**STATEMENT OF WILLIAM J. FOX, DIRECTOR**
**FINANCIAL CRIMES ENFORCEMENT NETWORK**
**UNITED STATES DEPARTMENT OF THE TREASURY**

**BEFORE THE**
**UNITED STATES SENATE**
**COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS**

**APRIL 26, 2005**

Chairman Shelby, Senator Sarbanes, and distinguished members of the Committee, I appreciate the opportunity to appear before you again to discuss the programs the Financial Crimes Enforcement Network is implementing under the Bank Secrecy Act, as amended, relating to the money services business sector. We very much appreciate the support and policy guidance you and members of this Committee have offered to us. Your leadership and commitment to understand and publicly discuss the issues facing the money services business sector is critical not only to the safety of our financial system, but also to our nation's security.

I am honored to be here today with Acting Comptroller Julie Williams from the Office of the Comptroller of the Currency; Commissioner Kevin Brown of the Small Business/Self-Employed Division of the Internal Revenue Service; and, Superintendent Diana Taylor from the State of New York Banking Department. All of these officials lead agencies that play critical roles in implementing a rational Bank Secrecy Act regulatory regime on the money services business sector. I am pleased to advise this Committee that we have continued to build on our very good working relationship with each of these agencies, as well as with other Federal and state regulatory agencies that share our efforts. The importance of our working relationship with these and other agencies cannot be overstated. In fact, if we are to be successful in achieving the goals of the Bank Secrecy Act, we must ensure that the government – policy makers, regulators and law enforcement – speaks with one voice on these issues. The confusion resulting from different messages has serious ramifications, which can be devastating. The need

for such close coordination to meet the challenges under the Bank Secrecy Act is particularly acute with respect to the money services business industry.

When I appeared before you last June, I outlined a plan for establishing more aggressive and coordinated administration of the regulatory implementation of the Bank Secrecy Act. In September, I updated you on that plan. Since that time, we have made extensive progress in the following areas:

- We have executed agreements with the five Federal Banking Agencies and the Internal Revenue Service to provide information to us in both specific and aggregate fashion to give us a better understanding of the overall level of Bank Secrecy Act compliance in the industry. This understanding will enable us to better oversee the various sectors in the financial industry we regulate and administer the Bank Secrecy Act. In each of those agreements, we have committed our direct involvement and support to those regulators in helping them discharge their regulatory obligations. We are currently working hard to get similar agreements with the Securities and Exchange Commission and the Commodity Futures Trading Commission.

- Working closely with the Conference of State Bank Supervisors, we have developed a model information-sharing agreement that we will seek to execute with all states that regulate banks, money services businesses, and other types of financial institutions for compliance with the Bank Secrecy Act or similar anti-money laundering requirements. This agreement is patterned after the agreement we have executed with the federal banking agencies and the Internal Revenue Service. In fact, I am pleased to tell you that the first state banking regulator with whom we have executed the model agreement is the State of New York Banking Department. These agreements will, in my view, take our oversight and administration of these programs to the next level. We will have a much clearer picture of the various financial industries we regulate, including money services businesses; our collective actions and concerns can be better coordinated; and we will better leverage information and resources as a result of these agreements.

- Our new Office of Compliance, established last year with the support of the Congress and the Department of the Treasury, particularly this Committee, is well on its way to full staffing. This office will be devoted solely to overseeing the implementation of the Bank Secrecy Act regulatory regime by the regulators with delegated examination authority. We are in the process of staffing the 18 positions provided by the Congress and purchasing the desks, computers and other equipment needed to support them. Several of these individuals have already reported for duty.

- As I committed to you last June, we have established a new Office of Regulatory Support in our Analytics Division, thereby devoting for the first time in the

history of the Financial Crimes Enforcement Network, a significant part of our analytic muscle to our regulatory programs. We now have devoted over one quarter of our analysts solely to this mission. Among other things, these analysts are being used to identify compliance weaknesses in the reporting submitted by regulated industries as well as trends, patterns and threats. The analysts are and will continue to assist our Office of Compliance and the other delegated supervisory regulators to be smarter about their programs for Bank Secrecy Act compliance.

- Finally, we have established a secure web site that will form the platform for much deeper information sharing under the authority of Section 314(a) of the PATRIOT Act. Section 314(a) contemplated a "two-way" conversation between the government and private sector on relevant issues relating to money laundering, terrorism and other illicit finance. Soon, we will begin providing information to the financial industry – on both a macro and micro level – that will help them assess the risks related to their business lines and customers, which will enable them to better discharge their responsibilities under the Bank Secrecy Act.

When I appeared before this Committee last September, my statement provided an overview of money services businesses and outlined the challenges we collectively face to ensure a healthy, yet safe and transparent sector. Because that is already part of the Committee's developing record on these issues, I will not repeat that information here today. Instead, my testimony will focus on several specific issues of concern that have arisen since last fall regarding money services businesses. I will also set out for you what we have accomplished, as well as the issues that we believe still need to be addressed.

