

**TESTIMONY
BY**

**JOSEPH CACHEY III
FIRST DEPUTY CHIEF COMPLIANCE OFFICER
WESTERN UNION FINANCIAL SERVICES, INC.**

**BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE U.S. HOUSE OF REPRESENTATIVES
FINANCIAL SERVICES COMMITTEE**

HEARING ON

**“THE FIRST LINE OF DEFENSE: THE ROLE OF FINANCIAL
INSTITUTIONS IN DETECTING FINANCIAL CRIMES”**

MAY 26, 2005

GOOD MORNING. I'D LIKE TO THANK YOU ON BEHALF OF WESTERN UNION FOR THE OPPORTUNITY TO ADDRESS THE SUBCOMMITTEE ON THE IMPORTANT TOPIC OF THE ROLE OF FINANCIAL INSTITUTIONS IN DETECTING FINANCIAL CRIMES THROUGH SUSPICIOUS ACTIVITY REPORTING.

WESTERN UNION IS A LEADER IN WORLDWIDE MONEY TRANSFER. OUR SERVICES ARE AVAILABLE IN OVER 195 COUNTRIES THROUGH SOME 225,000 AGENT LOCATIONS. WESTERN UNION IS A PART OF FIRST DATA CORPORATION, A PUBLICLY-TRADED FORTUNE 300 COMPANY WITH OVER 30,000 EMPLOYEES WORLDWIDE. FIRST DATA PROVIDES CREDIT CARD AND PAYMENT PROCESSING SOLUTIONS TO A WIDE RANGE OF CLIENTS INCLUDING OVER 1400 BANKS, MILLIONS OF MERCHANT LOCATIONS, AND EVEN GOVERNMENT AGENCIES, SUCH AS THE INTERNAL REVENUE SERVICE. FIRST DATA AND WESTERN UNION ARE SUBJECT TO A BROAD ARRAY OF STATE AND FEDERAL REGULATIONS THAT ENSURE SAFE AND SOUND SERVICES TO OUR CUSTOMERS.

SINCE THE SUSPICIOUS ACTIVITY REPORTING REGULATIONS TOOK EFFECT FOR MONEY SERVICES BUSINESSES ("MSBs") IN JANUARY, 2002, WESTERN UNION HAS CREATED AN INDUSTRY LEADING COMPLIANCE PROGRAM IN A RELATIVELY SHORT PERIOD OF TIME.

WESTERN UNION MAINTAINS AN ANTI-MONEY LAUNDERING (“AML”) COMPLIANCE DEPARTMENT OF OVER 180 DEDICATED EMPLOYEES LOCATED IN 13 LOCATIONS AROUND THE WORLD TO PROMOTE THE SAFE AND SOUND OPERATION OF ITS MONEY TRANSFER SYSTEM. THIS DEPARTMENT’S PRIMARY OBJECTIVES ARE TO PROVIDE SUPPORT AND GUIDANCE TO WESTERN UNION’S DIVERSE AGENT BASE, DETECT AND REPORT SUSPICIOUS ACTIVITY IN THE UNITED STATES AND FACILITATE REGULATORY AND LAW ENFORCEMENT OUTREACH AND RESPONSE. WE PRIDE OURSELVES IN WORKING WITH LAW ENFORCEMENT, WHEN APPROPRIATE, AROUND THE WORLD.

I AM HERE TODAY TO DISCUSS AN IMPORTANT PART OF OUR ANTI-MONEY LAUNDERING COMPLIANCE PROGRAM: SUSPICIOUS ACTIVITY REPORTING AND OUR DEALINGS WITH THE LAW ENFORCEMENT COMMUNITY.

EVEN TODAY, WESTERN UNION CONTINUES TO ENHANCE ITS OWN TRANSACTION MONITORING CAPABILITIES TO BETTER DETECT AND REPORT SUSPICIOUS ACTIVITY AND LARGE CURRENCY TRANSACTIONS TO THE FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN). WE HAVE DEVELOPED OUR OWN PROPRIETARY SOFTWARE FOR OUR UNIQUE MONEY TRANSFER SYSTEM. WE BELIEVE THAT GETTING THE RIGHT INFORMATION INTO THE HANDS OF LAW ENFORCEMENT IS OUR PRIMARY ANTI-MONEY LAUNDERING COMPLIANCE MISSION.

