

Prepared Testimony of
Timothy W. Baxter,
President, SwypCo, LLC
On behalf of
The National ATM Council, Inc.
before the
Subcommittee on Financial Institutions and Consumer Credit
of the
Committee on Financial Services
of the
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Chairman Luetkemeyer, Ranking Member Clay, and Members of the Subcommittee, thank you for this opportunity to testify before you today. My name is Tim Baxter. I live in The Colony, Texas, a Dallas suburb, and am President of SwypCo, LLC, a full-service ATM placement company and a provider of ATM processing services. We own 48 ATM terminals and provide processing services to our clients, accounting for 1,385 ATM terminals in total, located in Texas and 17 other states, ranging from Arizona to New York. I am married, with two children and three grandchildren, and am a proud veteran of the United States Marine Corps.

I first entered the ATM industry in 2004, after spending 25 years with one company in the commercial coffee industry. My career in ATMs began with a VISA-registered independent service organization (ISO), where I learned the industry and all aspects of its service and equipment, network rules, and sponsoring bank rules of operation.

I am testifying today on behalf of The National ATM Council, Inc. (“NAC”), a nonprofit association of individuals and businesses that are engaged in the ownership, operation, or servicing of independent automated teller machines—ATMs that are not owned or operated by banks or other financial institutions. I am a member of NAC and, in addition, was a founding member of its Board of Directors, on which I continue to serve.

NAC and its members wish to thank the Subcommittee for holding this hearing. We believe it is an opportunity to expose the widespread and severe consequences that in recent years have resulted from financial institutions’ practice of “de-risking.” We also applaud the determination of the Subcommittee, according to a letter to me from the Chairman dated February 1, 2018, to explore “methods to eradicate prejudicial treatment of industries by federal financial regulators.” That prejudicial treatment has flowed directly from federal regulators’ implementation of Operation Choke Point, in 2013, which, as the Chairman’s letter states, has been directed at what regulators termed “high risk” customers of financial institutions, whose transactions and accounts with and through such institutions were, according to the regulators, “deserving of heightened regulatory scrutiny.”

At the outset, we want the Subcommittee to know that NAC supports enactment of H.R. 2706, the Financial Institution Customer Protection Act, introduced by Chairman Luetkemeyer, which would impose appropriate and necessary limitations and conditions on the ability of any federal bank regulatory agency to direct or order any depository institution to terminate a specific customer account, or group of customer accounts, or otherwise to restrict or discourage any such institution from entering into or maintaining any banking relationship with a specific customer or group of customers. We believe that enactment would provide material relief to our industry and to the businesses and consumers throughout the nation whom we have the honor to serve.

“De-risking” by financial institutions—taking steps to reduce or eliminate the supposed risks of doing business with so-called “high risk” customers—can involve any number of measures.

Unfortunately for the independent ATM industry, it has become all too clear, especially over about the past 18 to 24 months, that a growing number of the banks that historically have served our industry by holding the deposit accounts that provide ATM operators access to the national payments system, through which virtually all ATM transactions must be conducted, have sought to “de-risk” their institutions by ordering closure of the deposit accounts of any customer engaged in the ATM industry, and refusing to open any new accounts for any person or firm in the industry.

Closing any such account has immediate and drastic consequences for the accountholder. Quite simply, it is impossible for an ATM operator to do business without having a bank account. When a cardholder withdraws cash from his or her account at any ATM that is not owned or operated by the cardholder’s own bank, that withdrawal necessarily can be accomplished only by transmissions made through one or more of the nation’s electronic funds transfer networks, which are accessible only through a bank account.

In recent years, increasing numbers of businesses and individuals in the independent ATM industry have been notified by their banks, without explanation, that their deposit accounts are to be closed, or, in some cases, already have been closed. These accountholders often have been customers who had enjoyed years, or even decades, of successful, trouble-free relationships with their banks. They were and are businesspeople who operated their businesses in full compliance with applicable laws and regulations. In many instances, the accountholder’s own banker—the bank’s “relationship manager” for the account—has been an advocate for the accountholder, seeking, without success, to convince senior management of the bank that the account relationship should be maintained.

