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PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Committee on Homeland Security and Governmental Affairs

Carl Levin, Chairman

Tom Coburn, Ranking Minority Member

**KEEPING FOREIGN CORRUPTION OUT
OF THE UNITED STATES:
FOUR CASE HISTORIES**

**MAJORITY AND MINORITY
STAFF REPORT**

**PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS**

UNITED STATES SENATE



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KEEPING FOREIGN CORRUPTION OUT OF THE UNITED STATES: FOUR CASE HISTORIES

This Report examines how politically powerful foreign officials, their relatives, and close associates – referred to in international agreements as Politically Exposed Persons (PEPs) – have used the services of U.S. professionals and financial institutions to bring large amounts of suspect funds into the United States to advance their interests. Using four case histories, this Report shows how some PEPs have used U.S. lawyers, real estate and escrow agents, lobbyists, bankers, and even university officials, to circumvent U.S. anti-money laundering and anti-corruption safeguards. This Report also offers recommendations to stop the abuses.

I. EXECUTIVE SUMMARY

Combating corruption is a key U.S. value and goal, due to its corrosive effects on the rule of law, economic development, and democratic principles. In 2001, the Patriot Act made the acceptance of foreign corruption proceeds a U.S. money laundering offense for the first time, and required banks to apply enhanced scrutiny to private banking accounts opened for senior foreign political figures, their relatives, and close associates. In 2003, the United States supported the United Nations Convention Against Corruption, now ratified by over 140 countries. Also in 2003, U.S. Immigration and Customs Enforcement (ICE) formed an investigative group dedicated to combating foreign corruption by PEPs. In 2004, President Bush issued Presidential Proclamation 7750 denying U.S. visas to foreign officials involved with corruption, and Congress later enacted supporting legislation. A 2009 study sponsored by the World Bank analyzed PEP controls worldwide and recommended stronger measures to reduce corruption.

The Permanent Subcommittee on Investigations (Subcommittee) initiated this investigation to learn how U.S. laws apply to PEPs utilizing the domestic financial system, and examine how foreign senior political figures, their relatives, and close associates may be circumventing or undermining anti-money laundering (AML) and PEP controls to bring funds that may be the product of foreign corruption into the United States. It is the latest in a series of Subcommittee hearings examining foreign corruption and its U.S. aiders and abettors.

During the course of its investigation, the Subcommittee staff conducted over 100 interviews, including interviews of lawyers, real estate agents, escrow agents, lobbyists, bankers, university professionals, and government officials. The Subcommittee issued over 50 subpoenas and reviewed millions of pages of documents, including bank records, correspondence, contracts, emails, property records, flight records, news articles, and court pleadings. In addition, the Subcommittee consulted with foreign officials, international organizations, financial regulators, and experts in anti-money laundering and anti-corruption efforts.

The Subcommittee has developed four case histories that expose some of the tactics being used by PEPs and their facilitators to bring suspect funds into the United States, and identify some of the legal gaps, poor due diligence practices, and inadequate PEP controls that, at times, have made these tactics possible.

Obiang Case History. From 2004 to 2008, Teodoro Nguema Obiang Mangue, son of the President of Equatorial Guinea, has used U.S. lawyers, bankers, real estate agents, and escrow agents to move over \$110 million in suspect funds into the United States. Mr. Obiang is the subject of an ongoing U.S. criminal investigation, has been identified in corruption complaints filed in France, and was a focus of a 2004 Subcommittee hearing showing how Riggs Bank facilitated officials from Equatorial Guinea in opening accounts and engaging in suspect transactions.

Two lawyers, Michael Berger and George Nagler, helped Mr. Obiang circumvent U.S. AML and PEP controls at U.S. financial institutions by allowing him to use attorney-client, law office, and shell company accounts as conduits for his funds and without alerting the bank to his use of those accounts. If a bank later uncovered Mr. Obiang's use of an account and closed it, the lawyers helped him open another. The U.S. shell companies they formed for Mr. Obiang included Beautiful Vision, Inc., Unlimited Horizon, Inc., Sweetwater Malibu, LLC, Sweetwater Management, Inc., and Sweet Pink, Inc.

Two real estate agents, Neal Baddin and John Kerrigan, helped Mr. Obiang buy and sell high-end real estate in California including his purchase of a \$30 million Malibu residence with funds wire transferred from Equatorial Guinea, operating without any legal obligation to inquire into the source of his funds. Mr. Obiang also used a U.S. escrow agent to purchase a \$38.5 million U.S.-built Gulfstream jet. When one escrow agent, McAfee & Taft, as a voluntary anti-money laundering precaution, refused to proceed without information about the source of the funds for the purchase, another escrow agent, International Airline Title Services Inc., stepped in and completed the transaction with no questions asked. U.S. law currently exempts both escrow and real estate agents from the Patriot Act's requirement to establish anti-money laundering programs.

Mr. Obiang also brought large amounts of suspect funds into the United States by taking advantage of banking systems that were not programmed to block wire transfers bearing his name.

Bongo Case History. From 2003 through at least 2007, Omar Bongo, President of Gabon for 41 years until his death in June 2009, employed a U.S. lobbyist, Jeffrey Birrell, to purchase six U.S.-built armored vehicles and obtain U.S. Government permission to buy six U.S.-built C-130 military cargo aircraft from Saudi Arabia to support his regime. President Omar Bongo was a focus of a 1999 Subcommittee hearing showing how he used offshore shell companies to move over \$100 million in suspect funds through accounts at Citibank Private Bank. He has been mentioned in connection with the ELF oil scandal in France, and has been identified in corruption complaints filed in France.

As part of the armored car and C-130 transactions, over \$18 million was wire transferred from Gabon into U.S. bank accounts held in the name of The Grace Group LLC, a U.S. corporation formed by Mr. Birrell. Mr. Birrell received the funds primarily from President Omar Bongo and an entity called Ayira. He later transferred \$9.2 million of the funds provided by Ayira to a foreign account held in the name of President Omar Bongo in Malta. He also wire transferred over \$4.2 million to foreign bank accounts opened in the name of a senior Bongo adviser, and over \$1 million in payments to foreign bank accounts held in the name of various "consultants." Mr. Birrell's corporate accounts served as a conduit for those Bongo funds.

In addition, President Omar Bongo provided large amounts of cash to his daughter, Yamilee Bongo-Astier, who deposited the cash into bank accounts and safe deposit boxes at U.S. financial institutions in New York from 2000 to 2007. Ms. Bongo-Astier made multiple large dollar deposits into her accounts at banks that were unaware of her PEP status, but knew she was an unemployed student. One bank closed her account after receiving an \$183,500 wire transfer from the Republic of Gabon; another did so after discovering she had \$1 million in \$100 shrink-wrapped bills in her safe deposit box, which she said her father had brought into the United States using his diplomatic status and without declaring the cash to U.S. authorities.

Another member of the Bongo family is Inge Lynn Collins Bongo, the wife of Ali Bongo, the current President of Gabon and its former Minister of Defense. In 2000, she formed a U.S. trust, the Collins Revocable Trust, and opened accounts in the name of that Trust at banks in California. For three years, from 2000 to 2003, Ms. Inge Bongo accepted multiple large offshore wire transfers into the Trust accounts and used the funds to support a lavish lifestyle and move money among a network of bank and securities accounts benefiting her and her husband.

Due to inadequate PEP lists prepared by third party vendors, the financial institutions hosting the Bongo accounts were, more often than not, unaware of their clients' PEP status and did not subject their accounts to enhanced monitoring.

Abubakar Case History. From 2000 to 2008, Jennifer Douglas, a U.S. citizen and the fourth wife of Atiku Abubakar, former Vice President and former candidate for President of Nigeria, helped her husband bring over \$40 million in suspect funds into the United States through wire transfers sent by offshore corporations to U.S. bank accounts. In a 2008 civil complaint, the U.S. Securities and Exchange Commission alleged that Ms. Douglas received over \$2 million in bribe payments in 2001 and 2002, from Siemens AG, a major German corporation. While Ms. Douglas denies wrongdoing, Siemens has already pled guilty to U.S. criminal charges and settled civil charges related to bribery and told the Subcommittee that it sent the payments to one of her U.S. accounts. In 2007, Mr. Abubakar was the subject of corruption allegations in Nigeria related to the Petroleum Technology Development Fund.

Of the \$40 million in suspect funds, \$25 million was wire transferred by offshore corporations into more than 30 U.S. bank accounts opened by Ms. Douglas, primarily by Guernsey Trust Company Nigeria Ltd., LetsGo Ltd. Inc., and Sima Holding Ltd. The U.S. banks maintaining those accounts were, at times, unaware of her PEP status, and they allowed multiple, large offshore wire transfers into her accounts. As each bank began to question the offshore wire transfers, Ms. Douglas indicated that all of the funds came from her husband and professed little familiarity with the offshore corporations actually sending her money. When one bank closed her account due to the offshore wire transfers, her lawyer helped convince other banks to provide a new account.

In addition, two of the offshore corporations wire transferred about \$14 million over five years to American University in Washington, D.C., to pay for consulting services related to the development of a Nigerian university founded by Mr. Abubakar. American University accepted the wire transfers without asking about the identity of the offshore corporations or the source of their funds, because under current law, the University had no legal obligation to inquire.

Angola Case History. The final case history examines three Angolan PEP accounts, involving an Angolan arms dealer, an Angolan government official, and a small Angolan private bank that caters to PEP clients, to show how the accountholders gained access to the U.S. financial system and attempted to exploit weak U.S. AML and PEP safeguards.

Pierre Falcone is a notorious arms dealer who supplied weapons during the Angolan civil war, a close associate of Angolan President Jose Eduardo Dos Santos, and the target of lengthy criminal investigations resulting in his recent imprisonment in France. He used personal, family, and U.S. shell company accounts at a U.S. bank in Arizona to bring millions of dollars in suspect funds into the United States and move those funds among a worldwide network of accounts. Mr. Falcone was imprisoned in France for one year beginning in 2000, was a fugitive from a 2004 French global arrest warrant, and was convicted in France in 2007 and 2009, on charges related to illegal arms dealing, tax fraud, and money laundering. He is now serving a six-year prison sentence. Bank of America maintained nearly 30 accounts for the Falcone family from 1989 to 2007, did not treat Mr. Falcone as a PEP, and did not consider his accounts to be high risk, even after learning in 2005 that he was an arms dealer and had been imprisoned in the past. In 2007, after receiving a Subcommittee inquiry about the Falcone accounts, the bank conducted a new due diligence review, closed the accounts, and expressed regret at providing Mr. Falcone with banking services for years.

Dr. Aguinaldo Jaime, a senior Angolan government official, was head of Banco Nacional de Angola (BNA), the Angolan Central Bank, when he attempted, on two occasions in 2002, to transfer \$50 million in government funds to a private account in the United States, only to have the transfers reversed by the U.S. financial institutions involved. Dr. Jaime invoked his authority as BNA Governor to wire transfer the funds to a private bank account in California during the first attempt and, during the second attempt, to purchase \$50 million in U.S. Treasury bills for transfer to a private securities account in California. Both transfers were initially allowed, then reversed by bank or securities firm personnel who became suspicious of the transactions. Partly as a result of those transfers and the corruption concerns they raised, in 2003, Citibank closed not only the accounts it had maintained for BNA, but all other Citibank accounts for Angolan government entities, and closed its office in Angola. In contrast, HSBC continues to provide banking services to BNA in the United States and elsewhere, and may be providing the Central Bank with offshore accounts in the Bahamas.

Banco Africano de Investimentos (BAI) is a \$7 billion private Angolan bank whose largest shareholder is Sonangol, the Angolan state-owned oil company. It offers banking services to Sonangol, Angolans in the oil and diamond industries, and Angolan government officials. Over the last ten years, BAI gained entry to the U.S. financial system through accounts at HSBC in New York, using HSBC wire transfer services, foreign currency exchange, and U.S. dollar credit cards for BAI clients, despite providing troubling answers about its ownership and failing to provide a copy of its AML procedures to HSBC after repeated requests. Despite the presence of PEPs in BAI's management and clientele, HSBC decided against designating BAI as a "Special Category of Client" requiring additional oversight until November 2008, years after the account was first opened.

Together, these four case histories demonstrate the need for the United States to strengthen its PEP controls to prevent corrupt foreign officials, their relatives, and close associates from using U.S. professionals and financial institutions to conceal, protect, and utilize their ill gotten gains.

A. FINDINGS

This Report makes the following findings of fact.

- (1) **Lawyers.** Two U.S. lawyers helped Teodoro Obiang, son of the President of Equatorial Guinea, circumvent anti-money laundering and PEP controls at U.S. banks by allowing him to secretly use a series of attorney-client, law office, and shell company accounts as conduits for his funds.
- (2) **Real Estate Agents.** Two real estate agents helped Mr. Obiang buy and sell multi-million-dollar residences in California, and a real estate escrow agent facilitated his purchase of a \$30 million property by handling millions of dollars wire transferred from Equatorial Guinea, without verifying the source of the funds, since they had no legal obligation to do so.
- (3) **Escrow Agents.** After one U.S. escrow agent, as an AML precaution, refused to complete the purchase of a Gulfstream jet without obtaining information on the source of \$38.5 million to be paid for the aircraft, another U.S. escrow agent stepped in and completed the transaction with no questions asked. The escrow agents had no legal obligation under current law to inquire about the source of the funds.
- (4) **Lobbyist.** A U.S. lobbyist helped President Omar Bongo of Gabon obtain six U.S.-built armored cars and U.S. Government permission to buy six U.S.-built military cargo aircraft from Saudi Arabia to support his regime, while allowing his U.S. bank accounts to be used as a conduit for \$18 million in suspect funds in connection with those transactions, with no questions asked.
- (5) **Offshore Corporations.** Jennifer Douglas, a PEP through her marriage to Atiku Abubakar, former Vice President of Nigeria, used a series of U.S. bank accounts to bring over \$25 million in suspect funds into the United States via wire transfers from offshore corporations.
- (6) **University.** A U.S. university accepted over \$14 million in wire transfers from unfamiliar offshore shell corporations to pay for consulting services related to development of a university in Nigeria founded by Mr. Abubakar.
- (7) **Personal Accounts.** Pierre Falcone, a PEP through his close association with the President of Angola and appointment as an Angolan Ambassador, was able to use personal, family, and U.S. shell company accounts at a U.S. bank in Arizona to bring millions of dollars in suspect funds into the United States and move those funds among a worldwide network of Falcone accounts, despite his status as an arms dealer and a long history of involvement in criminal proceedings in France.

- (8) **Government Accounts.** Dr. Aginaldo Jaime, using his authority as head of the Angolan Central Bank, attempted without success, on two occasions in 2002, to transfer \$50 million in government funds to a private account in the United States.
- (9) **Correspondent Accounts.** Banco Africano de Investimentos, a \$7 billion private Angolan bank that caters to PEPs, is not treated as a PEP client subject to enhanced monitoring by its U.S. correspondent bank.
- (10) **Vendor PEP Lists.** Some vendors relied on by U.S. financial institutions to screen clients for PEPs used incomplete and unreliable PEP lists.

B. RECOMMENDATIONS

This Report makes the following recommendations.

- (1) **World Bank PEP Recommendations.** Congress should enact a law and the U.S. Treasury Department should promulgate rules implementing the key recommendations of a recent World Bank study to strengthen bank controls related to Politically Exposed Persons (PEPs), including by requiring banks to use reliable PEP databases to screen clients, use account beneficial ownership forms that ask for PEP information, obtain financial declaration forms filed by PEP clients with their governments, and conduct annual reviews of PEP account activity to detect and stop suspicious transactions.
- (2) **Real Estate and Escrow Agent Exemptions.** Treasury should repeal all of the exemptions it has granted from the Patriot Act requirement for anti-money laundering (AML) programs, including the 2002 exemption given to real estate and escrow agents handling real estate closings, and sellers of vehicles, including escrow agents handling aircraft sales, and use its existing statutory authority to require them to implement AML safeguards and refrain from facilitating transactions involving suspect funds.
- (3) **Attorney-Client and Law Office Accounts.** Treasury should issue an AML rule requiring U.S. financial institutions to obtain a certification for each attorney-client and law office account that it will not be used to circumvent AML or PEP controls, accept suspect funds involving PEPs, conceal PEP activity, or provide banking services for PEPs previously excluded from the bank; and requiring enhanced monitoring of such accounts to detect and report suspicious transactions.
- (4) **U.S. Shell Corporations.** Congress should enact legislation requiring persons forming U.S. corporations to disclose the names of the beneficial owners of those U.S. corporations.
- (5) **Immigration Restriction.** Congress and the Administration should consider making significant acts of foreign corruption a legal basis for designating a PEP and any family member inadmissible to enter, and removable from, the United States.

- (6) **Visa Restriction.** The State Department should strengthen its enforcement of the law and Presidential Proclamation 7750 denying U.S. visas to foreign PEPs involved with corruption, and law enforcement agencies should increase the assistance they provide to State Department investigations of PEPs under review.
- (7) **Professional Guidelines.** Professional organizations, including the American Bar Association, National Association of Realtors, American League of Lobbyists, and American Council for Education, should issue guidance to their members prohibiting use of any financial account to accept suspect funds involving PEPs, conceal PEP activity, facilitate suspect transactions involving PEPs, or circumvent AML or PEP controls at U.S. financial institutions.
- (8) **FATF Recommendations.** The United States should work with the international Financial Action Task Force on Money Laundering to amend its existing 40+9 Recommendations to strengthen anti-corruption and PEP controls.

II. FOREIGN CORRUPTION AND MONEY LAUNDERING

Corruption has been increasingly condemned by the United States and the international community for impeding the development of honest government, democratic principles, and the rule of law. It is also blamed for distorting markets, deterring investment, deepening poverty, undermining international aid efforts, and fostering crime.¹ Some have drawn connections between corruption, failed states, and terrorism. Corruption also continues to be a massive problem. The World Bank has estimated that \$1 trillion in bribes alone exchange hands worldwide each year.²

Combating corruption has long been an aim of the United States. In 1977, for example, the United States became the first country in the world to prohibit the payment of bribes to foreign public officials.³ In 1999, the Clinton Administration launched a major anti-corruption initiative, sponsoring an international conference under the leadership of Vice President Gore to increase the visibility of the issue. In 2001, Congress enacted anti-corruption provisions in the Patriot Act, as explained below. In 2004, the Bush Administration issued Presidential Proclamation 7750, providing a legal basis for denying visas to foreign officials involved in corruption.⁴ In 2006, President Bush issued a national strategy to convince other nations to do the same.⁵ In 2009, Congress enacted legislation requiring the State Department to maintain “a list of officials of foreign governments and their immediate family members who the Secretary has credible evidence have been involved in corruption relating to the extraction of natural resources” and making such persons “ineligible for admission to the United States.”⁶

Subcommittee Work. The Permanent Subcommittee on Investigations has contributed to the anti-corruption battle by conducting several investigations over the past ten years into how politically powerful foreign officials, their relatives, and close associates utilize U.S. financial institutions to conceal, transfer, and spend funds suspected to be the proceeds of corruption.

In 1999, for example, the Subcommittee released a report and held a hearing on four case histories of heads of states or their relatives who used Citibank Private Bank to deposit at least \$100 million each in suspect funds.⁷ In 2001, the Subcommittee Chairman, Senator Carl Levin,

¹ See, e.g., statement by the World Bank that corruption is “the single greatest obstacle to economic and social development. It undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends.” David Chaikin and J.C. Sharman, “Corruption and Money Laundering: A Symbiotic Relationship,” Palgrave, 2009, at 11.

² The World Bank, “The Costs of Corruption,” April 4, 2004, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190187~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

³ See Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1 et seq.

⁴ Presidential Proclamation 7750 (January 2004), www.whitehouse.gov/news/releases/2004/01/20040112-3.html. Prior to this proclamation, corrupt foreign officials could and still can be denied visas on other grounds, including involvement with organized crime, drug trafficking, money laundering, trafficking in human persons, crimes of moral turpitude, and conduct detrimental to the interests of the United States. See, e.g., Section 212(f) of the Immigration and Naturalization Act, 8 U.S.C. 1182 et seq.

⁵ See “U.S. National Strategy to Internationalize Efforts Against Kleptocracy” (August 2006), available at www.state.gov/p/inl/rls/fs/70365.

⁶ See Section 7084 of the 2010 Omnibus Appropriations Act.

⁷ “Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities,” U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 106-428, (Nov. 9 and 10, 1999)(case histories involved Raul

working with the Chairman of the Senate Banking, Housing, and Urban Affairs Committee, Senator Paul Sarbanes, won enactment of provisions in the Patriot Act which, for the first time, made the knowing acceptance of foreign corruption proceeds a money laundering offense.⁸ They also successfully included Patriot Act provisions which required U.S. financial institutions to exercise enhanced due diligence before opening a private banking account for a senior foreign political figure, immediate relative, or close associate; conduct enhanced monitoring of such accounts; and report suspicious transactions to law enforcement.⁹

In addition, the Patriot Act required a long list of U.S. financial institutions to implement anti-money laundering (AML) programs, with written policies, procedures and controls, an AML compliance officer, employee training, and internal audits, unless explicitly exempted by the Treasury Secretary.¹⁰ It also required them to obtain customer identification information for each account opened.¹¹ Regulations issued by Treasury over the next few years implemented those Patriot Act provisions, requiring U.S. banks, securities firms, insurance companies, futures commission merchants, jewelry businesses, and money service businesses, among others, to develop the specified AML programs. At the same time, however, Treasury exempted several groups from having to establish AML programs, including hedge funds, the real estate industry, and escrow agents.¹²

In 2004, the Subcommittee released a report and held a hearing examining the extent to which U.S. financial institutions were complying with the new Patriot Act provisions, using Riggs Bank in Washington, D.C. as an example.¹³ At that time, Riggs Bank provided banking services for most of the foreign embassies in the nation's capital as well as for many heads of states, foreign government officials, and their relatives. The Subcommittee presented evidence of the Bank's poor compliance with the Patriot Act provisions, using two case histories.

The first case history found that Riggs Bank had opened over 60 accounts for the government of Equatorial Guinea (EG), the EG President Teodoro Nguema Obiang Mbagasa, senior EG officials, and their relatives; created offshore corporations and opened accounts in the names of those offshore corporations for the President and his sons; accepted millions of dollars in cash deposits from the President, his wife, and other EG officials; and facilitated numerous suspect transactions involving millions of dollars without alerting law enforcement. The second case history showed that Riggs Bank had secretly opened accounts for the former President of Chile, Augusto Pinochet, created offshore corporations for him, accepted about \$8 million in suspect deposits, and secretly couriered millions of dollars in cashiers checks to him in Chile. In

Salinas, brother to the President of Mexico; Omar Bongo, President of Gabon; Ali Zadari, husband to the Prime Minister of Pakistan; and two sons of Sani Abacha, then President of Nigeria).

⁸ See Section 315 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 18 U.S.C. § 1956(c)(7)(B)(iv) (adds as a predicate offense for a money laundering prosecution "bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official").

⁹ See Section 312 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 31 U.S.C. § 5318(i).

¹⁰ See Section 352 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 31 U.S.C. § 5318(h).

¹¹ See Section 326 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 18 U.S.C. § 5318(l).

¹² See, e.g., See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002)); Advance Notice of Proposed Rulemaking on Anti-Money Laundering Program Requirements for "Persons Involved in Real Estate Closings and Settlements," 68 FR 17569 (April 10, 2003).

¹³ "Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act," U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 108-633 (July 15, 2004).

2005, a supplemental report by the Subcommittee showed that Mr. Pinochet and his family members had opened a secret network of over 125 accounts under a variety of names at financial institutions operating in the United States.¹⁴

The investigation also determined that U.S. bank regulators, including the Office of the Comptroller of the Currency and the Federal Reserve, had identified serious deficiencies in Riggs' AML procedures, instructed Riggs to improve, but then took no supervisory action when Riggs failed to do so. The investigation showed that the supervisory failures at Riggs were part of a larger pattern of lax AML oversight. In response, beginning in 2005, U.S. bank regulators strengthened their AML oversight efforts and initiated a number of enforcement actions to compel stronger AML programs at U.S. financial institutions.

