Statement of

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Before

The House Subcommittee on Terrorism and Illicit Finance

And the

House Subcommittee on Financial Institutions and Consumer Credit

November 29, 2017

To the Chairmen and members of the subcommittees, I am John Byrne, President of Condor Consulting LLC and the previous Executive Vice President of ACAMS (Association of Certified Anti-Money Specialists). I am extremely fortunate to have been part of the AML (anti-money laundering) community for over thirty years. Whether it has been with the financial sector, or representing the entire community with ACAMS [i], it is clear to me that the private and public professionals who comprise compliance, risk, legal, advisory or regulatory oversight in financial crime prevention functions are all dedicated to stopping the flow of illicit funds. We may disagree with how to achieve this collective goal, but no one can challenge the commitment of all of those involved. It is therefore so important that as improvements are considered to what constitutes the AML infrastructure, all participants are actively consulted. The subcommittees deserve credit for reaching out on your proposal to modernize a series of requirements that are in need for revision and enhancement.

As we all are aware, the statement of purpose to the Bank Secrecy Act (BSA) in 1970 and as amended in 2001 is:

"to require certain reports or records where they 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."

The key is a "high degree of usefulness" a concept that needs this serious review. I have seen, all too often, that the focus under these laws appears to be mainly regulatory compliance and NOT getting immediate access to law enforcement information for investigations and deterrence of criminal abuse of our financial system. As I cover the provisions of the proposal on "Counter Terrorism and Illicit Finance Act" and the "End Banking for Human Traffickers Act of 2017," it is important to note the following:

- Any changes in reporting or recordkeeping will impact current resources, systems and operations
- Information sharing, not only among financial institutions but active sharing between the government and financial institutions is the most essential method of succeeding in attacking all aspects of money laundering and financial crime
- With the vast array of crimes that depend on utilizing the financial sector, any modifications or eliminations of requirements MUST involve active and ongoing consultation with the private sector and their public sector counterparts
- Regulatory uncertainly can result in confusion on priorities, risk aversion that harms legitimate commerce, and loss of critical data to law enforcement, and
- The banking industry has already been a private sector leader in human trafficking detection and prevention, so any proposed regulatory changes need to recognize that clear fact

Modernization of CTRs and SARs (Section 2) and a formal review of both reporting requirements (Section 3)

There can be no question of the importance of data and other information for an effective AML program and environment. As we know, the financial sector is obligated, among many other things, to report cash transactions (CTRs) over $10,000 and file suspicious activity reports (SARS) on certain activities that a financial institution knows or suspects may be a violation of law or has no lawful purpose. CTRs have been part of the AML fabric since 1972, and SARS from 1996 (and prior to SARS, Criminal Referrals since 1984). There is certainly value for law enforcement in both reporting regimes, but I feel that SARS are, without a doubt, more essential to successful investigations, prosecutions and overall detection of financial crime. The subcommittees should be commended for attempting to review and improve these requirements. I would respectfully recommend, however, that there are elements in both reporting regimes beyond the dollar thresholds that should also be considered for improvement.

For example, the financial sector did aggressively advocate for raising the threshold for cash reporting due to the stagnant nature (over thirty years) of the over $10,000 reporting amount. For the various reasons that these subcommittee have identified, such as inflation and the many CTRs that clearly have no law enforcement value, the filing community sought a careful consideration of adjusting the thresholds. At the time, the law enforcement community reacted vehemently against such a move, claiming major loss of investigative data. I believed then, as I do now, that evidence does not support a broad position of all CTRs being valuable. During the previous debate, it was too difficult for the financial sector to continue the advocacy of change and now since there are so many system options for reporting cash activity, the question of how useful it will be to raise the dollar threshold is a valid consideration.

In discussing the idea of raising the reporting threshold for CTRs with a number of my industry colleagues, the recurring theme for a good number of institutions is that raising the threshold will

have little impact on burden because automated systems have been implemented to assist with the identification of reportable cash transactions and the filing of CTRs. I do not have enough data from all impacted filers to assess the pros and cons of raising the CTR filing thresholds in 2017, so if the subcommittees intend to pursue such a plan, I would encourage that all participants in the filing process, especially law enforcement stakeholders, be included in discussions around any potential change.

As for what causes the most difficulty for CTR filers in 2017, I would submit it is the "exemption" process that section 3 contemplates reviewing.