I have been a victim of such “de-risking” in my own ATM businesses. In addition, as a member and a director of NAC, I have learned about the experiences of numerous other NAC members—and of others in the independent ATM industry who weren’t NAC members but who contacted our organization to seek help or advice after they had learned that their bank accounts were being or had been closed.

I do not want to dwell here on my own experiences—it is the widespread negative impact of “de-risking” on individuals and businesses, throughout our industry, that we want to make clear to the Subcommittee—but I would be pleased to describe and discuss my experiences in some detail if the Subcommittee would like me to do so.

A few illustrative examples may help the Subcommittee understand why this is such an urgent issue for our industry. A NAC member who is an ATM operator in Houston, after having been told that his customer relationship with Wells Fargo was being terminated by the bank, contacted NAC and told us he had found another bank, to whom he’d described his business and his need for a new bank, and that the institution had responded that it would be happy to have his business. This individual had a considerable history in the ATM business and had maintained his bank accounts at Wells Fargo for approximately 20 years.

At the time that Wells closed his accounts, the bank was charging and receiving from him approximately \$2,000 in monthly operating charges for servicing his accounts. For whatever reason, when Wells decided that it was dissatisfied with the relationship, the bank didn’t request more information from him about his business, his accounts, or the transactions in or through those accounts. It didn’t offer to maintain the account by means of an increase in the operating charges imposed on his accounts. Instead, it simply notified him that the bank was closing all of those accounts.

After he'd found another bank and moved his business's account there, he proceeded to make arrangements to operate his business, and service his ATMs, from his new bank. While he had banked at Wells Fargo, he'd had a contract with an armored-car service to make cash deliveries for his terminals from Wells Fargo. When his new bank told him that it was necessary that he switch to a different armored-car service that the bank used, he canceled his existing contract and arranged for cash deliveries to be made by the service that was used by that bank.

He then scheduled a delivery of \$200,000 in cash from his new bank, to be used to replenish his ATMs. On the evening before that delivery was to be made, the bank notified him that it was closing his account and that no delivery of cash would be made the next day. He was told that the bank would remit \$200,000 to him by check or wire transfer but would not provide him cash. When he asked why the bank closed his account, he was told that it was closing the accounts of all its customers who were in the ATM industry.

In some instances, financial institutions have given customers prior notice—sometimes 10 days, sometimes 30 days, sometimes even 60 days or longer, prior to the effective date of account closure. In other instances, there was no prior notice.

One of our members learned that his business's accounts had been closed only when he logged on to his bank's website at about 9:30 one evening and found that there was no indication on the site that any of his accounts ever had existed. Believing that there had been some serious failure impairing the website's operation, he then telephoned the bank's support line and, after having gone through security protocols, was told only that all of his accounts had been closed and that he would have to call or visit the bank the next day to obtain further information. When he called the bank on the following day, it refused to provide him any information except that a check would be mailed to him for the balance in his accounts.

Another NAC member, in southern California, was notified by his bank last April that it was closing his account. When he asked the reason for the bank's action, it refused to provide any. He sent to NAC a list of more than two dozen banks and credit unions that he then had called or visited, in May and June, in unsuccessful efforts to find another institution that would accept his account. NAC even has heard from firms—such as those that buy and sell ATM businesses, or that broker such transactions—that have never owned or operated a single ATM, and never have loaded cash into one, but that nevertheless have had their bank accounts closed, apparently because of their association with the ATM industry.

Yet another NAC member, in Tennessee, found out—only when he learned that one of the ATMs owned by his business would not accept his own debit card—that his bank had closed his business and personal accounts. This gentleman, 64 years old, had been a public school bus driver for more than 20 years, and invested his life's savings in the small ATM business that he built up over a decade.

Some banks have attributed their closure of accounts to factors that they describe in vague terms such as “regulatory burdens,” and even some that, in written notifications, have told depositors that they were under no obligation to provide any reason and that they therefore would not do so, also have indicated in conversations that the closures resulted from pressure from their regulators. A few banks have sought to justify account closures by stating that, as a matter of policy, they do not serve “money services businesses,” even though, in 2007, the federal Financial Crimes Enforcement Network (“FinCEN”) published interpretive guidance clarifying that, under federal law, a nonbank owner or operator of a typical ATM—one that offers cardholders access to their bank accounts only for purposes of making balance inquiries or cash withdrawals—is not considered a “money services business.”