WESTERN UNION FILES TENS OF THOUSANDS OF SUSPICIOUS ACTIVITY REPORTS (“SARs”) EACH YEAR, REPRESENTING A SMALL FRACTION OF OUR TOTAL NUMBER OF TRANSACTIONS. WE KNOW THAT SOME SARs LEAD TO INVESTIGATIONS BECAUSE THERE IS DIRECT FOLLOW-UP FROM LAW ENFORCEMENT, USUALLY THROUGH A COURT-ISSUED SUBPOENA, FOR FURTHER INFORMATION. THE FILING OF A SAR MAY LEAD TO A NUMBER OF ACTIONS TAKEN IN CONJUNCTION WITH LAW ENFORCEMENT. I’LL CITE JUST A FEW EXAMPLES WITHOUT GOING INTO SPECIFICS THAT COULD JEOPARDIZE ANY INVESTIGATION OR OUR MONITORING SYSTEMS.

LAST YEAR, WESTERN UNION, BASED ON INTERNAL CRITERIA, FILED SIX SARs ON FOUR CONSUMERS WHO WERE RECEIVING TRANSACTIONS IN HIGHER RISK COUNTRIES. THESE SARs RESULTED IN THE OPENING OF AN EXPANSIVE INVESTIGATION NOW BEING CONDUCTED BY DUAL FEDERAL AGENCIES. WESTERN UNION CONTINUES TO SUPPORT THESE INVESTIGATIVE EFFORTS BY RESPONDING TO SUBPOENAS TARGETING IDENTIFIED CONSUMER TRANSACTION INFORMATION. IN ADDITION, WE HAVE ALSO SHARED EMERGING INSIGHTS INTO CONSUMER NETWORK PATTERNS INVOLVING INVESTIGATIVE SUBJECTS, AND HELP FACILITATE COORDINATION AMONG SPECIAL AGENTS FROM EACH OF THE RESPECTIVE AGENCIES.

WESTERN UNION ALSO COOPERATES WITH FEDERAL LAW ENFORCEMENT EFFORTS THROUGH AGREEMENTS THAT ASSURE CERTAIN AGENT LOCATIONS ARE KEPT OPEN DURING ONGOING INVESTIGATIONS. FOR EXAMPLE, THE OWNER OF A WESTERN UNION AGENT LOCATION IN THE MID-WEST WAS INDICTED IN APRIL 2005 ON 43 COUNTS OF MONEY LAUNDERING AFTER A FIVE YEAR INVESTIGATION. WESTERN UNION'S AGREEMENT TO WITHHOLD NORMAL BUSINESS INTERVENTION AND KEEP THE LOCATION OPEN ALLOWED LAW ENFORCEMENT TO GATHER SUFFICIENT EVIDENCE IN PREPARATION FOR THE INDICTMENT.

IN ADDITION, WESTERN UNION CONTINUALLY COOPERATES WITH STATE AND FEDERAL AUTHORITIES BY MAINTAINING A "HANDS-OFF" POSTURE ON CERTAIN CONSUMERS UNDER ACTIVE SURVEILLANCE IN SEVERAL STATES. IN EACH OF THESE EXAMPLES ARE CONSUMERS OR AGENTS THAT WESTERN UNION HAS IDENTIFIED AND WOULD TYPICALLY STOP DOING BUSINESS WITH BUT FOR LAW ENFORCEMENT REQUESTS. SUCH COOPERATION IS IMPERATIVE TO PREVENTING SUCH ACTIVITY FROM MOVING UNDERGROUND AND OUT OF REGULATORY VIEW.

AS IS TYPICAL WITH MONEY LAUNDERING SCHEMES, RISK MAY SHIFT AS MORE INFORMATION CAN BE OBTAINED AND ANALYZED, AND SO MUST OUR FOCUS. FOR INDUSTRY TO BETTER FOCUS ITS RESOURCES, THE REGULATOR, IN THIS CASE FINCEN, MUST PROVIDE ONGOING

COMMUNICATION TO INDUSTRY ABOUT EMERGING RISKS AND MONEY LAUNDERING PATTERNS SO THAT WE CAN DIRECT OUR COMPLIANCE EFFORTS TOWARDS THE MOST CRITICAL RISK AREAS. THIS TYPE OF ONGOING COMMUNICATION SHOULD NOT ONLY RESULT IN MORE MEANINGFUL REPORTING OF SUSPICIOUS ACTIVITY TO LAW ENFORCEMENT BUT ALLOW THE INDUSTRY TO REDUCE THE FILING OF NON-USEFUL REPORTS WHICH MAY CREATE “NOISE” IN THE SYSTEM AND UNDERMINE THE EFFORTS OF LAW ENFORCEMENT.

