Testimony of Edward L. Yingling
On Behalf of the American Bankers Association
Before the
Committee on Financial Services
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Mr. Chairman and members of the Committee, I am Edward L. Yingling, Deputy Executive Vice President and Executive Director of Government Relations of the American Bankers Association (ABA), Washington, D.C. I am pleased to be here today to present the views of ABA on the important issue of making our country's money laundering and tracking laws more effective, particularly with respect to terrorists and their supporters. The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest bank trade association in the country.

Accompanying me today is John Byrne, Senior Counsel and Compliance Manager with ABA. Mr. Byrne is responsible for ABA's regulatory and educational efforts on money laundering, asset forfeiture, and computer security issues. He has been a member of the Treasury Department's Bank Secrecy Act Advisory Group since its inception; co-chairs the Suspicious Activity Report (SAR) Review project; and co-chairs the American Bar Association/American Bankers Association Annual Money Laundering Enforcement Seminar that is now in its 13th year.

We were all shocked and saddened by the horrific events of September 11, and we mourn the loss of our friends and colleagues and all others who lost their lives in New York City, Pennsylvania, and the Pentagon. As you know, the financial community was particularly hard hit by the attack. However, if one of the goals of the attack on New York was an attempt to seriously disrupt the banking system, that goal was not met. While there were a few short-term problems caused by the destruction, the banking system continued to run smoothly. Both the banking industry and other financial providers have extensive back-up systems to deal with

business disruptions, be they acts of nature or acts of terrorism. With $2 trillion dollars of transactions moving through the banking system each day, protection of computer systems and emergency back-up plans are essential. The Federal Reserve did an outstanding job, working closely with the banking industry, to assure that the necessary liquidity was available to complete financial transactions that were already in the pipeline and to assure the overall integrity of the payments system. I'm also pleased to say that the confidence of customers in the U.S. banking system held steadfast throughout this period. The banking system continues to operate smoothly, deposits are protected, and customers worldwide have access to their funds.

Since September 11, our attention has also focused on assisting law enforcement agencies in tracking the money trail of terrorists and those suspected of supporting terrorist activities. Since the attack, as is quite clear from press reports, the banking industry has been providing information to law enforcement officials that has been instrumental in tracking the activities of the terrorists prior to September 11 and in developing leads to suspects, material witnesses, and others that should be questioned. We know from talking to bankers that a large number of Suspicious Activity Reports (SARs) have been filed. And the industry moved immediately to institute the account freeze announced by President Bush.

Today, we reaffirm our pledge to support fully efforts to find and prosecute the perpetrators of these heinous acts and their supporters, and work with Congress and this Committee to enact new tools in the campaign against terrorism. We commend you, Mr. Chairman, for holding this hearing and moving so expeditiously to address this issue.

As you know, the banking industry has a long history of support for government efforts to stop the flow both of financial resources used to finance illegal operations and of the laundered proceeds of criminal activities. The task ahead of us is daunting and should not be underestimated. Enhancing money laundering laws, including all financial service providers in the process of identifying suspicious money flows, and working with foreign governments to

adopt or improve money laundering laws will certainly make it more difficult to move funds to support terrorism or other illegal activities. However, some financial flows – clearly a considerable volume – take place outside the traditional system. Dealing with these flows in an effective way is critical and difficult. Moreover, the money flows that support terrorist activities are in some ways quite different from those that money laundering laws were originally primarily designed to prevent. Money laundering laws initially targeted the channeling of funds arising from illegal activities (such as drug trafficking) into the traditional banking system. Terrorists may not care whether the money is "cleaned." They are interested in how to collect money and move it to where they want it. We believe that by forging an aggressive public-private partnership, we will make significant progress in the fight against terrorism.

In my statement today, I would like to make three key points:

- The banking industry strongly supports efforts to track the flow of money that finances terrorist activities and to shut it down. We will do everything in our power to aid in this effort.

- A strong base already exists in current law and regulation to prevent money laundering through the U.S. banking system. This base should be extended to include all financial services providers, and the efficiency with which information is collected and analyzed should be improved.

- We are committed to work with the Administration, Congress, and the bank regulators to strengthen and extend current law where needed. We are confident that working together, we can craft provisions that both are effective and protect the due process and privacy concerns of Americans.