One thing has become clear to us, as the incidence of these closures has grown exponentially over about the past two years: Wells Fargo and several other large banks have been the most systematic, uniform, and rigorous in cutting off and denying bank accounts to the independent ATM industry. It is per-

haps no coincidence that these institutions have by far the nation's largest branch networks and largest ATM networks. Moreover, during this same period these institutions have been actively rolling out and vigorously promoting and advertising various proprietary offerings to their customers, including the capabilities of their "touchless/NFC (near-field communication)" mobile apps, which are designed to function only with each bank's own ATMs, and not with any others.

These large, nationwide institutions accordingly stand to realize significant competitive advantages by the shrinking presence of independently owned ATMs, which is an inevitable and continuing consequence of the banks' unjustified refusal to offer or provide banking services to independent ATM owners and operators. Because these banks' own branch and ATM networks are among the most extensive in the nation, their collective blacklisting of accounts of the independent ATM industry, as a matter of corporate policy, has particularly devastating effects.

Banks' treatment of ATM providers as "high risk" businesses is wholly unjustified. Every independent ATM operator must be sponsored by a sponsoring bank, which conducts thorough, detailed due diligence on any person or firm that seeks to become an ATM owner or operator. Those that survive this initial vetting—which must be successfully completed before anyone can enter into the business—thereafter are required to submit detailed monthly reports to their sponsoring banks. Each owner or operator also must undergo an annual review and audit by its sponsoring bank. In addition, all of them are required to operate their businesses in strict accordance with detailed and extensive network rules that are issued and enforced by Visa, MasterCard, and other networks.

Although the underlying "product" of every ATM business is cash, it should be readily apparent that the detailed regular audits, reviews, and reporting that are required of those businesses, under network rules and by their sponsoring banks, should suffice to establish that there is no rational basis for banks to treat them as sources of undue risk of being involved in unlawful activity.

The account closures afflicting the independent ATM industry do not, in our view, accomplish any legitimate regulatory or law-enforcement objective, but they unquestionably cause grave and continuing harm: first, to the legitimate, law-abiding ATM businesses that are deprived of the bank accounts that are essential to their continued operation; and, second, to the innumerable members of the banking public that benefit every day from the services provided by the independent ATM industry. If the increasing incidence of blanket account closures by banks is permitted to continue unabated at its current pace, the resulting constriction on the availability of cash will have severe and growing adverse effects on the most vulnerable geographic and economic sectors of the nation, and ultimately on all Americans who rely on widespread, convenient access to cash.

In addition, the refusal by banks to offer deposit accounts to businesses in the independent ATM industry directly contravenes the affirmative obligation of every insured depository institution, under the Community Reinvestment Act, to demonstrate that the deposit services offered by the institution serve the convenience and needs of the communities in which it does business. Submitted with my prepared testimony is a copy of a letter dated September 20, 2017, from the Executive Director of NAC to Rep. Carolyn B. Maloney, which sets forth the bases of NAC's position that the refusal of banks to provide deposit services to independent ATM owners and operators is contrary to the lawful obligations of those institutions under the Community Reinvestment Act.

The independent ATM industry fulfills a critical role in the American economy. According to the most recent available data, the total number of ATMs deployed throughout the nation is approximately 470,000, which provides U.S. residents the highest per-capita availability, of any nation in the world, of ready access to cash from the funds held in their bank accounts. This widespread availability of sources of cash provides enormous benefits to our nation's economy. A substantial majority—nearly 60 per-

cent—of the nation’s ATMs are independently owned, and a great many of those independent ATMs are located in underbanked low-income urban neighborhoods, and in sparsely populated rural areas, where few bank offices, and few bank-owned ATMs, can be found.

