Testimony of John J. Byrne
On Behalf of the American Bankers Association
Before the
Subcommittee on Oversight and Investigations
Of the
Committee on Financial Services
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Madam Chairman and members of the Committee, I am John J. Byrne, Senior Counsel and Compliance Manager of the American Bankers Association (ABA), Washington, D.C. I am pleased to be here today to present the views of ABA on the important work of the industry to address the changes in our country's money laundering laws since the passage of the USA PATRIOT Act in October 2001. The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest bank trade association in the country.

As ABA's Deputy Executive Vice President, Edward Yingling, told the full Financial Services Committee last October:

> . . . the financial community was particularly hard hit by the [9/11] attack. However, if one of the goals of the attack on New York was an attempt to seriously disrupt the banking system, that goal was not met. While there were a few short-term problems caused by the destruction, the banking system continued to run smoothly. Both the banking industry and other financial providers have extensive back-up systems to deal with business disruptions, be they acts of nature or acts of terrorism. With $2 trillion in transactions moving through the banking system each day, protection of computer systems and emergency back-up plans are essential. The Federal Reserve did an outstanding job, working closely with the banking industry, to assure that the necessary liquidity was available to complete financial transactions that were

already in the pipeline and to assure the overall integrity of the payments system. I'm also pleased to say that the confidence of customers in the U.S. banking system held steadfast throughout this period. The banking system continues to operate smoothly, deposits are protected, and customers worldwide have access to their funds.

With respect to the issues of detection and prevention of money laundering and related crimes post 9/11, the banking industry has focused its attention on assisting law enforcement agencies in tracking the money trail of terrorists and those suspected of supporting terrorist activities. The banking industry has been providing information to law enforcement officials that has been instrumental in tracking the activities of the terrorists prior to September 11 and in developing leads on suspects, material witnesses, and others that should be questioned. We have also been diligently responding to the various lists that the government has been distributing to either block or freeze accounts or to notify law enforcement that a particular individual has an account with a specific institution.

Madam Chairman, we pledged in October to "support fully efforts to find and prosecute the perpetrators of these heinous acts and their supporters, and work with Congress and this Committee to enact new tools in the campaign against terrorism." We helped fulfill that pledge with our strong support of the USA PATRIOT Act, and we continue to work closely with the government to ensure that any new tools created are used effectively to achieve our mutual goal. That goal, of course, is to prevent our nation's financial system from being used by terrorists.

In my statement today, I would like to make three key points:

- The banking industry strongly supported Title III of the USA PATRIOT Act. As we enter the regulatory implementation process, it is important that Congressional intent be followed and that the industry continue to work with the appropriate agencies charged with anti-terrorism efforts.

- Now that the USA PATRIOT Act is law and many additional financial services providers are covered, enforcement of the laws must be applied in a consistent manner.

- The ABA has prepared a Resource Guide for our members, addressing the importance of strong and effective account opening procedures. This guide, attached to this testimony for your information, is the product of extensive work and input from both the private and public sectors. As the Treasury Department considers its regulatory obligation to draft a regulation dealing with the verification of identities at the account-opening stage, we believe this guide will be of great assistance.

The USA PATRIOT Act and Its Implementation

As has been often stated, financial institutions are the first line of defense against money launderers – they see criminal activity first and up close. The ABA and the banking industry pledged support for law enforcement and the Administration's efforts, and for enacting and implementing what became the USA PATRIOT Act to fight terrorism. Banks have worked closely with law enforcement agencies to track financial flows of the known terrorists and others who have been detained and questioned. The industry announced full support for the various executive orders but also offered solid suggestions for effectiveness and efficiency, such as our input on the process for sending the so-called "control lists" to designated personnel in each financial institution.

The industry is committed to improving the process going forward. It is also important that the regulations being proposed take into account efficiency and operational difficulties.

A key to the success is a public-private partnership. Fortunately, there has been a long history of this kind of relationship with respect to the fight against money laundering. For example, in 1994, the Treasury began working in partnership with banks and others to establish policies and regulations to prevent and detect money laundering. This partnership approach is illustrated by the work of the Bank Secrecy Act (BSA) Advisory Group, a special panel of experts (authorized by the Annunzio-Wylie Anti-Money Laundering Act of 1992) who offer advice to Treasury on increasing the utility of anti-money laundering programs to law enforcement and eliminating unnecessary or overly costly regulatory measures. The Advisory

Group consists of thirty individuals drawn from the financial community – including bankers, broker-dealers and other non-bank financial institutions – as well as from federal and state regulatory and law enforcement agencies. Chaired by the Treasury Department's Under Secretary for Enforcement, the group has helped to increase the effectiveness of money laundering laws, eliminated some unnecessary reporting requirements, simplified reporting forms, and refined the funds transfer record keeping rules, among other things. This group stands ready to work on the variety of anti-terrorism issues that must be addressed. We urge the Treasury Department to use this group aggressively going forward.

There are numerous provisions in Title III of the USA PATRIOT Act. I would like to direct your attention to a few of the provisions that, we believe, can improve both the industry's and the government's ability to address terrorist activities. Section 314 (Cooperative Effort to Deter Money Laundering) requires the Treasury Department to issue regulations to "encourage further cooperation" among financial institutions, their regulatory authorities and law enforcement authorities through the sharing of information on terrorist and money laundering activities. The ABA has long stressed the need for clarity on what information can be shared to protect our institutions from being used unwittingly by criminals.

The federal agencies have opined on the ability of banks to share fraud related information as long as the fact of a SAR being filed is not disclosed. The industry, however, needs additional guidance, and this regulation has the potential of assisting us in that effort. While we await the Treasury's proposal, the industry remains hopeful that the rule will actually facilitate information and not place unnecessary burdens on the industry. For example, the "notice" requirement (notice to the Treasury that financial institutions are sharing information) has the potential of discouraging the transfer of information if it becomes a major, unnecessary reporting requirement. The ABA believes that Section 314 should permit the filing of SARs as compliant with the notice provision.