ONE PRIMARY EXAMPLE OF POTENTIAL “NOISE” IS THE REPORTING OF SIMPLE STRUCTURING. THE MAJORITY OF THE SARs WESTERN UNION FILES REPORT LOW LEVEL STRUCTURING ACTIVITY. CURRENTLY, THE SUSPICIOUS ACTIVITY REPORTING THRESHOLD IS AT \$2000 AND STRUCTURING MAY OCCUR JUST BELOW THE \$3000 BSA RECORDKEEPING REQUIREMENT. FRANKLY SPEAKING, WE BELIEVE THAT MOST OF THIS ACTIVITY RESULTS NOT FROM EVIL INTENT – BUT FROM THE AVERAGE AMERICAN’S UNWILLINGNESS TO SHARE THEIR SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION WITH A THIRD PARTY. TOGETHER WE NEED TO QUESTION WHETHER FINANCIAL INSTITUTIONS REPORTING ACTIVITY AT THIS LEVEL IS HELPFUL TO LAW ENFORCEMENT. WE WOULD ENCOURAGE FINCEN TO ANALYSE ITS SAR DATA ACROSS THE FINANCIAL SERVICES COMMUNITY AND PROVIDE MORE GUIDANCE ON WHAT TYPE AND LEVEL OF ACTIVITY PRESENTS THE BEST INTELLIGENCE TO LAW

ENFORCEMENT. IT IS POSSIBLE THAT BY FOCUSING ON HIGHER LEVELS OF ACTIVITY WE CAN REDUCE THE NUMBER OF NON-USEFUL REPORTS, ASSIST LAW ENFORCEMENT IN MORE RAPIDLY IDENTIFYING MONEY LAUNDERING SCHEMES AND DRIVE OUR COLLECTIVE RESOURCES TO WHERE THE RISK REALLY LIES.

BUT HOW CAN THE REPORTING SYSTEM BE IMPROVED? FIRST, I'D LIKE TO COMMEND DIRECTOR FOX AND FINCEN FOR INCREASING THE DIALOGUE WITH OUR INDUSTRY ABOUT THESE ISSUES. AS YOU ARE AWARE, FINCEN HAS PROPOSED A NEW SAR-MSB FORM AND WESTERN UNION LOOKS FORWARD TO COMMENTING ON THE FORM IN THE NEAR FUTURE. HOWEVER, WE BELIEVE THE PROCESS SHOULD BE EVEN FURTHER SIMPLIFIED FOR OUR AGENTS. AGENTS SHOULD BE REPORTING SUSPICIOUS ACTIVITY ON A SIMPLE, ONE-PAGE FORM PROVIDING ONLY BASIC INFORMATION. ANY LAW ENFORCEMENT INVESTIGATION TRIGGERED BY SUCH A SAR WILL INEVITABLY LEAD TO REQUESTS FOR UNDERLYING INFORMATION HELD BY THE SERVICE PROVIDER SO NOTHING IS LOST BY ALLOWING AN AGENT TO USE AN ABBREVIATED FORM. FURTHER, THE FORM SHOULD BE IN BOTH ENGLISH AND SPANISH IN RECOGNITION OF THE GROWING HISPANIC SEGMENT OF OUR POPULATION. I NOTE THAT WESTERN UNION PROVIDES TRAINING MATERIALS IN ENGLISH, SPANISH, MANDARIN, PORTUGUESE, FRENCH, KOREAN, RUSSIAN, ARABIC AND POLISH

IN RECOGNITION OF THE WIDE VARIETY OF AGENTS SERVING A VERY DIVERSIFIED CONSUMER BASE.

IN THE AREA OF PROVIDING BETTER INFORMATION TO LAW ENFORCEMENT, THERE ARE TWO AREAS OF CONCERN. FIRST, FROM OUR EXPERIENCE, LOCAL LAW ENFORCEMENT AGENCIES AND STATE ATTORNEYS GENERAL OFFICES ARE NOT FULLY UNAWARE OF FINCEN'S GATEWAY SYSTEM WHICH ALLOWS THEIR AGENCIES TO CONDUCT THEIR OWN RESEARCH AND ANALYZE BSA DATA EXTRACTED FROM THE HUNDREDS OF THOUSANDS OF SARs FILED EVERY YEAR. BETTER EDUCATING LOCAL LAW ENFORCEMENT WILL RESULT IN FEWER REQUESTS GOING TO MSBs FOR INFORMATION THAT IS ALREADY AVAILABLE.

