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

Statement of

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Before the
U. S. House of Representatives
Committee on Financial Services
Subcommittee on Financial Institutions
And Consumer Credit

Regarding
Bank Secrecy Act's Impact on Money Services Businesses

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Mr. Chairman, Members of the Committee, my name is Gerald Goldman. I serve as General Counsel to the Financial Service Centers of America (FiSCA). I thank you for the opportunity to appear today to present our views with regard to the alarming number of banks making wide-scale terminations of their check casher customers. Those views will provide you a description of the serious plight of our industry, the tremendous efforts we have made thus far to find a solution to the problem, and the apparent indifference we continue to experience on the part of most banks and some federal regulators.

FiSCA is the national trade association representing over 6,000 neighborhood financial service providers throughout the United States. FiSCA's members provide non-traditional financial services including check cashing, funds transfers, money orders and utility bill payment services. We serve millions of customers, both banked and un-banked, who use us for the advantages that we provide: convenient access, service and the ability to obtain instant liquidity. The most important service that we offer is a place for hard-working people to cash their paychecks, a necessary service that they cannot always obtain at a bank, or choose not to. We serve customers from all walks of life, including urban communities and the under-banked, groups that the Financial Crimes Enforcement Network (FinCEN) and the federal banking agencies have stressed as being underserved by more traditional financial institutions.

U.S. Treasury Secretary John Snow acknowledged last year in an address to the Florida Bankers Association, that money services businesses (MSBs) "are key components of a healthy financial sector, and it is very important that they have access

to banking services." We are very much a part of the fabric of a healthy economy, yet our industry remains in peril.

As we have reported time and again, the MSB industry is experiencing a growing crisis of banks making wide-scale terminations of their accounts. In the State of New York, for example, there are some 640 licensed check cashers which last year cashed 35,687,745 checks with a total value of $15,509,239,471. Fully 87% of the state's check cashers are now served by only two banks. If one of those banks should terminate, the result may be disastrous. (One has already terminated its licensed money transmitters.) Other areas are experiencing similar trends. Moreover, of the banks that continue to serve the industry, many are refusing new accounts, or are placing onerous requirements on the accounts they currently maintain.

The MSB and banking industries are in agreement that the problem stems from a perception by federal bank regulators that check cashers and other MSBs are "high risk" for money laundering and financial crime. The trend gained momentum in 2000 following the OCC's issuance of a BSA Handbook and an advisory letter (Advisory Letter 2000-3) placing check cashers and other MSBs in high risk account categories. As a result of this guidance and heightened attention to anti-money laundering following passage of the USA Patriot Act, coupled with existing prejudices, federal bank examiners have been exerting undue pressure on banks servicing the industry. There is no question but that banks are required to expend greater resources in maintaining MSB customer compliance and monitoring systems, which has directly impacted the profitability of servicing this market sector. Banks have decided to invest resources in more profitable business lines. In some instances banks have terminated check

cashers due to direct criticism from bank examiners. In some cases the decision has been due to nebulous “reputational risk” concerns. In many cases banks refuse check cashers simply because we are MSBs; to be labelled an MSB is to be branded with a scarlet letter.

The high risk designation is a red herring. FinCEN, IRS and numerous state officials have publicly acknowledged that there is no palpable money laundering problem within the regulated check cashing industry. Moreover, significant government oversight of the industry presently exists. As MSBs, check cashers must register with the federal government and are subject to periodic IRS examination. In many states, check cashers are required to be licensed, and must undergo background screening and financial review. Licensing authorities typically impose recordkeeping and reporting requirements, and subject licensees to periodic examination by state (often banking department) examiners. As the result of recent Memoranda of Understanding between FinCEN and the various states, information gathered in examinations of check cashers is now shared between IRS and state authorities. Notwithstanding our objectively low risk profile, we continue to suffer discrimination and account terminations.

There is a consensus among FinCEN and the federal banking agencies that a bank discontinuance problem clearly exists, and that termination of MSB accounts is not in the interests of national security, and threatens access to financial services in urban communities and to the under-banked. Notwithstanding a clear acknowledgment of the problem, a regulatory solution has not been achieved and the terminations are continuing unabated.

