then focus on the elements most relevant to all of us here today working with Financial Intelligence Units (FIUs) on AML/CFT issues.

Whenever I approach AML/CFT issues, whether in a conversation with an individual financial institution or other reporting entity about how to approach their regulatory obligations, or in looking at macro aspects such as participating in the development of a national strategy to combat a specific category of threat, I try to break it down into two distinct steps: first, identifying the risks; and then second, considering what tools are at our disposal to reasonably mitigate those risks, mindful of possible unintended consequences and also wishing to allow legitimate economic and commercial activity to flourish. We know that criminal activity, and in particular organized criminal activity is motivated by profit, and hence, our AML/CFT efforts are critical tools to deter and detect organized crime. Taken at a transnational level, by size and scale the criminal actors can become only more dependent upon the global financial system to launder and attempt to invest and benefit from the proceeds of crime.

This is why our global AML/CFT efforts are such a critical tool in the arsenal to combat transnational organized crime. It is the responsibility of all of us here today – from government and private industry, working together in a partnership – to turn the reliance on the global financial system into a vulnerability for these illicit actors. A lynchpin of all this is the role of the financial intelligence unit, in particular when FIUs from different jurisdictions work together to help bridge the gap across jurisdictional border to share information in support of law enforcement efforts to combat transnational organized crime.

The key role for FIUs was foreseen more than a decade ago when the United Nations General Assembly adopted the UN Convention on Transnational Organized Crime, urging all nations to establish an FIU as a critical component in the efforts to combat these threats. I would like to share with you some of my perspectives on what FIUs are doing in this regard, and what more we need to do together with your help. Hence, I will try to touch upon all aspects of the title of this session: the role of the FIU in combating transnational organized crime, including working within government, with overseas governments and with business.

Organized cyber criminals direct cyber attacks from abroad that target United States citizens and steal their identities for the purpose of raiding bank accounts or placing fraudulent credit card purchases. Other organized criminals commit crimes abroad and launder and maintain funds in the United States, without ever traveling to our shores, and sometimes through the use of U.S. shell corporations."

Background on FinCEN

But first, to provide some context about myself and my agency for those unfamiliar with us, let me tell you a little more about the Financial Crimes Enforcement Network (FinCEN). The easiest way to do this is to confirm that we are very much like the Australian Transaction Reports and Analysis Center (AUSTRAC). FinCEN's mission is to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems. FinCEN serves as the financial intelligence unit of the United States to collect, analyze, and disseminate financial intelligence in support of law enforcement investigations and prosecutions.³ We also regulate financial institutions, broadly defined, for AML/CFT purposes.⁴

As our host, John Schmidt, stated in his opening remarks, our experience has also been that the FIU and regulatory efforts are mutually reinforcing. And we share a common view of the need to take a global approach to our work together with our FIU and regulatory counterparts. And although the United States population and its financial system is obviously much larger than that of Australia, you also may be interested in knowing that we are of a similar size and structure to AUSTRAC with just over 300 employees, which further cements not only the interest but also the necessity for FinCEN to partner with and leverage its efforts through other agencies, such as criminal investigators and prosecutors, financial supervisors in helping us ensure regulatory compliance among financial institutions, and our international counterparts.

³ See 31 U.S.C. § 310(b) Director.—

(1) Appointment — The head of FinCEN shall be the Director, who shall be appointed by the Secretary of the Treasury.

(2) Duties and powers.— The duties and powers of the Director are as follows:

* * *

(B) Maintain a government-wide data access service, with access, in accordance with applicable legal requirements, to the following:

(i) Information collected by the Department of the Treasury, including report information filed under subchapter II of chapter 53 of this title (such as reports on cash transactions, foreign financial agency transactions and relationships, foreign currency transactions, exporting and importing monetary instruments, and suspicious activities)

* * *

(C) Analyze and disseminate the available data . . . to—

(i) identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies;

* * *

(v) determine emerging trends and methods in money laundering and other financial crimes;

(vi) support the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism; and

(vii) support government initiatives against money laundering.

* * *

(H) Coordinate with financial intelligence units in other countries on anti-terrorism and anti-money laundering initiatives, and similar efforts.

⁴ See Treasury Order 180-01, "Financial Crimes Enforcement Network," (September 26, 2002), delegating the authority of the Secretary of the Treasury to administer the regulatory provisions of the Bank Secrecy Act, which is the primary AML/CFT regulatory law in the United States.