It is fair to say that the Bank Secrecy Act regulatory climate has changed dramatically since I appeared before you last September. One result of this change has been an increase in what we call the "defensive filing" of suspicious activity reports. We believe this climate change has also caused many institutions to reassess the risks associated with large portions of their customer base. This reassessment of risk is not a bad thing; in fact, many in the financial industry have told us that the heightened scrutiny on Bank Secrecy Act compliance has caused their institutions to "know" their customers better. However, the reassessment of risk has also led many institutions to conclude that certain customers pose too much risk for the institution to continue to maintain an account relationship. These institutions have begun to terminate their "risky" account relationships and the money services businesses sector is an industry sector that has suffered the wide-spread termination of banking services. Unfortunately, we are concerned that often decisions to terminate account relationships may be based upon fear and confusion, or on a misperception of the level of risk posed by money services businesses.

Once we recognized that account termination was becoming a wide-spread problem, and at the direction of Secretary Snow, we and the Bank Secrecy Act Advisory Group's Non-Bank Financial Institutions and Examinations subcommittees held a public

fact-finding meeting to elicit the perspectives of money services businesses and banks why these account relationships were being terminated. The meeting, held on March 8th of this year, confirmed that money services businesses of all types and sizes are losing their bank accounts at an alarming rate, even when those money services businesses appeared to be complying with the Bank Secrecy Act and state-based regulatory requirements. We also heard an unprecedented level of concern among small and large banking institutions alike that opening or maintaining accounts for money services businesses will be too costly, pose too great a threat of reputational risk, or will continue to subject them to heightened regulatory scrutiny from examiners. These concerns are exacerbated by the perceived risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts, the perception that banks are being evaluated against regulatory standards that have not been explained, misperceptions about the requirements of the Bank Secrecy Act, and the erroneous view that money services businesses present a uniform and unacceptably high risk of money laundering or other illicit activity.

Individual decisions to terminate account relationships, when compounded across the U.S. banking system, have the potential to result in a serious restriction in available banking services to an entire market segment. The money services business industry provides valuable financial services, especially to individuals who may not have ready access to the formal banking sector. It is long-standing Treasury policy that a transparent, well regulated money services business sector is vital to the health of the world's economy. It is important that money services businesses that comply with the requirements of the Bank Secrecy Act and applicable state laws remain within the formal financial sector, subject to appropriate anti-money laundering controls. Equally as important is ensuring that the money services business industry maintain the same level of transparency, including the implementation of a full range of anti-money laundering controls as required by law, as do other financial institutions. If account relationships are terminated on a wide-spread basis, we believe many of these businesses could go "underground." This potential loss of transparency would, in our view, significantly damage our collective efforts to protect the U.S. financial system from money laundering and other financial crime – including terrorist financing. Clearly, resolving this issue is critical to our achieving the goals of the Bank Secrecy Act.

As my colleagues in the regulatory agencies and I are well aware, financial industry members across the spectrum are genuinely concerned about the heightened levels of scrutiny placed upon their institutions. Unfortunately, we continue to see institutions with very basic compliance failures that have a significant impact, while at the same time, we see institutions across the spectrum working harder than ever to ensure compliance with this regulatory regime. These institutions perceive a significant regulatory and reputation risk being placed upon their institutions by examiners, prosecutors, and the press. This perception is not irrational. Institutions are trying hard to determine what it takes to comply with the Bank Secrecy Act regulatory regime in this time of heightened scrutiny.

Based upon what we learned at the March 8th meeting, and in discussing these issues with other Federal regulators, we have developed and are implementing a three-point plan for addressing these issues:

1. ***Guidance – Develop guidance jointly with the federal banking agencies to outline with specificity Bank Secrecy Act compliance expectations when banks maintain accounts for money services businesses.***

On March 30, 2005, the Federal Banking Agencies and we took the first step toward addressing these issues by issuing a Joint Statement on Providing Banking Services to Money Services Businesses. *See* Attachment A. The purpose of the Joint Statement was to assert clearly that the Bank Secrecy Act does not require, and neither the Federal Banking Agencies nor we expect, banking institutions to serve as *de facto* regulators of the money services business industry. The Joint Statement also made it clear that banking organizations that open or maintain accounts for money services businesses are expected to apply the requirements of the Bank Secrecy Act to money services business customers on a risk-assessed basis, as they would for any other customer, taking into account the products and services offered and the individual circumstances.

This was just a first step. In the Joint Statement, we pledged to issue further, more specific guidance that would outline further our collective compliance expectations for both banking institutions and money services businesses. We believe this guidance will help clarify the Bank Secrecy Act requirements and supervisory expectations as applied to accounts opened or maintained for money services businesses. We are not so naïve as to believe that this guidance will solve all issues, nor that it will repair all relationships between money services businesses and banking organizations. We are, however, committed to continue to work with the federal banking agencies and our other federal and state partners to do everything we can as responsible and responsive regulators, to issue guidance, clarify expectations, and answer questions.