Section 352 of the Act requires the Treasury Department to craft regulations for each financial institution to have "anti-money laundering programs." This section is a critical part of the congressional intent of ensuring that all financial institutions participate in the nation's

private sector anti-money laundering effort. It is also important to state that our members are already required to have these programs in place. We have, since 1987, been required to have policies in place that mirror the requirements of Section 352. Therefore, this section should not be used as an opportunity to create additional requirements for our industry. We do not believe that was the Congressional intent.

Section 355 of the Act is another important provision. This section addresses a long-standing industry suggestion for preventing criminal activity by permitting depository institutions to provide information, in a written employment reference, to other institutions concerning the possible involvement in potentially unlawful activity by a current or former employee.

The full Committee correctly pointed out that:

> Occasionally banks develop suspicions that a bank officer or employee has engaged in potentially unlawful activity. These suspicions typically result in the bank filing a SAR. Under present law, however, the ability of banks to share these suspicions in written employment references with other banks when such an officer or employee seeks new employment is unclear.[1]

ABA also raised this issue several times, advocating that:

> In order to protect financial institutions from hiring individuals that have already committed fraud against another institution, we urge the Congress to consider a change that grants liability protection for assisting other institutions. Financial institutions need this liability protection to improve the tools at their disposal for ensuring the safety and soundness of our financial industry.[2]

[1] Summary of Section 208, House Report To accompany H.R. 3004, Financial Anti-Terrorism Act of 2001, which was ultimately incorporated in the PATRIOT Act as Section 355.
[2] Testimony of the ABA before the House Judiciary Committee, Subcommittee on Crime, on February 10, 2000.

The passage of Section 355 should greatly enhance the industry's ability to protect its institutions and accountholders. In order to encourage banks to use this new authority, we are publishing an article on how to implement this new authority in the March/April edition of ABA Bank Compliance magazine. One of the authors is Robert Serino, the former Deputy Chief Counsel of the Office of the Comptroller of the Currency. As Mr. Serino points out, Section 355 will protect financial institutions "and their employees from liability when they take steps to keep dishonest individuals out of the financial services industry."

Madam Chairwoman, this is an important safety and soundness issue – to combat fraud – but also could prevent the criminals or terrorists from "planting" members of their groups inside financial institutions. We applaud the Congress for passing this provision.

Consistency of Enforcement

Certainly, one of the most dramatic elements of the Act is the coverage of the plethora of financial institution providers outside of traditional banking. Whether it is the reporting of suspicious activities by underground banking systems (Section 359), the filing of SARs by the securities industry (Section 356), or the anti-money laundering program requirements mentioned above (Section 352), there must be consistent enforcement of all requirements under the Act. If education of the new requirements presents a challenge, we urge that the Treasury expand the Bank Secrecy Act Advisory Group to include the appropriate representatives.

The ABA Industry Resource Guide on Identification and Verification of Accountholders

Section 326 of the Act requires the Secretary to issue regulations (with an effective date of October 26, 2002) to establish minimum procedures for financial institutions to use in verifying the identity of a customer during the account opening process. The regulations must take into consideration situations such as the use of mail or the Internet, where the customer is not physically present at the financial institution, as well as the types of accounts and the types of identifying information available.

This section also requires a study, to be submitted within 6 months of October 26, 2001, on determining the most "timely and effective" ways to require foreign nationals to provide identification when opening up an account.

The Section directs that the regulations will, at a minimum, require that all financial institutions:

Implement, and customers (after being given adequate notice) comply with, reasonable procedures for:

(A) Verifying the identity of any person seeking to open an account to the extent reasonable and practicable;
(B) Maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and
(C) Consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.[3]

For depository institutions, these requirements should not present any major adjustments. Banks have long been required, under the Bank Secrecy Act examination procedures, to have account opening procedures in place.[4] The real impact of this section will be the requirement that ALL financial institutions have account opening verification procedures in place.

The ABA, as part of its overall effort, has been moving to address this issue aggressively, even in advance of its regulatory process. In fact, ABA began a process to address the account opening issue prior to the passage of the Act and the notice of proposed rulemaking on Section 326.

We have learned that the 9/11 terrorists that utilized financial institutions did so by opening up checking accounts with minimal identification and low dollar amounts. In fact, the identification offered were visas, and the potential customers did not possess social security

[3] Section 5318 (l)(2)
[4] Comptroller's Handbook, Bank Secrecy Act/Anti-Money Laundering, December 2000, pp.19-21.

numbers.[5] Section 326, if implemented across all industry lines, will prevent criminals from using financial enterprises following these rules. In addition, once the regulations are in place, we believe that consistent application of these new procedures will also assist in preventing other types of fraud, such as identity theft.

Our guide is simply meant as a resource to institutions looking for examples of how others handle the challenges presented by opening accounts in the 21st Century. Given the wide array of institutions, it is critical that the regulation not become a burdensome recordkeeping and reporting requirement. We hope that this Resource Guide (attached to the testimony) will be the first in a series of private sector initiatives that will assist all of us as we continue to address the menace of terrorism.

Conclusion

The American Bankers Association appreciates the opportunity to testify today. We pledge to work with you, Madam Chairman, this Committee, Congress and the Administration as we continue our efforts to prevent money laundering and to stop the flow of funds that support terrorist activities.

[5] We want to take this opportunity to commend the government for providing feedback to the industry on terrorist activities. For example, FinCEN recently released SAR Bulletin 4 on "Aspects of Financial Transactions Indicative of Terrorist Funding." Updates such as these are critical to our contingency planning.