

Testimony of
Mr. Steve Bartlett
On Behalf of
The Financial Services Roundtable
To The
Subcommittee on Oversight and Investigations
Hearing on Suspicious Activity and Currency Transaction Reports: Balancing Law
Enforcement Utility and Regulatory Requirements
May 10, 2007

Introduction

Good morning, Chairman Watt, Ranking Member Miller, and Members of the Oversight Subcommittee. My name is Steve Bartlett, and I am President and Chief Executive Officer of The Financial Services Roundtable.

The Roundtable represents 100 of the nation's largest integrated financial services companies. Our members provide banking, insurance and investment products and services to millions of American consumers. Roundtable member companies account for \$65.8 trillion in managed assets, \$1 trillion in revenue, and 2.4 million jobs.

I would like to begin by thanking the members of the Subcommittee and Chairman Watt, in particular, for holding this hearing. While, the Roundtable unequivocally supports the need to forcefully and effectively combat terrorist financing and money laundering activities, we believe that the current BSA/AML reporting system could be improved to more effectively combat money laundering, assist law enforcement, and improve the ability of our legitimate customers to access the financial services system. Our member companies tell us Suspicious Activity Reports ("SARs") and Currency Transaction Reports ("CTRs") filings continue to rise, and most of these filings have little direct connection to money laundering or terrorist financing investigations. Consider, for example, the dramatic increase in SAR filings in recent years. In 1996, there

were 62,473 SARs filed. By 2005, almost 1 million SARs were filed.¹ Many of these reports are never examined. The Roundtable believes that BSA/AML compliance should be focused on the effectiveness of filings, not the number of filings. It is results that count, not inputs.

One Roundtable member company recently hired 200 new FTEs just to keep pace with CTR filings. Another Roundtable company, M&T Bank, which is one of the best managed companies in America, devoted almost four pages to the matter in its recent annual report. M&T estimates the annual recurring direct expense of AML compliance is approximately \$3.3 million—almost twice the amount spent on Sarbanes-Oxley compliance. A study by the Institute for International Economics estimates that the BSA/AML compliance costs for financial institutions equal approximately \$7 billion a year. That study further estimates that consumers bear an additional \$1 billion as a result of the current BSA/AML compliance regime.²

1. See FenCen's SAR Activity Reports at www.fincen.gov

2. See American Banker Article, "*Vague Guidance Still Invites Defensive SARs*" by Reginald J. Brown and Stephen R. Heifetz (January 6, 2006)

The members of the Financial Services Roundtable wish to work with law enforcement and regulators to assess the usefulness and value of the large volume of SARs and CTRs in combating money laundering. Toward that end, we--

- Propose the creation of a Working Group to assess and improve the BSA/AML reporting system;
- Urge regulators to reduce ad-hoc BSA/AML supervisory practices and address Alien Tort Act/Anti-Terrorism Act Law suits; and
- Urge Congress to enact H.R. 323 the Seasoned Customer CTR Exemption Act of 2007.
- If the first three proposals are not addressed, then we recommend that the Treasury Department codify the good faith standard in the anti-money laundering examination manual in order to reduce defensive SAR filings.

Working Group to Improve BSA/AML Reporting System

The Roundtable believes that the opportunity exists to make our current BSA/AML reporting system more effective in the fight against money laundering and terrorist financing. This goal can be greatly facilitated by the creation of a BSA/AML Working Group composed of federal banking regulators, representatives of the law enforcement community, and financial institutions.

Such a Group should be charged with assessing the effectiveness of current BSA/AML reporting requirements and proposing appropriate reforms to Congress.

I urge Congress to establish this Group and to set a time-table to analyze the effectiveness of the anti-money laundering and anti-terrorist financing requirements applicable to financial services firms and report its findings to Congress. Such an assessment should not be seen as an attempt to reduce the BSA compliance burden on financial services firms. The Roundtable is committed to the goals of the BSA. However, many of the existing requirements have been in place for years, and some were imposed in response to specific developments. In addition, since the enactment of the BSA in 1970, there have been significant advances in business practices and technology, and some of the requirements may not utilize the cutting edge of existing practices and technology.