Based upon the foregoing, and building upon our common values, heritage, language and legal traditions, it will come of no surprise to you that—notwithstanding the physical distance—FinCEN and AUSTRAC have forged a strong partnership and close collaboration over the years. Some highlights include the establishment of a memorandum of understanding for the sharing of information back in 1996; as will become clearer in the course of my remarks today, that cooperation in support of law enforcement investigations is more important than ever. More recently, we have been working to share more information on regulatory issues and approaches.

For instance, I understand that just this past month AUSTRAC implemented changes to its requirements with respect to Threshold Transactions Reports (TTRs), to require reporting entities to provide additional details when an individual other than the customer of a designated service conducts a transaction. FinCEN has had a similar requirement in its analogous threshold reports for cash transactions in excess of USD 10,000 for decades, and I can confirm to you that this information about the person conducting the transaction adds significant value.

In the course of this week here in Sydney, I look forward to continuing to draw upon AUSTRAC's experience in collecting and analyzing international funds transfer instructions (IFTIs), for which AUSTRAC has been a global leader among FIUs for the past generation. IFTIs were a focus of my last learning visit to Sydney three and a half years ago. In September 2010, FinCEN issued a regulatory proposal to require analogous reporting of what we refer to as cross-border electronic transmittals of funds. And we are each committed to looking at new ways to leverage technology for our work, especially in looking at large volumes of data to focus on the emerging trends and areas of greatest risk. FinCEN is currently in the course of a multi-year IT modernization effort, so I hope to get further insights in that regard in the course of my visit this week.

FinCEN and AUSTRAC have also tried to leverage and complement each other's efforts on the international front. It was in 1995 that our agencies spearheaded the effort with a few like-minded counterparts to establish the Egmont Group. It is in recognition of those successes that it has become globally recognized in United Nations Conventions and subsequently enshrined in the FATF Recommendations the critical step that each jurisdiction should establish an FIU and join the Egmont Group. A decade after its establishment, my former Deputy, Bill Baity, served as the Chair of the Egmont Group, and he subsequently passed the reigns to the former AUSTRAC CEO, Neil Jensen. Both FinCEN and AUSTRAC remain active in the Egmont Committee, and I particularly note the crucial leadership of AUSTRAC in continued capacity building across South East Asia and the Pacific.

It is from this perspective that I share with you my comments about FIU efforts to combat transnational organized crime. And also, for all these reasons, you can see why it is such an honor and a privilege to be here with you today at AUSTRAC's invitation.

The United States Strategy to Combat Transnational Organized Crime

President Obama's statement in the July 2011 release of the Strategy to Combat Transnational Organized Crime⁵ states in pertinent part:

Despite a long and successful history of dismantling criminal organizations and developing common international standards for cooperation against transnational organized crime, not all of our capabilities have kept pace with the expansion of 21st century transnational criminal threats. Therefore, this strategy is organized around a single, unifying principle: to build, balance, and integrate the tools of American power to combat transnational organized crime and related threats to our national security – and to urge our partners to do the same.

The Strategy sets out five key United States policy objectives:

1. Protect Americans and our partners from the harm, violence, and exploitation of transnational criminal networks.
2. Help partner countries strengthen governance and transparency, break the corruptive power of transnational criminal networks, and sever state-crime alliances.
3. Break the economic power of transnational criminal networks and protect strategic markets and the U.S. financial system from TOC penetration and abuse.
4. Defeat transnational criminal networks that pose the greatest threat to national security by targeting their infrastructures, depriving them of their enabling means, and preventing the criminal facilitation of terrorist activities.
5. Build international consensus, multilateral cooperation, and public-private partnerships to defeat transnational organized crime.

The Strategy also introduces new and innovative capabilities and tools, which will be accomplished by prioritizing within the resources available to affected U.S. Federal Government departments and agencies:

- **A new Presidential Proclamation** under the Immigration and Nationality Act (INA) will deny entry to transnational criminal aliens and others who have been targeted for financial sanctions.
- **A new rewards program** replicates the success of narcotics rewards programs in obtaining information that leads to the arrest and conviction of the leaders of transnational criminal organizations that pose the greatest threats to national security.

⁵ See

http://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf

- **An interagency Threat Mitigation Working Group** will identify those TOC networks that present a sufficiently high national security risk and will ensure the coordination of all elements of national power to combat them.
- **A new Executive Order** establishes a sanctions program to block the property of and prohibit transactions with significant transnational criminal networks that threaten national security, foreign policy, or economic interests.