In 2005, Riggs Bank paid a \$16 million criminal fine and a \$25 million civil fine for failing to report suspicious activities to law enforcement and to correct deficiencies in its AML program.¹⁵ The owners of the bank also paid a \$5 million fine to a Spanish court for failing to observe a court-ordered freeze on assets related to Augusto Pinochet. Later that same year, PNC purchased the bank, and the Riggs name disappeared from U.S. banking.¹⁶

The Subcommittee's past work and the findings in this Report should be seen in the context, not only of U.S. efforts to combat corruption, but also of the international community's increasing efforts to prevent, detect, and stop corruption. Some highlights of those efforts include the following.

FATF Anti-Corruption Recommendations. One key source of international efforts to combat corruption dates back to the 1989 formation of the Financial Action Task Force on Money Laundering (FATF), which is the leading international body opposing money laundering. Since its establishment, FATF has focused on exposing money laundering and terrorist financing threats, setting international standards to meet those threats, and conducting peer reviews to encourage compliance with its standards. About 170 jurisdictions have pledged to comply with FATF standards. In 2003, FATF strengthened its longstanding 40 Recommendations to combat money laundering, and issued 9 Special Recommendations to combat terrorist financing.¹⁷ The FATF 40+9 Recommendations include provisions to combat the laundering of corruption proceeds, including Recommendation No. 6 which directs FATF member countries to require their financial institutions to screen clients to identify Politically Exposed Persons (PEPs) – defined as individuals entrusted with prominent public functions, their relatives, and close associates – “take reasonable measures to establish the source of wealth and the source of funds” in PEP transactions, and “conduct enhanced ongoing monitoring of the business relationship.”

1997 OECD Anti-Bribery Convention. Another major development was the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which obligates its signatories to criminalize the bribery of foreign officials.¹⁸

¹⁴ “Supplemental Staff Report on U.S. Accounts Used by Augusto Pinochet,” U.S. Senate Permanent Subcommittee on Investigations, S. Prt. 109-25, (March 16, 2005).

¹⁵ *U.S. v. Riggs Bank*, Case No. 05-35 (RMU) (U.S.D.C. D.C.) (January 27, 2005); OCC Consent Order, In Re Riggs Bank, Case No. 2005-1 (May 13, 2004).

¹⁶ See, e.g., Associated Press, “Final Chapter Nears in Riggs Bank Drama,” March 29, 2005.

¹⁷ http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html.

¹⁸ See OECD website, http://www.oecd.org/document/20/0,3343,en_2649_34859_2017813_1_1_1_1,00.html.

Prior to this convention, payments made to foreign officials to obtain contracts or other goods or services were not always viewed as crimes; some countries even viewed such payments as tax deductible business expenses.¹⁹ The OECD Convention rejected that approach and instead followed the lead of the U.S. Foreign Corrupt Payments Act in outlawing such payments as bribes. To comply with the Anti-Bribery Convention's requirements, signatories must enact domestic laws making the payment of bribes to foreign officials a criminal offense. The OECD concentrated at first on encouraging its member countries to enact those domestic laws. In recent years, the focus of the Anti-Bribery Convention has shifted to encouraging countries to enforce the laws now on the books.²⁰

2001 Basel Directive. In 2001, the Basel Committee on Banking Supervision, an international body of banking supervisors that formulates banking policy and guidance, brought the corruption issue to the attention of banks worldwide when it issued a statement on "customer due diligence." That statement included strong language on the need for banks to identify PEPs and avoid the acceptance of corrupt proceeds:

"Accepting and managing funds from corrupt PEPs will severely damage the bank's own reputation and can undermine public confidence in the ethical standards of an entire financial centre, since such cases usually receive extensive media attention and strong political reaction. ... [I]t is clearly undesirable, unethical and incompatible with the fit and proper conduct of banking operations to accept or maintain a business relationship if the bank knows or must assume that the funds derive from corruption or misuse of public assets. There is a compelling need for a bank considering a relationship with a person whom it suspects of being a PEP to identify that person fully, as well as people and companies that are clearly related to him/her."²¹

2003 UN Convention Against Corruption. Still another key development was the 2003 United Nations Convention Against Corruption (UNCAC). Currently, over 140 countries have signed the UNCAC, which entered into force in 2005.²² It requires signatories to criminalize a wide range of corrupt acts, including not only bribery and embezzlement, but also influence peddling and money laundering. Among other provisions, the UNCAC directs signatories to require their banks "to verify the identity of customers, to take reasonable steps to determine the identity of beneficial ownership of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and associates." In addition, UNCAC strengthened international anti-corruption efforts by requiring signatories to provide mutual legal assistance to extradite and prosecute offenders, including by gathering and providing evidence to the prosecuting country. UNCAC also required signatories to support the tracing, freezing, and seizure of illicit funds, placing a special focus on recovery of assets stolen by corrupt officials. UNCAC was further strengthened at a recent conference in Doha, when the

¹⁹ See, e.g., http://www.oecdobserver.org/news/fullstory.php/aid/245/Writing_off_tax_deductibility_.html.

²⁰ In June 2009, Transparency International found that only Germany, Norway, Switzerland, and the United States were adequately enforcing anti-bribery laws. See http://www.transparency.org/news_room/latest_news/press_releases/2009/2009_06_23_2009_oecd_progress_report. In one highly visible case, in 2006, the U.K. Serious Fraud Office scuttled an investigation into alleged bribe payments made by a large company, BAE, to Saudi Arabian officials to secure a large arms contract. <http://www.oecd.org/dataoecd/43/13/38962457.pdf>.

²¹ Basel Committee on Banking Supervision, "Customer Due Diligence for Banks," (Bank for International Settlements, October 2001), paragraphs 42-43.

²² http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

signatories agreed to undergo a peer review process to evaluate their compliance with its provisions.

StAR Initiative and 2009 PEP Study. Still another major anti-corruption advance occurred in 2007, when the World Bank and the United Nations Office on Drugs and Crime (UNODC) launched the Stolen Asset Recovery Initiative (StAR). StAR's key mission is to help developing countries recover funds lost due to corruption. On its website, it states: "StAR's objective is to reduce barriers to asset recovery and thereby encourage and facilitate more systematic and timely return of stolen assets."²³ To accomplish this objective, StAR works with countries around the world to build national capacity to detect and respond to corruption, finances training, develops "how to" guides and information systems, and assists with the preparation of reports, legal research, financial analyses, and mutual legal assistance requests.

In November 2009, the StAR Initiative trained a spotlight on PEP issues by releasing a study examining how banks handle PEP accounts and transactions.²⁴ The report concluded: "The picture today is of an overall failure of effective implementation of international PEP standards" and "surprisingly low compliance" with FATF requirements on PEPs.²⁵ The report identified a number of problems, including a lack of political will to address PEP issues, the absence of enforceable legal and regulatory frameworks to address PEP issues, limited due diligence requirements, inadequate PEP databases, and use of associates, intermediaries, and legal entities to hide PEP involvement. To "prevent corrupt PEPs from abusing domestic and international financial systems to launder the proceeds of corruption," the report recommends that banks strengthen PEP identification systems and use regulator-approved PEP databases; eliminate artificial limits on how long an individual can be considered a PEP; obtain written beneficial ownership information for each account to detect PEPs using third parties to hide their activities; request public officials to provide any asset and income disclosure forms filed with their government authorities; and conduct at least annual reviews of PEP accounts to get a complete view of the relationship and identify any suspicious transactions.

G-8 and G-20 Anti-Corruption Efforts. In addition to the FATF, Basel, OECD, UN, and World Bank efforts, the G-8 and G-20 groups of countries have also undertaken anti-corruption efforts. In 2003, for example, at the Evian Summit, the G-8 group of countries released an action plan entitled, "Fighting Corruption and Improving Transparency."²⁶ This statement laid out concrete steps aimed at fighting corruption, such as conditioning budgetary support and trade agreements on tackling corruption, encouraging participation in fiscal transparency programs, and passing domestic laws aimed at requiring financial institutions to conduct adequate due diligence to halt suspect transactions. It also stated that the G-8 countries supported requiring financial institutions to establish "procedures and controls to conduct

²³ www.worldbank.org/star.

²⁴ The World Bank StAR Initiative, "Politically Exposed Persons: A Policy Paper on Strengthening Preventative Measures" (November 2009), www.worldbank.org/star.

²⁵ *Id.*, at XV.

²⁶ See http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/fighting_corruption_and_improving_transparency_-_a_g8_action_plan.html.

enhanced due diligence on accounts of ‘politically exposed persons,’ and thereby to detect and report transactions that may involve proceeds of foreign official corruption.”²⁷

More recently, in March 2009, the G-20 group of nations called for stronger enforcement of anti-corruption measures involving PEPs, in a Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets.²⁸ In September 2009 at the Pittsburgh summit, the G20 Heads of State issued an official statement asking FATF “to help detect and deter the proceeds of corruption by prioritizing work to strengthen standards on customer due diligence, beneficial ownership, and transparency.”²⁹ The Heads of State also confirmed their commitment to enforcement of transnational anti-bribery laws, ratification of the UN Convention Against Corruption, and adoption of a mechanism to measure compliance with that Convention.

2008 Wolfsberg PEP Guidelines. The financial industry has also contributed to anti-corruption efforts. About ten years ago, eleven of the world’s largest financial institutions formed the Wolfsberg Group as a voluntary private association dedicated to combating money laundering.³⁰ In May 2008, as part of that effort, the Wolfsberg Group updated its 2003 guidelines on handling PEPs and applied them to all PEP accounts rather than just private banking accounts.³¹ The guidelines discuss identification of PEPs, and use of relatives, third parties, and legal entities to disguise PEP activities. It recommends that banks ask potential clients whether they are PEPs, screen clients against PEP databases, and establish a procedure for senior bank officials’ approval of PEP clients. The guidelines also recommend enhanced monitoring of accounts controlled by PEPs, and training employees to increase awareness of the associated risks. The guidelines caution that existing customers may become PEPs in the future, and recommend enhanced due diligence when a PEP controls a corporation that has or is attempting to establish a relationship with the bank.

Public Interest Organizations. Many other public interest organizations are also active in the battle against corruption. Transparency International, for example, works with local anti-corruption groups around the world and publishes an annual Corruption Perceptions Index that focuses attention on corruption problems. Global Witness investigates and exposes corruption problems in specific countries. The Extractive Industries Transparency Initiative (EITI), launched in 2002, seeks to curb corruption primarily in the oil, gas, and mining sectors. EITI requires corporations involved in extractive industries to disclose royalty and other payments made to government officials, and then requires the recipient governments to disclose the revenues produced from those sectors, with the aim of increasing transparency and reducing corruption. Publish What You Pay (PWYP) is another group aimed at holding governments accountable for revenues derived from the oil, gas, and mining sectors. Active in nearly 70

²⁷ *Id.*, at paragraph 4.2.

²⁸ G20 Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets (SG2), March 27, 2009, at paragraph 41.

²⁹ G20, “Leaders’ Statement, The Pittsburgh Summit,” (September 24-25, 2009), at paragraph 42, <http://www.pittsburghsummit.gov/mediacenter/129639.htm>.

³⁰ The participating banks are Banco Santander, Bank of Tokyo-Mitsubishi, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan Chase, Societe Generale, and UBS.

³¹ See “Wolfsberg Frequently Asked Questions (‘FAQs’) on Politically Exposed Persons (‘PEPs’),” <http://www.wolfsberg-principles.com/pdf/PEP-FAQ-052008.pdf>.

countries, PWYP urges governments to disclose not just company payments and government revenues, but also license agreements and contracts, while supporting a variety of transparency and anti-corruption initiatives. Still other groups, such as the Global Financial Integrity Program, the Tax Justice Network, and Sherpa contribute to anti-corruption efforts in a variety of ways, encouraging academic research, building anti-corruption capabilities, filing legal actions, and adding to the visibility and urgency of the issue.

This Report seeks to contribute to U.S. and international anti-corruption efforts by exposing some of the tactics being used by PEPs to bring suspect funds into the United States and offering recommendations to strengthen U.S. AML and PEP controls. The Subcommittee's investigation shows that, although U.S. financial institutions have become more vigilant over time and less willing to harbor suspect funds, PEPs are still often able to bring millions of dollars into the United States without having to answer questions about the source of their funds. Some of these PEPs escape detection for years at a time due to inadequate screening of potential PEP clients by banks, by using routine bank accounts not subject to enhanced monitoring, or by finding banks with lax due diligence procedures. Other PEPs conceal their transactions by acting through third parties, using shell company, attorney-client, law office, escrow agent, trust, and other accounts to move their funds into the U.S. financial system. Still others exploit weak controls in U.S. wire transfer systems to bypass AML or PEP scrutiny. The Report's four case studies present actual examples of how some foreign officials, their relatives, or close associates have persuaded U.S. lawyers to help them circumvent AML and PEP safeguards at U.S. banks, convinced U.S. real estate and escrow agents to handle suspect funds, used a U.S. lobbyist's bank account to distribute offshore funds, and even convinced U.S. university officials to accept millions of dollars from unknown offshore corporations.

In addition to exposing some of these tactics, the Report offers a range of recommendations to stop the abuses. They include tightening bank procedures for screening PEP clients, requiring written beneficial ownership forms for accounts to detect PEP involvement, and conducting annual reviews of PEP accounts to identify suspicious transactions; eliminating existing AML exemptions for real estate and escrow agents handling millions of dollars in realty and vehicle transactions; cracking down on the misuse of attorney-client and law office accounts to carry out PEP transactions outside of bank AML and PEP controls; urging professional organizations to issue guidance to their members against facilitating suspect transactions for PEPs; calling on the United States to make better use of its visa and immigration systems to deny entry to corrupt foreign officials; and supporting the ongoing international effort to strengthen the anti-corruption and PEP provisions in FATF's 40+9 Recommendations.

Senior foreign officials engaged in large-scale corruption can have a disproportionate impact on a country, a region, even a generation of citizens victimized by a corrupt society. They can export problems by spreading corruption internationally, undermining the rule of law, encouraging crime, and even opening the door to terrorism. In some cases, those engaged in large-scale corruption have sought the services provided by a modern financial system that can store, protect, invest, and transfer their funds efficiently. To keep that corruption out of the United States, it is time to build stronger legal barriers, not only in our banks, but in a range of U.S. professions.

III. OBIANG CASE STUDY: USING U.S. LAWYERS, REAL ESTATE AND ESCROW AGENTS, AND WIRE TRANSFER SYSTEMS TO BRING SUSPECT FUNDS INTO THE UNITED STATES

Teodoro Nguema Obiang Mangué is the 40-year-old son of Teodoro Nguema Obiang Mbasogo, the President of Equatorial Guinea (EG). For more than ten years, he has held the post of EG Minister of Agriculture and Forestry, and has been seen as a likely successor to the EG Presidency. Mr. Obiang and his father have also long been suspected of accumulating substantial wealth from acts of corruption. This case study examines how, from 2004 to 2008, Mr. Obiang employed the services of a variety of U.S. professionals, including attorneys, real estate and escrow agents, insurance brokers, and others, to bring more than \$100 million in suspect funds into the United States to advance his interests. At times, the U.S. professionals he employed acted openly on his behalf; at other times, they hid his involvement in transactions, especially from U.S. banks on guard against handling suspect funds. This case history details how Mr. Obiang employed these U.S. professionals to help him move money through at least six large and small U.S. banks, often by using attorney-client, escrow, or shell company accounts or by using wire transfer systems unequipped to detect or block incoming wire transfers from Obiang accounts abroad.

This case history demonstrates, for example, how Mr. Obiang employed two U.S. attorneys, Michael Berger and George Nagler, to help him bring millions of dollars in suspect funds from Equatorial Guinea into the United States, carry out certain transactions, and pay his bills and expenses. These attorneys, each of whom operated independently of the other, formed U.S. shell companies under California law for Mr. Obiang's use, including Beautiful Vision, Inc., Unlimited Horizon, Inc., Sweetwater Malibu, LLC, Sweetwater Management, Inc., and Sweet Pink, Inc. Each attorney helped open U.S. bank accounts for those shell corporations and helped use some of those corporate accounts to pay Mr. Obiang's bills and expenses. In addition, each allowed his own attorney-client and law office accounts to serve as conduits for Obiang funds, accepting millions of dollars in wire transfers from Equatorial Guinea, moving those funds into other Obiang-related accounts, and using the funds to pay Obiang-related bills and expenses. Each attorney also worked with other U.S. professionals, including bankers, property managers, insurance brokers, and real estate and escrow agents, to advance Mr. Obiang's interests.

In addition, Mr. Obiang employed two U.S. real estate agents, Neil Baddin and John Kerrigan, to buy and sell high-end California real estate, including a 2006 purchase of a \$30 million residence in Malibu and 2004 sale of a \$7.7 million residence near Los Angeles. A U.S. escrow company, First American Trust, helped Mr. Obiang purchase the Malibu property without using a mortgage, accepting \$30 million in wire transfers from Equatorial Guinea to complete the transaction. Another U.S. escrow company, Insured Aircraft Title Services, Inc. (IATS), facilitated Mr. Obiang's purchase of a Gulfstream jet, again without a mortgage, by accepting \$38.5 million in wire transfers from Equatorial Guinea and forwarding those funds through U.S. bank accounts for the seller of the aircraft. IATS agreed to handle the Gulfstream transaction after another U.S. escrow company, McAfee & Taft, had declined, as an anti-money laundering precaution, to complete the purchase without information on the source of the \$38.5 million.

Documents also show that, throughout the four years examined by the Subcommittee, Mr. Obiang exploited lax anti-money laundering (AML) and PEP controls at U.S. financial institutions. Documents reviewed by the Subcommittee show, for example, that Mr. Obiang surreptitiously used attorney-client, law office, shell company, and other third party accounts to obtain access to the U.S. financial system, even at banks that had previously closed his accounts and declined to do business with him. In addition, from 2004 to 2008, he brought over \$100 million into the United States using wire transfer systems at just two U.S. financial institutions, Wachovia Bank and Citibank. Neither system had been programmed to detect or block wire transfers bearing his name. In 2009, Wachovia took steps for the first time to block wire transfers with Mr. Obiang's name, while Citibank declined to take the same action due to projections that identifying, freezing, and investigating these wire transfers would generate too much work for its anti-money laundering staff.

Many of the U.S. professionals examined in this case history were under no legal obligation to take anti-money laundering precautions when dealing with a PEP, to evaluate the source of funds supplied by a PEP, or to refrain from handling suspect funds involving a PEP. For example, attorneys are currently not required by U.S. anti-money laundering (AML) statutes to establish AML controls to prevent or detect money laundering, and no U.S. professional rules or voluntary AML guidelines require attorneys to perform due diligence before accepting a client, evaluate the source of client funds, or refrain from using their attorney-client or law office accounts to conceal PEP transactions from the financial institution providing the accounts.³²

In 2008, for the first time, the Financial Action Task Force on Money Laundering (FATF) issued international guidance for members of the legal profession to address many AML issues.³³ The FATF guidance recommends, for example, that attorneys perform due diligence before accepting clients, evaluate the risk posed by particular clients, analyze the source of client

³² Attorneys are not subject to the major U.S. AML laws that require banks and other entities to establish AML programs to prevent, detect, and report suspicious transactions to law enforcement. See, e.g., list of covered entities at 31 U.S.C. §5312(a)(2). The American Bar Association does not provide official guidance for U.S. attorneys on how to handle AML issues or establish AML programs, although discussions and work to develop such guidance have been underway since at least 2002. The American Bar Association's existing Model Rules of Professional Conduct also do not explicitly address AML issues. See American Bar Association Model Rules of Professional Conduct, http://www.abanet.org/cpr/mrpc/rule_1_15.html, (9/16/2009). For example, while the Model Rules require attorneys to track and safeguard client property held in attorney-client accounts, they do not address issues related to using an attorney-client account to conceal a client's transactions or circumvent AML or PEP controls at a financial institution. The Model Rules do caution attorneys against engaging in criminal or fraudulent conduct. See, e.g., Model Rule 1.2(d) (an attorney "shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent"); Rule 8.4 (it is professional misconduct for an attorney to engage in conduct "involving dishonesty, fraud, deceit or misrepresentation"). Attorneys are also subject to U.S. criminal prohibitions against participating in a money laundering offense, see, e.g., 18 U.S.C. §§ 1956, 1957; and doing business with terrorists, narcotics traffickers, or other criminals identified on lists compiled by the Office of Foreign Assets Control, see OFAC lists, U.S. Dept. of Treasury, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>. In addition, attorneys engaged in a business are required to file reports, Form 8300, with the Internal Revenue Service if they receive cash payments of \$10,000 or more. ("Each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions, must file Form 8300.") See <http://www.irs.gov/pub/irs-pdf/f8300.pdf>. See also United States v. Moffitt, Zwerling & Kemler, 83 F.3d 660 (4th Cir. 1996)(law firm that did not examine the source of its fees can be required to forfeit them as proceeds of narcotics trafficking).

³³ See FATF, "RBA Guidance for Legal Professionals," October 23, 2008.

funds, and monitor client activity for suspicious transactions. Paragraph 109 of the FATF guidance recommends that attorneys treat PEPs as high risk clients requiring enhanced due diligence and monitoring. In addition, Paragraph 110 recommends that attorneys treat certain services as high risk, including services in which attorneys “handle the receipt and transmission of funds through accounts they actually control.” This guidance, however, was issued after most of the events reviewed in this Report and was never intended to be legally binding on U.S. attorneys.

With respect to real estate and escrow agents, since 1988, U.S. AML laws have identified “persons involved with real estate closings and settlements” and “business[es] engaged in vehicle sales, including automobile, airplane, and boat sales” as vulnerable to money laundering abuses and in need of AML safeguards, due to the large amounts of money involved in their transactions.³⁴ In 2001, after the 9/11 terrorist attack and as part of its effort to strengthen U.S. AML safeguards, the Patriot Act explicitly required such businesses to establish AML programs, unless exempted by the Treasury Department.³⁵ Six months later, however, in 2002, the Treasury Department “temporarily” exempted both categories of businesses from having to establish AML programs.³⁶ In 2003, Treasury solicited comments to develop a proposed AML rule for real estate businesses, but took no further action.³⁷ Today, eight years after enactment of the Patriot Act, the Treasury Department has yet to propose or finalize a rule requiring businesses engaged in either real estate closings or vehicle sales, including aircraft sales, to establish AML safeguards. In addition, none of the relevant business sectors has developed voluntary AML guidance for their members.³⁸

In contrast, since 2001, U.S. financial institutions have been required by law to set up AML programs, with AML policies, procedures, and controls; a compliance officer; employee training; and an internal audit function to ensure compliance.³⁹ Their AML programs typically require personnel to know their customers, evaluate the source of client funds, identify high risk clients, apply enhanced monitoring to high risk clients, and report suspicious transactions to law enforcement. Despite these requirements, some of the banks handling Obiang-related accounts

³⁴ See 31 U.S.C. § 5312(a)(2)(T) and (U).

³⁵ See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 U.S.C. § 5318(h).

³⁶ See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

³⁷ See Advance Notice of Proposed Rulemaking on Anti-Money Laundering Program Requirements for ‘Persons Involved in Real Estate Closings and Settlements,’ 68 FR 17569 (April 10, 2003), http://www.fincen.gov/statutes_regs/frn/pdf/352_real_estate_04102003.pdf.

³⁸ The National Association of Realtors, for example, has developed a detailed Code of Ethics for real estate agents, but none of the Code provisions addresses AML concerns. See 2010 Code of Ethics and Standards of Practice of the National Association of Realtors, www.realtor.org. The Association has instead developed educational materials for its members on money laundering and terrorist financing, without official guidance on how to address the issues. See, e.g., “The Basics, Money Laundering and Terrorist Financing,” http://www.realtor.org/government_affairs/gapublic/business_issues_money_laundering; Subcommittee interview of National Association of Realtors, January 13, 2010. Real estate and escrow agents, like attorneys, are subject to U.S. criminal prohibitions against participating in a money laundering offense, see, e.g., 18 U.S.C. §§ 1956, 1957, and doing business with terrorists, narcotics traffickers, or other criminals identified on lists compiled by the Office of Foreign Assets Control, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>. Real estate and escrow agents are also required to file Form 8300 reports with the Internal Revenue Service if they receive cash payments of \$10,000 or more.

³⁹ See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 U.S.C. § 5318(h).

did not designate the accounts as high risk and allowed them to receive suspect funds from Equatorial Guinea.