2. ***Education – Provide to the banking industry and bank examiners enhanced education on the operation of the variety of products and services offered by money services businesses and the range of risks that each may pose.***

We will build on the significant steps that the Federal banking agencies and we have taken toward establishing the framework and mechanism for providing educational outreach. For example, we are working together with the Federal banking agencies to develop a unified set of examination procedures for Bank Secrecy Act compliance, which will include a section devoted to money service businesses. Moreover, we have already begun joint examiner training through a partnership with the Federal Financial Institutions Examination Council that will provide a forum to provide training on the money services business industry. Finally, at the Financial Crimes Enforcement Network, we are developing a series of free training seminars for industry, regulators and

law enforcement that will undertake many of the issues that are currently vexing all interested parties.

***3. Regulation – Strengthen the existing federal regulatory and examination regime for money service businesses, including coordinating with state regulators to better ensure consistency and leverage examination resources.***

We will continue to evaluate and modify, if necessary, the existing Bank Secrecy Act regulatory requirements relating to money services businesses. This is an important exercise not just for money services businesses, but for all regulatory requirements. Our regulatory regime is not and cannot become static. We must be willing to change course when required to ensure the goals of the Bank Secrecy Act are being met. We have started this effort for money services businesses. For example, after consulting with law enforcement, we recently proposed to revise, simplify, and shorten the money services businesses suspicious activity form. This action will enhance the industry's ease of completing the form while still obtaining critical information needed by law enforcement. We will reexamine our registration requirement for money services businesses and ensure that it is achieving the purpose intended in the law; that is, to identify the universe of lawfully operating money services businesses so law enforcement can focus on those businesses that are operating outside the bounds of the law. We will also take a hard at our definitions about what is a money services business and ensure we have not captured entities that pose little or no money laundering or illicit finance risk.

We will continue to work closely with our colleagues at the Internal Revenue Service, to enhance the examination regime through the development of revised Bank Secrecy Act examination procedures, information sharing and examination targeting. Additionally, as I noted previously, we have worked and will continue to work closely with the Conference of State Bank Supervisors and state regulators on these issues. Executing individual agreements with state banking agencies will ensure better coordination and synergy with state-based examiners to better leverage some of the good work and resources of those agencies.

We also will continue to work to develop indicators that can be used by law enforcement and financial institutions to help identify unlicensed and unregistered money services businesses. By providing law enforcement, banks and other financial institutions with indicia of illicit activity, they will be better able to help us identify money services businesses that choose to operate outside the regulatory regime. It remains vital that we strike the appropriate balance between education and outreach to those businesses that remain ignorant of the regulatory requirements, and aggressive criminal enforcement of those businesses operating underground.

Perhaps the best outcome of the events of late has been the express recognition of the need for all the stakeholders in the Bank Secrecy Act arena to work more closely together to reach our collective goals in a consistent manner. We are working closer with the regulatory agencies that have delegated examination authority for the Bank Secrecy

Act than ever before. Not only are we issuing joint guidance and developing uniform examination procedures, but we also are sharing information in a deeper and broader way, as well as developing synergies to the benefit of the regulatory regime as a whole. We are also working more closely with law enforcement. We have formed an interagency working group that brings together regulators and law enforcement to work together to identify and address money services businesses that may not be complying with the law and regulations. Finally, we are setting the stage by building platforms, systems and technologies such as BSA Direct that will allow us to leverage information in a way that we never have before.

We understand that we must move with all possible speed we can muster and that when we move we must get it right. September 11th raised the stakes. The old paradigm of a nation being able to defend its citizens from outside threats with walls and military might – a paradigm that has been with the world since Rome – have vanished on that terribly brilliant day three and a half years ago. That day proved a terrible new reality we all face: the threat to our nation's security can come from within; from people living next door to us, shopping at the same supermarkets, getting gas at the same gas stations, receiving cash from the same ATMs, and taking the same flight.

This threat demands a different way of looking at things – a different way of protecting our citizenry. No longer can citizens be passive about the defense of our country. The government cannot do it alone. What we know about this new reality is that information is now central to the security of the nation. And the simple fact is that information is what the Bank Secrecy Act regulatory regime is all about. This regulatory regime should be directed at safeguarding the financial industry from the threats posed by money laundering and illicit finance and it should be directed at providing the government with the right information; relevant, robust and actionable information that will be highly useful to law enforcement and others. It is my view that best way to achieve these goals is to work in a closer, more collaborative way with the financial industry. This regime demands a partnership and an on-going dialogue between the government and the financial industry if it is ever going to realize its true potential. I am convinced that the vast majority of our financial industry members are committed to this partnership. Our goal is to do all we can to ensure that the government lives up to its side of the bargain.

Mr. Chairman, Senator Sarbanes, distinguished members of the Committee, the importance of your personal and direct support of these efforts cannot be overstated. Your oversight will ensure that we meet the challenges that we are facing. I know how critical it is that we do so and we hope you know how committed we are to meeting those challenges. Thank you.