On July 24, 2011, President Obama signed E.O. 13581, “Blocking Property of Transnational Criminal Organizations,” imposing sanctions against significant transnational criminal organizations that threaten the U.S. national security, foreign policy, or economy. My Treasury Department colleagues within the Office of Foreign Assets Control (OFAC) administer these provisions under the International Emergency Economic Powers Act on the basis of the President’s declaration of a national emergency. In the annex of E.O. 13581, the President identified and imposed sanctions on four significant organizations: the Brothers’ Circle (a.k.a. Moscow Center), the Camorra, the Yakuza, and Los Zetas. Let me note that the Australian Crime Commission mentions some of these entities in its 2011 report on “Organised Crime in Australia.”⁶ Going forward, the Treasury Department will pursue derivative designations of the four groups, and seek to identify additional transnational criminal organizations, as well as engage with foreign partners and with financial institutions in efforts to combat transnational organized crime.

and

- **A proposed legislative package with** proposals to ensure that federal law keeps up with the rapid evolution of organized criminal activity.

The U.S. Department of Justice has led the development of these proposals, including additional protections for foreign witnesses in this global environment, stiffer penalties for intellectual property offense, and the modernization of the country’s most powerful anti-organized crime statutes—the Racketeer Influenced and Corrupt Organizations Act, or RICO, and the Violent Crimes in Aid of Racketeering statute, or VICAR—to be more effective in combating activity that occurs both inside and outside the United States, and greater transparency about beneficial ownership in the corporate formation process.

A focal point is the Proceeds of Crime Act (POCA), which would update and clarify the current list of specified unlawful activities that are predicates for money laundering to include all domestic felonies except those specifically exempted, state felonies and federal misdemeanors that are included in the existing racketeering predicates, and any foreign crimes that would be felonies in the United States. The changes sought would also increase the scope and effect of anti-money laundering provisions in laws concerning promotional money laundering, bulk cash smuggling, tax evasion, and money laundering

⁶ See Australian Crime Commission, *Organised Crime in Australia 2011*, <http://www.crimecommission.gov.au/sites/default/files/files/OCA/2011/oca2011.pdf>, at 28-29 (discussing “organized criminal structures” including Mexican drug cartels and the Yakuza in Japan).

through informal value transfer systems, and would clarify the application of the law to commingled funds and aggregated transactions. POCA also would update civil forfeiture capabilities to help take away the money that motivates criminal behavior.

The Magnitude of Transnational Organized Crime

At the beginning of my speech, I shared my personal approach that we must have an appreciation for types of risk before we can efficiently focus our risk mitigation efforts. So let me once again underscore that the threat of transnational organized crime is real, serious, growing, and has negative potential for everyone around the globe. I wish to emphasize that the U.S. Government strategy highlighted the threat of transnational organized crime to our national security. The United States is far from alone in undertaking an assessment of the risk of transnational organized crime and reaching such a conclusion.

Prime Minister Rudd highlighted transnational organized crime in December 2008 in Australia's First National Security Statement to the Parliament outlining the government's national security policy.⁷ The National Security Strategy of the United Kingdom, published in June 2009, similarly recognized Transnational Organized Crime as a threat to UK National Security, noting: "Transnational organized crime ... is present in almost every facet of society and affects the daily lives of UK citizens."⁸

The stakes are high. According to the Australian Crime Commission's report on Organized Crime in Australia, organized criminal activity continues to reach deeper and deeper into legitimate business, even in times of economic uncertainty:⁹ "Overseas experience indicates that transnational crime groups increasingly operate within the legitimate economy in sectors such as banking and international finance, high technology, pharmaceuticals, shipping and manufacturing—also areas of potential concern within Australia. In some cases, the activities of organised criminal networks are almost indistinguishable from legitimate corporations. Unlike some legitimate enterprises, however, organised crime networks have prospered in times of economic recession or economic growth due to their flexibility and capacity to exploit changing market vulnerabilities."

And in Canada, as William J.S. Elliot, Commissioner of Canada's Royal Canadian Mounted Police, noted in the Criminal Intelligence Service of Canada's 2010 Report on Organized Crime,¹⁰ "Just as geographic boundaries are not a barrier to organized crime, they must not be a barrier to its prevention." The report notes that organized criminal activity is constantly evolving, and poses threats that are more difficult to detect, such as securities fraud.

