

MEMORANDUM OF UNDERSTANDING

**Between the
U.S. Department of the Treasury, Financial Crimes Enforcement Network
and the
New York State Banking Department**

I. Background

A. Purpose.

This Memorandum of Understanding ("MOU") sets forth procedures for the exchange of certain information between the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the U.S. Department of the Treasury, and the New York State Banking Department ("NYSBD"), a financial institution supervisory agency for the State of New York.

Information to be exchanged under this MOU includes information about FinCEN's administration of the Bank Secrecy Act ("BSA"), Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5332; information relating to the NYSBD's policies and procedures for examination of BSA compliance, in the context of NYSBD's examination of financial institutions for compliance with all laws and regulations, including federal law; significant BSA compliance issues at financial institutions supervised by the NYSBD; and analytical data based on or derived from information provided by the NYSBD.

Exchanges of information pursuant to the terms of this MOU are intended to assist FinCEN in fulfilling its role as administrator of the BSA and to assist the NYSBD in fulfilling its role as a financial institution supervisor. The parties intend for this MOU to further the purpose of the BSA by better ensuring compliance in the filing of reports and keeping of records that "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."¹ Through this MOU, the parties intend to improve and enhance the level of cooperation in the area of BSA examination and compliance. From the standpoint of policy, examination, and enforcement, this MOU will enable the parties to maximize their resources in discharging their statutory obligations and better ensure consistency in the application of the regulatory provisions of the BSA. Ultimately, the collective goal of the parties is to enhance communication and coordination to help financial institutions identify, deter and interdict terrorist financing and money laundering.

Finally, by the effective use of the information exchanged under the provisions of this MOU, the parties will also seek to enhance the level of assistance and analysis that can be provided to the regulated industries and to law enforcement in the area of BSA compliance.

¹ 31 U.S.C. § 5311.

B. Jurisdiction.

The NYSBD has plenary examination and enforcement authority for the financial condition, safe and sound operation, and compliance with laws and regulations of the financial institutions it supervises. (New York Banking Law, McKinn. Consolidated Laws of New York, Chapter 2 (West 2001 and supp 2005); Regulations codified at 3 N.Y.C.R.R. (West 2001 with supplements through 2005)).

Under delegated authority from the Secretary of the Treasury, FinCEN is the administrator of the BSA.² FinCEN has the authority under 31 U.S.C. § 5318(a)(3) to examine financial institutions for compliance with the BSA and regulations promulgated under the BSA at 31 C.F.R. Part 103, as well as to take enforcement actions for violations of the BSA and the implementing regulations under 31 U.S.C. §§ 5320-23.

The NYSBD has separate authority pursuant to the New York Banking Law to ensure that financial institutions comply with all laws and regulations, including the BSA. FinCEN supports the NYSBD's efforts in this regard and believes examinations conducted under the NYSBD's regulatory regime and voluntary reporting under this MOU will appropriately leverage resources of the NYSBD and FinCEN to enhance industry compliance with the BSA and better ensure consistency in the application of the BSA.

C. Types of Financial Institutions Covered

To ensure the broadest scope of information sharing, this agreement shall cover all applicable types of financial institutions supervised by the NYSBD and subject to regulation under the BSA (See 31 C.F.R. § 103.11(n)).

D. Assessment of MOU Operation.

The parties shall meet, no less often than annually, to discuss the operation of the MOU and to identify any issues or adjustments that may be required. During such meetings, FinCEN will provide an update on how the information provided by the NYSBD under this MOU has been used or applied by FinCEN. The parties will also evaluate the effectiveness of the information sharing in meeting the goals outlined above.

II. Provision of Information to FinCEN by the NYSBD

A. Annual Report. The NYSBD shall provide the Director of FinCEN or the Director's designee with the following information on an annual basis by October 1 of each year. For the first such report, the NYSBD shall provide the information outlined in II.A.(1)-(6) and II.B by August 1, 2005. For each subsequent report, the NYSBD will provide a summary updating any changes or other information regarding its examination program that relates to compliance with the BSA, including:

² See Treasury Order 180-01, dated September 26, 2002. The Secretary is authorized to delegate such responsibilities to FinCEN pursuant to 31 U.S.C. § 310(b)(2)(I) and (J).

