Written Statement
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Concerning
Current and Evolving Trends in Terrorism Financing
before the
Subcommittee on Oversight and Investigations
Committee On Financial Services
U.S. House of Representatives
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Mr. Chairman,
Distinguished Members:

Thank you for inviting me here today to express my views and concerns with regard to US and international efforts to stem the flow of financial support to terrorist organizations.

We have just passed the 9th Anniversary of the terrible 9/11 attack that confirmed for us, and for most of the international community, that international terrorism poses one of the gravest threats to international peace and security. Yet, despite this confirmation, funds continue to flow to those engaged in indoctrinating, recruiting, and training terrorists and for terrorist operations.

Some have suggested that we have, in fact, already put a real crimp on terrorist financing. But, the threat posed by the international terrorists has not diminished. And, empirical evidence demonstrates that many of these terrorist groups, including al Qaeda, the Taliban, Hamas, Hezbollah, Lashkar-e-Taiba, and other groups associated with al Qaeda, continue to have access to sufficient funds to maintain their organizations and their terrorist operations. If anything, Taliban funding is expanding, not diminishing.

While the Taliban's cash flow from Afghanistan's poppy fields comes as no surprise, the amount of foreign donations they continue to receive is a real eye opener. According to the CIA (as reported in the Washington Post), Taliban leaders and their allies received some $106 million in the past year from donors outside Afghanistan. Much of these funds are drawn from the same donors in Pakistan, the Gulf region, Southeast Asia and Europe that long supported al Qaeda. And these supporters continue to include a variety of Muslim fundamentalist organizations and charities, as well as wealthy Al Qaeda/Taliban supporters.

Hamas has also developed its own worldwide network for soliciting funds to support its activities, including terrorism-related operations. Hamas, which has close links with the Muslim Brotherhood, is also still able to use front companies and well-established banking links in much of the world to openly collect such funds from organizations, donors, and from over the internet, and to transfer these collected funds to Hamas operatives through well established channels.

There is also a growing nexus between terrorism and transnational crime. The Taliban, FARC and several other international terrorist groups draw heavily on funds generated from the illicit drug trade and other criminal activities, including petty crime and credit card fraud, and even Hamas has turned to the illicit drug trade emanating from the tri-border region in Latin America to surreptitiously acquire additional funding. West Africa and Southeast Asia are also emerging as other potential regions for this crime-terrorism convergence.[1] And these nexus rely heavily on money laundering techniques to enter these funds into established financial transfer channels.

I know, Mr. Chairman, that U.S. financial institutions take the threat of international terrorism very seriously. They have come a long way since 9/11 in

[1] See CRS Report "International Terrorism and Transnational Crime: Security Threats, U.S. Policy, and Considerations for Congress, March 18, 2010 prepared by John Rollins and Liana Sun Wyler

putting in place effective procedures to identify, report, and/or to block suspicious transactions. Extensive transaction filters have been put in place and "due diligence" and "know your customer" have become regular catchwords for compliance officers spread extensively throughout our banking and financial system. And, US Government regulatory oversight is now both intensive and vigilant.

So, what is lacking?

Well, Mr. Chairman, the fact is that US Banks are intricately networked into an international banking system that has not yet fully come to terms with halting terrorism financing. And, while we have made great strides in cutting off the flow of money for terrorism from the United States, our banks remain awkwardly vulnerable to getting caught up in handling terrorist group-related transactions that originate overseas. This is because US banks must so heavily rely on the veracity and accuracy of the transactional information provided to them by their overseas clients and associates.

Following enactment of the increased "due diligence" and "know your customers" requirements contained in the Patriot Act, US banks moved quickly to re-assess their relationships with the foreign banks with whom they maintain a correspondent relationship. They had to assure themselves that these foreign banks were also taking the steps necessary to vet their clients and that they would accurately record and pass on required transactional information, including the correct identification of the beneficial parties involved. But, the fact is that this is not always the case. And, in the fast and very competitive world of international financial transactions, these assurances are often shortchanged. Our banks must also rely heavily, therefore, on any cautionary information that our public sector regulatory agencies, such as Fincen, OFAC, and other relevant Treasury Department offices share with them. This cooperative relationship and information sharing is essential, and needs to be formalized.