⁷ See <http://pmrudd.archive.dpmc.gov.au/node/5424>

⁸ See

<http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/216734/nss2009v2.pdf> at 82.

⁹ See <http://www.crimecommission.gov.au/sites/default/files/files/OCA/2011/oca2011.pdf> (p. 21)

¹⁰ See http://www.cisc.gc.ca/annual_reports/annual_report_2010/document/report_oc_2010_e.pdf

As quoted from the report: –After a series of high-profile investment frauds in Canada and the United States that involved scores of investors, and because of investors’ fears about shrinking pensions, securities fraud is an issue that continues to generate a significant amount of public concern. Many securities fraud schemes are regional or transnational in scope and frequently target hundreds or even thousands of investors from multiple countries. Given the level of sophistication and insider knowledge often required to conduct these frauds, they pose significant financial threats.”

Two weeks ago, the United Nations Office on Drugs and Crime (UNODC) published a new report entitled, [*Estimating illicit financial flows resulting from drug trafficking and other transnational organized crime*](#).¹¹ According to the executive summary:

The overall best estimates of criminal proceeds are close to US\$2.1 trillion in 2009 or 3.6% of global GDP (95% confidence interval: 2.7%-4.4%). If only typical transnational organized crime proceeds were considered (resulting from trafficking drugs, counterfeiting, human trafficking, trafficking in oil, wildlife, timber, fish, art and cultural property, gold, human organs and small and light weapons), the estimates would be around 1.5% of GDP. About half of these proceeds were linked to trafficking in drugs. Crime proceeds linked primarily to the national sector such as fraud, burglaries, theft, robberies, loan sharking or protection racketeering were not included in these estimates.

In 2007, the UNODC had published An Assessment of Transnational Organised Crime in Central Asia,¹² identifying trafficking in drugs, human beings and firearms, fraud and corruption as the principle and most serious crimes. The 2005 UNODC report on Transnational Crime in the West African Region, noted the most prominent threats there being drug trafficking and advance fee fraud.¹³ These earlier studies raised awareness and concerns over the growing threats, but declined to try to quantify them, including because of the lack of available data. In West Africa, the executive summary cited the following elements in the broad socio-economic and political context that has made the region particularly vulnerable include: –the difficult economic circumstances characteristic of the last decades, civil war, state weakness, as well as specific conditions conducive to corrupt practices.

The degree to which some forms of organized criminal activity are simply accepted as normal –business” activities by their perpetrators is underscored.” Similarly, UNODC noted the context in Central Asia: –Gaps in governmental capacity and voids created by weak and ineffective state institutions are a strong contributing factor in the proliferation of organized criminal activities. Moreover, cultural, religious and ethnic differences are exploited by organized criminals to achieve their objectives and to facilitate the spread of organized crime.”

¹¹ http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf

¹² http://www.unodc.org/documents/organized-crime/Central_Asia_Crime_Assessment.pdf

¹³ http://www.unodc.org/pdf/transnational_crime_west-africa-05.pdf

TOC's Growing Connections with Other National Security Threats

If all of the foregoing were not enough evidence of concern, let me emphasize further the interconnectedness of transnational organized crime to other national security threats, including terrorism. This is a particularly good reminder in the context of our AML/CFT seminar today that anti-money laundering efforts can and should be leveraged to detect and deter the financing of terrorism.

There is longstanding recognition of the dependence of certain terrorist groups on organized crime, and in particular drug trafficking, as a funding mechanism, such as the Taliban (in 2000, UN Security Council Resolution 1333 demanded that the Taliban halt illegal drug activities, the proceeds of which finance their terrorist activities), and the Revolutionary Armed Forces of Colombia (FARC).¹⁴ But, as highlighted in the U.S. Strategy, terrorists are *increasingly* turning in an opportunistic way to transnational organized crime to fund their activities. These include drug and criminal activities of Hizballah, indications of links between al-Qa`ida in the Lands of the Islamic Maghreb and the drug trade, and kidnapping for ransom and extortion links of al-Shabaab.

