Statement of Tom Bolt, Chair
Committee on Non-Depository Providers
of Financial Services Act
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on Uniform State Laws
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Good morning. I am Tom Bolt, an attorney with the firm of Tom Bolt and Associates in St. Thomas, U.S. Virgin Islands. Welcome to this briefing and thank you for your interest in the continuing work of the National Conference of Commissioners on Uniform State Laws. NCCUSL is a 106-year-old organization that drafts and works to implement uniform laws for adoption by the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. We have promulgated more than 200 uniform and model acts, including such bulwarks of the American legal system as the Uniform Commercial Code and the Uniform Controlled Substances Act.

The committee I chair will begin this morning to draft a uniform law regarding non-depository providers of financial services -- sometimes called money services businesses or MSB's -- in an effort to combat money laundering. Starting at 10 A.M., the Committee will hold a public hearing at the Crowne Plaza Hotel, which is located at 14th and K Streets, N.W.

Let me acknowledge and thank Professor Anita Ramasastry of the University of Washington Law School and former counsel to the Federal Reserve, who serves as the Committee's reporter. She has done a superb job of reviewing the status of relevant federal regulation and how states do – or, more to the point, don't – regulate MSB's, which have become the vehicle of choice for money launderers today. My remarks draw in significant portion from her work.

To facilitate your understanding of the problem, let me give you some context and background. After which both Professor Ramasastry and I welcome your questions.

In 1994, Congress enacted "The Money Laundering Suppression Act" which built upon the framework laid by the federal Bank Secrecy Act, one of the most powerful deterrents to money laundering activities in the United States. Under the Bank Secrecy Act, for example, financial institutions are required to report currency transactions of $10,000 or more. When a bank customer deposits $10,000 into their bank account, the bank is obligated to file a "currency transaction report," or CTR, which indicates the name of the depositor, as well as the nature of the transaction.

Banks are mandated by federal law to also file "suspicious activity reports" or "SAR's" for financial transactions that suggest money laundering or other illegal or fraudulent activity. For example, a series of transactions in the amount of $9,999 could trigger an SAR. Bank regulatory agencies, such as the Federal Reserve, also require depository institutions to "know their customers" in an effort to determine whether money they receive or transmit is derived from illegal activity. The thrust of the compliance programs being to require banks to ascertain the true identity of customers, as well as the origin of the funds deposited.

By contrast, there is a entire spectrum of non-depository institutions, money services businesses, that provide various forms of financial services, yet are subject to less or no regulatory oversight as compared with banks. These MSB's money transmitters, check cashers and foreign currency exchanges. The recent advent of smart cards has created another category of money transmitters. Although a number of states have legislation dealing with some of these businesses, they do not require the same level of compliance as banks.

This lack of regulation has led money launderers to utilize MSB's. Although technically, MSB's are obligated to file currency transaction reports, the lack of federal and state oversight and regulation makes enforcement difficult. Some money services businesses may be unaware that they have this obligation. Others may be knowingly in violation of the law, and yet continue in the knowledge that detection is unlikely.

Under federal law, MSB's are not obligated to complete suspicious activity reports, and at present, the Treasury Department has only recently proposed an SAR designed for them. As a result, narco-traffickers and other criminals routinely structure transactions with MSB's that would be normally be identified as a suspicious activity if conducted through a bank. For example, a customer who wires money to a foreign country may well remain undetected, using a money transmitter instead of a bank.

Cyberspace is also ripe territory for innovative forms of money laundering, with electronic currency posing a potential new threat as a means to transport illegal money anonymously. In particular, encryption may prevent authorities from detecting the owner or source of the money. Stored value instruments, so-called "smart cards" can be uploaded by criminals with the proceeds of an illegal transaction with a simple swipe, placed in their back pocket and later emptied in a location outside the U.S., thus transporting dirty money undetected through customs and outside our borders.

In sum, money services businesses have come under heightened scrutiny in the past few years as sites for money laundering and related illegal activity. As federal and state laws have become stricter with respect to depository institutions, money launderers have turned to these non-depository institutions as a means of transporting their illegal money and channeling it into the legitimate stream of commerce.