- 1) Number of financial institutions, as defined in 31 C.F.R. § 103.11(n), categorized by type the NYSBD examines for compliance with New York Banking Law as it relates to BSA compliance as of the date of the report; and
 - a. A list of all banking organizations supervised by the NYSBD; and
 - b. If available, a list of all other financial institutions, categorized by type, subject to regulation under the BSA and supervised by the NYSBD.
- 2) Description of the NYSBD's examination cycle(s);
- 3) Description of criteria used for determining timing and scope of examinations;
- 4) Description of examination staffing and resources;
- 5) Description of training programs provided to examiners pertaining to compliance with the BSA; and
- 6) Description of the extent to which the NYSBD coordinates with any federal agencies to conduct examinations related to BSA compliance.

B. Program Documents. To the extent FinCEN does not already have them, the NYSBD will provide copies of written program documents pertaining to examinations related to BSA compliance, or amendments thereto, when they become available. Program documents include:

- 1) Examination workprogram documents, including core or basic procedures, expanded procedures, procedures for areas to receive special scrutiny, and any other written procedures pertaining to BSA compliance;
- 2) Written guidance pertaining to examinations, including relevant sections from manuals of examination policies, handbooks, policy statements, and any other written directives that represent the current examination policy of the NYSBD as they relate to BSA compliance; and
- 3) Relevant sections from written instructions for preparing BSA-related comments and citing violations of New York Banking Law based on BSA violations in Reports of Examination.

C. Quarterly Reports. Within 45 days after the end of each calendar quarter, the NYSBD shall provide to FinCEN the following aggregate information:

- 1) Number of examinations conducted³ within the NYSBD's established examination cycle where BSA compliance is reviewed, including examinations conducted jointly with a federal agency;
- 2) Number of examinations conducted under an established joint or alternate examination program where the examination is not conducted by the NYSBD jointly with a federal agency, where BSA compliance is reviewed;
- 3) Number of examinations or visitations conducted outside the NYSBD's established examination cycle, where BSA compliance is reviewed;
- 4) If available, number of financial institutions, categorized by type of financial institution cited for violations under New York Banking Law for failure to comply with the BSA;
- 5) If available, number and type of violations cited under New York Banking Law for failure to comply with the BSA;
- 6) Number of enforcement actions, categorized by type of action and type of financial institution, taken to address compliance with New York Banking Law for failure to comply with the BSA;
- 7) Number of terminated enforcement actions, categorized by type of action and type of financial institution, that addressed compliance with New York Banking Law for failure to comply with the BSA.

D. Special BSA Examination Project Information. FinCEN performs an important networking function to ensure, among other things, the efficient use of examination resources. For purposes of this MOU, a "special BSA examination initiative" is defined as a special initiative designed to address identified or emerging risks on a statewide or regional basis. It also includes examinations conducted because of, or to address, serious anti-money laundering issues that could have a systemic impact on a regulated industry. To better ensure such coordination, prior to the NYSBD conducting any special BSA examination initiative, the NYSBD shall notify FinCEN and provide FinCEN with written information regarding the special BSA examination initiative. Written information to be provided to FinCEN shall include, but is not limited to, a description of the scope of the special BSA examination initiative and the procedures and criteria used by the NYSBD to determine the scope. Nothing in this paragraph shall affect the exercise of a NYSBD's examination authority with respect to institutions under its supervision.

E. Provision of Information Concerning Significant BSA Violations or Deficiencies. As set forth below, the NYSBD will promptly notify FinCEN of instances when the NYSBD

³ For purposes of this MOU, an examination has been "conducted" once a final Report of Examination is issued to the subject financial institution, or once there is an interim written communication to the financial institution analogous to the issuance of a final Report of Examination.

believes there are significant BSA violations or deficiencies. For purposes of this MOU, a "significant BSA violation or deficiency" includes: a systemic or pervasive BSA compliance program deficiency; systemic or pervasive BSA reporting or recordkeeping violations; or a situation where a financial institution fails to respond to supervisory warnings concerning BSA compliance program deficiencies or systemic or pervasive recordkeeping or reporting violations, or continues a history of program, or systemic or pervasive recordkeeping or reporting deficiencies, even when such deficiencies or violations are dissimilar to those cited in prior Report(s) of Examination or supervisory correspondence. A significant BSA violation or deficiency also includes a non-technical, one-time BSA violation that demonstrates willful or reckless disregard for the requirements of the BSA, or that creates a substantial risk of money laundering or the financing of terrorism within the institution.