The vulnerable environment, echoing the socio-economic contexts analyzed by the UNODC, that can be exploited by transnational organized crime can be mutually reinforcing in a negative way for other illicit actors. The abovementioned UNODC report estimating illicit financial flows from transnational organized crime was actually launched on the occasion of a meeting of the Conference of the States Parties to the United Nations Convention on Corruption. Mr. Yury Fedotov, Executive Director of UNODC, highlighted this connection –as an apt reminder that corruption could play a major role in facilitating the entry of illicit funds into legitimate global financial flows, adding that investments of "dirty money" could distort the economy and hamper investment and economic growth.”

The G-20 countries have long linked not only AML/CFT and anti-corruption efforts, but also a commitment to fight tax evasion and the implementation of financial prudential standards, as essential to financial *market integrity*, and thereby promoting financial stability and sustained economic growth. The G-20 have viewed raising standards in these areas as mutually reinforcing in both a positive sense of promoting the purposes behind the respective best practices, but also in a negative sense that weakness in one or more of the areas could negatively affect the risks in other areas.¹⁵ At their summit last week in Cannes, France, the G-20 Leaders again urged all jurisdictions to adhere to the

¹⁴ For further discussion of the links between money laundering and terrorist financing, see Prepared remarks of Director Freis, –Global Markets and Global Vulnerabilities: Fighting Transnational Crime through Financial Intelligence,” (April 25, 2008), http://www.fincen.gov/news_room/speech/pdf/20080425.pdf

¹⁵ See James H. Freis, Jr., –The G-20 Emphasis on Promoting Integrity in Financial Markets,” in Mario Giovanoli and Diego Devos, eds., *International Monetary and Financial Law: The Global Crisis* (Oxford University Press, Oxford: 2010).

international standards in the tax, prudential and AML/CFT areas, and emphasized the need to further strengthen international cooperation in fighting corruption.¹⁶

AML/CFT and FIU Roles in Combating Transnational Organized Threats

Once again, these challenges highlight how critical are our AML/CFT efforts and the use of financial intelligence. Now let me speak to the financial institutions and other reporting entities in the audience – your AML/CFT efforts to be vigilant against possible illegal activity and to report information based on threshold or on suspicion – you know what is normal activity for your customers and what makes business sense; we need you to share with us situations that do not. Your efforts (all the things that will be discussed in the course of this conference) are a critical component in your governments’ efforts to combat transnational organized crime.

The U.S. Strategy describes money laundering among the **facilitators** for transnational organized crime:

Transnational criminal networks such as organized crime groups, drug traffickers, and weapons dealers at times share convergence points—places, businesses, or people—to “launder” or convert their illicit profits into legitimate funds. Many of these disparate networks also appear to use the same casinos, financial intermediaries, and front companies to plan arms and narcotics deals because they view them as safe intermediaries for doing business. Cash-intensive and high-volume businesses such as casinos are especially attractive, particularly those in jurisdictions that lack the political will and oversight to regulate casino operations or fail to perform due diligence on casino licensees. Illicit networks similarly abuse some of the same financial intermediaries and front companies in regions where government or law enforcement corruption is prevalent, with officials receiving either revenues from the criminal businesses or ownership stakes in the legitimate-appearing commercial entity.¹⁷

One of the key findings of the Australian Crime Commission is that money laundering is one of the “**enabler activities**” for organized crime, together with identity crime, violence, and high take crime. They explained further:

Legitimising the proceeds of crime and the instruments of crime (proceeds used to fund additional crime) is a crucial process for organised crime and therefore this activity is likely to continue to pose a critical risk. [and]

¹⁶ See G-20 Communiqué, paras. 17, 29, <http://www.g20.org/Documents2011/11/Cannes%20Leaders%20Communiqué%204%20November%202011.pdf>

¹⁷ See U.S. Strategy, http://www.whitehouse.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf, at 8.

The response to money laundering underlines the benefits of broader partnerships between law enforcement and the public and private sectors to counter the diverse nature of the threat.¹⁸

Serving in its role as the FIU of the United State of America, FinCEN collaborates with a broad international network of FIUs comprising the Egmont Group. FIUs and the Egmont Group have evolved significantly over the past couple decades. When FinCEN was created in 1990 through an order of Secretary of the Treasury Nicholas Brady, only two other countries - Australia and the United Kingdom - had FIUs. But in 1995, a group of like-minded government agencies and international organizations met at the Egmont-Arenberg Palace in Brussels, Belgium, to discuss operational issues that they had in common, and the Egmont Group of FIUs was born.

