

Oral Statement of

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Chairman McHenry, Ranking Member Green, and members of the Subcommittee, thank you for the opportunity to appear before you today as the Subcommittee reviews the Department of Justice's Operation Choke Point investigation.

I have spent over 20 years working on Bank Secrecy Act and anti-money laundering issues and have witnessed many cases where banks have been used, wittingly or unwittingly, as vehicles for fraud, money laundering, terrorist financing, and other illicit activities. Ensuring that banks have strong systems and controls in place to deter these abuses is an important objective of the OCC's supervision.

The OCC is not part of Operation Choke Point, so my testimony today will focus on the OCC's supervisory policies and actions. However, it is our policy to cooperate with law enforcement investigations, and the OCC routinely receives and processes requests for information from law enforcement agencies. Some of the official requests for information we received from DOJ during 2013 were related to Operation Chokepoint.

As the Subcommittee is aware, the OCC's primary mission is to charter, regulate, and supervise national banks, federal savings associations, and the federal branches and agencies of foreign banks. In carrying out this mission, the OCC requires banks to appropriately manage their risks, meet the needs of their communities, comply with laws and regulations, and provide

fair access to financial services and fair treatment of their customers. The safety and soundness of an institution – indeed its very viability – can be threatened when a bank lacks appropriate risk management systems and controls.

I have seen first-hand the serious consequences for a bank and the public when these controls are missing. A 2008 OCC enforcement action against Wachovia Bank illustrates this point. Wachovia failed to properly oversee activity in its third-party payment processor accounts and ignored significant red flags indicating consumer harm. Telemarketing customers of the payment processors deliberately targeted vulnerable populations, such as the elderly, for the sale of products of dubious or no value. The telemarketers used high-pressure sales calls to convince these consumers to provide their personal checking account information. Payment processors then used consumers' account information to create checks that were deposited into payment processors' accounts at the bank. The bank received hundreds of complaints and hundreds of thousands of the checks created by the payment processors were returned. Despite these red flags, and clear knowledge that consumers were being harmed, the bank failed to properly address the situation.

As a result of these failures, the OCC cited the bank for unsafe or unsound practices and unfair practices in violation of the FTC Act, and required it to pay approximately \$144 million in fines, restitution to consumers, and other relief. The OCC did not however, require the bank to cease doing business with any third-party payment processors or telemarketers. Rather, the OCC's action was focused on requiring the bank to remediate specific consumer harm and to establish enhanced risk management policies in order to mitigate the risk of future harm to consumers.

Currently there is great concern that banks are terminating the accounts of entire categories of customers, and some have suggested that regulators are dictating those actions. As a general matter, the OCC does not direct banks to open, close, or maintain individual accounts, or recommend or encourage banks to engage in the wholesale termination of categories of customer accounts. In rare cases where the bank cannot properly manage the risk presented by a customer, or a customer has engaged in suspected criminal or other illegal activity, we may order the bank through an enforcement action to terminate the customer's account.

We expect banks to assess the risks posed by individual customers on a case-by-case basis and to implement appropriate controls to manage their relationships. We recognize that the controls banks put in place to manage their risks are matters of banker and supervisory judgment. If the bar is set too high, it can cause banks to terminate accounts of legitimate businesses. However, if the bar is set too low, the consequences can be dire, allowing the bank to be used to facilitate criminal and other forms of misconduct. At the OCC, we strive to take a supervisory approach that is reasonable, balanced, and fair, and results in systems and controls that are effective in deterring the use of our nation's financial institutions for illicit purposes.

Thank you again for the opportunity to appear before the Subcommittee today. I will be happy to answer questions.