



FINANCIAL SERVICE CENTERS OF AMERICA, INC.
A NATIONAL TRADE ASSOCIATION

Statement of

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Before the
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Subcommittee on Oversight and Investigations

Regarding
The First Line of Defense:
The Role of Financial Institutions
in Detecting Financial Crimes

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Ms. Chairwoman, Members of the Subcommittee, my name is Scott McClain. I serve as Deputy General Counsel to the Financial Service Centers of America, also known as FiSCA. I represent FiSCA on the BSA Advisory Group, and I am grateful for the opportunity to appear today to discuss the BSA compliance experience of the community financial services and check cashing industry.

FiSCA is a national trade association representing over 5,000 neighborhood financial service providers throughout the United States. Our members are classified under the Bank Secrecy Act as “Money Service Businesses” or “MSBs.” We provide a range of financial services and products to our customers, including check cashing, money order sales, money transfer services, and utility bill payment services. The industry includes many types of businesses, including publicly traded entities down to corner grocery store “mom and pop” establishments offering ancillary financial services. In responding to the needs of our customers, we provide three things consumers need with regard to their money: liquidity, access and service. Fundamentally, check cashers have the ability to deliver these features at an affordable price; the marketplace has shown us that more traditional financial institutions cannot.

U.S. Treasury Secretary John Snow, acknowledged in a recent address to the Florida Bankers Association, that MSBs “are key components of a healthy financial sector, and it is very important that they have access to banking services.”

Julie L. Williams, acting U.S. Comptroller of the Currency, agreed, stating recently that “MSBs play a vital role in the national economy, providing financial services to individuals who are not otherwise part of the mainstream financial system.” The check cashing and MSB industry is unquestionably a product of the powerful market forces which have shaped us. We have grown out of a need for convenient, accessible financial services. In short, we serve the working communities of the United States. We serve the working man and woman – and we are very much a part of the mainstream of a healthy financial industry.

The MSB industry has taken significant measures to ensure BSA compliance.

The community financial services industry is clearly on the frontline in the war on money laundering and terrorist financing, and has committed significant resources in this regard. As an industry, we recognize the critical need for strict adherence to BSA compliance requirements, and the need for comprehensive education of MSBs and personnel.

As this Subcommittee is well aware, the MSB industry is subject to many of the core BSA requirements as banks and other financial institutions. These requirements include currency transaction reporting for qualifying transactions in excess of \$10,000, suspicious activity reporting, monetary instrument sales record-keeping for money order and travelers check sales, and recording requirements for electronic money transfers. Check cashers and MSBs are now required to be registered with the Treasury, and are required under Section 352 of the USA Patriot Act to have compliance programs

including written AML policies and procedures, compliance officers, employee training programs, and independent compliance examinations.

The industry has taken great measures to ensure wide-scale compliance. In 1993 the National Check Cashers Association (known since 1999 as FiSCA) issued two compliance manuals for the industry: The *FiSCA Compliance Manual* and a corresponding *FiSCA Employee Handbook*. These manuals were the first of their kind for the non-bank financial institutions industry – and were favorably reviewed by FinCEN and utilized by IRS as guidance materials in connection with Title 31 examination procedures. The manuals, which pre-dated USA Patriot Act requirements by nearly a decade, have been periodically updated and supplemented based on amendments to the BSA.

Following the September 11, 2001 terrorist attacks and implementation of the USA Patriot Act, FiSCA issued a *Model Anti-Money Laundering Compliance Program* to assist the industry in meeting new requirements under the Act. The *Model Compliance Program* provides guidance to MSBs for development of internal AML policies and procedures, and employee training programs.

Most recently, in the fall of 2004 FiSCA launched an Internet-based compliance training and examination program, which includes courses for both MSB tellers and compliance officers. The program, also the first of its kind for the MSB industry, provides comprehensive and uniform training to those employees on the front line. The courses include training on the identification of structured transactions and other financial crimes particular to the services and products offered by check cashers/money remitter agents. To date, approximately 6,000 MSB employees in more than a dozen states have sat for the on-line courses and examination. We hope to double the program's performance for 2005.

The FiSCA training and compliance programs have also received generous support over the years from Western Union and MoneyGram, and have been favorably reviewed by federal and state regulators.

Additionally, the major wire remitters have provided extensive BSA support to their thousands of agents across the United States. Virtually all check cashers are agents of Western Union, MoneyGram, or one of several other remitters. These companies are subject to rigorous BSA compliance requirements of their own. They are careful to verify the credibility, responsibility, and compliance programs of their agents. Moreover, these companies provide excellent BSA support materials and training sessions, and also conduct on-site agent examinations.