To better understand this key issue, NAC contracted with an independent group of researchers, with experience in geographic and economic analysis, to conduct a study of certain aspects of the ATM marketplace. This team consisted of PhD and research professors from The Center for Economics and Geographic Information Systems (GIS) Research, of the Department of Economics and Geography at the University of North Florida, in Jacksonville. In their study, they compared the demographic characteristics of the areas in which independently owned ATMs are located with those of the areas where bank-owned ATMs are located. A copy of the study is submitted with my testimony.

After identifying the geographic locations of bank-owned and independent ATMs, the study compared a range of demographic and socioeconomic characteristics of those areas, in an effort to identify the characteristics that distinguish the areas served by independently owned ATMs from those of the areas served by bank-owned ATMs. The characteristics selected for comparison were: total population; population density; labor force participation rate; median age; unemployment rate; education (measured by number of residents, and proportion of population, with college degrees); median and average household income and disposable income, and median and average home values.

The authors of the study state their general conclusions as follows:

In this study we find clear statistical evidence that independent ATMs in the U.S. tend to be located in areas that are disadvantaged in demographic and socioeconomic status, when compared to bank-owned ATMs. The locations of independent ATMs tend to have less population, lower population density, lower labor force participation rate, less college-educated population, higher unemployment rate, lower median and average income (household and disposable), and lower home values.

The study also cites a report in the February 5, 2018, editions of *The Wall Street Journal* about branch closures in the U.S. banking industry in recent years, which begins: “Banks are closing branches at the fastest pace in decades, as they leave less profitable regions” The study says that, according to the *Journal*’s report, between July 2016 and June 2017 more than 1,700 bank branches were closed in the U.S., and further observed that while shutting down branch offices has boosted banks’ profits, “it has put their rural customers in trouble, forcing some to travel long distances for access to cash. . . . In this context independent ATMs play an even more important and growing role in giving certain sections of the population (i.e. rural, inner city) access to financial services that could have been otherwise limited.”

In all too many areas, if independently owned ATMs are shut down, the only available alternative for local residents will be to travel—in urban areas several miles or more, and in rural areas perhaps 20 miles, 30 miles, or even 50 miles—to get to the nearest bank branch or bank-owned ATM, or perhaps an independent ATM. *Widespread, reliable access to cash is one of the principal drivers that sustains the strength and growth of America’s consumer-driven economy, and independent providers of ATM services are a principal and indispensable source of that access.*

Residents in the areas served by independently owned ATMs, and the local retail and service businesses that also serve those residents, regularly count on the availability, day in and day out, of the cash that consumers can reliably access only through ATMs. It also is important to recognize that such access is of special importance to those segments of the populace who rely upon nonbank ATMs as the

only convenient, low-cost, and readily available way for them to access the growing range of benefits that are provided by government agencies solely through electronic benefit transfer (EBT) cards.

We in the independent ATM industry want to assure the Subcommittee that we recognize the value and importance of fair and vigorous enforcement of federal and state laws and regulatory requirements adopted to prohibit illicit financial transactions, including money-laundering and financing of criminal activities such as terrorism and trafficking in illegal narcotics. We understand that financial intermediaries such as banks are at risk of being misused or exploited by those engaged in furthering or promoting such illicit activities, and that appropriate monitoring, documenting, and recordkeeping of transfers of high volumes of currency unfortunately are necessary elements of appropriate enforcement regimes.

We therefore do not suggest that fair and sensible enforcement of the Bank Secrecy Act and related laws be curtailed or reduced in any respect. On the contrary, such enforcement protects us all. At the same time, we urge that the Subcommittee recognize that for federal regulators to encourage or permit financial institutions to cut off financial services, and deny bank accounts, to legitimate businesses that are operating in accordance with the law, and that accept and cooperate with financial institutions' conduct of due diligence on those businesses and on their transactions and activities, unavoidably will cause severe injury to those businesses, to their customers—the banking public who want and need the access to their funds that ATMs provide—and to the other businesses, throughout the nation, with whom those customers in turn do business.