A. Background

Equatorial Guinea. Equatorial Guinea is a small country of about 600,000 persons located on the west coast of Africa between the countries of Cameroon and Gabon.⁴⁰ Its official languages are Spanish and French.⁴¹ Originally a Portuguese colony, Equatorial Guinea was ceded to Spain in 1778, which granted it independence 190 years later in 1968.⁴²

Equatorial Guinea (EG) possesses substantial natural resources. Following the discovery of oil in 1996, Equatorial Guinea has become the third largest oil producer in sub-Saharan Africa,⁴³ generating about 500,000 barrels per day by 2007.⁴⁴ In 2007 alone, Equatorial Guinea reportedly sold about 1.8 billion barrels of oil for \$4.3 billion, which comprised about 90 percent of the EG economy.⁴⁵ U.S. oil companies help produce roughly 75 percent of Equatorial Guinea's oil,⁴⁶ leading to the institution of direct airline flights between Houston, Texas and the EG capital city, Malabo.⁴⁷ In addition to oil, Equatorial Guinea has significant timber resources, which provides its second major export commodity.

EG oil and timber resources have done little, however, to raise the living standards of the EG population. Although the country ranks in the top fifth of nations in gross domestic product per capita due largely due to its oil revenues,⁴⁸ poverty is widespread. Equatorial Guinea ranks, for example, 115th of 179 nations on the United Nation's Human Development Index.⁴⁹ EG citizens have a low life expectancy and suffer from the 17th highest infant mortality rate in the world.⁵⁰ The World Bank has determined that, between 1995 and 2002, roughly 39 percent of

⁴⁰2008 World Fact Book, U.S. Central Intelligence Agency.

⁴¹ Id.

⁴² U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>; 2008 World Fact Book, U.S. Central Intelligence Agency.

⁴³The World Bank, Equatorial Guinea, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EQUATORIALGUINEAEXTN/0,,menuPK:352197~pagePK:141132~piPK:141109~theSitePK:352171,00.html>.

⁴⁴ U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>.

⁴⁵ "Equatorial Guinea; Poverty Rife in Africa's 'Kuwait,'" Africa News (10/6/2008), citing Bank of Central African States, <http://allafrica.com/stories/200810061482.html>.

⁴⁶ Id.

⁴⁷ The Independent, "A Murderous Dictator, His Rapper Son and a \$700M-a-Year Oil Boom," March 16, 2004. <http://www.independent.co.uk/news/world/africa/a-murderous-dictator-his-rapper-son-and-a-700mayear-oil-boom-566494.html>.

⁴⁸ 2008 World Fact Book, U.S. Central Intelligence Agency.

⁴⁹ The Human Development Index is a product of the United Nations Development Programme (UNDP). It "provides a composite measure of three dimensions of human development: living a long and healthy life (measured by life expectancy), being educated (measured by adult literacy and enrolment at the primary, secondary and tertiary level) and having a decent standard of living (measured by purchasing power parity, PPP, income)." See: http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_GNQ.html.

⁵⁰ 2008 World Fact Book, U.S. Central Intelligence Agency. See also U.N. Human Development Reports, <http://hdr.undp.org/en/statistics/>.

EG children under the age of five were malnourished, and only 44 percent of the population had access to safe drinking water.⁵¹

Equatorial Guinea has had only two presidents since gaining independence in 1968. Francisco Macias Nguema was elected the first EG President in 1968. By 1972, he had taken the title of “President-for-Life,”⁵² and during ten years of autocratic rule, saw the EG population contract by one-third. In 1979, his nephew, Teodoro Obiang Nguema Mbasogo, led a successful coup, executed his uncle, and assumed the presidency.

Over the next 30 years, President Obiang was declared the winner of five successive elections to seven-year terms, in 1982, 1989, 1996, 2002, and 2009.⁵³ International observers have criticized the fairness of those elections, questioning vote totals that, for example, in 1996 and 2002, showed President Obiang winning 98% and 97% of the vote, respectively.⁵⁴ His vote total in 2009 was announced as 95%.⁵⁵ Critics have also condemned his administration for widespread human rights abuses and suppression of political opposition.⁵⁶ In its 2008 Human Rights Report, the U.S. State Department noted improvements from past years, but also criticized a host of EG human rights abuses, including “limited ability of citizens to change their government; increased reports of unlawful killings by security forces; government-sanctioned kidnappings; systematic torture of prisoners and detainees by security forces; life threatening conditions in prisons and detention facilities; impunity; arbitrary arrest, detention, and incommunicado detention; harassment and deportation of foreign residents with limited due process; judicial corruption and lack of due process; restrictions on the right to privacy; restrictions on freedom of speech and of the press ... [and] government corruption.”⁵⁷

Transparency International’s Corruptions Perception Index has consistently ranked Equatorial Guinea as having one of the most corrupt images in the world, with the 2008 index ranking it 171 out of the 180 countries evaluated.⁵⁸ During the same time period, President Obiang’s personal wealth appears to have increased. In 2006, President Obiang was named by Forbes as one of the world’s ten wealthiest rulers, with an estimated personal wealth of \$600 million.⁵⁹ In 2008, Parade Magazine named President Obiang as one of the world’s worst dictators.⁶⁰

⁵¹The World Bank, Equatorial Guinea, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EQUATORIALGUINEAEXTN/0,,menuPK:352197~pagePK:141132~piPK:141109~theSitePK:352171,00.html>.

⁵² U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>.

⁵³ Id.

⁵⁴ Id.

⁵⁵ See 12/2/09 statement issued by the EG Ambassador to the United States, Purificacion Angue Ondo, “Republic of Equatorial Guinea Releases Final Presidential Election Results,” available on PRNewsire-USNewsWire.

⁵⁶ See, e.g., CBS News: 60 Minutes, “Kuwait of Africa,” July 18, 2004, <http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.

⁵⁷ U.S. Department of State, 2008 Human Rights Report: Equatorial Guinea, February 25, 2009.

⁵⁸ Transparency International, “Transparency International 2008 Corruption Perceptions Index.” http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table.

⁵⁹ See forbes.com, “Fortunes of Kings, Queens, and Dictators,” May 5, 2006, see online at http://www.forbes.com/2006/05/04/rich-kings-dictators_cz_lk_0504royals.html.

⁶⁰ Parade Magazine, “The World’s Worst Dictators,” 2008, <http://www.parade.com/dictators/2008/index.jsp>.

Teodorin Obiang. Teodoro Nguema Obiang Mangue, nicknamed “Teodorin,” is the eldest son of President Obiang and First Lady Constanca Mangue Nsue Okomo.⁶¹ For at least ten years, he has held the post of EG Minister of Agriculture and Forestry. He reportedly collects an official government salary of approximately \$5,000 per month or \$60,000 per year.⁶² Despite this modest salary, Mr. Obiang is known to live a lavish lifestyle with multiple real estate holdings, automobiles, and extravagant spending sprees.⁶³

In 2004, as part of an investigation into how Riggs Bank was implementing Patriot Act provisions to curb money laundering and foreign corruption, the Subcommittee released documents related to 60 Riggs Bank accounts that had been opened by Equatorial Guinea, EG officials, and their relatives, including Teodorin Obiang. One Riggs Bank analysis evaluated Mr. Obiang’s business activities, noting that in addition to his government position, he was the sole owner of a key EG forestry company, Grupo Sofana, with exclusive rights to export EG timber, and controlled an affiliated EG timber company, Somagui Forestal.⁶⁴ The Riggs documentation also showed that, from 1997 through 2003, Mr. Obiang was associated with over a dozen U.S. bank accounts which, at times, received millions of dollars in deposits. The 2004 report released by the Subcommittee summarized these accounts as follows.

“While the E.G. President’s eldest son, Teodoro Nguema Obiang, the E.G. Minister of Forestry, did not have any personal accounts at Riggs, he was the beneficial owner of three accounts opened in the name of companies he controlled. Two of these accounts were opened in the name of his California entertainment company, TNO Entertainment LLC. The first, Account No. 76-889-555, was opened in 2000 and closed in 2001, and the funds were transferred to Account 76-923-450, which was opened in 2001 and remained open in early 2004. From 2001 to 2003, the second account had balances that

⁶¹ The Scotsman, “Coup Plot Conviction Increases the Pressure on Mark Thatcher,” August 28, 2004. <http://news.scotsman.com/topstories/Coup-plot-conviction-increases-the.2559206.jp>.

⁶² See African Development Information Service – People Record: Teodoro Nguema Obiang, http://www.afdevinfo.com/htmlreports/peo/peo_8085.html.

⁶³ See, e.g., The Times Online, “Playboy Waits for His African Throne,” September 3, 2006, <http://www.timesonline.co.uk/tol/news/world/article626511.ece>; The Star, “African Oil Sheik Goes on South African Spending Spree,” July 20, 2005, page 1. Mr. Obiang’s well-publicized spending sprees include the following:

- According to press reports, on one weekend in 2005, Mr. Obiang purchased two Bentleys, a Lamborghini, and two multi-million dollar luxury houses in Cape Town, South Africa, http://www.iol.co.za/index.php?set_id=1&click_id=86&art_id=vn20050720063046112C699596; Times Online “President’s Playboy Son Splashes Out £1M in Luxury Car Spree,” July 21, 2005, <http://www.timesonline.co.uk/tol/news/world/article546244.ece>; The Star, “Playboy’s High Life: Dictator’s Son Spends Millions on Cars, Houses, and Campaign in SA”, July 20, 2005. <http://www.thestar.co.za/index.php?fArticleId=2631945>.
- In 2003, Mr. Obiang was observed traveling around Paris in a Lamborghini and purchasing as many as 30 designer suits in one afternoon while being followed by French media. CBS News: 60 Minutes, “Kuwait of Africa,” July 18, 2004, <http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.
- According to another press report, in 2006, Mr. Obiang spent nearly \$700,000 to rent Microsoft founder Paul Allen’s yacht “Tatoosh” for a Christmas cruise off St. Barts to entertain a former girlfriend. NY Daily News, “Has Eve’s Fling Brought Her a Despot of Gold,” February 20, 2006, http://www.nydailynews.com/archives/gossip/2006/02/20/2006-02-20_has_eve_s_fling_brought_her_.html.

⁶⁴ “Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act,” U.S. Senate Permanent Subcommittee on Investigations, July 15, 2004 (hereinafter “2004 Subcommittee Investigation into Riggs Bank”)

fluctuated between about \$17,000 and \$11.6 million. The third account, Account No. 25-380-038, was opened in the name of Awake Ltd., a Bahamian offshore shell company that Riggs helped to establish. This money market account, opened in 2002, saw virtually no account activity.⁶⁵ ...

“The Subcommittee also identified two other sets of bank accounts associated with the President’s son, opened at JPMorgan Chase and Citigroup. At JPMorgan Chase, four accounts and three CDs were opened in the name of the President’s son, including a savings account and three checking accounts which together held about \$75,000 in 2003. All three CDs had matured in 2002, and at that time had an aggregate value of more than \$1.7 million. At Citigroup, the Subcommittee identified four accounts that had been opened in the name of the son’s company, TNO Entertainment. The earliest of these accounts was opened in 1997, and all four were closed in early 2000. They included a checking account, money market account, CitiGold account, and securities investment account. These accounts were apparently dormant at times, but in mid 1999, received deposits in a relatively short period totaling about \$11.8 million. After noting suspicious account activity, Citigroup closed these accounts in 2000. Riggs Bank apparently identified at least one additional set of accounts held by the E.G. President’s son at City National Bank of Beverly Hills, California.”⁶⁶

Mr. Obiang has admitted in a number of settings that, in addition to his government post, he owns a number of companies. For example, in 2004, when a U.S. bank asked him to explain the source of funds for a substantial wire transfer, he sent an email explaining: “The wire transfer was from one of my companies in Equatorial Guinea. The funds that were transferred to me did not come from any illegal source. It was either from Somagui Forestal or Sofona.”⁶⁷ In a 2006 court proceeding examining ownership of two houses in South Africa, Mr. Obiang produced wire transfers showing that he had paid for the houses with funds from an EG account held by Socage. In a sworn and signed affidavit submitted to the court, he wrote: “One of the companies that I own is SOCIEDAD DE CARRETERAS DE GUINEA ECUATORIAL (‘SOCAGE’), with a bank account at the CCEI BANK GE, in BATA, the commercial capital of the country.”⁶⁸

Many of the transactions examined in this Report involve wire transfers sent by Somagui Forestal or Socage from bank accounts in Equatorial Guinea; a few involve funding transfers from accounts opened in the name of TNO Entertainment, LLC, a California corporation that is associated with Mr. Obiang and was still active in 2009.⁶⁹

⁶⁵ 2004 Subcommittee Investigation into Riggs Bank, at 159.

⁶⁶ *Id.*, at 160.

⁶⁷ 9/30/04 Declaration of Teodoro Ngeuma Obiang, *Obiang v. City National Bank*, Case No. SC 083177, explaining the source of funds for a substantial wire transfer he had sent to the bank, CNB0004068.

⁶⁸ 8/8/06 Second Respondent’s Answering Affidavit, *Maseve Investments 7 (PTY) Ltd. v. Equatorial Guinea*, (High Court of South Africa (Cape Provincial Division), Case No. 1407/2006, at 13. (Emphasis in original.)

⁶⁹ “TNO” apparently stands for Teodoro Nguema Obiang. Mr. Obiang is also active in the media in Equatorial Guinea, apparently owning the only privately-held radio station, Radio Asonga, and serving as director of the state owned TV Asonga.

During the course of the investigation, Subcommittee staff has communicated with Mr. Obiang's attorneys, raising questions as to the source of his funds. Most recently, in December of 2009, the Subcommittee contacted Mr. Obiang and again offered an opportunity for him to provide information to the Subcommittee. The Embassy of Equatorial Guinea responded and noted that it had passed the Subcommittee's request along to Mr. Obiang. Subcommittee staff then met with Mr. Obiang's attorney who promised to provide information as to the source of Mr. Obiang's funds.

Corruption Allegations. Members of the Obiang family have long been suspected of misappropriating Equatorial Guinea's oil and timber wealth for personal gain.⁷⁰ In addition to allegations in the media, over the past five years several civil and criminal legal actions have raised corruption concerns involving President Obiang, his son, and other relatives.

In 2004, this Subcommittee charged that Riggs Bank in Washington, D.C. had opened more than 60 accounts and certificates of deposit for the EG government, EG officials, and their relatives and, when administering them, had "turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement." Documents released by the Subcommittee showed that the bank had opened multiple personal accounts for the EG President and his wife, helped establish two offshore corporations controlled by President Obiang, and over a three-year period from 2000 to 2002, had "facilitated nearly \$13 million in cash deposits into Riggs accounts controlled by the E.G. President and his wife."⁷¹ The Subcommittee also released documents showing that about \$35 million had been withdrawn from the country's oil revenue accounts at Riggs Bank and wire transferred to accounts opened in the name of Apexside Trading Ltd. and Kalunga Co., offshore shell corporations associated with EG officials, including President Obiang.⁷²

In 2006, a civil complaint was filed in the High Court of South Africa by a South African firm, Maseve Investments, which was attempting to collect on a debt that it claimed the EG government owed in connection with a contract to construct an EG airport. To collect the debt, the plaintiff attempted to seize two luxury Cape Town homes that were owned by Mr. Obiang, but which the plaintiff alleged had been purchased with EG government funds sent from an account at Riggs Bank.⁷³ Mr. Obiang filed a sworn affidavit in response, producing wire transfers showing that the houses had been purchased with funds from an EG account held in the name of a company he owned, Socage.⁷⁴ He stated in the affidavit:

⁷⁰ See, e.g., Washington Post, "Oil Gives African Nation a Chance for Change: Despite Leader's Promises, Many Fear People of Equatorial Guinea Will Not Benefit From Windfall," May 13, 2001; CBS News: 60 Minutes, "Kuwait of Africa," July 18, 2004, <http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.

⁷¹ 2004 Subcommittee Investigation into Riggs Bank, at 129.

⁷² *Id.*, at 167.

⁷³ See Maseve Investments 7 (Pty) Ltd. v. Republic of Equatorial Guinea, (High Court of South Africa, Cape Provincial Division), Case No. 1407/2006. See also The Cape Times, "Equatorial Guinea playboy's Cape homes seized," February 16, 2006; The Guardian, "The tiny African State, the President's Playboy Son and the \$35M Malibu Mansion," November 10, 2006.

⁷⁴ 8/8/06 Affidavit of Teodoro Nguema Obiang, Second Respondent, Maseve Investments 7 (PTY) Ltd. v. Equatorial Guinea, (High Court of South Africa, Cape Provincial Division), Case No. 1407/2006.

“Cabinet ministers and public servants in Equatorial Guinea are by law allowed to own companies that, in consortium with a foreign company, can bid for government contracts and should the company be successful, then what percentage of the total cost of the contract the company gets, will depend on the terms negotiated between the parties. But in any event, it means that a cabinet minister ends up with a sizeable part of the contract price in his bank account.”⁷⁵

The U.S. Department of Justice later characterized this statement as follows: “Although Teodoro Nguema OBIANG has claimed that this practice was legal, the assertion also suggests that he may be receiving bribes or extortion payments in the form of a percentage of contract revenue.”⁷⁶

In March 2007, three nonprofit anti-corruption organizations, Sherpa, Survie, and the Federation of the Congolese Diaspora, filed a legal complaint before the French Public Prosecutor alleging the ruling families of Equatorial Guinea, Gabon, Angola, Burkina Faso, and Congo owned millions of dollars worth of properties in France “that could not be the fruits of their official salaries ... but would have likely required the use of stolen public assets.”⁷⁷ The complaint attached articles and reports with alleged information about property and vehicles owned by the Heads of State and their relatives, including the Obiangs. According to a later legal pleading filed in the case, in June 2007, a police investigation was launched in response to the complaint which confirmed most of the allegations and uncovered additional luxury properties, vehicles, and bank accounts belonging to the cited Heads of State and their relatives.⁷⁸ The police allegedly confirmed, for example, that “Teodorin Obiang, son of the President of Equatorial Guinea, acquired at least 5 million Euros worth of luxury cars.”⁷⁹ In November 2007, however, the police investigation was halted by the Public Prosecutor.

On July 9, 2008, another nonprofit organization dedicated to combating corruption, Transparency International France (TI France), together with two citizens from Gabon and the Congo, re-filed the complaint before the French Public Prosecutor with the goal of asking an investigating judge to reopen the investigation.⁸⁰ On December 2, 2008, after the Public Prosecutor declined to pursue the case, TI France filed a civil party petition with an investigating judge alleging that the presidents of Equatorial Guinea, Gabon, and Congo had acquired luxury

⁷⁵ *Id.*, at 12.

⁷⁶ 9/4/07 memorandum from the U.S. Department of Justice to the Central Authority of France, MEW:SCR.PJR 182-21407, at 5-6, no bates number. See also *The Financial Times*, “Taking a Cut Acceptable, Says African Minister,” October 25, 2006, http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclick_check=1.

⁷⁷ Legal memorandum prepared by Sherpa & Transparency International France (TI France), Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 1. This memorandum recounts the history of the anti-corruption case filed by the three organizations from 2007 to 2009. The initial 2007 complaint is *Plainte Pres le Tribunal de Grande Instance de Paris*, undated, PSI-OECD-00001-13.

⁷⁸ Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 1.

⁷⁹ *Id.* Later, in 2009, a 600-page compilation of documents related to the French police investigation was leaked to the press. Among other information, those documents indicate that the police had identified a luxury Paris apartment owned by Teodorin Obiang as well as eight luxury cars worth a total of \$6.2 million. MWC News, October 30, 2009, “France Halts African Leaders Probe,” mwcnews.net/content/view/34091/51/. See also Agence France, “French Corruption Suit Targets African Leaders,” December 2, 2008.

⁸⁰ Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 2.

homes and other property in France with embezzled public funds and requesting that an investigation be undertaken.⁸¹ On April 8, 2009, the Public Prosecutor recommended that the TI France petition be ruled inadmissible due to a lack of standing.⁸² On May 5, 2009, the Dean of investigating judges rejected that recommendation and instead held that the case could continue.⁸³ The Public Prosecutor appealed the Dean's decision, and in October 2009, a French appeals court ruled that TI France did not have standing to file the petition and dismissed it.⁸⁴ That ruling is now on appeal to France's highest court.⁸⁵

While this lengthy civil proceeding was unfolding in court, in September 2007, the U.S. Department of Justice (DOJ) sent a formal request to the "Central Authority of France" requesting assistance with an ongoing U.S. criminal investigation into Teodorin Obiang and his associates.⁸⁶ The 2007 DOJ memorandum making this request was leaked to the press in November 2009.⁸⁷ The memorandum stated that Mr. Obiang "has been the subject of various U.S. government inquiries for several years."⁸⁸ It stated that DOJ and the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) were "investigating suspected criminal conduct of Teodoro Nguema OBIANG and his associates involving the illicit transfer and laundering of assets believed to be derived from extortion, bribery and/or the misappropriation, theft, or embezzlement of public funds." It continued:

"[S]ources have informed investigators that Teodoro Nguema OBIANG, in his official capacity, has instituted a large 'revolutionary tax' on timber, but insisted that the payments be made directly to him, either in cash or through checks to SOMAGUI

⁸¹ *Plainte Avec Constitution de Partie Civile Pres le Tribunal de Grande Instance de Paris*, undated, PSI-OECD-00014-38; legal memorandum prepared by Sherpa & TI France, *Admissibility of TI France's complaint with civil party petition*, (French court of appeals, June 2009), at 2. The civil party petition was also filed by Gregory Ngbwa Mintsu, a Gabonese citizen.

⁸² Legal memorandum prepared by Sherpa & TI France, *Admissibility of TI France's complaint with civil party petition*, (French court of appeals, June 2009), at 3.

⁸³ *Ordonnance D'Irrecevabilite Partielle De Plainte Avec Constitution De Partie Civile*, Tribunal de Grande Instance de Paris, May 5, 2009, PSI-Transparency-USA.org 00001-00005; legal memorandum prepared by Sherpa & TI France, *Admissibility of TI France's complaint with civil party petition*, (French court of appeals, June 2009), at 5; TI France Press Release, "Corruption case filed by Transparency International France and a Gabonese citizen ruled partially admissible," May 5, 2009. See also BBC News, "Lawsuit on Africa Leaders 'Valid,'" May 6, 2009, <http://news.bbc.co.uk/2/low/africa/8035218.stm>; Connect Africa, "African Leaders to be Tried by French Magistrate," May 6, 2009, <http://connectafrica.wordpress.com/2009/05/06/african-leaders-to-be-tried-by-french-magistrate>.

⁸⁴ *Cour D'Appel De Paris Pole 7 Deuxieme Chambre De L'Instruction, Appel D'une Ordonnance De Recevabilite De Constitution De Partie Civile Arret*, October 29, 2009, PSI-Transparency-usa.org 00006-15. See also TI France Press Release, "Appealing for justice: three African presidents and their French assets," October 29, 2009; MWC News, "France Halts African Leaders Probe," October 30, 2009; Agence France, "French Corruption Suit Targets African Leaders," December 2, 2008; Impunity Watch, "French Court Halts Corruption Probe," October 31, 2009, http://www.impunitywatch.com/impunity_watch_europe/2009/10/french-court-halts-corruption-probe.html.

⁸⁵ TI France Press Release, "Appealing for justice: three African presidents and their French assets," October 29, 2009.

⁸⁶ 9/4/07 memorandum from the U.S. Department of Justice to the Central Authority of France, MEW:SCR.PJR 182-21407, no bates number (hereinafter "2007 DOJ memorandum").

⁸⁷ The DOJ memorandum was posted on the website of the *New York Times* on November 17, 2009. See *New York Times*, "Taint of Corruption is No Barrier to U.S. Visa," November 16, 2009, <http://www.nytimes.com/2009/11/17/us/17visa.html>.

⁸⁸ 2007 DOJ memorandum at 3.