In addition to its own efforts, the industry has received significant BSA educational support from both FinCEN and IRS. In our experience, FinCEN's recent MSB outreach program has been generally successful in reaching and educating the check cashing and MSB industry as a whole. The guidance materials issued by FinCEN have been widely disseminated. The materials are written in a clear and

concise manner, and have been very well received by the industry. The materials include a “Money Laundering Prevention - An MSB Guide” and corresponding “Recognizing and Reporting Suspicious Activity Relating to Financial Crimes.” Moreover, FinCEN and IRS representatives have over the past few years spoken at numerous seminars and workshops sponsored by the national and state MSB associations, and private companies.

We cannot stress enough that FinCEN and IRS have done an exceptionally good job of educating the nation’s 20,000+ registered MSBs in the short period since the enactment of the USA Patriot Act in 2001. We grateful for their efforts and continuing support.

The MSB Compliance Record.

The check cashing and MSB industry suffers greatly from the perception that we are an inordinately “high risk” as compared with other financial institutions or businesses. It would appear that this conclusion has been reached with little attention to the actual compliance record of the industry. Notwithstanding all of the concern and recent attention given the topic, there is a paucity of actual cases involving check cashers and money laundering.

Since April 1999, FinCEN has assessed a total of \$327,500 in civil penalties against check cashers for BSA violations – yet during the same period it assessed well over \$55,000,000 against banks and other financial institutions. Citing recent examples, BSA violations involving depositories frequently involve tens of millions of dollars. Since the passage of the USA Patriot Act, IRS has dramatically increased the number and scope of Title 31 examinations of check cashers. Nonetheless, there has not been a corresponding increase in BSA violations found within the check cashing industry.

As we have witnessed time and again, when banks have terminated their check casher customers, it is more likely that the bank, and not the check casher, has run afoul of compliance requirements. Our experience in Florida, over the last year alone, makes this point clear.

First, in an action that will undoubtedly be familiar to this Subcommittee, on October 12, 2004, FinCEN and the Board of Governors of the Federal Reserve System announced that they had jointly assessed a \$10 million civil money penalty against AmSouth Bank of Birmingham, Alabama, for violations of the BSA. A Cease and Desist Order was also issued requiring AmSouth and its parent bank holding company to take certain corrective actions. The penalty against AmSouth was based upon the assessment by FinCEN and the Federal Reserve Board that the bank had failed to establish an adequate anti-money laundering program and the failure to file accurate, complete and timely SARs. The agencies found systemic defects in AmSouth’s program with respect to internal controls, employee training and independent review that resulted in failures to identify, analyze and report suspicious activity at the bank. Notably, none of the examples cited by the agencies in the Assessment of Civil Money

Penalties were related to the activities of the bank's check casher customers. Despite all of this, the immediate reaction of AmSouth was to issue notices to its check casher customers throughout Florida, Alabama and Mississippi, terminating their accounts.

Shortly thereafter, on November 5, 2004, the FDIC issued an Order to Cease and Desist to Beach Bank of Miami Beach, Florida. As with AmSouth, the deficiencies noted were those of the bank, not the bank's check casher customers. Nevertheless, Beach Bank terminated its relationship with all of its dozens of check casher customers. This sacrificial offering came despite the fact that the Cease and Desist Order did not require it, and despite the fact that the check cashers were exemplary customers. Further, Beach Bank failed even to examine into the modest measures that would have been required for it to come into compliance. Like the actions of AmSouth, Beach Bank's reaction to the FDIC Order left the innocent parties, check cashers, scrambling to find new banking relationships on short notice.

These are but two examples of a nationwide trend. The fact remains that check cashers are simply not good vehicles for money laundering: they do not take deposits, and the dollar amounts of their transactions is typically low. They are subject to federal and often state compliance examinations. They are required to report qualifying transactions and suspicious activities. More fundamentally, check cashing transactions require the disbursement of funds, rather than the receipt of currency. Virtually any cash-based business, whether it be a restaurant or retail store, presents a far greater risk of money laundering than does a registered, licensed check cashing operation. Virtually any bank in the land will happily open a new account for a gas station or bar, and will accept that customer's cash without question as to its source. Check cashers and other MSBs are unfairly subjected to a different standard.

Current Issues Concerning BSA Compliance.

In our experience, the current BSA reporting system has been largely effective with regard to the check cashing and MSB industry. The industry's compliance record is good. We are, however, aware of the March 23, 2005 Office of the Inspector General Report (OIG 05-033) and the issues raised therein concerning SAR data quality. There are clearly several issues that should be addressed to improve the quality of industry reporting, and also the general BSA enforcement scheme as it affects this industry. We welcome the opportunity to work with this Subcommittee in this regard.