Returning to my thesis that regulatory uncertainty and changing expectations impact the financial sector more than any other portion of AML, exemptions from CTR reporting were first crafted as a sincere effort to eliminate reports that did not have a "high degree of usefulness" in detection of financial crime. Despite a concerted effort to improve the reporting infrastructure, as with other regulatory requirements, there are many examples of financial institutions being fined for administrative failings such as late registration, renewal of exemptions or lack of clarity as to what constitutes an exempted entity. As a result, it is considerably easier to simply file a CTR and avoid regulatory criticism. As numerous enforcement actions against financial institutions will attest to over the years, in many instances, institutions were not penalized for failure to file CTRs, but rather they were penalized for failure to file CTRs resulting from defective implementation of exemptions, leading to the failure to file CTRs.

To both simplify and ensure law enforcement utility, there has been a new call for dramatically changing cash reporting:

Eliminate All CTRS and have impacted financial institutions report cash activity directly to the Financial Crimes Enforcement Network (FinCEN).

With this change, law enforcement would get direct access to cash activity at the level decided by Congress, or by law enforcement with authority provided by Congress, and could develop metrics on what activities, types and other factors are important to the detection of all aspects of financial crime. Such a change quite possibly might eliminate one of the leading industry complaints that has persisted for many years – specific feedback from the government on the usefulness of the millions of CTRS filed annually. It is clear that a change this massive could not be commenced overnight, so creating several "pilot" programs may be the best option.

The subcommittees are also looking at suspicious activity reports (SARs) and propose an adjustment to the reporting thresholds there as well. Section 3 supplements the threshold increase with a direction to review many aspects of SAR reporting and utility. As with CTRs, I have a few comments on what parts of the SAR regime have caused much consternation to the filers.

I completely support the part of section 3 that looks at the continued filing of SARs. As with other issues that have occurred since the creation of SARs, ongoing activity reviews and reporting began with financial institutions innocently questioning the regulatory agencies and FinCEN as to their thoughts on filing SARS on activity that has already been reported. These innocent questions turned into regulation by fiat, based on current guidance and expectations

from regulators and FinCEN. Specifically, the financial sector sought guidance from FinCEN on the question of what to do if a SAR has been filed and there has been no follow-up from law enforcement. Here is the response from October 2000 from the SAR Activity Review:

"Repeated SAR Filings on the Same Activity

One of the purposes of filing SARs is to identify violations or potential violations of law to the appropriate law enforcement authorities for criminal investigation. This is accomplished by the filing of a SAR that identifies the activity of concern. Should this activity continue over a period of time, it is useful for such information to be made known to law enforcement (and the bank supervisors). **As a general rule of thumb**, organizations should report continuing suspicious activity with a report being filed at least every 90 days. This will serve the purposes of notifying law enforcement of the continuing nature of the activity, as well as provide a reminder to the organization that it must continue to review the suspicious activity to determine if other actions may be appropriate, such as terminating its relationship with the customer or employee that is the subject of the filing." (underline emphasis added)

This response was never created as an obligation but rather as guidance to institutions trying to be proactive in reporting possible illegal activity. What happened? This "rule of thumb" became the so-called "90-day rule" and many filers have been formally criticized for not filing a SAR on continuing activity on Day 90.

Another equally frustrating "rule" that really takes the focus away from why SARS are valuable is how to handle the decision NOT to file a SAR. Here is language from the interagency FFIEC AML/BSA Examination Manual:

"The decision to file a SAR is an inherently subjective judgment. Examiners should focus on whether the bank has an effective SAR decision-making process, not individual SAR decisions. Examiners may review individual SAR decisions as a means to test the effectiveness of the SAR monitoring, reporting, and decision-making process. In those instances where the 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 coverage is a fair and a rationale view of the difficulty in determining when or if to file a SAR. However, later in the manual, you find this as a directive to examiners:

"SAR Decision Making

Determine whether the bank's policies, procedures, and processes include procedures for:

- Documenting decisions not to file a SAR.
- Escalating issues identified as the result of repeat SAR filings on accounts.
- Considering closing accounts as a result of continuous suspicious activity."

The first bullet has now turned into a "requirement" to have a "no-SAR SAR." Many financial institutions have openly complained about this created obligation and, once again, goes far beyond what the SAR regime is designed to cover.