FORESTAL, a forestry company owned by Teodoro Nguema OBIANG. ... [I]n August 2006, Teodoro Nguema OBIANG filed an affidavit with the High Court of South Africa in a civil matter regarding whether funds held by Teodoro Nguema OBIANG belonged to the Equatorial Guinea government, a contention that Teodoro Nguema OBIANG contested. In his affidavit, Teodoro Nguema OBIANG admitted that cabinet ministers in Equatorial Guinea form private companies which act in consortia with foreign companies when obtaining government contracts and, as a consequence, ‘a cabinet minister ends up with a sizeable part of the contract price in his bank account.’ Although Teodoro Nguema OBIANG has claimed that this practice was legal, the assertion also suggests that he may be receiving bribes or extortion payments in the form of a percentage of contract revenue.”⁸⁹

The memorandum concluded: “The prosecutors suspect that most, if not all, of Teodoro Nguema OBIANG’s assets are derived from extortion, bribery or the misappropriation of public funds.”⁹⁰

A presentation by ICE in support of the 2007 request for assistance provided additional information. It stated that Mr. Obiang “[t]ravels frequently to the United States as an ‘A-1’ diplomat, although he is seldom on official business,” and “[r]outinely travels to the United States with over \$1 million in cash, and fails to declare,” which is a federal crime punishable by up to five years in prison.⁹¹ The ICE presentation also stated that Mr. Obiang was the “[t]arget of multiple [Suspicious Activity Reports] for suspected money laundering from different financial institutions,”⁹² and identified multiple assets and bank accounts associated with Mr. Obiang in France, South Africa, and the United States.

The Subcommittee attempted to confirm the 2007 criminal investigation discussed in the DOJ and ICE materials. Neither DOJ nor ICE would confirm the investigation or provide an update of its status. To date, no federal criminal indictment or civil asset forfeiture action involving Mr. Obiang had been made public.

In 2008, a complaint was filed in a Spanish court by the Open Society Institute and Soros Foundation, alleging money laundering of misappropriated oil revenues by EG officials. According to press articles, the complaint alleges that President “Teodoro Obiang has controlled close to 16 billion Euros [roughly US \$22 billion] worth of oil revenues since he took power in 1979.”⁹³ The complaint also alleges that President Obiang and his relatives purchased more than \$26 million in Spanish real estate with suspect funds. According to press reports, this civil complaint remains active.

Together, these investigations and complaints over the past five years have raised substantial public concerns about the Obiang family in general and Mr. Obiang in particular, and suggest that the funds in their possession should be viewed as suspect.

⁸⁹ 2007 DOJ memorandum at 5-6. See also Financial Times, “Taking a Cut Acceptable, Says African Minister,” October 25, 2006, http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclick_check=1.

⁹⁰ 2007 DOJ memorandum at 11.

⁹¹ U.S. Immigration and Customs Enforcement powerpoint presentation, undated but likely in 2007, “Teodoro Nguema OBIANG, et al,” slides 9 and 10.

⁹² *Id.*, at slide 10.

⁹³ See El Mundo, “Obiang Launderers over \$26 Million, Buying Real Estate in Spain,” December 9, 2008.

B. Obiang Use of Attorneys To Bring Suspect Funds Into the United States

For the four year period, 2004 to 2008, examined in this case history, Mr. Obiang employed members of the U.S. legal profession to help him bring millions of dollars in suspect funds from Equatorial Guinea into the United States through U.S. bank accounts. Two of the attorneys he employed in those efforts were Michael Berger who worked for him for four years, and George Nagler who worked for him for two years. Both attorneys were aware of the allegations of corruption related to Mr. Obiang, but facilitated his efforts to use shell company, attorney-client, law office, and other third party accounts at six U.S. banks as hidden conduits for his funds.

(1) Attorney Michael J. Berger

Documentation obtained by the Subcommittee shows that, from at least 2004 to 2008, Mr. Obiang employed Michael Jay Berger, a California attorney, to carry out a variety of personal and business transactions. Among other services, Mr. Berger incorporated two U.S. shell companies called Beautiful Vision, Inc. and Unlimited Horizon, Inc. on behalf of Mr. Obiang; opened bank accounts in the names of those shell companies; and used those shell company accounts, as well as Mr. Berger's own attorney-client and law office accounts, to bring at least \$3 million in suspect funds from Equatorial Guinea into the United States and pay Mr. Obiang's bills and expenses. The documents indicate that Mr. Berger actively assisted Mr. Obiang in using these third party accounts as conduits for his funds, at times helped conceal Mr. Obiang's activities from the banks administering the accounts, and thereby helped Mr. Obiang bypass AML and PEP safeguards designed to detect and analyze high risk transactions. Mr. Berger also assisted Mr. Obiang in the purchase of a \$30 million California residence, as explained later in this section.

The documents indicate that, while working for Mr. Obiang, Mr. Berger was well aware of Mr. Obiang's political status and suspect wealth. Mr. Berger maintained a collection of press articles related to Mr. Obiang, for example, many of which described corruption problems within Equatorial Guinea, alleged that the wealth accumulated by Mr. Obiang's father, the President of Equatorial Guinea, originated as the proceeds of corruption, and criticized Mr. Obiang's lavish lifestyle.⁹⁴

Mr. Berger received hundreds of thousands of dollars in compensation for his services as well as other benefits. Although he provided documents in response to a Subcommittee subpoena, Mr. Berger declined to answer Subcommittee questions regarding his dealings with Mr. Obiang, asserting his Constitutional rights under the Fifth Amendment.

⁹⁴ Various periodicals, SEN000535-84; 11/21/06 email from Mr. Berger to Mr. Obiang, SEN004492; 9/15/07 email from Mr. Berger to Mr. Obiang, SEN004620; 10/28/07 email from Mr. Berger to Mr. Obiang, SEN004389.

(a) Incorporating Shell Companies and Paying Bills

Mr. Berger is a California attorney who, according to his website, specializes in bankruptcy law.⁹⁵ He started his own firm in 1983, and his web site describes his clients as ranging from high-profile to working-class.⁹⁶ His relationship with Mr. Obiang, which dates back to at least 2004, involved his providing a variety of services to support Mr. Obiang's interests in the United States.

Mr. Berger formed two U.S. corporations for Mr. Obiang. The first was Beautiful Vision, Inc., a California corporation which was formed on October 12, 2004, and whose incorporation papers list Mr. Berger as the company president.⁹⁷ Although none of the incorporation documents mentions Mr. Obiang by name, he was the sole signatory on a Beautiful Vision account at Bank of America and, in a later sworn statement in an arbitration case, Mr. Obiang described Beautiful Vision as "my company."⁹⁸

One year later, on October 21, 2005, Mr. Berger formed a second California corporation for Mr. Obiang called Unlimited Horizon, Inc. Its incorporation papers identify Mr. Berger as the agent to accept service of process, but do not identify any officers or directors by name.⁹⁹ The incorporation documents do not mention Mr. Obiang. Mr. Berger later identified himself in bank account opening documentation as the president of Unlimited Horizon.¹⁰⁰

From 2004 to 2007, Mr. Berger opened multiple bank accounts in the names of Beautiful Vision, Inc. and Unlimited Horizon, Inc., and used those accounts to pay bills and expenses associated with Mr. Obiang.

One of the documents reviewed by the Subcommittee illustrates the types of services performed by Mr. Berger for Mr. Obiang in connection with these shell corporations. On July 17, 2006, Mr. Berger entered into a written agreement with Mr. Obiang to perform services related to Unlimited Horizon, Inc.¹⁰¹ The contract identified five services to be provided by Mr. Berger: (1) paying household bills associated with Mr. Obiang's residence at 3620 Sweetwater Mesa Road in Malibu, California; (2) hiring a payroll service company to pay the salaries of the employees of Unlimited Horizon, Inc., and compute any taxes owed in connection with these salaries; (3) hiring an accountant to perform that tax work; (4) obtaining worker's compensation insurance for Unlimited Horizon, Inc.; and (5) reviewing and paying Mr. Obiang's personal bills upon request.¹⁰²

⁹⁵ Michael Jay Berger, Esq., <http://www.bankruptcypower.com/>.

⁹⁶ Id.

⁹⁷ See incorporation papers for Beautiful Vision, Inc., Wells Box 1, no bates number. See also Coldwell Banker agreement signed by Mr. Berger as president of Beautiful Vision, PSI-Coldwell_Banker-01-000501.

⁹⁸ January 2007 Declaration of Teodoro Nguema Obiang, *Mirzo International, Inc. v. Hyland*, Case No. AB06-15 (Beverly Hills/Greater Los Angeles Association of Realtors Arbitration Complaint Case), SEN007574-76 ("On or about November 1, 2004, I authorized Mr. Berger, as then President of my company, Beautiful Vision, Inc., to sign an Exclusive Retainer Agreement").

⁹⁹ See Unlimited Horizon articles of incorporation, PSI-Union_BK_Calif-01-000007-12, at 12; C0000016; 8/23/05 Bank of America Investigative File on Unlimited Horizon, Inc. account, BAC-PSI-05948.

¹⁰⁰ See, e.g., 8/28/06 account opening documentation for Unlimited Horizon account at Union Bank of California, PSI-Union_BK_Calif-01-000007-12.

¹⁰¹ 7/17/06 agreement between Mr. Berger and Mr. Obiang, SEN000001-5.

¹⁰² Id.

Other documents show that Mr. Berger's tasks included such matters as screening, hiring, and facilitating the payroll of the domestic staff at the \$30 million Malibu residence Mr. Obiang had purchased, including private security guards, butlers, chefs, drivers, and other caretakers.¹⁰³ One bill showed, for example, that over the course of seven months in 2007, Mr. Berger paid over \$330,000 for two bodyguards available 24 hours per day at \$38 per hour, and over \$7,400 for "The Fish Physician" to provide services related to Mr. Obiang's fish tank and Koi pond.¹⁰⁴ These funds were disbursed from an Unlimited Horizon account at Union Bank of California.¹⁰⁵

Mr. Berger also assisted Mr. Obiang in his 2006 purchase of the \$30 million Malibu property, as detailed later in this section. An October 2006 email from Mr. Berger to Mr. Obiang shows that he also helped negotiate contracts with third parties regarding that property. In the message, Mr. Berger describes meeting with an interior decorator to discuss a \$4 million budget for decorating Mr. Obiang's Malibu residence:

"I met for 2 hours today with your designer I convinced them to accept 25% commission on all items, not the 30% in their draft contract. ... The job has an approximate budget of \$4,000,000.00. 5% of \$4,000,000.00 is \$200,000.00. I feel good about saving you money I enjoy working for you."¹⁰⁶

(b) Bringing In and Moving Suspect Funds

From at least 2004 to 2008, Mr. Obiang utilized a variety of U.S. bank accounts and wire transfer systems to bring millions of dollars in suspect funds from Equatorial Guinea into the United States to support his U.S. activities. Documents reviewed by the Subcommittee show that Mr. Berger helped Mr. Obiang conceal his U.S. financial activities, primarily by opening and using shell company accounts and his own attorney-client and law office accounts at U.S. banks as conduits for Obiang funds. Mr. Berger does not appear to have taken any steps to ensure that the funds he helped bring into the United States were legitimate.

From 2004 to 2007, Mr. Obiang used accounts at three U.S. banks, Union Bank of California, Bank of America, and Citibank, often with Mr. Berger's assistance, to deposit, transfer, and spend nearly \$10 million. Most of these funds were wire transferred from accounts in Equatorial Guinea held in the name of Mr. Obiang or two EG companies he controlled, Somagui Forestal and Socage. The EG wire transfers often deposited funds into attorney-client or law office accounts controlled by Mr. Berger, who then transferred the funds to other Obiang-related accounts. This two-step process helped mask the fact that the other accounts were receiving funds from Equatorial Guinea, which most banks flag as a high risk country due to its weak AML controls and reputation for corruption. Mr. Berger also used the EG funds to pay Obiang-related bills and expenses. Over time, as the three banks discovered the EG wire transfers or Mr. Obiang's use of their accounts, they closed the accounts he was using. The two banks with a Berger attorney-client or law office account also terminated their relationships with him, due to the incoming EG wires and Mr. Obiang's surreptitious use of the accounts. Each

¹⁰³ 1/10/08 Fax from Mr. Berger to Mr. Obiang, SEN000008.

¹⁰⁴ Various dates, checks from Unlimited Horizon, Inc. General Account at Union Bank of California, PSI-Union_Bk_Calif-01-000048-397 (Sealed Exhibit). See also 10/10/06 Invoice from Saurman Investigative Services, Inc. and 10/28/06 check from Unlimited Horizon, Inc., SEN000874.

¹⁰⁵ Id.

¹⁰⁶ 10/18/06 email from Mr. Berger to Mr. Obiang, SEN003438.

time an account was closed, however, Mr. Obiang responded by finding another U.S. bank account, often with Mr. Berger's assistance, that he could utilize.

Mr. Berger's matter-of-fact reaction to the account closings is instructive. On June 12, 2007, Union Bank of California closed Unlimited Horizon, Inc. General Account No. 0720115409, less than a year after it was opened, due to suspicious transactions.¹⁰⁷ Following the account closure, Mr. Berger wrote an email to Mr. Obiang explaining the status of the account, steps he was taking to avoid any complications from the closure, and alternative funding channels that could be used, including an Unlimited Horizon account at Citibank, a Berger attorney-client account at Bank of America, and perhaps a new account at another bank.

“Attached hereto is a copy of the check register of the general account at Union Bank from June 1, 2007 through June 12, 2007, the date it was closed by the bank. There is currently a zero balance in said account. Checks that were written but did not clear before the account was closed are listed. ... Most of these checks have already been replaced with new checks from the Citibank account. I have not yet heard from DMV with respect to replacement of 2 registration checks that did not clear: checks for your 2005 Lamborghini and your 2005 Mercedes. I will replace these checks as soon as I receive a bill from DMV, as I did for your 2005 Porche.

Also attached hereto is a copy of the Check register for the general account at Citibank from its opening on 6/25/07 through today, 7/11/07. The remaining balance in this account is \$19,664.96. I am saving this money for the next payroll which will take place on Friday, July 13.

Also attached hereto is an account of the funds that were deposited by me into my Bank of America Client Trust Account on your behalf, and the checks I wrote on your behalf. You have \$9,727.55 remaining in my Bank of America Client Trust Account. Per our discussion, I will use these funds to open up another bank account at another bank or, if needed, deposit these funds into the existing Citibank account.

... I have prepared and attached an invoice to you requesting a wire transfer of \$200,000.00 to my Bank of America Client Trust Account. I will need these funds to pay additional bills for you. A copy of my Bank of America Client Trust Account Wire Transfer Information is attached hereto.

As always, I appreciate the opportunity to work for you.”¹⁰⁸

As this email and other documents demonstrate, Mr. Berger actively assisted Mr. Obiang in bypassing U.S. AML and PEP safeguards intended to keep foreign corruption out of the United States.

¹⁰⁷ 7/11/07 email from Mr. Berger to Mr. Obiang, SEN004574. See also 8/28/06 Bank-Depositor Agreement of Union Bank of California and Unlimited Horizon, Inc., PSI-Union_BK_Calif-01-000007-12.

¹⁰⁸ 7/11/07 email from Mr. Berger to Mr. Obiang, SEN004574.

(i) Union Bank of California

For more than four years, from 2004 to 2008, Mr. Obiang used accounts at Union Bank of California (UBOC) to bring suspect funds into the United States to support his activities. Using multiple shell company, law office, and other third party accounts, none of which were opened in his own name, Mr. Obiang was able to wire transfer nearly \$8 million in suspect funds into UBOC accounts. Mr. Berger was instrumental in opening the shell company and law office accounts, moving Obiang funds through them, and masking Mr. Obiang's financial activities from the bank.

From 2001 to 2004, Mr. Obiang sent multiple wire transfers from Equatorial Guinea, including one for over \$6.2 million, to UBOC accounts, including one opened in the name of an individual employed by Mr. Obiang and another opened by an Obiang-related shell company, Sweet Pink, Inc. After detecting these EG wire transfers in 2004, the bank closed both accounts in 2005. In 2006, Mr. Berger opened two accounts for another Obiang shell company, Unlimited Horizon, as well as a law office account at UBOC, without disclosing that Mr. Obiang would be using them. Over a ten-month period from 2006 to 2007, EG wire transfers totaling more than \$1.7 million were deposited into the new Berger law office account. Over that same time period, Mr. Berger transferred those funds to the two Unlimited Horizon accounts which he then used to pay Mr. Obiang's bills and expenses.

While the \$1.7 million in EG wire transfers triggered internal UBOC AML alerts, UBOC did not review the transactions for about six months, because it was negotiating a deferred prosecution agreement with the U.S. Justice Department over deficiencies in UBOC's AML program. In June 2007, UBOC finally reviewed the transactions. Bank personnel concluded that the EG wire transfers were suspicious, raising both fraud and AML concerns, and UBOC immediately closed all three accounts.

But Mr. Obiang still wasn't done making surreptitious use of UBOC accounts. UBOC later discovered that, in 2008, Mr. Obiang wire transferred nearly \$30,000 to a UBOC account held by the mother of a woman he was dating, and then withdrew the funds via cash withdrawals at ATM machines and casinos in the United States.

Wire Transfers and Kulungian Account. UBOC told the Subcommittee that it first became aware of Obiang-related account activity in 2004, after UBOC deemed Equatorial Guinea to be a high-risk country and conducted a search for EG wire transfers.¹⁰⁹ The search identified one large 2001 wire transfer of \$6.2 million and seven smaller wire transfers from 2003 to 2004, totaling about \$18,700, that had been sent from an Obiang account at Riggs Bank, Account No. 76923450, to accounts at UBOC. The \$6.2 million wire transfer had been sent to a UBOC account for Beverly Hills Escrow in connection with Mr. Obiang's purchase of a

¹⁰⁹ Subcommittee interview of Union Bank officials, February 25, 2009; 10/21/04 UBOC Case Report, PSI-Union_Bank_of_California-04-0449-52 (providing results of search related to "Equatorial Guinea Government and related officials/family members scrub"). According to UBOC employees, each year UBOC ranked various countries by risk, using recommendations and reports of the Financial Action Task Force (FATF), the U.S. State Department, Transparency International, and other sources. UBOC assigned each country a risk rating of high, medium, or low. UBC's monitoring software then screened wire transfers and other transactions on a monthly basis to identify high risk activity for further review.

residence near Los Angeles as explained below.¹¹⁰ The remaining wire transfers had been sent to UBOC Account No. 1301073100, held in the name of Carla Kulungian.¹¹¹ Still another wire transfer for more than \$14,700 had been sent from an Obiang company, Somagui Forestal, to the Kulungian account.¹¹² UBOC told the Subcommittee that it was able to determine that Ms. Kulungian worked as a secretary for Mr. Obiang, and had accepted the wire transfers into her account pursuant to her employment.¹¹³ On November 19, 2004, UBOC closed the Kulungian account.¹¹⁴

Sweet Pink Account. Nearly a year later, on September 29, 2005, a UBOC checking account, Account No. 1300052831, was opened in the name of Sweet Pink, Inc.¹¹⁵ Sweet Pink, Inc. is a California shell corporation, formed in 2005, by another attorney who worked for Mr. Obiang, George Nagler, as described later in this section. During October 2005, two wire transfers, each for nearly \$30,000, were deposited into the account by Somagui Forestal, Mr. Obiang's EG company.¹¹⁶ The bank learned of the EG wire transfers and closed the Sweet Pink account on October 27, 2005, less than a month after it had been opened.¹¹⁷

Unlimited Horizon and Law Office Accounts. Undeterred by the closing of the two accounts, a year later Mr. Obiang struck again, this time using Mr. Berger to open the accounts. In August 2006, Mr. Berger opened two accounts at UBOC for Unlimited Horizon, Inc., without mentioning Mr. Obiang's connection to the company. Mr. Berger initially funded the accounts with Obiang funds held in his attorney-client account at Bank of America.¹¹⁸ Two months later, Mr. Berger opened a law office account at UBOC, and immediately began accepting EG wire transfers into that account. Over a ten-month period from 2006 to 2007, EG wire transfers deposited more than \$1.7 million into the UBOC Berger law office account. During that same period, Mr. Berger transferred the funds via check to the two Unlimited Horizon accounts and then used those accounts to pay Mr. Obiang's bills and expenses. By allowing his law office account to function as a pass-through for the EG funds, Mr. Berger helped Mr. Obiang circumvent UBOC's AML and PEP controls and bring suspect funds into the United States.

Mr. Berger opened the two Unlimited Horizon accounts at Union Bank of California on August 28, 2006, Accounts No. 0720115409 and No. 0720115417.¹¹⁹ The account opening

¹¹⁰ 10/21/04 UBOC Case Report, PSI-Union_Bank_of_California-04-0450, 0452.

¹¹¹ Id., at 0450. See also Subcommittee interview of Union Bank officials, February 25, 2009.

¹¹² 10/21/04 UBOC Case Report, PSI-Union_Bank_of_California-04-0450.

¹¹³ Subcommittee interview of Union Bank officials, February 25, 2009.

¹¹⁴ 10/21/04 UBOC Case Report, PSI-Union_Bank_of_California-04-0177; Subcommittee interview of Union Bank officials, February 25, 2009.

¹¹⁵ UBOC Case Report on Sweet Pink, Inc. Wire Review, PSI-Union_Bank_of_California-04-0191.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ 8/28/06 check from the Law Offices of Michael Jay Berger Attorney-Client Trust Account to Unlimited Horizon, Inc., PSI-Union_Bank_of_California-01-000026.

¹¹⁹ 8/28/06 Bank-Depositor Agreement of Union Bank of California and Unlimited Horizon, Inc., PSI-Union_Bank_of_California-01-000007-11. The first account was designated a "general" account for Unlimited Horizon, Inc., while the second was designated a "special" account for Unlimited Horizon.

documentation shows that Mr. Berger listed himself as the sole signatory for both accounts.¹²⁰ The documentation makes no mention of Mr. Obiang.

An August 28, 2006 email shows that Mr. Berger and Mr. Obiang explicitly agreed from the beginning to channel Obiang funds through the two Unlimited Horizon accounts. The email also makes it clear that both men knew Mr. Berger was using his attorney-client account to transact business and execute funding transfers for Mr. Obiang. Mr. Berger wrote:

“Dear Mr. Nguema:

Attached hereto is proof of my opening two business checking accounts for Unlimited Horizon, Inc. at Union Bank today and wire transfer information for these two accounts. From the funds that I am holding for you in my client trust account, I deposited \$20,000.00 into the general account for Unlimited Horizon, Inc. and \$10,000.00 into the special account for Unlimited Horizon, Inc.”¹²¹

Two months later, on October 15, 2006, Mr. Berger sent Mr. Obiang the following email:

“As of today, I have spent or transferred to the Unlimited Horizon Accounts all of the funds that you wired to my client trust account. ... Unlike my client trust account [at Bank of America] which is used for many clients, the 2 Unlimited Horizon Accounts are used exclusively for your business. ... [T]he need for the transfer of additional funds is clear. ... By separate email and fax, I am sending you a request for a wire transfer of \$200,000.00.”¹²²

The following day, October 16, 2006, Mr. Berger opened a third account at UBOC, the Michael Jay Berger DBA Law Office of Michael Jay Berger, Account No. 0720115581.¹²³ He was the only authorized signatory on the account.¹²⁴ He immediately began using his law office account as a pass-through for EG wire transfers, accepting large wire transfers from Somagui Forestal and Obiang accounts in Equatorial Guinea and forwarding the funds via check to the Unlimited Horizon general account at UBOC.

Two weeks after opening the new account, for example, on November 1, 2006, Mr. Berger sent Mr. Obiang an email asking him to wire \$200,000 to Mr. Berger’s new law office account at UBOC and explaining that he would then transfer the funds to the Unlimited Horizon account and, in turn, pay Mr. Obiang’s bills and expenses.

“Dear Mr. Nguema:

Our July, 2006 agreement requires me to send you an e-mail ‘whenever the balance in the checking account of Unlimited Horizon, Inc. falls below \$50,000.00.’ The balances as of today in the two Unlimited Horizon, Inc. accounts are as follows (after the clearing of all checks that have been written and sent out):

¹²⁰ Id.

¹²¹ 8/28/06 email from Mr. Berger to Mr. Obiang, SEN004449.

¹²² 10/15/06 email from Mr. Berger to Mr. Obiang, SEN004465.

¹²³ 10/16/06 Bank of California Bank-Depositor Agreement, PSI-Union_BK_Calif-01-000629-630.

¹²⁴ Id.