To the extent such information has not been provided to FinCEN already by a federal agency, the NYSBD shall provide FinCEN with information as follows:

- 1) When the NYSBD discovers what it believes to be a significant BSA violation or deficiency, the NYSBD will notify FinCEN as soon as practicable, but no later than 30 days after the NYSBD cites the organization, in a written communication, for a violation of New York Banking Law based on a significant BSA violation or deficiency.
- 2) As soon as practicable, but no later than 30 days after completion, the NYSBD will provide to FinCEN portions of the Report(s) of Examination and other written materials relating to the violation of New York Banking Law based on a significant BSA violation or deficiency.
- 3) The NYSBD will notify FinCEN of public enforcement actions involving a violation of New York Banking Law based on a significant BSA violation or deficiency as soon as practicable, but no later than 30 days after the NYSBD has decided to pursue the action. In all cases, the notification must occur before such action is made public. For all other enforcement actions involving a violation of New York Banking Law based on a significant BSA violation or deficiency, the NYSBD will notify FinCEN of the action as soon as practicable, but no later than 30 days after taking the action.
- 4) Follow-up Information on Enforcement Actions. If an enforcement action involving a violation of New York Banking Law based on a significant BSA violation or deficiency requires the financial institution subject to the action to take corrective measures, develop and implement an action plan, or submit progress reports to the NYSBD, the NYSBD will use its best efforts to provide FinCEN with a quarterly assessment of those financial institutions that have failed to comply with such requirements. The NYSBD will use its best efforts to provide to FinCEN copies of any relevant Report(s) of Examination related to such financial institutions if not otherwise provided. Copies of the Report(s) of Examination will be provided as soon as practicable, but not later than 30 days after completion. Upon request by

FinCEN, the NYSBD will provide reports submitted by the financial institution in response to an enforcement action, as well as Report(s) of Examination related to follow up on actions involving a violation of New York Banking Law based on a significant BSA violation or deficiency.

- 5) Resolution of Actions Involving a Violation of New York Banking Law Based on a Significant BSA Violation or Deficiency. To the extent not otherwise known to FinCEN, the NYSBD will notify FinCEN of the resolution of any action involving a significant BSA violation or deficiency as soon as practicable, but no later than 30 days after the resolution of the action, and provide any material relevant to the resolution. For purposes of this MOU, resolution is defined as termination of an action, or the issuance of a subsequent action.
- 6) Report(s) of Examination, Workpapers, and Supporting Documentation. Portions of the Report(s) of Examination relating to BSA examinations that are not provided under II.E.1) through 5) shall be available to FinCEN as soon as practicable upon FinCEN's written request, but no later than 15 days after such request. Workpapers and supporting documentation relating to BSA examinations shall be available to FinCEN as soon as practicable upon FinCEN's written request, but no later than 45 days after such request.

- F. Format for Information. The NYSBD shall provide information under this MOU in a format that is mutually acceptable to FinCEN and the NYSBD. Where available, information provided to FinCEN under this MOU shall be provided in electronic format.

III. Provision of Information to the NYSBD by FinCEN

A. FinCEN Enforcement Actions.

- 1) When FinCEN learns of information pursuant to paragraph II.E. of the MOU between FinCEN and the Federal Banking Agencies⁴, dated September 30, 2004, FinCEN will notify the NYSBD with supervisory authority when FinCEN determines that the imposition of civil enforcement remedies under the BSA may be warranted. Notification from FinCEN shall be made as soon as practicable, but no later than 30 days after the determination, and in any event before taking any public enforcement action.

⁴ The Federal Banking Agencies include the following: Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and Office of Thrift Supervision.

- 2) FinCEN will, to the extent possible, notify the NYSBD prior to taking an enforcement action against any financial institution under the NYSBD's supervision.
- 3) A copy of correspondence relating to a pending or possible enforcement action sent by FinCEN to a financial institution that is under the supervision of the NYSBD shall be sent to the NYSBD. Copies of correspondence received by FinCEN from an organization under the supervision of the NYSBD relating to a pending or possible enforcement action shall be forwarded to the NYSBD to the extent the NYSBD has not received a copy.

B. **FinCEN Analytical Products.** The information provided by the NYSBD pursuant to this MOU will further assist FinCEN, alone and in conjunction with the NYSBD, in developing a variety of analytical products that identify common BSA compliance deficiencies, patterns and trends in BSA compliance, developments in money laundering and terrorist financing, and trends and best practices in BSA examination. Such products will also focus on assisting the regulated industries in meeting their BSA compliance obligations. Accordingly, FinCEN will provide the NYSBD and, as appropriate, the industry, and the public with such analytical products to enhance the overall effectiveness of the administration of the BSA.