ABA strongly supports efforts to stop money that finances terrorist activities

Financial institutions are often the first line of defense against money launderers – they see criminal activity first and up close. The ABA and the banking industry pledge support for law enforcement and the Administration's efforts, and for enacting and implementing appropriate new laws to prevent money laundering and to fight terrorism. Since the tragedy, banks have worked closely with law enforcement agencies to track financial flows of the known terrorists and others who have been detained and questioned. The industry announced full support for the President's plan of September 24 and immediately took steps to implement the Executive Order to freeze accounts. At ABA, we also expanded our group of bank experts to advise the Administration and Congress on money laundering and related issues in light of the events of September 11.

The task ahead is a difficult one, but one we are committed to fulfill. Banks facilitate hundreds of thousands of transactions daily. In total, $2 trillion dollars flows through the banking system in the U.S. each day. As large as this seems, it does not reflect the money that flows outside the traditional banking channels – such as through the Hawala system that has been widely reported on in recent days.

Banks are able to track what is in the traditional system, but it takes cooperation and close coordination with the government and law enforcement agencies to identify individuals and groups suspected of illegal activities. Once this is done, monitoring and tracking of money flows can be undertaken and, where appropriate, assets can be frozen. As mentioned above, banks have had a long history of assisting law enforcement in tracking money flows, and have frozen assets when asked to by the appropriate government agencies. One of those mechanisms is the filing of Suspicious Activity Reports (SARs), which banks have been doing since 1996.[1] Since that time, banks have filed over 600,000 SARs. In 1996, the reporting process was greatly streamlined and simplified through the combination of six separate reporting requirements into a

[1] Prior to 1992, banks filed criminal referral forms.

new SAR that could be sent electronically (although only in disk form) to Treasury's FinCEN bureau.

The task is also made more difficult by inconsistent, weak, or non-existent laws in other countries to prevent money laundering. This makes it difficult for the U.S. government and U.S. financial institutions to track flows. Moreover, without close cooperation with U.S. government agencies, foreign governments, and foreign institutions it becomes very difficult to identify who may control, in reality, a given entity and whether the transactions indeed may violate law. We are pleased that foreign governments are, according to a *Washington Post* article of October 2, 2001, aggressively moving to tighten money laundering laws in their countries and to work closely with U.S. authorities. We urge the entire international community to work in the same direction.

A key to the success is a public-private partnership. Fortunately, there has been a long history of this kind of relationship with respect to money laundering. For example, in 1994, the Treasury began working in partnership with banks and others to establish policies and regulations to prevent and detect money laundering. This partnership approach is illustrated by the work of the Bank Secrecy Act (BSA) Advisory Group, a special panel of experts (authorized by the Annunzio-Wylie Anti-Money Laundering Act of 1992) who offer advice to Treasury on increasing the utility of anti-money laundering programs to law enforcement and eliminating unnecessary or overly costly regulatory measures. The Advisory Group consists of thirty individuals drawn from the financial community – including bankers, securities broker-dealers and other non-bank financial institutions – as well as from federal and state regulatory and law enforcement agencies. Chaired by the Treasury Department's Under Secretary for Enforcement, the group has helped to increase the effectiveness of money laundering laws, eliminated some unnecessary reporting requirements, simplified reporting forms, and refined the funds transfer record keeping rules, among other things.

A strong base on which to build exists in current law and regulation

It is important to re-examine all our tools to fight terrorism in light of the September 11 attack and move with all due speed to enact legislation that would enhance or supplement those tools. Fortunately, we have a strong base to build on in the form of laws currently applicable to banks.

Mr. Chairman, the American Bankers Association has participated in every congressional debate regarding the subject of money laundering since 1985. In fact, the ABA was privileged to work with senior members of the House Banking Committee when the original crime of money laundering was created in 1986.[2] Since that time, the banking industry has made money laundering awareness and prevention a key element in employee training and education for all banks, and we are proud of the fact that bankers have assisted law enforcement in many successful prosecutions of money laundering violations.

Since 1986, Congress has passed two additional laws covering money laundering; the Annunzio-Wylie Anti-Money Laundering Act (1992) and the Money Laundering Suppression Act of 1994. In addition to the criminal statutes covering money laundering, the banking industry complies with the Bank Secrecy Act (BSA). This law, enacted in 1970 (PL 91-508), was created "to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." The BSA is a reporting and record keeping mandate that, in general, requires the filing of currency transaction reports (CTRs) for cash transactions over $10,000. Banks file over 12 million CTRs each year.

Other key elements of the federal money laundering laws and regulations covering financial institutions are summarized below:

[2] Pub. L. 99-570, Title I, Subtitle H, Sections 1351-67, 100 Stat. 3207-18 through 3207-39 (1986).

- Since 1984, banks have been required to file reports on possible violations of law on "Suspicious Activity Reports" or SARs. As previously noted, banks have filed approximately 600,000 SARs since 1996.