General Account \$53,354.51
 Special Account \$ 336.46

Per our in person discussion on October 29, 2006, I suggest that the wire transfer be sent to my new client trust account at Union Bank. I will transfer it from there to the Unlimited Horizon, Inc. General Account. I will send you a separate e-mail and fax requesting a \$200,000 wire transfer and providing wire transfer information for this new account.”¹²⁵

On November 24, 2006, Somagui Forestal wired nearly \$200,000 to Mr. Berger’s new law office account.¹²⁶

From November 24, 2006 through June 6, 2007, eight EG wire transfers from Somagui Forestal or Mr. Obiang, totaling over \$1.7 million, were deposited into the new Berger law office account at UBOC.¹²⁷ Bank records indicate that soon after receiving each wire transfer, Mr. Berger transferred the funds received by writing a check to Unlimited Horizon Account No. 0720115409.¹²⁸ The funds deposited into the Unlimited Horizon account were then used to pay Mr. Obiang’s bills, including household expenses, parking tickets, car repairs, clothing, home furnishings, and electronics.¹²⁹

In addition, from October 2006 to March 2007, on a monthly basis, Mr. Berger wrote himself a \$5,000 self-endorsed check from the Unlimited Horizon account, presumably as compensation for his services.¹³⁰

The \$1.7 million in EG wire transfers sent to the Berger law office account did not go unnoticed; they triggered several internal UBOC anti-money laundering (AML) alerts.¹³¹ The bank’s review of these alerts was delayed, however, due to a deferred prosecution agreement that it was then negotiating with the U.S. Department of Justice arising from deficiencies in UBOC’s AML program.¹³² As part of the deferred prosecution agreement, UBOC was required to complete a number of pending compliance matters that delayed its review of the 2006 and 2007 EG wire transfers.¹³³

On or about June 11, 2007, Union Bank of California initiated an internal review of the EG wire transfers into the Berger law office account extending back to November 2006, and that

¹²⁵ 11/1/06 email from Mr. Berger to Mr. Obiang, SEN004477. Although the account is held in the name of Mr. Berger’s law office, he refers to the account in this email as his “new client trust account.”

¹²⁶ 11/24/06 wire transfer from Somagui Forestal, PSI-Union_Bk_Calif-01-000642.

¹²⁷ Wire transfers from Somagui Forestal, PSI-Union_BK_Calif-01-000642-647, 649-650.

¹²⁸ UBOC account statements, PSI-Union_BK_Calif-01-000631-641; UBOC wire transfer records, PSI-Union_BK_Calif-01-000652, 000657, 000660, 000667, 000678, 000686, 000697, 000718.

¹²⁹ Various dates, checks from Unlimited Horizon, Inc. to a variety of service vendors, PSI-Union_Bk_Calif-01-000048-397 (Sealed Exhibit).

¹³⁰ Various dates, checks from Unlimited Horizon, Inc. to Mr. Berger, PSI-Union_Bk_Calif-01-000391, 000331, 000274, 000239, 000182, 000140.

¹³¹ Union Bank of California wire monitoring software screens every field of wire transfer data for certain names, countries, and dollar amounts. Subcommittee interview of Union Bank officials, February 25, 2009.

¹³² Id.

¹³³ Id.

account's subsequent transfers to the Unlimited Horizon accounts.¹³⁴ Bank personnel concluded that the EG wire transfers were suspicious, raising both fraud and AML concerns. The investigative report of the UBOC Financial Intelligence Unit stated the following:

“The investigation found the use of multiple corporate vehicles by Michael Berger, the lawyer of a Politically Exposed Person (PEP), to disguise the identity of the PEP as well as layer and integrate funds derived via international wire transactions from a high risk jurisdiction [Equatorial Guinea], which had the appearance of money laundering activity. ... Several problematic areas were detected in the client's business account activity. ... [S]pecifically, the client (1) received multiple wire transactions from Teodoro Nguema Obiang and his company in Equatorial Guinea (EG), Somagui Forestal, (2) processed 3rd party checks payable to Teodoro Nguema Obiang through his IOLTA [law office] account in order to conceal the identity of the listed payee, and (3) operated a California LLC, Sweetwater Malibu LLC, in order to layer and integrate funds which originated in a high-risk jurisdiction. The ultimate benefactor of the transactions was Teodoro Nguema Obiang with the funds being utilized to pay for his estate and living expenses in the United States. ...

The aggregate total of all suspicious credits to the client's IOLTA account was \$1,752,520. ... [T]he total debits from the client's IOLTA account which were deemed suspicious in nature totaled \$1,551,855.00. ... [T]he total of [all debits paid from Ultimate [sic] Horizon accounts deemed suspicious] was \$1,656,359.00. ... [T]he aggregate total of all suspicious activity detected during this investigation was \$4,960,734.00.

This suspicious activity consisted of the use of multiple corporate vehicles by Michael Berger, the lawyer of Politically Exposed Person (PEP) Teodoro Nguema Obiang, in order to disguise the identity of his client as well as to place, layer, and integrate Obiang's funds derived via international wire transactions from Equatorial Guinea, a high risk jurisdiction. Therefore, the detailed actions had the appearance of money laundering activity conducted by a UBOC client on behalf of Obiang.”¹³⁵

On June 12, 2007, UBOC closed the Berger law office account.¹³⁶ The bank gave Mr. Berger a cashiers check with the remaining funds, which Mr. Berger deposited into his attorney-client account at Bank of America.¹³⁷ UBOC also sent a letter to Unlimited Horizon, addressed to Mr. Berger, stating that “we do not believe it is in the best interest to continue your relationship with Union Bank.”¹³⁸ On June 12, 2007, UBOC issued a second cashiers check in the amount of \$250,014.65 to Unlimited Horizon.¹³⁹

Johnson Account. Even after the closure of the Unlimited Horizon and Berger accounts, Mr. Obiang did not cease his efforts to make use of UBOC accounts. In 2009, UBOC discovered

¹³⁴ 6/15/07 UBOC Case Notes on Berger-Wire Review, PSI-Union_Bank_of_California-04-0272.

¹³⁵ 6/15/07 UBOC Case Summary on the Berger Wire Review, PSI-Union_Bank_of_California-04-0269.

¹³⁶ 6/12/07 letter from Union Bank of California to Mr. Berger, SEN000998. See also 6/15/07 UBOC Case Notes on Berger-Wire Review, PSI-Union_Bank_of_California-04-0272.

¹³⁷ Subcommittee staff interview of UBC officials, February 25, 2009.

¹³⁸ 6/12/07 letter from UBOC to Unlimited Horizon, Inc. and Mr. Berger, SEN007797.

¹³⁹ 6/12/07 cashier's check from UBOC to Unlimited Horizon, Inc., SEN004570.

that, on March 28, 2008, Mr. Obiang sent a wire transfer from Equatorial Guinea for nearly \$30,000 to a UBOC account belonging to Rayshonda Johnson for her daughter Roxanna Galbran.¹⁴⁰ It is unclear why the bank did not detect and ask questions about the EG wire transfer at the time, given the prior problems with Mr. Obiang. According to a 2009 internal UBOC investigation, Ms. Johnson explained that her daughter was engaged to an African prince, Mr. Obiang, and that the funds were to be used for her daughter's housing expenses. UBOC told the Subcommittee that it had learned the daughter had already lost her home, possibly to foreclosure, and that the funds appeared to have been withdrawn via large cash withdrawals at ATM machines and casinos in the United States.¹⁴¹ The bank told the Subcommittee that it had concluded Mr. Obiang had once again used a UBOC customer to receive funds in the United States on his behalf, continuing a multi-year pattern of activity to circumvent UBOC's attempts to restrict his financial activity at the bank.

(ii) Bank of America

From 2004 to 2007, Mr. Obiang was also able, with the assistance of Mr. Berger, to deposit over \$9.7 million, including over \$2 million in wire transfers from Equatorial Guinea and over \$4 million from the sale of property in Los Angeles, into accounts at Bank of America, none of which were opened in Mr. Obiang's name. The EG wire transfers generally went to an attorney-client account that Mr. Berger had long maintained at the bank. Mr. Berger then transferred some of these funds into two Bank of America accounts opened for an Obiang shell company, Beautiful Vision, Inc. Mr. Berger and Mr. Obiang then used the Beautiful Vision accounts to pay Obiang-related bills and expenses, until Bank of America closed them in 2005. After that, Mr. Berger used the EG funds in his attorney-client account to either pay Obiang-related bills directly or transfer funds to the Unlimited Horizon accounts at Union Bank of California or Citibank. By using his attorney-client account as a conduit for the EG funds, Mr. Berger helped disguise the real source of funding for the Beautiful Vision and Unlimited Horizon accounts and enabled Mr. Obiang to utilize those accounts for a substantial period of time. In 2007, after the bank conducted an internal investigation into whether Mr. Obiang was secretly utilizing the Berger attorney-client account, Bank of America closed the account, terminated its relationship with Mr. Berger, and told the Subcommittee that it had taken steps to prevent such tactics in the future.

Beautiful Vision Accounts. From 2004 to 2005, Mr. Berger opened several Bank of America accounts in the name of Beautiful Vision, Inc. Those accounts were used to pay millions of dollars in Obiang-related bills as well as supply Mr. Obiang with two cashiers checks totaling in excess of \$3.4 million.

On October 19, 2004, one week after Mr. Berger incorporated Beautiful Vision, Inc., he opened two Bank of America accounts in the name of the company, listing himself in the bank records as the company's owner and president.¹⁴² Beautiful Vision Account No. 02137-06466 was set up as a business checking account,¹⁴³ while Beautiful Vision Account No. 02139-06465

¹⁴⁰ Subcommittee interview of Union Bank officials, February 25, 2009.

¹⁴¹ Id.

¹⁴² 8/23/05, Bank of America, Master Case Information, BAC-PSI-05948.

¹⁴³ Bank of America, Master Agreement: Business Deposit Accounts, BAC-PSI-03036-39.

was designated a “special” checking account.¹⁴⁴ Mr. Berger was designated the sole signatory for the business checking account,¹⁴⁵ while the sole signatory for the special checking account was Mr. Obiang.¹⁴⁶ Mr. Berger also set up accounts to purchase two CDs in the name of Beautiful Vision, CD Nos. 02135-00057 and 02132-00049.¹⁴⁷ Although Mr. Obiang was the sole signatory on one of the accounts, Bank of America did not perform any due diligence related to him during the account opening process and did not learn of his PEP status.

About two weeks after the accounts were established, on November 1, 2004, Mr. Berger wrote three checks providing \$3.1 million in initial funding to the accounts. All three checks were drawn on his Bank of America attorney-client account, and used Obiang-related funds sent from Equatorial Guinea. One check deposited \$500,000 into the Beautiful Vision business checking account;¹⁴⁸ a second deposited \$1 million into the Beautiful Vision special checking account;¹⁴⁹ and a third provided \$1.6 million to purchase the two CDs.¹⁵⁰ Three weeks later, on November 19, 2004, the Beautiful Vision special checking account received a wire transfer for another \$4 million from D&G Escrow Corporation, the escrow agent that handled the September 2004 sale of a Los Angeles residence owned by Mr. Obiang, as explained further below.¹⁵¹ Over the next year, Mr. Berger made additional deposits totaling about \$2.5 million.¹⁵² This chart shows the primary deposits into the Beautiful Vision accounts.

Major Deposits Into Beautiful Vision Accounts			
Date	“To:”	Amount	Bates
11/1/04	Beautiful Vision, Inc. 02139-06465 (check from Berger attorney-client account)	\$ 1,000,000.00	BAC-PSI-02398
11/1/04	Beautiful Vision, Inc. 02137-06466 (check from Berger attorney-client account)	\$ 500,000.00	BAC-PSI-02399
11/1/04	Beautiful Vision, Inc. 02135-00057 (CD) & 02132-00049 (CD) (check from Berger attorney-client account)	\$ 1,600,000.00	BAC-PSI-02400
11/12/04	Beautiful Vision, Inc. 02139-06465	\$ 500,000.00	BAC-PSI-02473
11/19/04	Beautiful Vision, Inc. 02139-06465 (wire transfer from D&G Escrow)	\$ 4,054,408.33	BAC-PSI-02474
12/2/04	Beautiful Vision, Inc. 02139-06465	\$ 500,000.00	BAC-PSI-02479
3/4/05	Beautiful Vision, Inc. 02139-06465	\$ 605,288.43	BAC-PSI-02492
7/29/05	Beautiful Vision, Inc. 02139-06465 (check from Berger attorney-client account after City National Bank closed Obiang account)	\$ 669,691.02	BAC-PSI-02401
8/8/05	Beautiful Vision, Inc. 02139-06465 (wire transfer from Teodoro Obiang)	\$ 299,933.50	BAC-PSI-02510
Source: Bank of America		Total: \$ 9,729,321.28	

Prepared by Subcommittee

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ 8/23/05 Bank of America, Master Case Information, BAC-PSI-05948.

¹⁴⁷ Id.

¹⁴⁸ BAC-PSI-03067-68.

¹⁴⁹ BAC-PSI-02398.

¹⁵⁰ BAC-PSI-02400.

¹⁵¹ November 2004 statement for Beautiful Vision special checking account, BAC-PSI-02474. Less than two weeks later, a wire transfer for \$3.5 million was sent from the Beautiful Vision account to an account for Mr. Obiang, but that wire transfer was reversed on 12/10/04, and the funds were returned to the account. Id., at BAC-PSI-02474 and 02479.

¹⁵² See 2004-2005 account statements for Beautiful Vision special checking account, BAC-PSI-02470-515.

The two Beautiful Vision checking accounts were used to pay bills and expenses associated with Mr. Obiang. The business checking account, for example, issued multiple checks, signed by Mr. Berger, which together totaled about \$532,000. While most were for amounts of less than \$10,000, one large check for \$266,944.45 paid for purchases at a high-end retail store. The special checking account also issued multiple checks, all of which were signed by Mr. Obiang and together exceeded \$7.6 million.¹⁵³ The following chart lists the Beautiful Vision checks in excess of \$50,000 that were funded from the Beautiful Vision special checking account for which Mr. Obiang was the sole signatory.

Beautiful Vision Checks in Excess of \$50,000				
Date	Check Amount	"Pay to the Order of"	"For"	Bates
11/1/04	\$ 82,900.00	Naurelle	Furniture	BAC-PSI-02564
11/1/04	\$ 137,312.71	Ferrari of Beverly Hills	Maserati BVH	BAC-PSI-02565
11/5/04	\$ 63,326.25	Soofer Gallery	Carpet	BAC-PSI-02571
11/5/04	\$ 332,243.21	Ferrari of Beverly Hills	Ferrari	BAC-PSI-02566
11/8/04	\$ 66,893.11	Summit	(Illegible)	BAC-PSI-02568
11/12/04	\$ 80,287.95	Gucci		BAC-PSI-02572
11/13/04	\$ 51,288.00	Dolce & Gabbana		BAC-PSI-02563
11/13/04	\$ 21,976.56	Fields Pianos	Piano	BAC-PSI-02575
11/16/04	\$ 50,000.00	Ferrari of Beverly Hills	Deposit 6/2 Order	BAC-PSI-02574
11/13/04	\$ 59,850.00	Soofer Gallery	Rugs	BAC-PSI-02573
11/22/04	\$ 280,409.00	Auto Star Signature	Ferrari (Illegible)	BAC-PSI-02567
11/26/04	\$ 50,000.00	Lamborghini Beverly Hills		BAC-PSI-02570
11/26/04	\$ 288,523.29	Lamborghini Beverly Hills		BAC-PSI-02569
11/26/04	\$ 181,265.32	GlobalJet Corp.		BAC-PSI-02578
1/5/05	\$ 393,192.90	GlobalJet Corp.		BAC-PSI-02580
1/6/05	\$ 55,193.00	Dolce & Gabbana		BAC-PSI-02579
3/4/05	\$ 3,300,000.00	Cash		BAC-PSI-02585
3/4/05	\$ 285,567.33	GlobalJet Corp.		BAC-PSI-02586
3/5/05	\$ 58,500.00	L.A. Audio Video, Inc.	Installation of Bang & Olufsen Home Theatre	BAC-PSI-02587
3/5/05	\$ 118,244.66	ADT Security Services	Teodoro Nguema Obiang	BAC-PSI-02591
7/30/05	\$ 330,173.96	O'Gara Coach Company, LLC	Pay off 2005 Lamborghini Roadster	BAC-PSI-02591
8/6/05	\$ 102,053.29	ADT Security Services	Teodoro Nguema Obiang	BAC-PSI-02592
8/15/05	\$ 100,000.00	Beautiful Vision	General Acct. Payroll	BAC-PSI-02593
9/16/05	\$ 79,522.54	Cash		BAC-PSI-02595
Total - \$ 6,968,723.08		Source-Bank of America		

Prepared by Subcommittee

The largest Beautiful Vision check, dated March 4, 2005, and signed by Mr. Obiang, was made out to "cash" in the amount of \$3.3 million. Mr. Obiang used it to purchase a Bank of America cashiers check on the same day in the same amount, made payable to himself.¹⁵⁴ A

¹⁵³ See 2004-2005 account statements for Beautiful Vision special checking account, BAC-PSI-02470-515.

¹⁵⁴ See copy of 3/4/05 check and 3/4/05 cashier's check from Bank of America, BAC-PSI-06020.

little over a week later, on March 15, 2005, the cashier's check was cashed at CCEI Bank in Equatorial Guinea.¹⁵⁵ Despite the large amount of money and high risk jurisdiction involved in this transaction, it did not trigger a review by Bank of America or direct the bank's attention to Mr. Obiang.

Bank of America closed the first Beautiful Vision business checking account, Account No. 02137-06466, on or about August 10, 2005,¹⁵⁶ and a week later, on August 18, 2005, replaced it with a new checking account, Beautiful Vision Account No. 02139-41114.¹⁵⁷ This new account was initially funded with a \$100,000 check, signed by Mr. Obiang, drawn on the Beautiful Vision special checking account.¹⁵⁸ A month later, a \$50,000 check, again signed by Mr. Obiang and drawn on the Beautiful Vision special checking account, was also deposited into the new Beautiful Vision account.¹⁵⁹ The account then paid bills related primarily to activities at the Grand Wailea Resort in Hawaii, the Venetian Hotel in Las Vegas, and the L'Hermitage Hotel in Beverly Hills, on dates that corresponded to travel by Mr. Obiang to those cities.¹⁶⁰ In addition, two large wire transfers from the account, listing Mr. Berger as the originator, sent \$70,000 to the Grand Wailea Resort on August 24, 2005, and \$37,093.55 to the same resort on September 12, 2005.¹⁶¹

This activity triggered a review of the new account.¹⁶² During the review, Bank of America immediately discovered Mr. Obiang's role and immediately closed the account on September 12, 2005, a month after it was opened. The review also led to Bank of America's discovering that Mr. Obiang was using the second Beautiful Vision account, and the bank closed that account as well, two months later in November 2005.¹⁶³ Bank of America told the Subcommittee that it closed both accounts due to Mr. Obiang's involvement with Beautiful Vision, Inc.¹⁶⁴ The bank did not, however, take any action regarding Mr. Berger's accounts, even though he was the president of Beautiful Vision, had opened both accounts, and had hidden from the bank that Mr. Obiang was the beneficial owner of the company.

Berger Attorney-Client Account. After Bank of America closed the Beautiful Vision accounts in 2005, Mr. Obiang did not withdraw from the bank. Instead, he made greater use of

¹⁵⁵ See copy of 3/4/05 cashier's check, BAC-PSI-07630.

¹⁵⁶ 10/29/04 account statement from Bank of America, BAC-PSI-03040; 08/10/05 account statement from Bank of America, BAC-PSI-03065.

¹⁵⁷ 8/31/05 account statement from Bank of America, BAC-PSI-02516; 9/16/05 account statement from Bank of America, BAC-PSI-02520. The funds in the closed account were transferred to other Beautiful Vision accounts and used to pay Obiang-related bills and expenses. Subcommittee interview of Bank of America officials, December 18, 2009.

¹⁵⁸ 8/18/05 Bank of America deposit ticket and 8/15/05 check to Beautiful Vision, Inc. signed by Mr. Obiang, BAC-PSI-02596-97.

¹⁵⁹ 9/12/05 Bank of America deposit ticket and 9/9/05 check signed to Beautiful Vision, Inc. signed by Mr. Obiang, BAC-PSI-02598-99.

¹⁶⁰ 8/31/05 account statement from Bank of America, BAC-PSI-02516. 9/16/05 account statement from Bank of America, BAC-PSI-02520.

¹⁶¹ Id., at BAC-PSI-02520.

¹⁶² Subcommittee interview of Bank of America officials, December 18, 2009.

¹⁶³ Subcommittee interview of Bank of America officials, March 25, 2009 and December 18, 2009.

¹⁶⁴ Subcommittee interview of Bank of America officials, April 22, 2009.

Mr. Berger's attorney-client account to continue to bring suspect funds into the United States through Bank of America.

Mr. Berger first opened his attorney-client account at Bank of America in 1996, under the name of Law Offices of Michael Jay Berger Attorney-Client Trust Account No. 16646-09603.¹⁶⁵ Mr. Berger first began accepting wire transfers from Mr. Obiang in 2004, when he began working for him, and continued to accept them, including wire transfers from Equatorial Guinea, until his account was closed by the bank in 2007. Altogether over three years, the Berger attorney-client account accepted and disbursed over \$4.8 million to pay Obiang-related bills or forward funds to other Obiang-related accounts. By using his attorney-client account as a conduit for Obiang funds, Mr. Berger helped Mr. Obiang conceal his activities at Bank of America and circumvent the bank's AML and PEP controls.

For example, on June 24, 2005, City National Bank sent two checks to the Berger attorney-client account at Bank of America in the amounts of \$500,000 and \$199,691.02, for a total of \$699,691.02.¹⁶⁶ These funds came from an Obiang account that had been closed by the bank. Mr. Obiang had earlier told the bank that the source for these funds was one of his companies in Equatorial Guinea.¹⁶⁷ Mr. Berger deposited both checks in his attorney-client account.¹⁶⁸

On July 28, 2006, Mr. Berger sent Mr. Obiang instructions for wiring funds to his attorney-client account.¹⁶⁹ A week after those instructions were sent, on August 4, 2006, Mr. Obiang's EG company, Socage, wire transferred nearly \$300,000 to the Berger attorney-client account.¹⁷⁰ It was the first of six large EG wires from Socage or Somagui Forestal, totaling nearly \$1.3 million, sent to the account between August 2006 and September 2007.¹⁷¹ Each time these EG funds were deposited into the account, Mr. Berger responded by using the money to pay Obiang-related bills or forwarding the funds to other Obiang-related accounts.¹⁷²

On October 20, 2006, for example, the Berger attorney-client account received a wire transfer for \$199,931.17 from Socage.¹⁷³ Three days later, on October 23, 2006, Mr. Berger wrote a check from his attorney-client account to "cash" for \$199,931.17, placing a note on the check, "For UHI (illegible) account."¹⁷⁴ "UHI" refers to Unlimited Horizon, Inc. which cashed the check the same day, and deposited the funds into its account at Union Bank of California,

¹⁶⁵ 8/2/96 SQN scanned signature for account 16646-09603, BAC-PSI-04678.

¹⁶⁶ 7/6/05 City National Bank account statement, CNB0005540.

¹⁶⁷ 9/30/04 Declaration of Teodoro Nguema-Obiang to the Superior Court of California, County of Los Angeles, CNB0004068.

¹⁶⁸ Various dates, wire transfer records from Bank of America, BAC-PSI-02424-25.

¹⁶⁹ SEN 004438 (Mr. Berger wrote: "Here is the updated information that you need to wire transfer money to my Attorney Client Trust Account at Bank of America. Name of Account: Law Offices of Michael Jay Berger Attorney-Client Trust Account").

¹⁷⁰ 8/4/06 wire transfer record, BAC-PSI-02445.

¹⁷¹ Various dates, wire transfer records from Bank of America, BAC-PSI-02445-69. This \$1.3 million is in addition to the \$9.7 million deposited into the Beautiful Vision account from 2004 to 2005.

¹⁷² BAC-PSI-02395-441 (Sealed Exhibit). See also Citibank account file, C0000003-24.

¹⁷³ Various dates, wire transfer records from Bank of America, BAC-PSI-02442-69..

¹⁷⁴ The check amount corresponds to a \$200,000 incoming wire amount, less a \$45 wire transfer fee. 10/31/06 account statement from Bank of America, BAC-PSI-02371.