Today, when US banks have doubts about the legitimacy of transactions they are required to file suspicious activity reports with FinCen. In most cases they still permit the transaction to be processed. However, when their doubts suggest the possibility of terrorism financing, they will usually place some kind of hold on the transaction.

US Depository Institutions filed some 15,500 suspicious wire transfer reports in 2009. Of these, only about 545 involved possible terrorism financing concerns. How well they are actually doing in discerning such terrorist-related risks remains any ones guess. Nevertheless, the number of suspicion-of-terrorism SARS did increase some 8 percent last year.

Considerable strides have also been made with regard to the regulation and oversight of the myriad money services businesses operating in the United States. This sector has seen exponential growth in the volume of international financial transfers. We must recognize, however, that at least one part of this sector – the informal mom and pop transfer mechanisms, such as Hawala, lack the wherewithal to closely vet the transactions they handle and they remain particularly vulnerable to being used to handle terrorism related transfers. Here too, much of the problem resides overseas. Funds transferred through Hawala like systems are very hard to trace, particularly as they are re-directed once they are received overseas. Terrorist organizations have become sufficiently sophisticated in handling such transactions to assure that the initial overseas recipient of the funds appears squeaky clean.

Let me suggest, Mr. Chairman, that it is essential that we broaden the focus of our attention, when it comes to inhibiting the financing of terrorism, to include financial institutions beyond our shores.

When I say that the locus of the terrorism financing problem is largely overseas I do so with a caveat. A number of foreign financial institutions that maintain branches and correspondent accounts in the United States have engaged in banking activities that have become of grave concern to us.

In August 2005, the New York branch of Jordan's Arab Bank signed a consent decree, and paid a $24 million penalty, for its involvement in transferring more than $20 million to and from more than 45 suspected terrorists or terrorist groups in the Middle East. The bank acknowledged that it had dollarized many of these transactions. In April 2009, Doha Bank, New York paid a civil penalty of $5,000,000 which was assessed, in part, because of its involvement in dollarizing transactions related to terrorist groups overseas.

There have been several other cases involving US branches of foreign banks that have engaged in practices inconsistent with U.S sanctions laws and regulations. Last May a criminal information was filed against, ABN AMRO, now part of the Royal Bank of Scotland, for facilitating transactions by altering or stripping information from the transactions so that they might pass undetected through compliance filters at other U.S. financial institutions. These transactions involved more than $3.2 billion dollars moving to, from, and through AMB AMRO's New York branch. And, in December 2009, Credit Suisse was assessed a $536 million penalty for processing thousands of transactions over a 20-year period that concealed the involvement of sanctioned parties and the routing of wire transfers and securities transactions to and through the United States.

These regulatory actions have sent a strong message to overseas financial institutions that the United States will not countenance such activities on the part of their branches in the United States.

But, an even stronger message is now being sent by victims of terrorism as they move in U.S. courts to hold such financial institutions accountable under section

2333 of the anti terrorism act for facilitating the flow of funds to terrorist organizations. I cite as examples the civil damages cases now proceeding in New York against Arab Bank, Nat West, and Credit Lyonnais for their having facilitated the transfer of funds to Hamas and other terrorist groups that have launched suicide and other terrorism attacks against innocent victims in Israel.

The real problem here is that while these terrorist related transactions are illegal in the United States, they have not been deemed illegal by many of the other countries in which these banks operate. This is in spite of the fact that almost all countries are now parties to the International Convention for the Suppression of the Financing of Terrorism, which came into force in April 2002. That convention clearly obligates all countries to criminalize the funding of groups or individuals that engage in terrorist activities.

Shortly after the 9/11 attack the Security Council also adopted resolution 1373 which obligates all countries, whether or not they have adopted the Terrorism Financing Convention, to take the steps necessary to prevent the transfer of funds to terrorist organizations or for terrorist purposes. But, the resolution failed to contain any definition or criteria as to what constitutes terrorism. It left it to each country, independently, to determine this crucial issue for itself. Without common criteria, or a definition of terrorism, each country remains free to interpret its own obligations. Each can decide which groups they consider terrorists and which they wish to hail as “freedom fighters.” Saudi Arabia uses this distinction, for example, to justify its continuing funding for Hamas while Iran and Syria use it to provide funds and support to Hezbollah.