The Egmont Group established a Legal Working Group to examine obstacles to the cross-border exchange of financial intelligence. In 1996, they adopted a definition of an FIU (slightly revised in 2004 to extend the focus from money laundering to explicitly reference terrorism financing):

A central, national agency responsible for receiving, (and as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information:

- (i) concerning suspected proceeds of crime and potential financing of terrorism, or
- (ii) required by national legislation or regulation, in order to combat money laundering and terrorism financing.¹⁹

The explicit recognition and legal framework for the role of the FIU has become clear only within the past decade, with much of that effort focusing on capacity building.²⁰ It is in the area of information sharing to combat transnational threats where FIUs can and should increase their efforts exponentially.

The Egmont Group has grown considerably from its first gathering in June 1995, as the FIUs increasingly focused on nurturing the exchange of information available within their respective countries. Today many jurisdictions from all over the globe have established an FIU as a core component of an AML/CFT regime. The expansion of FIUs has been promoted through the incorporation of the FIU concept into the standards of the Financial Action Task Force and the Egmont Group. As a reflection of the growing importance of FIUs, consider that the Egmont Group's membership has expanded from just 13 FIUs in 1995²¹ to 53 in 2000 to 127 in 2011.

¹⁸ See Australian Crime Commission, *Organised Crime in Australia 2011*, <http://www.crimecommission.gov.au/sites/default/files/files/OCA/2011/oca2011.pdf>, at 9-10.

¹⁹ See Interpretive Note Concerning the Egmont Definition of a Financial Intelligence Unit, available at http://www.egmontgroup.org/files/library_egmont_docs/egmont_final_interpretive.pdf.

²⁰ See http://www.fincen.gov/news_room/speech/pdf/20080425.pdf

²¹ See <http://www.egmontgroup.org/library/annual-reports>, at page 5.

During the past sixteen years, the Egmont Group has developed mechanisms for the rapid exchange between FIUs of sensitive information across borders. Over the years, Egmont Group members have agreed upon a common framework for information exchange. This framework begins with a shared vision – an internationally accepted definition – of an FIU that serves as a national, central authority that receives, analyzes, and disseminates disclosures of financial information, particularly STRs to combat money laundering and terrorist financing.²² A key part of this framework is the protection of the financial intelligence shared, particularly on the basis of sensitive personal and commercial information reported by financial institutions. It is an important and exceptional policy choice in each jurisdiction to empower FIUs uniquely to share information for AML/CFT purposes not only on behalf of themselves, but also for the benefit of other relevant government agencies.

While criminals still deal significantly in anonymous cash transactions, another change for FIUs has been following how criminals utilize emerging payment technologies. The shift away from cash-based crimes was also noted by Jeanne Flemming, Director of the Financial Transactions and Reports Analysis Centre – FINTRAC, the FIU of Canada. As she noted in her September 2011 remarks before the International Symposium on Economic Crimes, “The world continues to turn, and organized crime continues to mutate.... For financial intelligence units, being able to see beyond cash transactions is essential as criminals seek their profits not just in traditional cash crimes but in less cash-intensive crimes and transfer their funds around the globe. This is especially true since it would appear that criminal networks are acting in response to global efforts to place controls on cash transactions and bulk shipments of cash across borders.”

In addition to their traditional role in supporting existing law enforcement investigations on a reactive basis, FIUs are increasingly proactively sharing information with each other and developing strategic analyses to identify trends and patterns of money laundering/terrorist financing based on the information that FIUs possess or have access to. With respect to tactical analysis in support of investigations of specific criminal targets, the FIUs have had proven success. In our ever more globalized world, such success will only increase demand, as more countries become actively involved in information sharing, and as law enforcement better understands the power of this unique tool.

FIUs have been devoted to combating transnational organized crime since long before the term was widely used. The more we focus our attention and resources, however, on specific threats, the more likely we are to be able to show success in those areas. For example, we can similarly look to recent success by FIUs in the anti-corruption fight, as mentioned in the Egmont Group plenary meeting this past summer.

In recent years the Egmont Group has also placed increased emphasis on the fight against corruption. This year’s plenary included further sessions devoted to

²² For the exact text of the Egmont Group’s definition of an FIU as well as a detailed discussion, see “Interpretive Note Concerning the Egmont Definition of a Financial Intelligence Unit,” available at <http://www.egmontgroup.org/library/download/8>.

combating corruption and asset recovery, as well as discussions on the impacts that corruption can have on efforts to establish new FIUs and to effectively carry out the FIU mission. The anti-corruption work of the World Bank, and more recently the FATF, has helped raise awareness of the intrinsic link between corruption and money laundering (e.g., where the proceeds from thefts of public funds are subsequently moved through the financial system). The G-20 also has identified fighting corruption among its current priorities.