Account No. 0720115409.¹⁷⁵ This transaction was described in an email from Mr. Berger to Mr. Obiang as follows:

“Dear Mr. Nguema:

This confirms my receipt of a wire transfer from you in the amount of \$199,941.17 [sic]. This money was received in my attorney client trust account at Bank of America on October 20, 2006. Per our telephone conversation today, I will transfer said funds to the Unlimited Horizon General Checking Account at Union Bank on Monday (when Union Bank opens) and use said funds to pay your bills. ...

Sincerely,
Michael Berger”¹⁷⁶

On July 26, 2007, the Berger attorney-client account received another EG wire transfer from Socage for \$199,948.82.¹⁷⁷ The same day, Mr. Berger wrote a check on his account to “cash” for \$199,948.82 with a note “for cashier’s check for client.” The check was deposited into an Unlimited Horizon account at Citibank, Account No. 202018867.¹⁷⁸

On August 5, 2007, Mr. Berger sent the following email asking Mr. Obiang to send \$200,000 to the Berger attorney-client account at Bank of America so that the money could be used to pay Mr. Obiang’s bills.

“Dear Mr. Nguema:

... All approved check requests have been paid, with the following 4 exceptions:

Hagerty Insurance Agency \$8,165.00 (add on Bentley Azure)
Gearys \$1,734.17 (2 wine glasses)
South Coast Water \$3,221.31 (portable car wash machine)
Xtreme Marine \$8,044.26 (service speed boat)

I did not have enough money to pay these 4 bills[.]

I have prepared and attached an invoice to you requesting a wire transfer of \$200,000.00 to my Bank of America Client Trust Account. I will need these funds to pay additional bills for you. A copy of my Bank of America Client Trust Account Wire Transfer Information is attached hereto. ...

Sincerely,
Michael Berger”¹⁷⁹

¹⁷⁵ 9/28/07 account statement from Bank of America, BAC-PSI-02394; 10/23/06 check to UHI, BAC-PSI-02406.

¹⁷⁶ 10/21/06 email from Mr. Berger to Mr. Obiang, SEN012377.

¹⁷⁷ 7/31/07 account statement from Bank of America, BAC-PSI-02390.

¹⁷⁸ 7/31/07 account statement from Citibank, C0000027.

¹⁷⁹ 8/5/07 email from Mr. Berger to Mr. Obiang, SEN004594.

Shortly afterward, on August 16, 2007, Somagui sent a wire transfer from Equatorial Guinea for \$199,908.45 to the Berger attorney-client account.¹⁸⁰ On the same day, Mr. Berger wrote a check on that account to “cash” for \$199,908.45 with a note for “Unlimited Horizon, Inc. Cashier’s Check.” The check was deposited into the Unlimited Horizon account at Citibank, Account No. 202018867.¹⁸¹

A final example occurred on September 11, 2007, when Somagui sent an EG wire transfer for \$199,934.10 to the Berger attorney-client account.¹⁸² On the same day, Mr. Berger wrote a check on that account to “cash” for \$199,934.10 with a note for “Cashier’s Check.” As before, the check was deposited into the Unlimited Horizon account at Citibank.¹⁸³

The following chart lists key EG incoming wires to the Berger attorney-client account at Bank of America from 2005 to 2007.

Select Incoming EG Wires to Berger Attorney-Client Account at Bank of America						
Date	Amount	Originator	Ordering Bank	Correspondent	Ultimate Beneficiary	Bates
8/8/05	\$ 299,933.50	Teodoro Obiang	Belgolaise Bank in Paris	None specified	Beautiful Vision Account 02139-06465 at Bank of America	BAC-PSI-02914
8/4/06	\$ 299,923.68	SOCAGE, BATA	NATEXIS BANQUES	None Specified	Funded multiple checks drawn on Berger Attorney-Client Account 16646-09603 at Bank of America	BAC-PSI-02445
9/26/06	\$ 199,975.90	SOCAGE, BATA	CCEI Bank GE	ING Belgium	Funded multiple checks drawn on Berger Attorney-Client Account 16646-09603 at Bank of America	BAC-PSI-02449
10/20/06	\$ 199,976.17	SOCAGE, BATA	CCEI Bank GE	ING Belgium	Unlimited Horizon Account 0720115409 at Union Bank of California	BAC-PSI-02454
7/26/07	\$ 199,948.82	SOCAGE, BATA	CCEI Bank GE	Northern Trust Int'l Bank	Unlimited Horizon Account 202018867 at Citibank	BAC-PSI-02458
8/14/07	\$ 199,933.45	SOMAGUI, BATA	NATEXIS BANQUES	None Specified	Unlimited Horizon Account 202018867 at Citibank	BAC-PSI-02462
9/11/07	\$ 199,934.10	SOMAGUI, BATA	CCEI Bank GE	Northern Trust Int'l Bank	Unlimited Horizon Account 202018867 at Citibank	BAC-PSI-02466
TOTAL- \$1,599,625.62			SOURCE- Bank of America			

Prepared by Subcommittee

By 2006, Bank of America knew that Mr. Berger was working with Mr. Obiang and had established the Beautiful Vision accounts for him, but took no action for more than two years to review the EG wires going into the Berger attorney-client account.

¹⁸⁰ BAC-PSI-02462-65.

¹⁸¹ SEN004605; 8/31/07 account statement from Citibank, C0000030; 6/26/07 Citibank account enrollment form for Unlimited Horizon, Inc., C0000018.

¹⁸² 4/26/04 wire transfer, BAC-PSI-02466-69. This amount was the amount sent by wire transfer less a wire transfer fee.

¹⁸³ SEN004605; 9/30/07 account statement from Citibank, C0000033; 6/26/07 Citibank account enrollment form for Unlimited Horizon, Inc., C0000018.

In the meantime, Mr. Berger used his attorney-client account to transfer funds to both the Beautiful Vision and Unlimited Horizon accounts, as well as to pay some Obiang bills and expenses. This chart lists significant disbursements totaling in excess of \$4.8 million from the Berger attorney-client account from 2004 to 2007.

Select Disbursements from Berger Attorney-Client Account at Bank of America			
Date	"To:"	Amount	Bates
11/1/04	Beautiful Vision Account 02139-06465 at Bank of America	\$ 1,000,000.00	BAC-PSI-02398
11/1/04	Beautiful Vision Account 02139-06466 at Bank of America	\$ 500,000.00	BAC-PSI-02399
11/1/04	Beautiful Vision Accounts 02135-00057 (CD) & 02132-00049 (CD) at Bank of America	\$ 1,600,000.00	BAC-PSI-02400
7/29/05	Beautiful Vision Account 02139-06465 at Bank of America	\$ 669,691.02	BAC-PSI-02401
8/31/06	Saurman Investigative Services "For: Sweetwater Malibu, LLC"	\$ 56,544.00	BAC-PSI-02404
10/4/06	Saurman Investigative Services "For: Sweetwater Malibu, LLC"	\$ 54,720.00	BAC-PSI-02405
10/23/06	Cash ("For: Cashier's Check UHI Gen. Acct.") – Unlimited Horizon Account at Union Bank of California	\$ 199,931.17	BAC-PSI-02406
7/6/07	Saurman Investigative Services "For: TNO June 2007"	\$ 54,720.00	BAC-PSI-02408
7/10/07	Cash "For Cashier's Check Unlimited Horizons, Inc." / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$ 100,000.00	BAC-PSI-02409
7/27/07	Cash "For: Cashier's Check for Client" / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$ 199,948.82	BAC-PSI-02407
8/16/07	Cash "For: Unlimited Horizon, Inc. Cashiers Check" / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$ 199,908.45	BAC-PSI-02410
9/11/07	Cash "For: Cashier's Check"/Deposited to Unlimited Horizon Account 202018867 at Citibank	\$ 199,934.10	BAC-PSI-02411
Source- Bank of America		Total- \$4,835,397.56	

Prepared by Subcommittee

A comparison of the two charts shows five instances in which an incoming EG wire transfer into the Berger attorney-client account was followed by an outgoing check in the same amount to an Unlimited Horizon account. The timing and amounts of those transfers suggest that the funds were deliberately sent to the attorney-client account first, even though the funds were ultimately intended for an Unlimited Horizon account at another bank. The transfers suggest that Mr. Obiang, with the assistance of Mr. Berger, was making a deliberate effort to conceal the source of funding for the Unlimited Horizon accounts. By routing the funds through the Berger attorney-client account at Bank of America first, the funds deposited into the Unlimited Horizon accounts at UBOC and Citibank were presented as transfers from the account of a U.S. lawyer rather than from a company in Equatorial Guinea. Mr. Berger assisted in this scheme by accepting the EG wire transfers and then transferring the same amount of funds via checks to the Unlimited Horizon accounts. Essentially, Mr. Berger allowed his attorney-client account to function as a pass-through account and conceal the fact that the Unlimited Horizon accounts at UBOC and Citibank were recipients of suspect funds from Equatorial Guinea.

In June 2008, the Subcommittee contacted the bank and inquired about whether the Berger attorney-client account was being used as a conduit for Obiang funds. Bank of America told the Subcommittee that an analysis performed in response to the Subcommittee's inquiry uncovered the Obiang and EG connections to the Berger attorney-client account.¹⁸⁴ Bank of

¹⁸⁴ Subcommittee interview of Bank of America officials, April 22, 2009.

America told the Subcommittee that it “wasn’t comfortable” with the transactions, viewed them as suspicious, and closed the attorney-client account in July 2008.¹⁸⁵

(iii) Citibank

Still another U.S. bank account utilized by Mr. Obiang, with the assistance of Mr. Berger, was an account opened by Mr. Berger in the name of Unlimited Horizon, Inc. at Citibank in Beverly Hills, California. Beginning in July 2007, more than \$1 million in suspect funds from Equatorial Guinea were transferred from the Berger attorney-client account to this account and used to pay Mr. Obiang’s bills and expenses. Citibank closed the account in May 2008, ten months after it was opened.¹⁸⁶

Mr. Berger opened Citibank Account No. 202018867 in the name of Unlimited Horizon, Inc. on June 25, 2007, thirteen days after the closing of the Unlimited Horizon account at Union Bank of California.¹⁸⁷ Mr. Berger was the sole signatory on the account, and apparently actively hid from Citibank the company’s connection to Mr. Obiang.¹⁸⁸

At the time of the account opening, Citibank conducted a due diligence review of Unlimited Horizon, including by reviewing its corporate records, requiring completion of a know-your-customer form, and conducting a physical site inspection of the company using the address provided by Mr. Berger.¹⁸⁹ As part of this due diligence process, Mr. Berger provided a copy of Unlimited Horizon’s incorporation documents and identified himself as the company’s president.¹⁹⁰

Mr. Berger also filled out a Citibank form entitled, “Senior Public Figure Screening,” requesting details on any politically connected signatory or owner of more than a 25% of the company’s shares. Mr. Berger indicated on the form that no signatory or account owner was a citizen of a country other than the United States. By answering in the negative, Mr. Berger was not required to and did not answer the following question which asked: “If yes, are any of such owners a Senior Political Figure (for example, a current or former Senior Public Figure or Senior Official in the executive, legislative, administrative, military or judicial branch of government) or a close associate/family member”¹⁹¹

The final step in Citibank’s due diligence process was a site inspection of the place of business listed on the account opening forms. On June 26, 2007, one day after the account application, a Citibank personal banker toured the address of Unlimited Horizon, Inc. provided by Mr. Berger.¹⁹² The banker’s report described the type of business as providing legal

¹⁸⁵ Subcommittee interview of Bank of America officials, March 25, 2009; document disclosing Mr. Berger’s accounts, BAC-PSI-07607.

¹⁸⁶ Mr. Obiang also had a Citibank credit card in his own name from June 30, 2005 to March 2008, when the account was closed. The credit card account had been inactive since March 2007. See 3/19/09 letter from Citibank to the Subcommittee, PSI-Citi-34-0001-08, at 06.

¹⁸⁷ 7/11/07 email from Mr. Berger to Mr. Obiang, C0000006; SEN004574.

¹⁸⁸ 6/26/07 Citibank account enrollment form for Unlimited Horizon, Inc., C0000018.

¹⁸⁹ 6/27/07 Citibank Single Stock Holder Checklist, C0000005.

¹⁹⁰ 10/27/05 Articles of Incorporation for Unlimited Horizon, Inc. as provided to Citibank, C0000016; Citibank account file for Unlimited Horizon cover sheet, C0000004.

¹⁹¹ 6/22/07 Citibank: CitiBusiness Deposit Account Application, Senior Public Figure Application, C0000014.

¹⁹² 6/26/07 Citibank, Observations at Place of Business, C0000021.

accounting services, the number of employees present as three, and other characteristics of the office.¹⁹³ Mr. Berger had provided the address for his own law offices. The Citibank report states: “Mr. Berger also owns Law Offices of Michael Jay Berger and D&B verification result showed a confidence code: 6. Same address and phone number.”¹⁹⁴

Mr. Berger failed to disclose that the beneficial owner of Unlimited Horizon – the true beneficiary of the company – was Mr. Obiang.¹⁹⁵ He also represented that his law offices served as the physical office of Unlimited Horizon, without disclosing that Unlimited Horizon was a shell company with no employees or physical presence of its own. He allowed the Citibank banker to think that Unlimited Horizon provided legal accounting services, when it did not. Mr. Berger also failed to disclose that the company had a direct connection to a senior foreign official, Mr. Obiang, who was then serving as the Minister of Agriculture and Forestry in Equatorial Guinea.

Based upon the information it was provided, Citibank agreed to open the account for Unlimited Horizon on June 25, 2007. Citibank records show that the account was first funded two weeks later, on July 10, 2007, with a \$100,000 cashier’s check from Bank of America.¹⁹⁶ This cashier’s check had been paid for with funds from the Berger attorney-client account. A July 12, 2007 email from Mr. Berger to Mr. Obiang makes it clear that these were Obiang-related funds:

“Dear Mr. Nguema, ... I went to Bank of America, withdrew \$100,000.00 of your money from my Bank of America client trust account, purchased a cashier's check for \$100,000.00 made out to Unlimited Horizon, Inc. and deposited said cashier's check into the new Unlimited Horizon, Inc. account at Citibank.”¹⁹⁷

Over the next five months, the Unlimited Horizon account received five more large deposits, totaling nearly \$1 million, all of which were secretly linked to Mr. Obiang. On July 27, 2007, for example, following a wire transfer for nearly \$200,000 from “Somagui” in Equatorial Guinea to the Bank of America attorney-client account, Mr. Berger withdrew the same amount from that account and deposited it into the Unlimited Horizon account at Citibank.¹⁹⁸ Three weeks later, on August 16, 2007, Mr. Berger withdrew nearly \$200,000 from his attorney-client account at Bank of America and deposited the same amount into the Unlimited Horizon account at Citibank.¹⁹⁹ A month after that, on September 11, 2007, he did it again. After receiving a wire transfer for nearly \$200,000 from “Somagui” in Equatorial Guinea to his Bank of America attorney-client account, Mr. Berger withdrew the same amount from that account and deposited it into the Unlimited Horizon account at Citibank.²⁰⁰ On October 12, 2007, it happened a fourth time. Mr. Berger withdrew nearly \$200,000 from his Bank of America attorney-client account

¹⁹³ Id.

¹⁹⁴ Id.

¹⁹⁵ See, e.g., 10/15/06 email from Mr. Berger to Mr. Obiang, SEN004465 (Mr. Berger wrote: “Unlike my client trust account which is used for many clients, the 2 Unlimited Horizon Accounts [at Union Bank of California] are used exclusively for your business.”).

¹⁹⁶ 7/31/07 account statement from Citibank, C0000026; SEN004595.

¹⁹⁷ 7/12/07 email from Mr. Berger to Mr. Obiang, SEN004586.

¹⁹⁸ BAC-PSI-02458; BAC-PSI-02407; SEN004598; 7/31/07 account statement from Citibank, C0000027.

¹⁹⁹ 8/31/07 account statement from Citibank, C0000030; BAC-PSI-02410; SEN004605.

²⁰⁰ BAC-PSI-02411; BAC-PSI-02466; SEN004605; 9/30/07 account statement from Citibank, C0000033.

and deposited the same amount into the Unlimited Horizon account at Citibank. Finally, on November, 9, 2007, he withdrew nearly \$170,000 from the same attorney-client account and deposited the same amount into the Unlimited Horizon account at Citibank.²⁰¹ These five deposits, in addition to the initial deposit of \$100,000, meant that the Citibank account collected over \$1 million in less than six months.

The funds sent to Mr. Berger's attorney-client account at Bank of America could have been sent directly to the Unlimited Horizon account at Citibank, but if they had been, Citibank would have been alerted the funds were being wired from Equatorial Guinea. The fact that the funds were routed first through the attorney-client account suggests that Mr. Berger was deliberately assisting Mr. Obiang in hiding his involvement in the funding of the Citibank account.

The Obiang-related funds in the Berger attorney-client account were used to pay Obiang-related bills and expenses, including payroll expenses associated with his Malibu residence. On May 20, 2008, less than one year after the account was opened, Citibank closed the Unlimited Horizon account, because "activity in the account was inconsistent with the account profile."²⁰² A little over \$6,000 was in the account when it was closed.²⁰³

(iv) PayPal

Mr. Berger used three U.S. banks, Union Bank of California, Bank of America, and Citibank, to help Mr. Obiang bring millions of dollars in suspect funds into the United States, through shell company, attorney-client, and other accounts. He apparently also considered using other payment systems for this purpose. On June 8, 2007, for example, Mr. Obiang's assistant Suellen Everett wrote to Mr. Berger requesting that he purchase a product called "jumping stilts" for Mr. Obiang:

"The boss saw a guy running down the street in these contraptions and wanted them. In order to get them by Saturday we must pay via the link below"²⁰⁴

Mr. Berger replied:

"I have set up a PayPal account for Unlimited Horizon, Inc. It will take 2 or three business days to get verified. At that point, I will be able to use PayPal to make payments for Unlimited Horizon in any amount up to the balance of the account. This will be a good thing for the future and will give Mr. Nguema extra flexibility in ordering and paying for items...."²⁰⁵

By setting up a PayPal account in the name of a shell company, Mr. Berger could have enabled Mr. Obiang once more to hide his involvement in making purchases that, while trivial here, could involve a more serious expenditure of suspect funds in the future.

²⁰¹ SEN004675.

²⁰² 3/19/09 letter from Citibank to the Subcommittee, PSI-Citi-34-0001-08, at 07.

²⁰³ 2/29/08 account statement from Citibank, C0000056.

²⁰⁴ 6/7/07 email from Ms. Everett to Mr. Berger, SEN002185.

²⁰⁵ Mr. Berger previously established an account at Union Bank of California in the name of Unlimited Horizon, Inc.; see also 6/7/07 email from Mr. Berger to Ms. Everett, SEN002184.

When Paypal was contacted by the Subcommittee, however, it was unable to find any account that had been opened in the name of Unlimited Horizon, Inc., Beautiful Vision, Inc., or other corporations associated with Mr. Obiang. Nor had any account been opened in the name of Mr. Obiang. The Subcommittee was thus unable to confirm, despite Mr. Berger's 2007 email, that any PayPal account for Mr. Obiang had actually been established.

(c) Compensation

The total amount and form of the compensation provided by Mr. Obiang to Mr. Berger in return for his services are unclear. Mr. Berger periodically requested wire transfers from Mr. Obiang in amounts ranging from \$200,000 to \$400,000 to be sent to Mr. Berger's attorney-client accounts to pay for "legal services to be rendered to you and costs to be paid for you pursuant to our July 26, 2006 personal services agreement."²⁰⁶ These funds were provided on at least a monthly basis, but it is unclear how much Mr. Berger retained as compensation for his own services.²⁰⁷ The records also show that, from October 2006 to March 2007, Mr. Berger wrote himself a monthly \$5,000 self-endorsed check from the Unlimited Horizon account at UBOC, for a total of \$30,000 over six months.²⁰⁸ Still another document indicates that Mr. Berger was paid a \$60,000 fee for referring Mr. Obiang to a California real estate agent who helped him purchase his \$30 million Malibu residence, as explained further below.²⁰⁹

In addition to this cash compensation, as a result of his relationship with Mr. Obiang, Mr. Berger was invited to exclusive social events and venues in Southern California. After a party called the "Nguema Summer Bash" on September 14, 2007, for example, Mr. Berger sent the following email to Mr. Obiang:

"Thank you very much for inviting me to your party and for being so nice to me at the party. I appreciate the super VIP treatment that you gave me. I appreciate you telling your friends that I am your attorney. I am proud to work for you. ... The food was great, the drinks were better than great, the house, the view, the DJ, the white tiger were all SO COOL! Best of all were the people that I met there because of you."²¹⁰

Mr. Obiang also arranged for Mr. Berger to be invited to the 2007 "Kandy Halloween Bash" at the Playboy Mansion.²¹¹ After the party, Mr. Berger wrote:

"Dear Mr. Nguema:

²⁰⁶ See, e.g., 8/23/07 invoice from Mr. Berger to Mr. Obiang, SEN007758; 8/5/07 invoice from Mr. Berger to Mr. Obiang, SEN007767; 8/5/07 wire transfer information, SEN007769; 11/29/07 invoice from Mr. Berger to Mr. Obiang, SEN007785; 10/30/07 invoice from Mr. Berger to Mr. Obiang, SEN007786; 9/25/07 invoice from Mr. Berger to Mr. Obiang, SEN007796.

²⁰⁷ Id.

²⁰⁸ Various dates, checks from Unlimited Horizon to Mr. Berger, PSI-Union_Bk_Calif-01-000391; 000331, 000274, 000239, 000182, 000140 (Sealed Exhibit).

²⁰⁹ 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell_Banker-03-0003.

²¹⁰ 9/15/07 email from Mr. Berger to Mr. Obiang, SEN004620.

²¹¹ 10/12/07 email from Mr. Berger to Mr. Obiang accepting the invitation to the Kandy Halloween party, SEN004651.

Thank you very much for inviting me to the Kandy Halloween party @ The Playboy Mansion and getting me the VIP treatment. I had an awesome time. I met many beautiful women, and I have the photos, e-mail addresses and phone numbers to prove it. If the word gets out that you are looking for a bride, women all over the world will go even more crazy for you. ...

Your loyal friend and attorney,
Michael Berger.”²¹²

These documents suggest that, through Mr. Obiang, Mr. Berger gained access to exclusive settings that might otherwise have been inaccessible to him.

(2) Attorney George I. Nagler

For a two-year period from 2005 to 2007, Mr. Obiang employed a second California attorney, George I. Nagler, to advance his interests in the United States. Mr. Nagler helped Mr. Obiang purchase and manage the Malibu property, incorporated shell companies for Mr. Obiang, persuaded others to open accounts in the names of those companies, and for a short time allowed Obiang funds to be funneled through his own attorney-client and law office accounts. Altogether, Mr. Nagler helped Mr. Obiang bring over \$2.1 million in funds from Equatorial Guinea into the United States. In addition, Mr. Nagler worked with a colleague in the insurance industry to help Mr. Obiang obtain insurance for his fleet of 32 cars and motorcycles. Mr. Nagler and Mr. Berger met, but appeared to work independently of each other.

Mr. Nagler is a graduate of Harvard University and has been admitted to practice law in California since 1970.²¹³ According to his website, his areas of practice include real estate, business law, and limited liability companies, among others.²¹⁴ Mr. Nagler provided documents in response to a Subcommittee subpoena and answered written questions from the Subcommittee.

According to Mr. Nagler, he provided legal services to Mr. Obiang for two years, from approximately September 2005 through September 2007.²¹⁵ Those services related primarily to Mr. Obiang’s purchase of the \$30 million Malibu residence, and included assisting Mr. Obiang in the formation of three shell companies, arranging for the purchase and management of his Malibu property, and handling various insurance matters.²¹⁶ Mr. Nagler told the Subcommittee that in performing these duties he did “not believe that he ever concealed or mischaracterized the Client’s association with any account.”²¹⁷ The documentation also indicates that, like Mr. Berger, Mr. Nagler was well aware of the suspect origins of Mr. Obiang’s funds. Mr. Nagler told the Subcommittee that he was paid fees for his services which, over the two years, totaled about \$196,500.²¹⁸

²¹² 10/28/07 email from Mr. Berger to Mr. Obiang, SEN004389.

²¹³ Lawyers.com, <http://www.lawyers.com/California/Beverly-Hills/George-I.-Nagler-78953-a.html>.