Because of its recognition of the importance and necessity of appropriate BSA/AML enforcement, several years ago NAC began working to formulate a set of operating principles and procedures for use by ATM owners and operators, in order to facilitate BSA/AML compliance by the banks that serve the ATM industry. The result of these efforts was NAC's "Recommended Settlement/Vault Cash Account Guidelines for U.S. ATM Operators," which is posted on NAC's website, and a copy of which is submitted with my testimony. The Guidelines are intended to ensure that the banks that serve our industry will be provided, by their customers in the industry, the data and information that federal financial regulators expect every bank—in the conduct of its due diligence and for purposes of its account monitoring and related compliance duties—to obtain from any of its depositors that are independent providers of ATM services.

Based on guidance published by the Federal Financial Institutions Examination Council ("FFIEC") in its BSA/AML Examination Manual, available on the FFIEC's website, the Guidelines identify certain data, information, and records that ATM businesses that subscribe to and operate under the Guidelines agree to compile and provide to their banks on a regular basis.

These materials, according to the examination manual, include the data and information that bank examiners, in evaluating banks' BSA/AML compliance, are expected to review in the course of the examination process. The Guidelines incorporate many of the detailed requirements set forth in the examination manual, and thus are intended to serve as an educational tool, for ATM operators and for their bankers, as to what information needs to be documented by ATM businesses, provided by them to their banks for review by auditors and compliance staff, and made available by the banks for review by examiners in accordance with the provisions of the manual.

In an ATM business that operates under the Guidelines, the currency that is loaded into the business's ATMs is provided from one or more bank accounts, commonly known as a Settlement Account, which, as set forth in the Guidelines, is structured to operate as a "closed loop." The sole use of the funds that are held in any such account is to provide the currency that is loaded into ATMs owned or operated by the accountholder.

There are two, and only two, sources of the funds that are deposited into any Settlement Account: first, deposits made by the accountholder, and subject to customary due diligence by the Settlement Bank on such matters as the source(s) of the deposited funds, and the reasons that the deposit is needed; and, second, deposits received through automated clearing house (ACH) transfers that originate in the respective depository banks of cardholders who have made withdrawals from the business's ATM, and that are made in settlement of those withdrawal transactions. Surcharge or interchange revenue of the accountholder's ATM business, and any other revenue or income that it may receive, is deposited solely into other bank accounts wholly separate and apart from its Settlement Account(s). These operating procedures, and the reporting and recordkeeping that are provided for in the Guidelines, are intended to eliminate the possibility that any of the funds that flow through the Settlement Account could in any way be misused or diverted to illicit purposes, without such misuse being readily detected by the Settlement Bank.

During the course of developing the Guidelines, NAC had multiple meetings with officials and staff of FinCEN to review and discuss drafts of the Guidelines, and to solicit the agency's views about the effectiveness and utility of the Guidelines in describing, facilitating, and promoting appropriate documentation and recordkeeping, on the part of providers of ATM services, to enable the banks with which they do business to comply with their obligations under BSA/AML requirements. We understand that FinCEN views the Guidelines favorably, and NAC has urged, and continues to urge, its members to subscribe to the Guidelines and operate in accordance with them, and to review and discuss them, and their use and purposes, with their bankers.

We have met with the Acting Comptroller of the Currency and his senior staff and have requested that Comptroller Otting and the OCC work with NAC in addressing this situation and the serious issues that it presents. NAC and the banking agencies all share the same interests: implementing regulatory and enforcement procedures that provide for fair and effective enforcement of BSA/AML statutes and regulations, while assuring reliable provision of financial services, including deposit accounts, to law-abiding, legitimate businesses and individuals, on terms and conditions that do not impose undue or unreasonable burdens upon them or their business activities. **We are hopeful that the Subcommittee will join with us and urge the Comptroller's Office, and the other federal financial regulatory agencies, to work with NAC, and with the men and women of our industry, to relieve the existential threat that the current growing wave of unnecessary account closures presents for law-abiding independent ATM providers. We would also ask that the Subcommittee be open to an appropriate additional specific legislative resolution, should this prove necessary.**

Thank you again for the opportunity to appear before the Subcommittee and to present to you the views and concerns of NAC and its members on the important issues that are affecting, and indeed threaten the very survival of, our business.