As for the increase in SAR reporting thresholds, I will leave to current members of financial institutions to comment but will say that many banks file SARs in the hopes that law enforcement will start an investigation. If the dollar amounts are raised, will there be less consideration to lower dollar frauds and financial crime? Also, as we know from our law enforcement partners, terrorist financing models have often occurred at extremely low dollar amounts so will we be losing valuable financial intelligence?

The remaining directives in the bill to the Secretary of the Treasury is an eventual report on SAR related actions and do appear valuable, but I would remind the subcommittees that one topic--the placing of SARs and CTRs on the same form was already tried in the early 1990's and found to not be helpful in data gathering or reporting and did not create any less of a burden on filers. On one more point, I would strongly encourage the subcommittees that it is important that the language of who should be the participants in the reports (Treasury, law enforcement and the affected private sector) have equal input to these studies, along with the regulatory community.

Information Sharing – The Key to Effective Money Laundering Deterrence (Section 4)

The subcommittees are also to be commended for the inclusion of section 4 that fixes a long-held barrier to enhancing information sharing. The provision expands 314 (b) of the USA Patriot Act to ensure that financial institutions can now share information on actions that could be indicative of the many financial crimes (specified unlawful activities) in the money laundering statutes. The previous reading of 314 (b) was unnecessarily limiting and contrary to the original intent behind the legislation. As one who was intimately involved in numerous discussions around information sharing at the time the provision was being drafted into the USA Patriot Act, I was extremely disappointed with the final regulation that, in my opinion, severely limited institutions' abilities to share relevant and meaningful information. This is a welcome expansion and will result in more effective reporting and eventual detection of many forms of financial crime.

The additional portion of this section that requires regulations on expanded information sharing within the same multi-national institution will finally eliminate the barriers to effective risk response of activities throughout an enterprise.

Creation of a process for opinions, priorities and to encourage innovation (Sections 5-7)

With the plethora of questions on application of the various AML laws and regulations, it would be extremely useful for a process to be developed for impacted entities to seek formal opinions on how to traverse guidance, rules and laws. The banking industry has a long history of seeking clarity and I can recall asking that a "BSA Staff Commentary" be developed as far back as 2003 and most likely even earlier. A "no action" process with active consultation of the banking agencies could go a long way to prevent the "policy as rule" issues that I raised earlier in this testimony.

Section 6 on the creation of a priorities list would also be a welcome change to how the financial sector attempts to deal with all of the many financial crimes that can be reported on a SAR. I would again urge that law enforcement and of course, the impacted private sector, be active partners of any consultation on priorities.

Section 7 highlights the subcommittees recognition of the needed focus on the importance of technology to AML detection and prevention. Whether a multi-national company or a community bank, it is important that financial institutions be permitted to utilize technology to become more efficient. One of the common complaints I have heard is that all too often regulators make it difficult for financial institutions to experiment with new tools for fear of regulatory criticism during transitionary periods. This coupled with regulatory criticism for perceived failures because the "new technology" is not operating in the same way as the current, or old, technology, stymies innovation by the financial sector. This section should alleviate those problems.

Assessing Reporting Usefulness (Section 8)

Since the very beginning of the AML regime in 1986, all partners have struggled with how to prove usefulness in order to focus the laws and regulations on the shared ultimate goal---getting critical information into the hands of law enforcement and effectively managing actual risks within financial institutions. This section combines the need for measurements of effectiveness with improving feedback to the financial sector, a mission that will enhance and focus reporting. Currently, FinCEN does an admirable job of feedback with the previously mentioned SAR Activity Reviews and other SAR statistics. The hope is that the section 8 reports will provide data that will continue the collective goal of attacking financial crime in its many facets.

Beneficial Ownership and the CDD Rule (Section 9)

One of the major recent challenges to the financial sector in the AML area has been the impending CDD rule that is required to be implemented by May 2018. With the focus from the Financial Action Task Force (FATF) and the media outcry from the Panama and Paradise Papers, we know that there is universal focus on the mechanisms used to obscure beneficial ownership of corporate vehicles. The CDD rule is in response to the issue of transparency and FATF's critique of US law from the mutual evaluation process, but many have argued with the ease of corporate formation that the rule will not be enough. In addition, because even with the new rule, validation that the identified individuals are actually the beneficial owners is not required, and cannot be performed because of the lack of critical data necessary to perform such a validation, questions have been asked as to the usefulness of these new requirements. Section 9 responds both to the incomplete nature of the Rule and the need for increased transparency by requiring FinCEN to collect this information rather than financial institutions. According to the proposal, the CDD rule would be delayed until Financial Institutions could utilize the information for the purposes of complying with their CDD requirements. For background of concerns regarding the current rule, see the report from a June 2017 meeting of financial institutions hosted by ACAMS. file:///C:/Users/Owner/Desktop/The-Way-Forward-White-Paper%208-17-17.pdf A direct obligation to file with FinCEN is a welcomed proposal.