We know that both drug traffickers and organized crime units have already used MSB's to transmit currency across our borders, so let's look at some case studies. Under federal law, the Government can require a group of financial institutions within a specific geographic area to comply with special record-keeping requirements. As early as 1991, the Treasury Department and the multi-country Financial Action Task Force identified MSB's as vehicles for money laundering. The work of that Task Force has enabled the federal government to initiate a geographic targeting order or "GTO" against 22 money transmitters in New York City involved in fund transfers to Colombia and their 3,500 licensed agents. In August 1996, a GTO was issued requiring the 22 transmitters to report information about cash transfers to Colombia greater than $750. According to recent statements made by Under Secretary of the Treasury, Raymond Kelly, before Congress the volume of money transferred to Colombia dropped by 30% as a result of that GTO, but clearly -- more needs to be done.

Additional evidence came in a 1994 study conducted by the National Association of Attorneys General, which confirmed that currency exchange houses or “casas de cambio”, in particular, were used in the Southwestern United States by narco-traffickers.

Similarly, in the fall of 1996, seven East Coast money transmitters were indicted for accepting funds that were allegedly drug proceeds uncovered in a federal sting operation. The El Dorado Task Force involved the Federal Customs Service, the Internal Revenue Service, the Secret Service, the New York Police Department and the New York State Banking Department. Based on their investigations, the federal government was able to obtain the first-ever guilty plea from a licensed money transmitter, Viga Remittance Corporation, in July 1996.

So where do we go from here? At the federal level, Treasury and FinCEN are currently considering three proposed rules that would address the absence of oversight; creating a registration scheme for MSB’s; and extending SAR transaction reporting requirements to certain categories of MSB’s. Our Committee will be carefully watching their work to assure that there is no needless duplication of effort or contradictory requirements in the legislation we propose.

At the state level, current regulation of MSB’s is extremely varied. Thirty states have various degrees of criminal money laundering statutes, but only 8 of these statutes make it illegal for financial institutions to fail to comply with the Bank Secrecy Act.

Money transmitters are regulated in approximately 43 states, check cashers in 20 states, and wire transfer agencies in about 28 states. Currency exchange businesses are the least regulated with only 7 states having applicable legislation. Bonding, licensing and reporting requirements vary greatly among jurisdictions and between industries. And electronic currency has only recently emerged as a potential subject for federal and state regulation.

Which brings us to the question of the day: “What to do at the state level?” “The Money Laundering Suppression Act of 1994” recommended that the states enact a uniform law to regulate MSB’s. Congress specifically requested that NCCUSL develop a uniform act, and recommended that the uniform act include:

(1) Licensing requirements for MSB’s;
(2) Licensing standards for MSB’s that focus on:
    (a) the business records and capital adequacy of the MSB; and
    (b) the competence and experience of its directors and officers;
(3) Reporting requirements concerning disclosure of fees for services offered to consumers;
(4) Procedures to ensure compliance with federal currency transaction reporting requirements; and
(5) Criminal penalties for the operation of an MSB business without a license.

One of the first issues our Committee will need to consider is the scope of the Proposed legislation, such as the types of MSB’s to be included. We will need to evaluate the extent to which a system of state registration and licensing is desirable. We should bear in mind the potential problems that might arise in the implementation of licensing and registration, since state banking departments may be charged with increased responsibilities and all the fiscal and administrative burdens that come with them.

Alternatively, we may consider whether a system of registration and mandatory disclosure would be preferable, as opposed to one that requires ongoing supervision.

The role of vendors or agents will be a consideration. In the New York case I cited earlier, the agents of the 22 licensed transmitters were helping to move illicit funds abroad. Perhaps enhanced record-keeping and reporting requirements for agents will help rectify that problem.

We should also consider whether MSB's should possess a security device such as a bond or collateral deposit, and whether net worth requirements are desirable.

We may want to consider examination, inspection and audit procedures as part of the legislation and finally, we will need to consider enforcement guidelines and penalties.

Let me emphasize one major point before concluding. Our Committee is not drafting this legislation in order to regulate simply for the sake of regulation. We don't want to make it any more difficult to cash a check in the supermarket, or to purchase goods and services over the Internet. We don't want to stifle the growth of electronic commerce by recommending needless bureaucratic requirements for legitimate businesses dealing with legitimate customers.

What we do want is to put a halt to the growth of sophisticated channeling of illegal funds into legitimate streams of commerce, a problem that will only be harder to eradicate the longer it continues unchecked.

Clearly, our charge is formidable. This process will not be easy nor will it be over at the end of today. But it begins in earnest today -- because we know as a rule, once criminal activity ceases to be profitable, it ceases altogether. In politics today, reporters are told to follow the money. In the world of financial crimes, our goal is to stop dirty money in its tracks. Hopefully, the work of the Committee will assist in ending one aspect of criminals profiting from their illegal activity.

Thank you for your interest and we welcome your comments and questions.

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