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June 23, 2006

Mr. Yawar Shah  
Chairman  
Society for Worldwide Financial  
Telecommunications  
7 Times Square  
45th floor  
New York, NY 10036

Dear Mr. Shah:

Today's New York Times reports that the Bush Administration has initiated a secret program to gain access to financial records from a vast international database and examine banking transactions involving thousands of Americans and others in the United States (see, Eric Lichtblau and James Risen, "Bank Data is Sifted by U.S. in Secret to Block Terror," New York Times, June 23, 2006, at A1). According to the Times report, the Administration has obtained broad access to financial data from the Brussels-based Society for Worldwide Financial Telecommunications ("SWIFT").

According to the Times article, the program in question was run out of the Central Intelligence Agency and overseen by the Treasury Department. The Times article reports that the program "is a significant departure from typical practice in how the government acquires Americans' financial records" in that "Treasury officials did not seek individual court-approved warrants or subpoenas to examine specific transactions, instead relying on broad administrative subpoenas for millions of records from the cooperative, known as Swift." According to the Times, some of the nearly 20 current and foreign government officials and industry executives interviewed "expressed reservations about the program, saying that what they viewed as an urgent, temporary measure had become permanent nearly five years later without specific Congressional approval or formal authorization."

The Times report, coming on the heels of earlier revelations of government surveillance of domestic telephone records, raises disturbing questions about whether the Administration is complying with the Constitutional and legal protections established to protect the privacy of American citizens. In order to carry out my legislative and oversight responsibilities as both the Ranking Member of the Telecommunications and Internet Subcommittee, and as a Member of the Homeland Security Committee, I respectfully request your assistance and cooperation in providing responses to the following questions regarding SWIFT's participation in this program:

1. How and when did SWIFT agree to establishment of the financial records surveillance program? Was this arrangement approved by SWIFT's Board or its Executive Steering Group? Who within the SWIFT consortium was aware of its existence? Were the banks and other financial institutions that are SWIFT's Member Shareholders informed of this program?
2. According to the Times article, "Treasury Department lawyers, consulting with the Justice Department, concluded that the privacy laws applied to banks, not to a banking cooperative like Swift. They also said the law protected individual customers and small companies, not the major institutions that route money through Swift on behalf of their customers."
  - a. Does SWIFT believe that U.S. privacy laws do not apply to its operations? If so, what is the legal basis for this conclusion?
  - b. Has the SWIFT concluded that privacy laws do not prevent the government from gaining access to financial transaction data involving the routing of money through SWIFT by various financial institutions? If so, what is the legal basis for this conclusion?
3. SWIFT's website ([http://www.swift.com/index.cfm?item\\_id=1001](http://www.swift.com/index.cfm?item_id=1001)) contains numerous references to the security of SWIFT's financial telecommunications networks. For example, the consortium's description of its SWIFTNet messaging services reports, "By introducing IPSec-based security, SWIFT continues to maintain its leadership in providing the most secure financial messaging services." The website also notes that:

"In payments, more than 60 clearing systems, carrying from 500 to over 300k payments a day, rely on SWIFT for the *secure messaging connectivity* and common message standards essential to their smooth operation.

"Financial institutions and regulators continue to seek better control of the risks associated with the explosive growth in the value of trading. Globally, risk managers are being asked to measure, monitor and reduce exposure.

"In response, industry associations and central banks have developed market infrastructures for clearing and settlement. Because they are multilateral, they *need a trusted third party to provide secure, reliable and proven messaging solutions. SWIFT is increasingly used by financial institutions to fill that role.*" [Emphasis added]

How does SWIFT reconcile such statements about the security of its financial telecommunications systems with the fact that the consortium apparently has allowed U.S. government officials broad access to data passing through its systems without any judicially-approved warrant or grand jury subpoena?

4. The Times article reports that "for many years, law enforcement officials relied on grand-jury subpoenas or court-approved warrants for such financial data," but that after

September 11<sup>th</sup> the government began collecting financial data with so-called “administrative subpoenas” that do not require grand jury or judicial approval.

- a. Why were financial records obtained from SWIFT in connection with this program obtained without resort to a judicial warrant?
  - b. The Times reports that the Department’s Office of Foreign Asset Control has issued “broad subpoenas” for SWIFTs records that were “intended to give Swift some legal protection.” Is this true?
  - c. How many subpoenas were issued for information from SWIFT? What data did these subpoenas request?
  - d. Did any judge or grand jury approve these subpoenas? If so, when? If not, why not?
5. Please provide an analysis of the applicability of domestic U.S. privacy laws, including the Right to Financial Privacy Act, the Privacy Act, and the Gramm-Leach-Bliley Act to the financial records surveillance program described in the Times article.
  6. What type of financial information has been gathered under this program?
  7. Since SWIFT is based overseas and also has offices in the U.S., it is subject to both U.S. and European privacy laws. Is SWIFT’s participation in the Bush Administration’s financial records surveillance program consistent with the requirements of the European Union’s Privacy Directive, and with the implementing national legislation adopted by the various European Union nation’s to implement that directive? If so, please provide a legal analysis that would substantiate this conclusion. If not, why did SWIFT provide financial records to the U.S. government in violation of European privacy laws and regulations?
  8. How many American citizens’ financial records have been scrutinized by the government as part of this program? How many non-American citizen’s financial records were provided to the U.S. Government by SWIFT?
  9. The Times article reports that “an outside auditing firm [was engaged] that verifies that the data searches are based on intelligence leads about suspected terrorists.” Is this true? Did SWIFT hire this firm, or did the U.S. government?
  10. Did this auditor report to SWIFT about its findings? If so, please provide copies of all such reports. If not, how does SWIFT know that the data searches are appropriate and legal?
  11. The Times article quotes Treasury Undersecretary Levy as stating that “people do not have a privacy interest in their international wire transactions.”
    - a. Does SWIFT agree that people do not have a privacy interest in their international wire transactions?
    - b. Does SWIFT provide other government’s intelligence or internal security agencies with information about international wire transactions? If so, which Governments? If not, would SWIFT provide such information if, for example, if the Chinese, the Russian, the Iranian, or the North Korean governments were to request such information from SWIFT?
  12. The Times article further reports that “one person had been removed from the operation for conducting a search considered inappropriate.” Is this true? If so, please describe the facts and circumstances of this case.

13. The Times article reports that following a 2003 meeting between SWIFT and U.S. government officials to respond to concerns raised by SWIFT about the surveillance program, the U.S. government pledged to impose tighter controls on the program, including the stationing of SWIFT officials “alongside intelligence officials” who could “block any searches considered inappropriate.”
- a. Is this report accurate?
  - b. What concerns did SWIFT had that led to these tighter controls?
  - c. What controls were put into place following this 2003 meeting?
  - d. At any time did SWIFT officials exercise the “veto” authority referred to in the Times article?

Thank you for your assistance and cooperation in responding to these questions. Should you have any questions about this request, please have your staff contact Mr. Jeffrey Duncan of my staff at 202-225-2836.

Sincerely,



Edward J. Markey