SECOND, THERE MUST BE MORE INFORMATION FLOWING FROM LAW ENFORCEMENT TO THE INDUSTRY ON EMERGING CRIMINAL AND MONEY LAUNDERING PATTERNS. THE "TWO-WAY" CONVERSATION BETWEEN THE GOVERNMENT AND THE PRIVATE SECTOR MUST MOVE FROM A WHISPER TO A ROAR IF COLLECTIVELY WE ARE GOING TO SUCCEED IN PROTECTING OUR NATION. WE BELIEVE THAT THE SHARING OF MORE NON-PUBLIC INFORMATION BETWEEN THE PUBLIC AND PRIVATE SECTOR WILL SIGNIFICANTLY IMPROVE ALL OF OUR EFFORTS IN THIS AREA.

A FINAL WORD ON THE “DEFENSIVE” FILING OF SARs. AS DISCUSSED, A BIG ISSUE FOR MSBs IS THE FILING OF A SAR TO REPORT LOW LEVEL STRUCTURING. SUCH FILING IS NOT DEFENSIVE BECAUSE STRUCTURING FOR ANY REASON IS TECHNICALLY A CRIME. BUT WHILE SUCH REPORTING IS NOT “DEFENSIVE”, IT MAY NOT BE ALL THAT HELPFUL. THERE HAS TO BE A BETTER APPROACH.

THERE ARE STILL MANY QUESTIONS SURROUNDING THE REPORTING OF STRUCTURING ACTIVITY. DOES IT HAPPEN OVER A SINGLE DAY, A WEEK OR CAN IT OCCUR AND THEREBY REQUIRE REPORTING OVER A PERIOD OF MONTHS? SOME PUBLIC PRONOUNCEMENTS SUGGEST THE ANSWER IS YES, BUT THERE IS NO CLEAR GUIDANCE CONCERNING TRANSACTION LEVELS OR A TIMEFRAME FOR THE ACTIVITY TO BE MONITORED. MUCH OF THE GUIDANCE GIVEN HAS BEEN TOO BROAD AND IN TODAY’S REGULATORY ENVIRONMENT GRAY AREAS LEAD TO MORE FILINGS.

AN EXAMPLE OF A GRAY AREA IN SAR FILING DECISION-MAKING IS “HIGH VOLUME” CONSUMERS. WESTERN UNION HAS FOUND THAT MANY OF OUR HIGHER VOLUME CONSUMERS HAVE VERY LEGITIMATE REASONS FOR THE USE OF OUR SYSTEMS. WE STRIVE TO IDENTIFY AND LEARN MORE ABOUT THESE CONSUMERS BY CONTACTING THEM TELEPHONICALLY. HOWEVER, STATE BANK EXAMINERS HAVE STATED THAT THEY “FEEL” THAT ANY HIGH VOLUME USER OF AN MSBs’ SERVICES MUST BE SUSPICIOUS. SO IF WE TRY

TO CONTACT THE CONSUMER AND HE DOES NOT RETURN THE CALL – MUST WESTERN UNION FILE A SAR WITHOUT ADDITIONAL INFORMATION RELEVANT TO THIS ACTIVITY? RIGHT NOW, OTHERS WE HAVE CONSULTED WITH ANSWER, YES – FILE THE SAR TO PROTECT YOURSELF FROM A POTENTIAL NEGATIVE EXAMINATION FINDING.

MANY EXAMINERS' POSITION APPEARS TO BE “IF YOU CANNOT PROVE THAT A CONSUMER IS WHOLLY INNOCENT – THEN THEY ARE GUILTY – FILE THE SAR.” THIS ATTITUDE LEADS TO EXCESSIVE SAR FILINGS BECAUSE IT FOLLOWS THE “MORE EQUALS BETTER” APPROACH. WESTERN UNION IS ATTEMPTING TO BECOME MORE SURGICAL IN ITS SAR FILING TO PROVIDE QUALITY INFORMATION, NOT MORE INFORMATION. WE HOPE THE LAW ENFORCEMENT AND REGULATORY COMMUNITY SUPPORTS THIS MORE THOUGHTFUL APPROACH.

NO COMPLIANCE PROGRAM SHOULD BE STATIC AND NOR SHOULD THE GOVERNMENT’S APPROACH TO FIGHTING MONEY LAUNDERING AND TERRORIST FINANCING. WHAT WAS PUT IN PLACE THREE YEARS AGO MIGHT NOT ADDRESS TODAY’S CONCERNS. WE WOULD LIKE TO SEE A REVIEW OF LAW ENFORCEMENT’S EXPECTATIONS OF WHAT TYPE OF ACTIVITY SHOULD BE FILED ON BASED ON TODAY’S REALITIES AND YESTERDAY’S LEARNINGS. SUCH A REVIEW AND DIALOGUE WILL LEAD TO A MORE EFFICIENT AND FOCUSED REPORTING REGIME. THANK YOU.