We have worked long and hard to find a solution to the problem. I first reported the emergence of a bank discontinuance problem to FinCEN in November of 2000. Since that time, we have met with federal and state legislators, we have suggested legislation, we have written letters to scores of banks, we have met with FinCEN, OCC, and other bank regulatory agencies. We have testified before congressional sub-committees; in May of 2005 I testified on the issue before the U.S. Senate Committee on Banking, Housing and Urban Affairs. We have proposed that Treasury form an advisory group made up of representatives of the federal banking agencies, banks, and MSBs, for the sole purpose of ensuring access to banking services. More recently, we met with the American Bankers Association and other banking groups to develop a unified strategy. We have even called for a moratorium on MSB account terminations until a more permanent solution could be found. We have seen some progress; we were encouraged when FinCEN held hearings on the issue in March of 2005, and spearheaded the issuance of the April 26, 2005 Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses (the "MSB Guidance"). Unfortunately, any progress thus far has been illusory.

All of our efforts and the efforts of FinCEN have been for naught. No major banks that previously terminated their MSBs have returned to the industry. If anything, last year's MSB Guidance has merely exacerbated the situation; many banks view the MSB Guidance as just adding to the regulatory load in serving MSBs, and some banks have terminated their check cashers as a result of the Guidance.

It is time for either absolution or compulsion. We must either absolve banks of their obligation to act as the functional regulators of their check casher customers and

free them of their current regulatory burdens – or we must compel them to stop discriminating against this industry. It must be recognized that regulatory efforts will not work because even with regulatory reform, many banks have become so intransigent in their position that they are writing off the entire industry. Absent a lifting of the regulatory burden, the only way to resolve the problem is to compel banks to refrain from discriminating against this industry. Nothing short of a statutory solution will bring the banks back because this is discrimination. It is time to stop the charade. This situation requires legislative intervention.

We appreciate the efforts and support of the American Bankers Association on this issue, but we see no evidence at all that the banks that need to listen are getting the message. At our Annual FiSCA Conference in September 2005, we hosted a Bank Forum, the purpose of which was to bring together key players from the MSB industry, banks and regulators in an effort to improve relationships and address the misimpressions that serve to perpetuate the problem. Not one single bank that has terminated its MSBs agreed to attend.

Recently, an “Underbanked Financial Services Forum” was held in Chicago, at which numerous panel discussions explored the ways that banks can better serve the under-banked, a group that is now perceived as the next growth market for the banking industry. It is no small irony that while banks now see a value in serving the under-banked, banks are at the same time denying us the opportunity to serve this same group.

From the inception of this problem to today, banks have been reluctant to step forward and testify, as evident from their absence from any of the hearings and forums

on the issue. In truth, at no point during this ongoing situation have any of these banks come forward to either defend their position, or work with us towards a solution.

As we have previously proposed, because of the deep seated bias that now exists a legislative approach may be required. We must mandate that financial institutions may not discriminate against check cashers solely on the basis of their status as MSBs, or due to alleged "reputation risks." Additionally, legislation should impose a requirement that a bank may only terminate an MSB customer for cause.

Alternatively, there must be a paring down of the regulatory burden on banks servicing the MSB industry. What is needed is legislation which gives force to the policy in the MSB Guidance that banks "will not be held responsible for their customers' compliance with the Bank Secrecy Act" or other regulations. Banks should be relieved of the burden of reviewing the compliance programs of their licensed and registered check casher customers. MSBs are already subjected to several levels of oversight by IRS and, in many cases, their state regulator. Banks should not be required to conduct their own redundant and costly review and monitoring of customer BSA compliance programs.

As suggested by prominent banking industry representatives, a more reasonable alternative would be a cross-industry practice whereby the MSB would provide primary compliance information (i.e., state license and MSB registration) to its bank, together with a certified statement by the MSB to the effect that the MSB does maintain appropriate BSA policies, procedures and controls. This self-certification, together with existing regulatory oversight by IRS and state regulators, should expressly relieve the bank of further due diligence obligations. FiSCA supports a certification process. We

agree that the MSB customer must take responsibility for its compliance obligations, and must be able to certify to its depository that it maintains appropriate controls. We are in accord that banks should be relieved of this burden, including the attendant costs and regulatory exposure.

Both the banking and MSB industry have also suggested legislation that would limit enforcement actions against banks that service MSBs in good faith. Although regulators express a reluctance to grant any form of "safe harbor," there is little question but that administrative enforcement actions against banks have had a chilling effect on access to depository services to the MSB industry. In one notable example, a multi-million dollar penalty was assessed against a Florida bank due to the bank's internal BSA deficiencies. Although the bank also served many check cashers, none were implicated in connection with the bank's regulatory violations or internal compliance deficiencies. Nonetheless, the bank responded to FinCEN and FED sanctions by terminating its check cashers, a result clearly not intended by the enforcement action.