An assessment of the effectiveness of the existing requirements and their implementation would help to ensure that the requirements applicable to financial services firms do, in practice, deter financial crimes and lead to the prosecution of those crimes. We believe the assessment should:

1. Propose the creation of a Working Group to assess and improve the BSA/AML reporting system:
 - Conduct comprehensive review of the needs of law enforcement's money laundering reporting needs,

- Focus on the effectiveness and the value of the information requested by law enforcement and require better explanation for use of the information obtained by law enforcement,
 - Evaluate the cost-benefit of the information collected by law enforcement; and
 - Assess the practicability of law enforcement requesting information related to money laundering directly from institutions.
2. Devise improvements to current system to better accomplish BSA reporting requirements:
- Develop risks-base principles for reporting suspicious activities,
 - Narrow the scope for reporting suspicious activities by financial institutions,
 - Improve the use of technology in BSA reporting, and
 - Increase the reliance on “due diligence” rules for BSA reporting.

Ad-hoc Supervisory BSA/AML Practices & Alien Tort Act/Alien Terrorism Act

Law Suits

A. Recently, the federal banking agencies issued a joint BSA/AML supervisory manual. The release of this manual was an extremely useful step in establishing uniform BSA/AML supervisory practices. However, Roundtable member companies still report that the supervisory environment remains somewhat ad hoc. We understand that regulators continue to develop compliance standards through the examination process on an institution-by-institution basis. For example, one Roundtable member company has reported that examiners, using so-called “due diligence” rules, are second guessing the institution’s BSA/AML policies, and forcing the institution to retroactively close accounts that involve small dollar amount transactions. This ad-hoc approach results in inconsistent regulatory standards and inconsistent information to regulators and law enforcement. It also adds compliance costs to the industry, some of which are ultimately passed along to consumers. We believe that regulatory standards should be clear and consistent for the entire industry, and developed in an open and transparent manner.

B. The Roundtable is also concerned about potential litigation issues surrounding BSA/AML compliance under the Alien Tort Act & Anti-Terrorism Act. To date, this act has been used to sue three foreign banks with U.S.

branches. The banks are being sued in connection with their customers in non-US branches that have engaged in transactions outside the United States. These banks are complying with their own country laws. One troubling aspect of these cases is that the judges presiding over these cases have suggested in their decisions that banks may be required to consult terrorist lists outside of their home jurisdiction.

Good Faith Standard

Again, if the Roundtable first three aforementioned proposals are not addressed then we recommend that the Treasury Department codify the “good faith” standard that is contained in the Anti-Money Laundering Examination Manual. We believe that codifying the “good faith” standard would help to reduce defensive SAR filings and permit law enforcement agencies to focus valuable resources on serious crimes.

That standard reads as follows:

In those instances where a bank has an established SAR decision-making process, has followed existing policies, procedures, and processes and has determined not to file a SAR, the bank should not be criticized for the failure to file a SAR unless the failure is significant or accompanied by evidence of bad faith.

This standard reflects the inherently subjective nature of SAR filings and the impossibility of detecting and reporting all illicit transactions that flow through an institution. While the standard is designed to focus attention on policy, procedures and processes, it has not deterred defensive filings. It has not done so because it is an “informal” statement of policy, rather than a “formal” regulatory standard. By adopting the standard as a regulation, Treasury would send a strong signal to all financial services firms that the focus of SAR compliance is on policies, procedures and processes, not individual filing decisions. This would reduce defensive filings and permit law enforcement agencies to focus their resources on serious crimes

Exemption for Seasoned Customers

We wish to thank the members of the Financial Services Committee and your House colleagues for approving H.R. 323, the “Seasoned Customer CTR Exemption Act of 2007.” This bill would create a filing exemption for transactions with long standing and well known customers. It’s an appropriate modification to the CTR filing requirement and will not diminish anti-money laundering enforcement.

Conclusion

In conclusion, the Roundtable appreciates the efforts of the Subcommittee in bringing attention to our BSA/AML regulatory compliance system. I wish to state again that the Roundtable supports and appreciates the work of the regulators and law enforcement.

Yet, we believe the current compliance system can be improved following a thorough assessment. A Working Group to assess and improve BSA/AML reporting is needed.

Thank you.

Attachments