The Egmont Group of FIUs reaffirmed a commitment, including as specifically foreseen in the United Nations Conference Against Corruption, to fulfill their important role as part of each government's anti-corruption work, in tracing and identifying possible illicit proceeds, and in facilitating and strengthening the international exchange of information in furtherance of anti-corruption efforts.²³

The provisions of the United Nations Convention Against Corruption urging UN member states to establish an FIU are virtually identical to the provisions of the United Nations Convention on Transnational Organized Crime. Once again, the reason is the common features of the vulnerabilities to criminal risks, the centrality of money as a motivation and as a vulnerability for detection and deterrence, and the global recognition of the unique role that FIUs can and should play as part of an overall government commitment to address these national security risks.

The FIUs also need to expand their collaboration beyond mostly reactive work, to be proactive in getting out information about threats to our global partners. And finally, but arguably the most important, the greatest benefits for transnational sharing of financial intelligence through FIUs will lie in transnational collaboration on strategic analytical work to understand and begin to address emerging threats and vulnerabilities. This is particularly true in combating transnational organized crime, where, by definition, the organizations and thus information about them, are dispersed across multiple jurisdictions. Going forward, a challenge for FinCEN in responding to the call for increased attention to combating transnational organized crime (including in providing support to its law enforcement customers devoting more attention to the issue), is to determine how to leverage finite resources and build partnerships with other FIUs to work together in new proactive ways.

Cooperation Leads to Success

The role of the FIUs in combating transnational organized crime is more important than ever. The very nature of the information that is collected and analyzed, and the ability to share information with counterpart FIUs, has set the stage for increased collaboration across the globe. We have established the processes; now we must put them to work. In fact, this is what we have all hoped for and should expect, as the reason that we have

²³ Egmont Group, Press Release, "FINANCIAL INTELLIGENCE UNITS UPGRADING MECHANISMS TO ENHANCE INTERNATIONAL COOPERATION IN THE FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING," Yerevan, Armenia (July 15, 2011), <http://www.egmontgroup.org/news-and-events/news/2011/7/18/19th-egmont-group-plenary-press-release>

been building capacity from an international viewpoint is to provide for transnational sharing in order to combat the increasingly global threats of money laundering, terrorist financing, and other transnational organized criminal activity they support.

Let me give you a few quick examples of cases where drawing upon all powers of government, supported by the AML/CFT partnership with financial institutions and reporting entities, and leveraged internationally through the work of FIUs, we have been able to make a difference in combating transnational organized crime. Before joining you here today in Sydney, the last time I saw some of my friends from AUSTRAC's executive team was this past July at the annual Egmont Group plenary, this year hosted by the FIU of Armenia in Yerevan. While Armenia differs from the United States and Australia in many ways, including as a smaller landlocked jurisdiction of approximately 3 million people, the Armenian government and in particular its FIU have shown a strong commitment to promoting AML/CFT principles, including in bringing together our counterparts this past summer. It is thus appropriate for me to draw a parallel to a successful effort to combat transnational organized crime spanning across our three jurisdictions (and continents), which is highlighted in AUSTRAC's 2011 Typologies and Case Studies Report 2011.²⁴

The investigation uncovered a major drug smuggling operation after law enforcement officers identified that a number of subjects under investigation had transferred more than AUD100,000 out of Australia. After one suspect was arrested while attempting to transfer the funds to Armenia, the remaining suspects began structuring their transactions to evade the cash reporting threshold, as well as employing other methods to avoid detection. Over a four-year period, the group transferred nearly AUD1.8 million to Armenia, which was subsequently sent to the United States, where authorities believe the funds were used to purchase cocaine for importation back to Australia. The subjects owned auto body repair shops in Sydney, and brake drums were used to hide the cocaine – as well as to likely smuggle cash – during shipment to Australia. Ultimately, two members of the group were arrested and sentenced to six years imprisonment.