²¹⁴ Law Offices of George I. Nagler, <http://www.georgenagler.com/>.

²¹⁵ 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0002.

²¹⁶ Id.

²¹⁷ Id., at PSI-Nagler-02-0009.

²¹⁸ Id., at PSI-Nagler-02-0002.

(a) Incorporating Shell Companies

Mr. Nagler told the Subcommittee that he helped Mr. Obiang establish three California corporations, Sweet Pink, Inc., Sweetwater Malibu, LLC, and Sweetwater Management, Inc.

Sweet Pink, Inc. According to Mr. Nagler, he began working for Mr. Obiang in September 2005, after being contacted through the Internet by Mr. Obiang's executive assistant, Rosalina Romo.²¹⁹

Mr. Nagler told the Subcommittee that he was asked at that time to form a corporation "to employ individuals at the home the Client maintained before he purchased the Malibu Property and to handle payroll and other matters related to the employment of those individuals."²²⁰ In an email dated September 15, 2005, Mr. Nagler asked Ms. Romo to provide him with two or three names for the corporation.²²¹ Later that same day, he requested articles of incorporation be filed with the California Secretary of State for "Sweet Pink Inc."²²² The Statement of Information for Sweet Pink, Inc. listed Ms. Romo as the company's Chief Executive Officer, Secretary, and Chief Financial Officer.²²³ Mr. Obiang is listed as "assistant treasurer,"²²⁴ but Mr. Nagler told the Subcommittee that it was his understanding that Mr. Obiang "was the sole owner" of the corporation and was the "sole source of funding" for the corporation.²²⁵

On September 22, 2005, Mr. Nagler faxed an "engagement letter" to Marvin Freedman, a certified public accountant, with instructions to immediately open a bank account for Sweet Pink, Inc. and obtain wiring instructions so that Mr. Obiang could fund the account.²²⁶

"He [Mr. Obiang] wants you to open a bank account as soon as you can forward the wiring instructions so he can wire funds. You should plan to have two or three people in your office authorized to sign the account. You should add him as the assistant treasurer as able to sign alone. ... He is in Paris and can arrange to wire the funds from there."²²⁷

A few days later, Mr. Nagler was told that Eve Jeffers, a hip-hop musician and Mr. Obiang's then girlfriend, would become the president of the corporation. On September 28, 2005, Mr. Nagler sent the following instructions to Mr. Freedman and Ms. Romo regarding signatory authority for the Sweet Pink account at Union Bank of California:

"I understand that Eve Jeffers, the President, Secretary, and Chief Financial Officer will be coming in to the Encino branch of Union Bank to sign the signature card today. She signing alone will have signing authority, Mr. Obiang will also have signing authority acting alone when he can come in and sign and you will initially be authorized. Three

²¹⁹ Id., at PSI-Nagler-02-0010.

²²⁰ Id., at PSI-Nagler-02-0004.

²²¹ 9/15/05 email from Mr. Nagler to Ms. Romo, SEN005785.

²²² 9/15/05 fax from Mr. Nagler, SEN005786.

²²³ State of California, Statement of Information for a Domestic Stock Corporation, SEN013765.

²²⁴ Id.

²²⁵ 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0004-05.

²²⁶ 9/22/05 fax from Mr. Nagler to Mr. Freedman, SEN005761.

²²⁷ Id.

other people from your office will be authorized to sign so long as two of you sign all checks. You expect that the other three will sign the signature card some time this week. In the interim you will be authorized to sign alone.

Lina, by copy [being] sent to you, please ask Eve to call you when she has signed. You should then call or fax Mr. Freedman and tell him that the card has been signed.

Mr. Freedman can then open the account and send the complete wiring instructions to you by fax. I understand that the funds will be wired by Mr. Obiang from a bank out of town.”²²⁸

The next day, September 29, 2005, a checking account in the name of Sweet Pink, Inc., Account No. 1300052831, was opened at Union Bank of California. Ms. Jeffers was a signatory along with four other persons from Mr. Freedman’s firm. Mr. Obiang was not on the signature card.²²⁹ During October 2005, two wire transfers, each for nearly \$30,000, were deposited into the account from Somagui Forestal, one of Mr. Obiang’s EG companies.²³⁰ Union Bank of California learned of the large wire transfers from Equatorial Guinea, which it had designated as a high-risk jurisdiction. On October 27, 2005, less than one month after the account opening, the bank closed the Sweet Pink account.

Sweetwater Malibu, LLC. In February 2006, Mr. Nagler formed a second California corporation for Mr. Obiang, Sweetwater Malibu, LLC. Mr. Nagler told the Subcommittee that this corporation was formed “to take title to the Malibu Property,”²³¹ which was then in the process of being purchased. In a memorandum he sent to Mr. Obiang, Mr. Nagler provided this explanation of the company:

“Sweetwater Malibu, LLC. This limited liability company will be the buyer of the Malibu. I had it formed on Tuesday, February 7, 2006, by sending the papers to the Secretary of State. I need you to give me the name of the person who you want to act as manager. I need someone who is a US taxpayer so that we can apply for a tax identification number for the company. If you do not give me a name, I will show you as the manager.”²³²

The Sweetwater Malibu, LLC articles of organization were filed with the California Secretary of State on February 8, 2006.²³³ They identified Mr. Nagler as the initial agent for service of process and stated that Sweetwater Malibu, LLC would be managed by a single manager who was not named.²³⁴ The articles made no mention of Mr. Obiang, however, a week

²²⁸ 9/28/05 fax from Mr. Nagler to Mr. Freedman, SEN005736.

²²⁹ Union Bank of California internal report, PSI-Union_Bank_of_California-04-0191.

²³⁰ 3/2/09 Union Bank of California Case Report on Sweet Pink, Inc., PSI-Union_Bank_of_California-04-0191.

²³¹ 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0003. See also 4/3/06 fax from Mr. Nagler to the First American Title Co., SEN006103 (Sweetwater Malibu, LLC was formed for the purpose of “purchasing, owning and operating a residence commonly known as 3620 Sweetwater Mesa Road, Malibu, CA 90265.”).

²³² 2/21/06 fax from Mr. Nagler to Mr. Obiang, SEN0011704

²³³ 2/8/06 Sweetwater Malibu, LLC Articles of Organization, PSI-Pacific_Mercantile_Bank-01-0263.

²³⁴ Id.

later, on February 15, 2006, Mr. Obiang signed an “Operating Agreement for Sweetwater Malibu, LLC” identifying him as the “sole member of the company.”²³⁵

Three weeks after the formation of the corporation, on February 27, 2006, a grant deed was signed and notarized selling the Malibu property to Sweetwater Malibu, LLC.²³⁶ The grantor requested that notification of the recording of the deed be sent to “Sweetwater Malibu, LLC, care of George Nagler.”²³⁷

On March 31, 2006, a confidentiality agreement was signed by the realty company that handled the sale, Coldwell Banker, to prohibit disclosure of Mr. Obiang as the purchaser of the property, the terms of the purchase, or the value of the property, for a period of 50 years.²³⁸ According to the agreement, any disclosure made pursuant to legal process required notification to Mr. Nagler and the seller’s attorney.²³⁹ Hilton & Hyland, the seller’s agent, told the Subcommittee that both the seller and Mr. Obiang had wanted the confidentiality agreement.

About six months later, on September 15, 2006, a Statement of Information for Sweetwater Malibu, LLC was filed with the California Secretary of State and listed Mr. Obiang as the sole manager of the corporation.²⁴⁰ Mr. Nagler told the Subcommittee that Mr. Obiang “was the sole manager” of Sweetwater Malibu, LLC “after March 2, 2006.”²⁴¹ He said that Sweetwater Malibu, LLC “had no employees.”²⁴²

Sweetwater Management, Inc. A few weeks after setting up Sweetwater Malibu, LLC, Mr. Nagler established a third California corporation for Mr. Obiang called Sweetwater Management, Inc. A February 21, 2006, memorandum from Mr. Nagler to Mr. Obiang describes the corporation as follows:

“New Management Company. You asked me to form a new management company to handle the payroll and to employ all the employees that you now have and will have at the Malibu house. You also asked me to prepare a draft of an employment agreement. We talked about using the name Sweetwater Management, Inc. You thought that name was acceptable. Do you want me to form this company?”²⁴³

On May 16, 2006, Sweetwater Management, Inc. was incorporated using Mr. Nagler’s business address in Beverly Hills, California.²⁴⁴ The California “Statement of Information” listed Mr. Obiang as the company’s sole director and identified Mr. Nagler as the agent for

²³⁵ 2/15/06 Operating Agreement for Sweetwater Malibu, LLC, PSI-Pacific_Mercantile_Bank-01-0266-73.

²³⁶ 2/27/06 Grant Deed of 3620 Sweetwater Mesa Road, PSI-Coldwell_Banker-01-000069.

²³⁷ Id.

²³⁸ 3/31/06 Broker Confidentiality Agreement, PSI-Coldwell_Banker-01-000509.

²³⁹ Id., at PSI-Coldwell_Banker-01-000510.

²⁴⁰ 9/25/06 Statement of Information regarding Sweetwater Malibu, LLC, signed by Mr. Obiang, PSI-Pacific_Mercantile_Bank-01-0262.

²⁴¹ 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0003.

²⁴² Id.

²⁴³ 2/21/06 fax from Mr. Nagler to Mr. Obiang, SEN011704.

²⁴⁴ See 5/16/06 Sweetwater Management, Inc. Articles of Incorporation, PSI-Pacific_Mercantile_Bank-01-0215-16; SEN005882.

service of process.²⁴⁵ Another document filed a week later named Mr. Obiang as the president, chief financial officer, and secretary of Sweetwater Management, Inc.²⁴⁶ An employee contract later described the purpose of Sweetwater Management, Inc. as “providing various services to Sweetwater Malibu, LLC.”²⁴⁷

Documentation obtained by the Subcommittee shows that bank accounts that were later opened in the name of Sweetwater Management provided funds for employee and other expenses associated with Mr. Obiang’s Malibu property.²⁴⁸ The documents also show that Mr. Nagler helped manage the domestic staff payroll through Sweetwater Management and paid a number of bills associated with that property as well as other expenses incurred by Mr. Obiang.²⁴⁹

(b) Bringing In and Moving Suspect Funds

During the two years that he was employed by Mr. Obiang, from September 2005 to September 2007, Mr. Nagler helped Mr. Obiang open accounts at three small California banks, Cal National Bank, City National Bank, and Pacific Mercantile Bank. These accounts included accounts opened in the name of two Obiang shell companies that Mr. Nagler helped form, Sweetwater Malibu, LLC and Sweetwater Management, Inc.; Mr. Nagler’s own attorney-client and law office accounts; and a personal account in Mr. Obiang’s own name which Mr. Nagler helped to open. The shell company and Obiang accounts did not last long; the banks closed each account after it received a single large wire transfer from Equatorial Guinea, but together these accounts managed to bring in over \$1.75 million through EG wire transfers. Mr. Nagler accepted another \$400,000 in Obiang-related funds into his own attorney-client and law firm accounts and used the funds to pay Obiang-related bills and expenses for a three-month period in the summer of 2006, but then stopped doing so. By September 2007, Mr. Obiang stopped using Mr. Nagler’s services, and Mr. Nagler ended his efforts to locate bank accounts that Mr. Obiang could use to bring money into the United States from Equatorial Guinea.

(i) Cal National Bank

A few months after Mr. Obiang purchased the Malibu property in April 2006, Mr. Nagler facilitated the opening of Sweetwater Malibu and Sweetwater Management accounts at Cal National Bank in Westwood, California even though Cal National Bank had a policy against doing business with PEPs. Mr. Nagler asked a property management company that was known to the bank to open the accounts without disclosing Mr. Obiang’s involvement. The bank initially opened the accounts, but after receiving a \$250,000 wire transfer from Equatorial Guinea and an inquiry from an Obiang employee, the bank learned of Mr. Obiang’s ownership of the Malibu property being managed, closed the accounts, and transferred the remaining funds to Mr. Nagler’s attorney-client account at City National Bank.

²⁴⁵ See 6/21/06 Sweetwater Management, Inc. Statement of Information, PSI-Pacific_Mercantile_Bank-01-0217; SEN009061-72.

²⁴⁶ 5/23/06 “Action by Unanimous Written Consent in Lieu of First Meeting of the Incorporator and Board of Directors of Sweetwater Management, Inc.,” SEN009183. See also 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0003.

²⁴⁷ 12/12/06 Employment Agreement of Suellen Everett at Sweetwater Management, Inc., SEN004220.

²⁴⁸ Id.; 7/30/07 Sweetwater Management, Inc. Semi-Monthly Payroll, SEN007509; 6/10/07 Sweetwater Management, Inc. Over Time Approval, SEN007510.

²⁴⁹ 1/26/07 email from Mr. Nagler to Ms. Everett, SEN013560.

Opening the Accounts. During late 2005 and early 2006, Mr. Nagler actively assisted Mr. Obiang in the purchase of the Malibu residence, which was ultimately purchased in the name of Sweetwater Malibu, LLC in April 2006. In May 2006, Mr. Obiang, as owner of Sweetwater Malibu, LLC, entered into an agreement with Ed Mizrahi of American Equity Properties, Inc. to manage the property.²⁵⁰ In connection with that agreement, Mr. Nagler asked Mr. Mizrahi to open accounts in the name of Sweetwater Malibu, LLC and Sweetwater Management, Inc. at the bank used by his property management firm, so that those accounts could be used to pay for expenses related to the Malibu property, but not to disclose Mr. Obiang identity or involvement with the property or the corporations.

Cal National Bank officials told the Subcommittee that Mr. Mizrahi was well known to them as a professional property manager who managed multiple properties and maintained numerous accounts for those properties at Cal National Bank.²⁵¹ They said that, on or about May 30, 2006, Mr. Mizrahi asked the branch manager to open property management accounts for an individual described as “high profile” who “needed his identity to remain anonymous.”²⁵² The bank agreed to open the shell company accounts without obtaining the identity of the person or determining whether he qualified as a PEP, even though U.S. financial institutions are routinely required to obtain this type of information to prevent money laundering.

In response to Mr. Mizrahi’s request, on May 30, 2006, the bank opened Account No. 50317171 in the name of “American Equity Properties, Inc. ITF: Sweetwater Malibu.”²⁵³ Mr. Mizrahi was the sole account signatory.²⁵⁴ As part of the account opening documentation, the bank obtained a copy of the management agreement between American Property Management and Sweetwater Malibu, LLC.²⁵⁵

The next day, Mr. Mizrahi, accompanied by Melinda Dehaven, an Obiang employee, opened three additional accounts: Account No. 50317197 for Sweetwater Management, Inc. – Payroll; Account No. 50317205 for Sweetwater Management, Inc. – Household; and Account No. 50317254 for Sweetwater Management, Inc. – Corporate. Ms. Dehaven was a signatory on all three accounts and apparently funded them with money transferred from her personal account at Bank of America.²⁵⁶ Mr. Mizrahi was also a signatory.²⁵⁷

Mr. Nagler sent the following email to Mr. Obiang regarding the opening of the Cal National Bank accounts:

²⁵⁰ 5/23/06 Management Agreement, PSI-Cal_Nat'l_Bank-01-0020-24; Subcommittee interview of Cal National Bank officials, February 27, 2009.

²⁵¹ Subcommittee interview of Cal National Bank officials, February 27, 2009.

²⁵² 7/06 Cal National Bank Account Review and Summary, PSI-Cal_Nat'l_Bank-01-0048; Also see Subcommittee interview of Cal National Bank officials, February 27, 2009.

²⁵³ 5/31/06 Cal National Bank Business Signature Card and Resolution of Corporation, PSI-Cal_Nat'l_Bank-01-0091-92. Subcommittee interview of Cal National Bank officials, February 27, 2009. “ITF” means “in trust for.”

²⁵⁴ Subcommittee interview of Cal National Bank officials, November 9, 2009.

²⁵⁵ 5/23/06 Management Agreement, PSI-Cal_Nat'l_Bank-01-0020-24.

²⁵⁶ Subcommittee interview of Cal National Bank officials, February 27, 2009. See also deposit tickets and checks from Ms. Dehaven, PSI-Cal_Nat'l_Bank-01-0089-90. The Subcommittee did not examine her account to determine whether it, too, operated as a conduit for Obiang funds.

²⁵⁷ 5/31/06 Cal National Bank Business Signature Card and Resolution of Corporation, PSI-Cal_Nat'l_Bank-01-0091-92.

“Mr. Nguema,

Ed [Mizrahi] called me from the bank. He has been able to open the accounts with Melinda in the name of Sweetwater Management, Inc. for both the payroll and the household accounts. To do this, we need to have Melinda elected the Secretary instead of being an assistant secretary. I will change the first minutes to show her as the secretary. You can remove her as secretary any time you wish but it now gives her the authority with the bank to open the bank accounts. It avoids you having to go into the bank and sign the documents.”²⁵⁸

The Subcommittee does not know whether Mr. Nagler actually “changed” the minutes dating from the first Sweetwater Management board meeting as suggested in this email.

Account Activity. About two weeks later, on June 12, 2006, Cal National Bank received a wire transfer for nearly \$250,000, sent by Socage in Equatorial Guinea, to the American Equity Properties, Inc. ITF: Sweetwater Malibu account.²⁵⁹ The next day, June 13, 2006, Ms. Dehaven contacted the bank about the wire transfer and apparently asked to have the money moved from the American Equity account, where she was not a signatory, to one of the Sweetwater Management accounts where she was a signatory.²⁶⁰

According to bank officials interviewed by the Subcommittee, after receiving her inquiry, the branch manager reviewed the American Equities-Sweetwater agreement it had on file, examined the information provided on ownership of the company, and learned that Mr. Obiang was listed as the sole owner and manager of Sweetwater Malibu, LLC.²⁶¹ The branch manager then conducted an Internet search, learned that Mr. Obiang was an EG Minister and the son of the EG President, and read about Riggs Bank’s involvement with Equatorial Guinea and the Obiang family.²⁶² He then contacted a Cal National Bank compliance officer for guidance.²⁶³

The branch manager also contacted Mr. Mizrahi who sent the following email to Ms. Dehaven, with a copy to Mr. Nagler:

“I was just informed by the Manager at Cal National Bank that you were inquiring why the \$249,899.80 wire was transferred into the American Equity Properties, Inc. ITF Sweetwater Mailibu account and not the Household account (that you are a signer on) or the payroll account. ... In the future, if you have questions concerning the transfers of monies you should address them with me or George Nagler, and **not the bank manager**.”²⁶⁴ [Emphasis in original.]

Ms. Dehaven sent the following apology:

²⁵⁸ 5/31/06 email from Mr. Nagler to Mr. Obiang, SEN011169.

²⁵⁹ 7/06 Cal National Bank Account Review and Summary, PSI-Cal_Nat'l_Bank-01-0055.

²⁶⁰ 6/13/06 email from Mr. Mizrahi to Ms. Dehaven, SEN010959.

²⁶¹ 5/16/06 State of California, Articles of Incorporation for Sweetwater Management, Inc., PSI-Cal_Nat'l_Bank-01-0024.

²⁶² 7/06 Cal National Bank Account Review and Summary, PSI-Cal_Nat'l_Bank-01-0048.

²⁶³ Id.

²⁶⁴ 6/13/06 email from Mr. Mizrahi to Ms. Dehaven, SEN010959.

“Sorry if I didn’t go about it the correct way. I didn’t realize that speaking with [the branch manager] wasn’t proper.”²⁶⁵

Mr. Mizrahi later sent another email to Mr. Nagler:²⁶⁶

“Cal National Bank decided to review the files and researched the Owner and Ownership of the property. Upon doing so, the Bank Manager advised me of his finding and said that the Bank’s policy is to have ‘clients that are not politically connected.’ He further informed me that the bank accounts (that were just opened) could potentially be closed by the bank due to their findings.”²⁶⁷

Account Closings. On June 22, 2006, less than a month after the account was opened, Cal National Bank notified American Equity Properties by letter that it was closing all four Sweetwater accounts.²⁶⁸ Following the account closure, Cal National Bank placed Mr. Obiang and Melinda Dehaven on its “hot list,” which restricted them from receiving banking services through the bank.²⁶⁹ The funds remaining in the American Equity Properties, Inc. ITF: Sweetwater Malibu account, totaling about \$203,000, were wire transferred to Mr. Nagler’s attorney-client trust account at City National Bank.²⁷⁰

Cal National Bank chose not to take any action against Mr. Mizrahi, the property manager, even though he opened the Sweetwater accounts and hid Mr. Obiang’s involvement from the bank.

(ii) City National Bank

After the closure of the Cal National Bank accounts in June 2006, for the next three months, Mr. Nagler allowed his attorney-client and law office accounts at City National Bank to serve as conduits for about \$400,000 in Obiang funds. Mr. Nagler told the Subcommittee that he did not recall using these accounts to pay for Obiang-related expenses at any other time.²⁷¹

Mr. Nagler told the Subcommittee that during the summer of 2006, at Mr. Obiang’s request, he accepted a number of Obiang-related wire transfers into his attorney-client and law office accounts at City National Bank, and then used those funds to pay Mr. Obiang’s “household and living expenses” while Mr. Obiang made other arrangements.²⁷² To pay the bills, Mr. Nagler instructed a payroll company to produce checks imprinted with the Sweetwater Management, Inc. name at the top and his attorney-client or law office account number at the bottom, and used those checks to pay the Obiang bills.

²⁶⁵ 6/13/06 email from Ms. Dehaven to Mr. Mizrahi, SEN010958.

²⁶⁶ 6/13/06 email from Mr. Mizrahi to Ms. Dehaven, SEN010959.

²⁶⁷ 6/13/06 email from Mr. Mizrahi to Mr. Nagler, SEN010943.

²⁶⁸ 6/06 letter from Cal National Bank regarding closure of Sweetwater accounts, PSI-Cal_Nat’l_Bank-01-0049.

²⁶⁹ Subcommittee interview of Cal National Bank officials, February 27, 2009.

²⁷⁰ 6/26/06 wire transfer, PSI-Cal_Nat’l_Bank-01-0051. See also Subcommittee interview of Cal National Bank officials, February 27, 2009.

²⁷¹ 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0008. See also 7/20/06 email from Mr. Nagler to Pacific Mercantile Bank, PSI-Pacific_Mercantile_Bank-01-0154-55 (Mr. Nagler wrote: “Currently, I ... have been paying [the Malibu property] bills out of my trust account.”).

²⁷² Id., at PSI-Nagler-02-00008-09.

More than a year later, after the bank received an inquiry from the Subcommittee, City National Bank conducted a search of its records and learned for the first time that, for a three-month period during the summer of 2006, Mr. Obiang had utilized the Nagler attorney-client and law office accounts. Because there was no sign that Mr. Obiang had continued to use them, City National Bank did not close the Nagler accounts, but rated them “high risk” subject to additional monitoring. City National Bank also confirmed that it had earlier maintained personal and corporate accounts for Mr. Obiang, but had closed the last of those accounts in 2004.

Obiang Accounts. Mr. Obiang had already had five years of involvement with City National Bank prior to his utilization of the Nagler accounts in 2006. From at least 2001 to 2004, Mr. Obiang had maintained six corporate and personal accounts at the bank. In 2003, City National Bank closed the five corporate accounts. In 2004, the bank opened and then closed a personal account for Mr. Obiang due to suspicious transactions, froze \$700,000 of his funds, and returned those funds to Mr. Obiang only after ordered by a court to do so.

The first set of accounts at the bank were opened in the name of TNO Entertainment, LLC, the California company owned by Mr. Obiang.²⁷³ These accounts were:

- Account No. 101-672085 “TNO ENTERTAINMENT, LLC”;
- Account No. 101-770427 “TNO ENTERTAINMENT, LLC (PETTY CASH ACCOUNT)”;
- Account No. 101-800261 “TNO ENTERTAINMENT, LLC (SPECIAL ACCOUNT)”;
- Account No. 101-862860 “TNO ENTERTAINMENT, LLC (PAYROLL ACCOUNT)”;
- Account No. 101-862852 “TNO ENTERTAINMENT, LLC (MUSIC DIVISION ACCOUNT)”.²⁷⁴

In account opening documents for Account No. 101-672085, Mr. Obiang identified himself as the managing member of TNO Entertainment, LLC, and listed his occupation as “Recording Executive.”²⁷⁵ Between February and December of 2001, Mr. Obiang made three large deposits to that account totaling \$3.5 million.²⁷⁶ Those deposits were funded by checks drawn against a Riggs Bank account, numbered 76923450, that had been opened in the name of TNO Entertainment.²⁷⁷

²⁷³ Subcommittee interview of City National Bank officials, March 9, 2009. “TNO” refers to Teodoro Ngeuma Obiang.

