Statement of
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Chairman Shelby, Ranking Member Sarbanes and members of the Committee, I appreciate the opportunity to appear before you today to discuss implementation of the Bank Secrecy Act in the context of money services businesses (MSBs). We very much appreciate your leadership, and that of the Committee, in this vital area.

"Money services businesses," or MSBs, is an umbrella term encompassing many different types of financial services providers. Estimates of the number of MSBs run into the hundreds of thousands, ranging from Fortune 500 companies with numerous outlets worldwide, to independent convenience stores offering check-cashing services. According to industry sources, up to 40 million Americans – who, for various reasons, do not have bank accounts -- depend on MSBs to satisfy most of their financial services needs.

But because they may handle large volumes of cash, MSBs can pose significant risks. While most MSBs have never been tainted by money laundering, some have been conduits for illicit activity. We have even seen cases in which money launderers established MSBs to disburse and effectively launder their excess cash to unsuspecting customers.

Today, MSBs are governed by an uneven system of licensure and regulation. Some states do not require any MSBs to obtain licenses; some only license certain

segments of the MSB industry; others have comprehensive licensing standards and oversight. And, as of October 2004, apparently only about one out of ten of all MSBs had registered with FinCEN, as Federal law requires.

Thus, banks that maintain relationships with MSBs face multiple challenges. In general, at a minimum, they must:

1) apply their customer identification program requirements;

2) confirm FinCEN registration;

3) confirm compliance with state or local licensing requirements;

4) confirm agent status; and

5) conduct basic risk assessment to determine the level of risk associated with the account, and thus the level of diligence warranted for the relationship.

Depending on the nature of a bank's business with MSBs, fulfilling these responsibilities can involve significant bank resources.

Compounding the challenge, we recognize that guidance on key issues provided by Federal regulators has been in need of clarification in important respects. This was especially true in the case of unregistered MSBs, where clarity was needed whether banks are expected to file SARs, close accounts, or take some other action upon discovery that an MSB customer has not complied with applicable registration and licensing requirements.

Finally, in addition to these costs, risks, and uncertainties, it is a reality that banks feel that they are subject to substantial compliance and reputation risk if they are perceived to misstep on BSA issues generally. It is not surprising, given these factors,

that some banks determined that the risks were not worth it and chose to terminate their relationships with MSBs.

In closing, I would stress several points. First, the OCC does not expect banks to be de facto supervisors of their MSB customers. A banks' job is to develop systems and controls that effectively identify suspicious transactions and to implement them in a risk-based manner; its job is not, and it should not be expected, to police their MSB customers.

Second, except in unusual cases, generally involving an enforcement matter, the OCC does not require any national bank to close the accounts of an MSB or any other customer.

Third, the OCC expects banks that service MSBs to apply the requirements of the BSA on a risk-assessed basis – just as they do with other account holders. Not all MSBs represent the same level of risk, and banks should treat each MSB according to its risk profile.

Finally, I want to emphasize that the OCC is constantly striving to improve the quality of our BSA examinations and the clarity of the guidance we provide to the national banking system. Our track record of BSA enforcement actions reflects judicious use of our enforcement authority; we absolutely do not have a "zero tolerance" approach where any and every BSA deficiency warrants a formal enforcement action, but we absolutely will take action where action is warranted.

With respect to better BSA guidance, together with FinCEN, the OCC and the other Federal banking agencies recently issued an Interagency Policy Statement, touching on several key issues.

FinCEN and the agencies today are issuing "Interagency Interpretive Guidance on Providing Banking Services to MSBs," which should clarify key issues where uncertainties existed. I will defer to Director Fox to describe that guidance in detail. I also would like to take this opportunity to applaud Director Fox for all his efforts to foster coordination and collaboration between FinCEN and the Federal banking agencies.

Lastly, in concert with FinCEN and the other Federal banking agencies, we also will soon produce revised, uniform interagency BSA examination procedures.

Mr. Chairman, Senator Sarbanes, and members of the Committee, the OCC salutes your leadership in this vital area and strongly shares the Committee's goal of preventing and detecting criminal acts that involve the misuse of our nation's financial institutions. We also share the concern that it is important that MSBs have access to banking services, but those relationships also must be consistent with the anti-money laundering and anti-terrorist financing laws.

We stand ready to work with Congress, FinCEN, the other Federal banking agencies, and the banking industry, to achieve these goals.