In short, banks should not be held responsible for the compliance deficiencies or potential illegal activities of their MSB customers, however rare. Legislation is needed to provide that a bank that services check cashers or other MSBs in good faith will not face administrative enforcement action for the compliance lapses of its customer. Although bank and non-bank financial institutions cannot remain willfully blind to suspicious activity, banks should not be held accountable for the conduct of their check casher customers occurring outside of the depository relationship.

Additionally, there is a need for legislation expressly removing regulated check cashers from the category of "high risk," and imposing a presumption that such

accounts are “low risk.” Before 2000, there were few problems between check cashers and the many banks that served them. Check cashers and other MSBs were simply among the numerous commercial customers regularly and profitably served by their depositories. The shift in climate was not the result of a rash of money laundering convictions among check cashers. There is no legitimate nexus between the current trend and money laundering within our industry. To our knowledge, no check casher has ever been implicated in a terrorist financing situation.

Likewise, we are unaware of any situation where a bank has been penalized due to money laundering or BSA violations by its check casher customer. Nonetheless, the tendency among federal bank examiners has been to treat all MSBs as high risk. With respect to the regulated check cashing industry, this presumption is inaccurate and damaging. As compared with other financial sectors, the industry’s BSA enforcement record is quite good. Although the FinCEN website lists many multi-million dollar civil penalties against banks and other financial institutions, there have been only a few assessed against check cashers – and only one since 9/11. Moreover, since passage of the USA Patriot Act, IRS has greatly increased the number and scope of Title 31 compliance examinations, yet we have not seen a corresponding increase in BSA enforcement actions within the industry. The record shows that the regulated check cashing industry is not high risk for money laundering, and this fact must be driven home to the bank regulatory agencies that are compelling banks to terminate our accounts. The “high risk” label must be eliminated.

Other solutions to the bank terminations problem have been proposed by various industry leaders. Some have suggested that the current crisis could be alleviated by

granting MSBs direct access to depository accounts at Federal Reserve Banks, placing MSBs on par with credit unions and savings and loans. Others have suggested that a Community Reinvestment Act ("CRA") type process be implemented to determine how well banks are servicing the MSBs in their area, or, alternatively, granting CRA credits to banks that continue to service this industry. FiSCA is fully supportive of both of these concepts.

In sum, the current regulatory regime is not catching more criminals, but is harming scores of legitimate businesses and the customers they serve. Further regulation simply is not the solution. Regulators on all sides agree that bank discontinuance is a problem, but the fact is that there is not a sufficient resolve among the banking agencies to forge an inter-agency regulatory solution. As we have seen, FinCEN's recent attempts to bring relief to the situation have not been successful. Whether due to fear of regulatory reprisal, or indifference, banks are still not coming to the table. We are at a point now that a legislative solution, providing either absolution or compulsion, is the only solution.

We appreciate the opportunity afforded us to testify before you today with respect to this very important issue. We hope that the Subcommittee will consider favorably our recommendations. We remain committed to continuing to work with the Subcommittee and all interested parties in this regard.

Thank you.

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Gerald Goldman has served as General Counsel for the Financial Service Centers of America, Inc. from 1987 to the present. He is also General Counsel for the Check Cashers Association of New York, Inc. (1986 to present) and the New Jersey Check Cashers Association (1979 to present). He is a partner with Winne, Banta, Hetherington & Basralian, P.C. in Hackensack, NJ.

Goldman was appointed by New Jersey Governors Byrne and Cahill to the State Commission on Regulatory Efficiency and the State Law Enforcement Planning Commission from 1973 to 1978. In 1993, he was appointed by the Financial Crimes Enforcement Network (FinCEN), an agency of the US Treasury, to serve as a member of the Bank Secrecy Act Advisory Committee for eight years.

Goldman is one of today's foremost authorities on the bank discontinuance issue and its effect on the financial services industry. To this end he testified at the joint meeting of nonbank institutions and examination subcommittees of the Bank Secrecy Act Advisory Group in March, 2005. He also testified on this topic before the US Senate Committee on Banking, Housing and Urban Affairs in April, 2005. He has been a participant in numerous industry panels and discussions and has written extensively on the bank discontinuance problem over the past several years.

In addition to his distinguished career in financial services, Goldman served two terms as the mayor of Passaic, NJ from 1971 to 1978. He received his Bachelor's degree from the University of Vermont (1956) and his J.D. from New York University in 1959.