Another example of a successful international cooperative effort is the announcement by the U.S. Department of Justice last week of the criminal conviction of the notorious international illicit arms dealer Viktor Bout. He was arrested in Thailand, extradited to the United States for trial, recently found guilty of conspiring to sell millions of dollars worth of weapons to the Fuerzas Armadas Revolucionarias de Colombia (FARC) – a designated foreign terrorist organization based in Colombia – to be used to kill Americans in Colombia. As stated in the press release, “The case [which was tried in New York] was investigated by the DEA, with assistance from the Royal Thai Police; the Romanian National Police; the Romanian Prosecutor's Office Attached to the High Court of Cassation and Justice; the Korps Politie Curacao of the Netherlands Antilles; and the Danish National Police Security Services.”²⁵

²⁴ See http://www.austrac.gov.au/files/typ_rpt11_full.pdf

²⁵ See U.S. Department of Justice, Press Release, “International Arms Dealer Viktor Bout Convicted in New York of Terrorism Crimes” (November 2, 2011), <http://www.justice.gov/opa/pr/2011/November/11-ag-1442.html>

Other recent examples of successful prosecutions of transnational organized criminals by the U.S. Department of Justice, including a number of cases where FinCEN supported the criminal investigations, have involved crimes including drug trafficking, healthcare fraud, computer hacking, kidnapping, terrorist financing, and, of course, money laundering.²⁶

Conclusion

Each of our countries has its own unique challenges. But what we all do have in common is that none of us, acting alone, can be successful in our efforts to combat transnational organized crime and its growing impact on international security and governance.

I will leave you with another one of my most common personal expressions in describing FinCEN's AML/CFT efforts and the need for partnership among all of us here today: criminals do not respect the law; they certainly do not respect national borders. We also know that financial markets and transactions are increasingly global.

We in the United States are very thankful for our partners down under. In the context I have discussed today, I know I can rely on AUSTRAC. In his 2010-11 Annual Report, AUSTRAC CEO John Schmidt noted, "International cooperation and information sharing will become increasingly important in the future as advances in technology and globalisation contribute to the increasingly complex and transnational nature of serious and organised crime."²⁷ The Australian Crimes Commission specifically noted that although Australia's geography provides some insulation against organized crime, "transnational criminal groups rapidly adopt information and communication technologies, enabling them to operate in a borderless world—cherry picking opportunities across jurisdictions and exploiting large numbers of people regardless of location—further reducing the advantages of Australia's isolation."²⁸

Together we must continue to build strong partnerships with others to address risks that come from weak points outside as well as within our borders. In the words of President Obama, again upon the release of the United States' Strategy to Combat Transnational Organized Crime: "While this Strategy is intended to assist the United States Government in combating transnational crime, it also serves as an invitation for enhanced international cooperation. We encourage our partners and allies to echo the commitment we have made here and join in building a new framework for international cooperation to protect all our citizens from the violence, harm, and exploitation wrought by transnational organized crime."

This global interdependence underscores the fundamental importance of the AML/CFT cooperation between the private sector and FIUs, as well as the unique authority and

²⁶ See Testimony of Lanny A. Breuer, *supra* note 2.

²⁷ See http://www.austrac.gov.au/ar_2011.html

²⁸ See Australian Crime Commission, *Organised Crime in Australia 2011*, <http://www.crimecommission.gov.au/sites/default/files/files/OCA/2011/oca2011.pdf>, at 24.

capabilities of financial intelligence units to bridge across jurisdictions to help law enforcement combat transnational organized crime. We must use the tools available to us to extend law enforcement's reach beyond our jurisdictional limitations, in particular the exchange of financial intelligence through financial intelligence units.

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APPENDIX

Description from the U.S. National Strategy Against Organized Crime

Transnational organized crime refers to those self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/or violence, or while protecting their illegal activities through a transnational organizational structure and the exploitation of transnational commerce or communication mechanisms. There is no single structure under which transnational organized criminals operate; they vary from hierarchies to clans, networks, and cells, and may evolve to other structures. The crimes they commit also vary. Transnational organized criminals act conspiratorially in their criminal activities and possess certain characteristics which may include, but are not limited to:

- In at least part of their activities they commit violence or other acts which are likely to intimidate, or make actual or implicit threats to do so;
- They exploit differences between countries to further their objectives, enriching their organization, expanding its power, and/or avoiding detection/apprehension;
- They attempt to gain influence in government, politics, and commerce through corrupt as well as legitimate means;
- They have economic gain as their primary goal, not only from patently illegal activities but also from investment in legitimate businesses; and
- They attempt to insulate both their leadership and membership from detection, sanction, and/or prosecution through their organizational structure.