C. **Assistance in Identifying BSA Compliance Deficiencies within Financial Institutions.** Using information provided pursuant to this MOU, as well as BSA data and other information, FinCEN will provide support to the NYSBD in helping to identify financial institutions with possible BSA compliance deficiencies for the purpose of assisting the NYSBD in utilizing its examination resources.

D. **Public Reports by FinCEN.** In the event that information (other than confidential supervisory information, which is subject to the restrictions in Section IV of this MOU) provided by the NYSBD is included in any documents that are made public or disclosed to any Congressional entity, such documents shall be provided to the NYSBD before they are released by FinCEN with as much notice as possible.

IV. Restrictions on Disclosure and Use of Confidential Supervisory Information Provided to FinCEN by the NYSBD

A. 1) The NYSBD retains ownership of all information provided to FinCEN under this MOU. All confidential supervisory information provided by the NYSBD remains subject to New York's laws and regulations governing the disclosure of confidential supervisory information. FinCEN will use information provided by the NYSBD under this MOU in accordance with the restrictions applicable to information shared by the NYSBD under New York's laws and regulations.⁵ Except as provided in IV.A.2, FinCEN will make no public use of confidential supervisory information provided by the NYSBD under this MOU without the prior written approval of the NYSBD.

⁵ See New York Banking Law Section 36 (10), New York Public Officers Law Sections 87 and 89, 3 N.Y.C.R.R. Supervisory Procedure G 106

2) Confidential supervisory information provided by the NYSBD under this MOU may be used by FinCEN in investigative proceedings and, upon notice to the NYSBD, FinCEN may base factual findings in its enforcement orders on factual information it obtains as a result of its review of confidential supervisory information.

3) FinCEN will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of the information which is provided under this MOU and information derived therefrom.

4) FinCEN will notify the NYSBD in writing of any legally enforceable demand for information provided by the NYSBD under this MOU, prior to complying with the demand. FinCEN will assert all such legal exemptions or privileges on the NYSBD's behalf as the NYSBD may request. Unless subject to a court order or other compulsory process, FinCEN may not grant any demand or request for the information without prior written notice to, and approval of, the NYSBD.

5) The NYSBD expressly reserves all evidentiary privileges and immunities applicable to any information provided to FinCEN under this MOU.

B. Confidentiality Restrictions of Federal Agencies. Disclosure to FinCEN of confidential supervisory information that is jointly held by a federal agency and the NYSBD shall be subject to the approval of the applicable federal agency and the NYSBD.

V. Restrictions on Disclosure and Use of Information Provided by FinCEN to the NYSBD

FinCEN analytic products typically incorporate information obtained from BSA reports, and may also be based on information from other sensitive sources, such as law enforcement. The NYSBD agrees that, unless advised in writing by FinCEN to the contrary, FinCEN analytic products received under this MOU shall not be publicly disclosed, nor disseminated beyond the recipient agency, without prior written authorization from FinCEN.

VI. Consent to Federal Agencies' Disclosure of Jointly Held Information to FinCEN

In the interest of ensuring timely and efficient disclosures to FinCEN with respect to information jointly held by a federal agency with delegated authority to examine institutions for BSA compliance under 31 C.F.R. § 103.56 and the NYSBD ("Jointly Held Information"), the NYSBD hereby consents to such federal agency's disclosure to FinCEN of confidential supervisory information that is Jointly Held Information, provided such information is accorded the protections detailed in Section IV of this MOU.

VII. Civil Enforcement

No provision of this MOU is intended to affect the parties' respective enforcement authority.

VIII. Term of MOU

This MOU is effective upon signature and will remain in effect until amended, replaced or terminated by signed, mutual agreement of the parties or terminated by either party upon 30 days' written notice to the other.

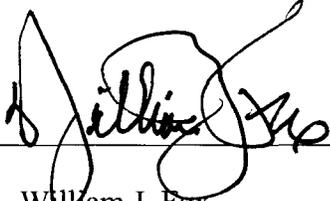
The parties agree that amendments to the format and delivery of information required by this MOU may be done by the mutual agreement of staff of the parties.

This MOU may be executed in counterparts.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, each of the parties hereto has caused this MOU to be executed by its duly authorized officer on the date indicated below.

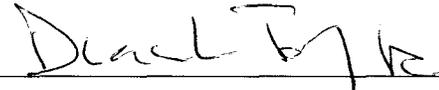
FINANCIAL CRIMES
ENFORCEMENT NETWORK



By: William J. Fox
Director

Dated: 26 APR-2005

NYSBD



By: Diana L. Taylor
Superintendent of Banks

Dated: 26 Apr 05