AML Impact on Financial Access

I would be remiss if I did not also reference the collateral damage that can and does occur with confusion regarding risk in today's AML regime. When the financial sector receives limited advice and counsel regarding how best to manage risk, the logical response by some financial institutions is to exit or not onboard certain classes of customers. The concept, euphemistically known as "de-risking", impacts access to the traditional banking sector and has harmed victims in conflict zones from receiving funding for water, utilities and other resources. Make no mistake that banks and other financial institutions should be free to decide if they can ultimately manage risk, but they shouldn't be forced to exit account relationships because of confusing and conflicting oversight and, unfortunately, the opinions of some examiners examining specific financial institutions that the institution should not bank a type of customer or a specific customer. These subcommittees can provide a valuable service to the AML and the broader global community by adding to the studies and reports an update to the challenges regarding financial access. I spoke on this topic in June in London, referencing the joint work between ACAMS members and the World Bank and have included my comments for consideration here. file:///C:/Users/Owner/Documents/Keynote%20Address_JohnJByrne.pdf

H.R. 2219 (End Banking for Human Trafficking Act of 2017)

Another critical part of the financial sector's proactive work in combatting financial crime is their work addressing the scourge of human trafficking. Perhaps it is partially the lack of public coverage of the financial sector, but the clear fact is that the men and women of the banking industry (and related financial institutions) have a long history of success of responding to human trafficking here in the United States and abroad. At ACAMS alone, the association has awarded recognition to financial institutions such as JPMorgan Chase and financial institutions in Canada such as BMO for working closely with law enforcement on various projects to create and enhance "red flags" and other indicators to assist in looking for and reporting possible human trafficking.[ii] Therefore, I would humbly suggest that the premise regarding financial institutions in this bill is flawed, and that the government could actually learn from their private sector partners how to improve due diligence regarding detecting this crime. If the subcommittees continue to move on HR 2219, I would respectfully ask that they be directed to work with the private sector on language and strategies regarding any new training or reporting.

Conclusion

While not specifically addressed in any of the proposed provisions, I would like to conclude by expanding on a point that I have made in my testimony today. Somewhere between the beginning days of the Bank Secrecy Act and where we sit currently, a good number of requirements from regulators have been imposed through the use of "guidance" and "regulatory expectations." The FFIEC (Federal Financial Institution Examination Council) BSA/AML Examination Manual is the most prominent example of this trend.

The Examination Manual, which was originally designed to provide direction to examiners while conducting BSA/AML examinations AND provide some indication to regulated financial institutions as to what should be expected during the course of such examinations has developed into requirements for regulated entities. In examination after examination, bank examiners cite the Examination Manual as the basis for requirements that banks act in a certain way. Examination reporting, including MRAs, MRIAs and MRBAs (Matters Requiring Attention, Matters Requiring Immediate Attention and Matters Requiring Board Attention) routinely cite provisions of the Examination Manual as the basis for required actions being imposed by the regulators. I would urge the subcommittees to consider whether regulatory agencies should be allowed to continue imposing "requirements" based on what was designed to provide guidance to both examiners and the industry.

I would like to thank the subcommittees for this opportunity to offer mine and my AML colleagues views on the thirty years of AML. The key going forward is to retain and support the concept of private-public partnerships. If all parts of AML work collaboratively, there is no doubt we will be successfully at pursuing and prosecuting financial criminals.

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[i] The Association of Certified Anti-Money Laundering Specialists (ACAMS) is the largest international membership organization dedicated to enhancing the knowledge, skills and expertise of AML/CTF and financial crime detection and prevention professionals. Their members include representatives from a wide range of financial institutions, regulatory bodies, law enforcement agencies and industry sectors. http://www.acams.org/

[ii] Here is a small snippet of resources offered by ACAMS on this issue. http://www.acams.org/aml-resources/human-trafficking/