- It is a crime to conduct or attempt to conduct a financial transaction that involves the proceeds of unlawful activity. There are approximately 175 federal crimes that can be part of a money laundering count. Penalties include potential twenty-year prison terms. As noted below, we recommend this list be expanded.

- It is also a crime to intentionally structure ("break down") cash transactions under $10,000 to avoid reporting requirements.

- The Treasury has the authority to promulgate regulations for anti-money laundering programs. For example, the Treasury can require the development of additional internal policies, procedures, and controls, and can extend compliance to other financial service providers.

- The banking agencies can revoke an institution's charter following the conviction of the institution for money laundering, following appropriate hearings on the matter.

- Banks are examined by federal regulators for compliance under the Bank Secrecy Act – a process that started in 1987. These exams include reviews of correspondent banking, private banking and payable through accounts.

- The Office of the Comptroller of the Currency (OCC) issued an Advisory Letter last year to national banks (2000-3), which requires increased attention on high-risk accounts. Such special attention is also built into the new OCC examination procedures.

ABA supports strengthening and extending existing efforts

The ABA supports strengthening and extending existing efforts. The list of recommendations below is not meant to be all encompassing. There may be other important concepts that should be considered. The banking industry wants to work with the Administration, the bank regulators, and Congress to stop whenever possible the financial flows to terrorists and their supporters. We will support legislation to do that, and we will vigorously do our part to implement it.

A. The ABA strongly supports full implementation of the President's initiatives announced on September 24 and will work to implement these as more names are added to the freeze list and as international efforts are extended.

B. The ABA strongly supports the recently announced national strategy by the Treasury, in consultation with the Justice Department, entitled *The 2001 National Money Laundering Strategy*. It has numerous improvements and enhancements to the current system that should be implemented. We also commend the report for its emphasis on effectiveness. Some aspects of the way current law is implemented have made the system less effective. In the words of Treasury Undersecretary Gurulé before the Senate Banking Committee last week, current implementation diverts attention from "major money laundering enterprises." Certainly now more than ever, focus is needed, and we will be quickly forwarding to the Committee suggestions to accomplish this and, therefore, improve the effectiveness of current reporting.

C. The ABA recommends that there be an emphasis on advanced training for law enforcement agents in techniques for combating money laundering and investigating financial transactions of criminals and terrorists. We note that this is taken up in *The 2001 National Money Laundering Strategy.*

D. The ABA strongly supports the expansion of current laws and the drafting of new laws to ensure they cover other providers of financial services. This should be a high

priority. To be effective, money laundering laws and reporting requirements should apply to a broad range of financial service providers, including those in the non-traditional money-flow channels. We strongly support the Treasury's proposal that all financial institutions report suspicious transactions. Moving up the time for all money services businesses (MSBs) to register with FinCEN to December 31, 2001 is also an appropriate and necessary step. It is now widely known that terrorist networks use non-traditional methods for a significant part of their money transfers. A unified approach covering all financial services participants and money transmitters is the best defense against criminals that move money to finance their activities.

E. The ABA strongly supports the expansion of money laundering laws recommended in recent days by the Attorney General. We have reviewed the language sent to Congress by the Attorney General and recommend that it be enacted as quickly as possible.

F. The ABA strongly supports provisions that would make currency smuggling a criminal offense. There are numerous reports, and it comes as no surprise, that terrorists often smuggled cash. This issue should be addressed directly.

G. The ABA strongly recommends that Congress authorize insured depository institutions to include suspicions of illegal activities in written employment references. This is an important safety and soundness issue – to combat fraud – but also could prevent the criminals or terrorists from "planting" members of their groups inside financial institutions.

H. The ABA strongly supports giving the Secretary of the Treasury more flexible authority to designate that a specific foreign jurisdiction, financial institution, or class of international transaction, raises money laundering concerns and therefore should be subject to special treatment relating to record keeping, conditions, or even prohibitions. Provisions to accomplish this were part of legislation reported out of the House Banking Committee on a bi-partisan basis last year. We believe those

provisions provide a workable framework for discussion. Ambassador Eizenstat, who helped develop proposals in this area for the Clinton Administration, testified last week before the Senate Banking Committee that those provisions were "carefully tailored to help banks deal with identifiable situations in high-risk accounts." As discussed in the next section of my testimony, and as is the case in several issues in this area, there is a balance that needs to be achieved with respect to this potentially broad grant of authority. Targeting identifiable situations is key to that balance.