The fact of the matter is that there is still only a very limited international consensus as to which organizations are terrorist organizations. And, for the most part, that consensus is limited to a very short list of entities and individuals identified and designated by a Committee of the Security Council, as being directly associated with al Qaeda and/or the Taliban.

At my own last count, in June 2010, that designation list includes 137 members of the Taliban, 257 members or associates of al Qaeda, and 103 entities directly related to al Qaeda. I want to be clear on this point. Beyond that list of designated individuals and entities there is no international consensus, and therefore, no clear and enforceable international obligation, which inhibits countries from allowing their financial institutions to engage in financial transactions with such undesignated individuals and entities.

Only a limited number of countries have joined with us in designating such organizations as Hamas and Hezbollah as terrorist organizations. This includes, for the most part, our European friends and allies. Yet, some European countries still exempt the political and humanitarian wings of these organizations from such designation. Many other countries have not even gone that far and openly permit their financial institutions to process transactions in Hamas' and Hezbollah's favor.

Given US bank interaction with this larger international banking community, the vulnerabilities become stark. And, that means that very careful attention must be paid to assuring that accurate information regarding origination and the ultimate recipient of the transaction is complete and accurate.

The problem is further complicated by the emergence in numerous lesser developed countries of new under-funded and under-regulated home grown banks. These banks rely heavily on their correspondent and payable through accounts maintained in more established banking institutions. Many of these home grown banking institutions continue to lack the wherewithal to mount and maintain an effective compliance system. At the same time the national regulatory environment under which they operate is unable to provide effective oversight. And, many of these banks are located in areas quite susceptible to the recruitment of terrorists.

So, Mr. Chairman, I would also place great emphasis on the need to strengthen the international banking communities resources and commitment to halting the financing of terrorism.

I do not want to appear too pessimistic in this regard. A very substantial segment of the international banking community does take terrorism financing and money laundering issues quite seriously. The Wolfsberg group of banks, for example, has established high standards to prevent terrorist organizations from accessing their financial services, and they have pledged to assist governments in their efforts to combat terrorist financing.

There are also a number of other activities underway to upgrade international compliance capability. FATF, The Financial Action Task Force, has made great strides in providing guidance and best practices for the strengthening of international banking compliance, and in brokering assistance for jurisdictions wishing to upgrade their compliance programs. It has also spawned numerous regional organizations to facilitate cooperation and share the burden of compliance among their member banks.

FATF has also finally gotten back to holding certain countries accountable for their failings in this regard. In 2008 FATF began publishing a list of high risk and non cooperating jurisdictions whose banks have failed to adequately implement an anti-money laundering and counter terrorism financing program. FATF issued a series of statements expressing concerns about the AML/CFT deficiencies in Iran, Uzbekistan, Pakistan, Turkmenistan, São Tomé and Principe, and the northern part of Cyprus.

The FATF statements called on FATF members to pay special attention to transactions dealing with Iran and Uzbekistan and to strengthen preventive measures in response to the risks associated with these countries. In February

2009, FATF also called on its members and other jurisdictions to apply additional counter-measures to protect their financial sectors from money laundering and terrorist financing risks emanating from Iran.

Ultimately, United States regulatory agencies can also make reference to the broad powers provided to them in Section 311 of the Patriot Act. As you know, Mr. Chairman, that section authorizes the Secretary of the Treasury to impose special enhanced due diligence requirements with regard to the maintenance and operation of correspondent and payable through accounts maintained in US banks for foreign jurisdiction banks. And, in some cases this may include precluding the operation of such accounts in favor of risky banks overseas.

We all recognize that these powers must be used sparingly and prudently. At the same time they do provide us considerable leverage when it comes to influencing and correcting bad banking conduct overseas.

Thank you, Mr. Chairman.