First, with regard to Suspicious Activities Reporting requirements, we recognize that reliability of MSB SAR data is key in the battle against money laundering and financial crime. We are concerned that the current MSB SAR form (TD F 90-22.56) may be unduly complicated for the typical community financial services business. The instructions alone are fully three and one-half pages, are overly technical and incorporate terminology not common to the industry. In several areas, the SAR form applicable to depositories is actually easier to understand.

Obviously, the "Suspicious Activity Information – Narrative" section of the MSB

SAR form is of critical importance to law enforcement. The narrative section is designed to capture the essential details of the suspicious activity and individuals involved. As we have learned from our own experience and the recent Inspector General report, there have been data quality problems with regard to narratives completed by MSBs.

Although FinCEN recently issued a new MSB SAR form for comment, even that form may be unnecessarily complex. We would recommend that the form be completely re-evaluated, and that a more particularized form be created specifically for the community financial services industry, and tailored to the limited services and products we offer.

Referring again to the March 23, 2005 Inspector General Report, concerns have been raised with regard to the number of apparently incomplete SARs filed by both MSBs and depository institutions. While this raises many potential issues, one problem in the data collection scheme is immediately apparent. The MSB SAR threshold for virtually all consumer transactions is \$2,000. The threshold, however, for recording monetary instrument sales information is \$3,000. This disparity creates a significant data collection gap. Clearly, the scheme requires re-evaluation to cure any related systemic defects.

Moreover, due to the very nature of certain types of suspicious activity, it must be underscored that it is impossible to gather complete data on all suspicious transactions. The classic example includes a situation where a customer attempts a transaction at the \$10,000 CTR threshold level, and when he is asked to produce identification the customer leaves the establishment. Clearly, the MSB would not have an opportunity to obtain the individual's identification or other information sufficient to file a fully completed SAR form. Ironically, although a SAR missing key information is facially inadequate, on another level it is indicative of the fact that the general BSA scheme is working to thwart financial crime.

Additionally, OFAC compliance continues to be a confusing problem for the community financial services industry. There are no implementing guidelines for the MSB industry with respect to OFAC. Although the Office of Foreign Assets control did issue in late 2004 a guidance memorandum to MSBs, the notice was limited to money transfers. There is a need for additional OFAC guidance concerning risk assessment in regards to the other products and services provided by the community financial services industry. Moreover, although OFAC compliance is technically not a BSA issue, it would be helpful to industry if the Office of Foreign Assets Control were represented on the BSA Advisory Group.

Consistency of Title 31 examinations by IRS continues to be problematic. Although IRS has greatly improved the level of education of its agents in regards to the community financial services industry, there is clearly a need for consistency in the examination process. As we have experienced, records or documentation that appear to be satisfactory to one agent may be completely insufficient for another. Additionally,

there is no appeal process whatsoever with regard to an agent's determination as to whether an MSB's AML program is insufficient. As the process currently works, if an agent determines that a program does not satisfy BSA requirements, the MSB is issued a form (1112) letter outlining the deficiencies. The MSB has no ability to actually correct the IRS's determinations, even where the agency findings are clearly erroneous. Inasmuch as the examination results may affect the MSB's overall compliance record and banking relationships, there is a clear need for some corrective process at this level.

Most importantly, there must be creation and a process for lines of communication between the community financial services industry and the banking industry. The two industries seem to be operating in separate tracks, without regard to the fact that we serve the same market and are subject to many of the same AML requirements. Although the FinCEN guidelines concerning banking MSBs are a step in the right direction, notwithstanding the recent flurry of activity, not much appears to be happening.

We understand that much of the tension between the community financial services industry and the banking industry stems from a misunderstanding about the nature of the services we provide, and the level of potential risk to the banks that serve us. We prepared to bridge the gap in this regard. Obviously, it is in our best interests to cause the banking industry to be reassured that banking check cashers is safe and profitable.

Additionally, it is critical that the recent FinCEN guidelines be evaluated to determine whether they are, in fact, providing federal bank examiners and banks with the necessary tools and information to make informed decisions concerning MSBs. FiSCA will be hosting on September 26, 2005 a forum to discuss the guidelines, and to determine whether they have staunched the flow of banks leaving the industry, and, hopefully, reassured others to return. We intend to invite not only MSBs, but also the banks, key banking regulators, and decision-makers who will ultimately determine whether the guidelines have achieved their purpose. We ask for your support and involvement in this process.

In conclusion, the community financial services industry is committed to the ongoing battle against money laundering and terrorist financing. As with other sectors of the United States financial system, it is critically important that we protect the integrity and legitimacy of our industry. It is equally critical, however, that our industry be recognized as being a part of a healthy financial industry, and partner in the war on financial crime.

Again, we thank you for the opportunity to present these views.