The ABA does have two recommendations to help strengthen these provisions. First, we believe banks' primary regulators should be included in the process. For example, once a high-risk situation has been identified, we believe the bank's primary regulator should be brought into the process to design the "special treatment." Treasury officials in this context are primarily enforcement specialists. Banking specialists can help design the most workable approach.

Second, the bill last year provided that the Secretary of the Treasury defines the implementation of the provisions by "regulation, order, or otherwise as permitted by law." We believe that a regulation should be written and a comment process should be required in order to obtain input on the implementation from industry experts and others. For example, uniform procedures will be needed for financial firms to comply effectively with orders for enhanced due diligence. Without uniform procedures, financial firms will not be able to be as effective and timely in complying with an order. We recognize that individual cases must be decided quickly, and therefore, we are only talking about the methodology for compliance. We recognize that in this current emergency quick action is called for. An interim final rule could be used to implement the provisions quickly, while comments are sought. In the long-run, such a process will only strengthen the effectiveness and balance of this new authority.

I. The ABA strongly supports the amendments to the Bank Secrecy Act's "safe harbor" provisions contained in last year's bill. These amendments will improve the effectiveness of the Suspicious Activities Reports (SARs) process.

J. The ABA strongly recommends that improved methodologies be developed for identifying individual account holders, particularly for non-U.S. citizens. For example, one difficulty that has come to light in the past few weeks is the problem of translating Arabic names. Also, some names used on lists are apparently incomplete. Both problems are slowing down identification and also leading to false-positive identifications. Government officials should work with our industry experts in developing more specific identification methods, particularly for non-U.S. citizens, who may not have identification numbers that are routinely used with respect to others to track their accounts. The Bank Secrecy Act Advisory Group, which brings industry experts together with government officials, is an ideal group to work on this issue. That group has a regularly scheduled meeting coming up, and we recommend this issue be on the agenda.

Striking the Right Balance

In a number of areas, as Congress develops legislation to address the terrorist threat, a debate is occurring on how to strike the right balance between aggressive law enforcement and prevention and the traditional values and rights for which our country stands. Some of those issues arise with respect to the subject of this hearing.

It is important to our citizens that our country achieves the right balance. It is also very important to banks, as they have a long history of trust with their customers. Working together, we are confident we can achieve the right balance.

This is not a new debate with respect to money laundering. Only two years ago, Congress and the regulators heard a great deal of concern from thousands of bank customers about the "Know Your Customer" proposals. Customers were very concerned about banks being

asked, they thought, to "investigate" them. The proposal was opposed by many Members of Congress and ultimately withdrawn. We believe that expanded money laundering legislation can be crafted to be both targeted and effective. At the same time, this legislation can be drafted in a manner that minimizes the concerns caused by the Know-Your-Customer proposals. We will work with the Committee to develop whatever due process and other protections may be necessary to accomplish that.

There is also a need to strike the right balance between the role of government agencies and the role of banks. Banks, and other financial institutions, can and should play an important role in helping stop illegal money flows. However, there is a practical limit on the amount of information about their customers banks have or can get.

There are a number of areas where banks can be very effective. They can, upon the appropriate request from law enforcement, track financial activities – providing trails for investigation and evidence. Second, banks can, and do, block and freeze assets and accounts as requested by government. Third, they can and do file regular reports on certain activities – for example, the over 12 million Currency Transaction Reports were filed last year. And fourth, banks can and do identify activities that may violate laws and report them, through SARs or otherwise.

However, banks have limited abilities, as a practical matter, to know what their customers are doing beyond the information provided in the process for setting up the customer relationship and the financial transactions that flow through the bank. The great, great majority of the latter are, of course, done by computer. A large bank may have tens of thousands of such transactions each day. This limitation on information is compounded when dealing with transactions or entities from foreign countries. For example, while banks can request information on who is the "beneficial owner" of an account or the ultimate recipient of a transfer, banks most often have no way to investigate or confirm this information. The House Banking Committee recognized this last year in H.R. 3886 when it inserted the language "reasonable and practicable" with respect to requirements to determine or report beneficial ownership. The Committee Report stated that the Committee was sensitive to concerns that requirements in this area could "result in some

circumstances in clearly excessive and unjustifiable burdens." While banks can and should report activities that raise suspicions of violations of law, government agencies must often take the lead in identifying problem countries, groups, individuals, and transactions and then asking banks to act upon that information. It must be a true public-private partnership, working together.

Conclusion

The American Bankers Association appreciates the opportunity to testify today. We pledge to work with you, Mr. Chairman, this Committee, Congress and the Administration to strengthen the laws and regulations to prevent money laundering and to stop the flow of funds that support terrorist activities.