²⁷⁴ 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067; 5/8/01 Operating Agreement of TNO Entertainment, LLC, CNB0004863 to CNB0004868.

²⁷⁵ 12/4/03 City National Bank Business Account Agreement, CNB0001049.

²⁷⁶ 2/28/01 account statement from City National Bank CNB0000614; 11/30/01 account statement from City National Bank, CNB0000655; 11/30/01 account statement from City National Bank, CNB0000659, R 2589; 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067.

²⁷⁷ 2/28/01 account statement from City National Bank CNB0000614; 11/30/01 account statement from City National Bank, CNB0000655; 11/30/01 account statement from City National Bank, CNB0000659; 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067 (Sealed Exhibit).

Bank records show that numerous checks drawn on Account No. 101-672085 were used to pay for high-end retail purchases. For example, the account was used to pay for a \$25,000 bill from Versace, a \$23,000 bill from Dolce & Gabbana, and a \$14,000 bill from Gucci, three high-end clothiers.²⁷⁸ Sometime in 2003, the bank initiated an evaluation of the account activity and determined that it was inconsistent with the profile for an entertainment company.²⁷⁹ At the end of 2003, the bank closed all five TNO Entertainment accounts, because of rapidly diminishing funds in the accounts, account activity inconsistent with other entertainment accounts handled by the bank, and difficulties contacting the accountholder, Mr. Obiang.²⁸⁰ Although City National Bank closed the accounts, the bank told the Subcommittee that it did not view them as suspicious, and did not place any restrictions on Mr. Obiang's doing business with the bank in the future.²⁸¹

About three months later, on March 2, 2004, Mr. Obiang opened a personal checking account at City National Bank, Account No. 009-609326, apparently using an invalid Social Security number and an invalid date of birth.²⁸² At account opening, the bank used a database known as Chex System to verify the Social Security number without receiving any alert of a problem.²⁸³ Mr. Obiang apparently did not alert the bank to his PEP status. Mr. Obiang initially funded the account with a \$300,000 check drawn on a Riggs Bank account, Account No. 25773624, but the check was returned unpaid.²⁸⁴ On March 15, 2004, Mr. Obiang sent a wire transfer for nearly \$1 million from his account at CCEI Bank Guinea Equatorial.²⁸⁵ City National Bank allowed the transfer without making any inquiries into the source of the funds.

A few months earlier, in December 2003, the bank had received a Section 314(b) request from Riggs Bank requesting information related to Mr. Obiang.²⁸⁶ The letter clearly disclosed Mr. Obiang's PEP status. In addition, City National Bank had become aware of adverse media reports concerning Equatorial Guinea and the Obiang family. In response, a City National Bank compliance officer performed a search of the bank records, identified the Obiang checking account, and began to review the account activity.²⁸⁷ On June 2, 2004, the compliance officer wrote to other bank officials, raising a number of concerns regarding the Obiang account:

²⁷⁸ 5/16/01 check from TNO Entertainment to Versace, CNB0001200; 5/18/01 check from TNO Entertainment to Dolce & Gabbana, CNB0001201; 8/3/01 check from TNO Entertainment to Gucci, CNB0001229 .

²⁷⁹ Subcommittee interview of City National Bank officials, March 9, 2009.

²⁸⁰ Id.

²⁸¹ Id.

²⁸² 3/21/04 City National Bank Personal Account Agreement, CNB0001043. Mr. Obiang has been issued a valid Social Security Number, apparently in connection with his California corporation. See 12/10/09 letter from Social Security Administration to the Subcommittee, no bates number.

²⁸³ Subcommittee interview of City National Bank officials, March 9, 2009. CNB advised the Subcommittee that at time of account opening, the banking center manager may not have been aware of policies respective to screening and banking PEPs, and that bank policies regarding PEPs were not as strong as they are currently as a result of improvements made pursuant to a 2005 Consent Order with the Office of the Comptroller of the Currency (OCC).

²⁸⁴ 3/31/04 account statement from City National Bank, CNB0000057.

²⁸⁵ Id.

²⁸⁶ Subcommittee interview of City National Bank officials, March 9, 2009. Section 314(b) of the 2001 Patriot Act encourages financial institutions and associations of financial institutions located in the United States to share information in order to identify and report activities that may involve terrorist activity or money laundering.

²⁸⁷ Subcommittee interview of City National Bank officials, March 9, 2009.

“We have identified a number of issues with this client, which should be addressed immediately.

- 1) Your branch is unable to locate the signature card. Account opened on 3-2-2004.
- 2) Public records indicate, the Social Security number used belongs to another individual.
- 3) Opening deposit of \$300,000.00 was returned unpaid by Riggs Bank (own check).
- 4) Discrepancy in date of birth.
- 4) Wire transfer for \$999,950.00 from Equatorial Guinea, which should have been reported as suspicious and unusual.
- 5) Internet shows that the client is the Minister of State for Forestry, Fishing, & Environment of Equatorial Guinea. It appears, he is related to the President of that country, Obiang Nguema Mbasogo. He may qualify as a political exposed person, requiring enhanced due diligence. Refer to Legal & Compliance Manual.

Since the client provided false information, we should close the account.”²⁸⁸

On the same day, June 2, 2004, City National Bank sent a letter notifying Mr. Obiang of its intention to terminate its banking relationship with him, asked him to close his account by June 8, and instructed him to cease all banking activity with the bank.²⁸⁹ City National Bank closed the account on or about June 14, 2004.²⁹⁰ Following the account closure, the bank placed Mr. Obiang on its “hot list,” effectively blocking him from banking through City National Bank in the future.²⁹¹ The bank also issued and held two checks with the funds remaining in the account totaling \$669,691.02.²⁹²

On July 30, 2004, Mr. Obiang called the bank to discuss closure of the account. An email by the bank official who spoke with Mr. Obiang described the conversation as follows:

“In our conversation he asked me why we closed the account. I told him that we were provided with the incorrect social security number and that we had tried to reach him on many occasions and we were unsuccessful. After I told him that, he said, ‘I thought it was due to our country and the oil.’ He then asked me if we could reopen the account if he were to come in and provide us with the correct social. I told him that since we were unable to get a hold of him, the legal department is now involved.”²⁹³

²⁸⁸ 6/2/04 internal City National Bank email, CNB0004800.

²⁸⁹ 6/2/04 letter from City National Bank to Mr. Obiang, CNB0004101.

²⁹⁰ 11/15/04 City National Bank’s Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

²⁹¹ Subcommittee interview of City National Bank officials, March 9, 2009.

²⁹² 11/15/04 City National Bank’s Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

²⁹³ 11/30/04 internal City National Bank email CNB0004799.

Earlier the same month that this conversation took place, on July 15, 2004, the Subcommittee held its hearing and released its report on Riggs Bank's handling of the Equatorial Guinea accounts. The Subcommittee's report specifically referenced Mr. Obiang's TNO Entertainment accounts at City National Bank.²⁹⁴ The bank learned of the Subcommittee report as well as a report issued by the U.S. State Department warning that Equatorial Guinea was mishandling its growing oil wealth.²⁹⁵ In addition, on August 19, 2004, the bank received a law enforcement subpoena requesting documentation that, among other individuals, related to Mr. Obiang.²⁹⁶

In August 2004, Mr. Obiang requested delivery of the \$700,000 from his closed account.²⁹⁷ In response, City National Bank requested that Mr. Obiang identify the source of the funds. Mr. Obiang provided the following declaration:

"The wire transfer was from one of my companies in Equatorial Guinea. The funds that were transferred to me did not come from any illegal source. It was either from Somagui Forestal or Sofona."²⁹⁸

According to documents reviewed by the Subcommittee, City National Bank learned from press reports that Obiang accounts at Riggs Bank had been frozen by the U.S. Government and believed that law enforcement expected delivery of the remaining funds in the Obiang account at its bank, pursuant to the subpoena served on the bank.²⁹⁹ City National Bank determined that it should hold onto the funds in expectation of a request from law enforcement.

Mr. Obiang filed suit in the Superior Court of California, County of Los Angeles, to recover the funds.³⁰⁰ He was represented in that matter by attorney Michael Jay Berger. A Federal court had previously determined that the U.S. Government had no interest in the funds.³⁰¹ When no other party filed a claim in the suit, the California court ordered the funds paid to Mr. Obiang.³⁰² On June 24, 2005, City National Bank issued two checks payable to a Berger attorney-client account at Bank of America in the amounts of \$500,000 and \$199,691.02, for a total of \$699,691.02.³⁰³ Mr. Berger deposited both checks in that account.³⁰⁴

Nagler Attorney-Client and Law Office Accounts. Despite the actions taken by City National Bank to close the Obiang checking account in June 2004, bar Mr. Obiang from doing business with the bank, and freeze \$700,000 of his funds until the June 2005 court decision,

²⁹⁴ 2004 Subcommittee Investigation of Riggs Bank at 44, footnote 162.

²⁹⁵ CNB0003931-32.

²⁹⁶ 11/15/04 City National Bank's Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

²⁹⁷ Id.

²⁹⁸ CNB0004068.

²⁹⁹ Id.

³⁰⁰ 6/27/05 Teodoro Nguema Obiang's Ex Parte Application to Approve Judgment, Obiang v. City National Bank, Case No. SC083177, CNB0005558-64, at 61.

³⁰¹ Id.

³⁰² Id.

³⁰³ 7/1/05 internal legal memorandum from City National Bank, CNB0005553.

³⁰⁴ BAC-PSI-02424, 02425. Mr. Berger later transferred these funds to one of the Beautiful Vision accounts as explained earlier.

Mr. Obiang did not object when Mr. Nagler suggested using City National Bank accounts during the summer of 2006, to pay Mr. Obiang's bills and expenses. For the three-month period from June to August 2006, Mr. Obiang managed once more, without the bank's knowledge, to funnel money through its accounts, using an account Mr. Nagler had opened years earlier to handle client funds, Account No. [xxx-xxxx]27, and an account opened in the name of "Law Offices of George I. Nagler," Account No. [xxx-xxxx]43.³⁰⁵

Mr. Nagler told the Subcommittee that he had maintained an attorney-client account at City National Bank "for many years."³⁰⁶ In 2005, this account began receiving the first of several wire transfers from Equatorial Guinea, which Mr. Nagler said were sent by Somagui Forestal to pay Mr. Obiang's legal fees. Mr. Nagler told the Subcommittee that he received nearly \$40,000 in this manner, citing an October 19, 2005 wire transfer for nearly \$12,000; a January 18, 2006 wire transfer for nearly \$12,000; and a March 23, 2006 wire transfer for about \$14,200.³⁰⁷

In mid-2006, the Nagler attorney-client account received another influx of Obiang-related funds totaling more than \$360,000. All of these funds came from U.S. bank accounts, rather than directly from Equatorial Guinea. On May 2, 2006, First American Title Company wire transferred \$107,581.11 from its U.S. account to the Nagler attorney-client account, marked "FBO Teodoro Nguema Obiang."³⁰⁸ City National Bank did not block this wire transfer even though, in 2004, it had placed Mr. Obiang on its "hot list" to prevent his doing any more business with the bank.

Mr. Nagler told the Subcommittee that these funds had been left over in the escrow account at the title company after Mr. Obiang's purchase of the Malibu property.³⁰⁹ He said that he used \$50,000 of the transferred funds to pay Mr. Obiang's legal fees, sent about \$4,400 to the IRS to settle a tax matter involving Mr. Obiang, and set aside the rest in a "subaccount" for Mr. Obiang.³¹⁰

On June 26, 2006, another \$213,149.30 was transferred into the Nagler attorney-client account from the closed Sweetwater accounts at Cal National Bank.³¹¹ On July 27, 2006, First American Title Company sent another \$47,500 to the Nagler attorney-client account with instructions "FBO Teodoro Nguema Obiang."³¹² Again, the bank did not block the wire transfer even though Mr. Obiang was on the bank's internal "hot list." Mr. Nagler told the Subcommittee that these funds came from rent that had been paid by the seller for occupying the Malibu property after the closing.³¹³

³⁰⁵ Various dates, variety of checks from Sweetwater Management, Inc., CNB0001955-57.

³⁰⁶ 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0006.

³⁰⁷ *Id.*, at 08.

³⁰⁸ 7/7/08 Transaction Detail Report from First American Title Co., CNB0001651. "FBO" typically means "for the benefit of." Mr. Nagler told the Subcommittee that this transfer occurred on May 5, 2006. 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

³⁰⁹ 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

³¹⁰ *Id.*, at 08-09.

³¹¹ 6/30/06 account statement from City National Bank, CNB00000227; 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

³¹² 7/7/08 Transaction Detail Report from First American Title Co., CNB0001654.

³¹³ 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0009.

After receiving these funds, Mr. Nagler transferred at least \$27,000 to his law office account. On May 6, 2006, for example, Mr. Nagler transferred \$15,052.38 from his attorney-client account into his law office account.³¹⁴ On June 30, 2006, Mr. Nagler wrote a \$12,683.05 check drawn against his attorney-client account and deposited it into his law office account with the notation for “Sweetwater Mgt - payroll.”³¹⁵

In addition, he arranged for a payroll company, Paychex Inc., to provide him with checks which were imprinted with Sweetwater Management, Inc. at the top and his law office account number, No. [xxx-xxxx]43, at the bottom. Beginning on June 30, 2006, Mr. Nagler began using those checks “to pay wages due to the employees of Sweetwater Management, Inc. and the appropriate payroll tax obligations of the company.”³¹⁶ Mr. Nagler told the Subcommittee that he paid these expenses at the direction of Mr. Obiang.³¹⁷

The following chart lists the checks that were imprinted with Sweetwater Management, Inc., drawn on the Nagler law office account, and paid to Obiang-related employees during June 30 to July 31, 2006.

Sweetwater Management Checks Drawn on Nagler Law Office Account to Sweetwater Employees			
Date	Check #	Amount	Bates
6/30/06	11003	\$ 719.87	CNB0001956
6/30/06	11008	\$ 983.50	CNB0001956
6/30/06	11004	\$ 2,360.63	CNB0001957
6/30/06	11006	\$ 731.06	CNB0001957
6/30/06	11009	\$ 992.67	CNB0001957
6/30/06	11007	\$ 2,072.95	CNB0001955
7/14/06	11013	\$ 1,460.27	CNB0001963
7/14/06	11012	\$ 2,322.95	CNB0001958
7/14/06	11011	\$ 2,360.63	CNB0001958
7/14/06	11010	\$ 1,404.63	CNB0001959
7/31/06	11018	\$ 1,460.27	CNB0001959
7/31/06	11015	\$ 2,360.63	CNB0001957
7/31/06	11014	\$ 1,442.64	CNB0001962
7/31/06	11017	\$ 2,115.21	CNB0001961
7/31/06	11016	\$ 2,322.95	CNB0001961
Source- City National Bank		Total- \$25,110.86	

Prepared by Subcommittee

Mr. Nagler also had checks imprinted with Sweetwater Management, Inc. at the top and the number of his attorney-client account, No. [xxx-xxxx]27, at the bottom. In a written response to questions from this Subcommittee, Mr. Nagler’s attorney stated that from “June 26, 2006 through August 23, 2006, Mr. Nagler paid certain of Client’s household and living expenses from his trust account, at the Client’s request and with funds provided by the Client for

³¹⁴ 5/30/03 account statement from City National Bank, CNB0000153.

³¹⁵ 6/30/06 check from Mr. Nagler to himself, CNB0002320.

³¹⁶ 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0004.

³¹⁷ Id., at 08.

that purpose.”³¹⁸ The “Client” referred to is Mr. Obiang. Altogether, his account disbursed more than \$368,000 in Obiang-related funds.³¹⁹

During this period, Mr. Obiang relied heavily on Mr. Nagler to pay his bills. In July 2006, for example, after Mr. Nagler advised Mr. Obiang’s assistant, Melinda Dehaven, that he would be out of town for four days,³²⁰ Ms. Dehaven sent him the following email:

“Mr. Nguema left me a message and wanted me to ask you if you go out of town on those dates who will be available to write checks while you are away. ... [T]here are numerous bills that are awaiting his approval along with purchases that he will be making upon his arrival and will need to be paid by check. ... [P]lease advise so I can let him know.”³²¹

According to Mr. Nagler’s attorney, Mr. Nagler stopped paying Mr. Obiang’s expenses on or about August 23, 2006.³²² Mr. Berger had already agreed to undertake this task in an agreement he had signed the prior month with Mr. Obiang.³²³ Even after Mr. Nagler stopped paying Mr. Obiang’s bills, however, he apparently retained some Obiang-related funds in his accounts. An email dated May 10, 2007, for example, sent by Mr. Nagler to Mr. Obiang indicates that he was then holding more than \$4,000 in Obiang funds in his attorney-client account at City National Bank:

“Mr. Nguema, I note that I am still holding \$4,185.10 of your funds in my trust account from last August. This amount was intended to cover check #3039 to Raffles L’Ermitage...to cover 5 nights at the hotel.”³²⁴

Obiang Connection Uncovered. In July 2008, the Subcommittee asked City National Bank for records related to Mr. Obiang. In response, the bank conducted a search and learned for the first time that Mr. Obiang had used the Nagler attorney-client and law office accounts to pay his expenses during the summer of 2006.³²⁵ The bank also learned of the checks that Mr. Nagler had created. City National Bank told the Subcommittee that it did not view these transactions as suspicious, but did deem them to be inconsistent with the purposes of the Nagler attorney-client and law office accounts.³²⁶ City National Bank told the Subcommittee that it had determined not to close the Nagler accounts, but rate them as “high risk” subject to enhanced monitoring.³²⁷

In 2004, City National Bank’s regulator, the Office of the Comptroller of the Currency (OCC), had determined that the bank’s anti-money laundering controls were inadequate. In

³¹⁸ 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0008.

³¹⁹ *Id.*, at 09.

³²⁰ 7/8/06 email from Mr. Nagler to Ms. DeHaven, SEN010356.

³²¹ 7/9/06 email from Ms. DeHaven to Mr. Nagler, SEN010356.

³²² 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0009.

³²³ See 7/17/06 contract between Mr. Berger and Mr. Obiang in which Mr. Berger agreed to assist Unlimited Horizon, Inc. in managing Mr. Obiang’s Malibu property and to pay Mr. Obiang’s personal bills upon request, SEN000001.

³²⁴ 5/10/07 email from Mr. Nagler to Mr. Obiang, SEN004055.

³²⁵ Subcommittee staff interview with City National Bank officials, March 9, 2009.

³²⁶ *Id.*

³²⁷ *Id.*

2005, the OCC entered into a Consent Agreement with the bank to strengthen its AML and other compliance programs, including by establishing controls to detect and report potential money laundering by immediate family members of senior foreign political figures.³²⁸ Despite this instruction from its regulators to tighten its controls to detect PEP activities, City National Bank did not investigate the EG wire transfers into the Nagler attorney-client and law office accounts, even when the wire transfers explicitly named Mr. Obiang; did not detect Mr. Obiang's use of those accounts; and did not take any action against Mr. Nagler, even after discovering how he had hidden Mr. Obiang's utilization of his accounts in 2006.

(iii) Pacific Mercantile Bank

At the same time that Mr. Nagler was using his City National Bank attorney-client and law office accounts to pay Mr. Obiang's bills, he was working to help Mr. Obiang open accounts at another bank. In July 2006, Mr. Nagler contacted an acquaintance at Pacific Mercantile Bank (PMB) in Beverly Hills, California, and urged the bank to open accounts for Mr. Obiang. PMB is a small state-chartered bank, with less than ten branches in southern California.³²⁹ The bank agreed to open five accounts in the name of Mr. Obiang and his Sweetwater corporations. For the first three months, the accounts were inactive. Then, after an EG wire transfer deposited nearly \$500,000 into Mr. Obiang's personal checking account and he disbursed nearly all of the funds over the course of the next month, PMB decided it was ill-equipped to oversee such high risk transactions and closed the accounts.

Account Opening. The documents reviewed by the Subcommittee show that, on July 20, 2006, Mr. Nagler sent an email to an acquaintance who worked as an Executive Vice President at the PMB Beverly Hills branch.³³⁰ Mr. Nagler stated in the email that he wanted to introduce Mr. Obiang to the bank, describing him as the son of the EG President, an EG Minister, and someone who wanted to become active in the U.S. entertainment industry. Mr. Nagler described Equatorial Guinea as "an ally of the United States and a major supplier of oil to this country," and downplayed the negative reports on the country's interactions with Riggs Bank. He wrote: "I suggest that Mr. Nguema will become a valued customer of the bank and someone with whom you will be proud to have a business relationship."³³¹

Mr. Nagler also wrote that Mr. Obiang "has formed two entities, a corporation and a limited liability company, to hold and manage his residence here and would like to establish one or more bank accounts for these entities. ... Currently, I am the sole signing officer on his funds and have been paying bills out of my trust account."³³²

According to Mr. Nagler, on or about September 15, 2006, he accompanied Mr. Obiang to the bank and introduced him to the PMB Executive Vice President.³³³ That same day,

³²⁸ See Office of Comptroller of the Currency, Consent Order # 2005-16, In the Matter of City National Bank, <http://www.occ.treas.gov/ftp/eas/EA2005-16.pdf>; Subcommittee staff interview with City National Bank officials, March 9, 2009.

³²⁹ See PMB press release, November 12, 2009, on its website, www.pmbank.com.

³³⁰ 7/20/06 email from Mr. Nagler to PMB, PSI-Pacific_Mercantile_Bank-01-0114-15.

³³¹ *Id.*, at 0115.

³³² *Id.*

³³³ 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0005.

Mr. Obiang completed paperwork to open five accounts for himself and his companies.³³⁴ Account No. 3109386 was a personal checking account in his name, and was opened with an initial cash deposit of \$3,000.³³⁵ According to PMB, this was the only account of the five that was actually funded.³³⁶

Account No. 3401130 was a personal savings account in Mr. Obiang's name.³³⁷ On the account opening form, he indicated that he would be making an initial deposit of \$500,000, but this deposit was not actually made.³³⁸ Account No. 3109378 was opened in the name of Sweetwater Malibu, LLC,³³⁹ with the account opening documentation identifying Mr. Obiang as the company's sole owner and manager.³⁴⁰ Account No. 3109360 was opened in the name of Sweetwater Management, Inc.,³⁴¹ with the account opening documentation identifying Mr. Obiang as the company president,³⁴² chief executive officer, director,³⁴³ and sole owner.³⁴⁴ According to PMB, despite the completed paperwork, neither of these corporate accounts was ever funded. Mr. Obiang also completed a form to purchase a Certificate of Deposit (CD) at the bank to be funded with a \$1 million wire transfer.³⁴⁵ Again, however, according to PMB, this CD was never actually purchased.

Mr. Obiang provided slightly different information on the various account opening forms. In one, he described his "Employer" as: "Self[;] Minister of Agriculture/Forestry."³⁴⁶ In others, he described himself as an "Investor" or "Self Employed."³⁴⁷ He gave the Malibu residence as his home address.³⁴⁸ He also provided a copy of a U.S. social security card in his name.³⁴⁹

³³⁴ 9/15/06 PMB account opening documentation, SEN008935-9021. See also handwritten notations regarding these accounts, PSI-Pacific_Mercantile_Bank-01-0201; 9/15/06 email from Mr. Nagler to PMB regarding accounts, PSI-Pacific_Mercantile_Bank-01-0220.

³³⁵ 9/15/06 PMB cash receipt, PSI-Pacific_Mercantile_Bank-01-0016.

³³⁶ Subcommittee interview of Pacific Mercantile Bank officials, November 16, 2009.

³³⁷ 9/15/06 PMB form, PSI-Pacific_Mercantile_Bank-01-0196-98; Subcommittee interview of Pacific Mercantile Bank officials, Nov. 16, 2009.

³³⁸ 9/15/06 PMB account opening form, SEN008956; Subcommittee interview of Pacific Mercantile Bank officials, Nov. 16, 2009.

³³⁹ 9/15/06 PMB account opening documentation, PSI-Pacific_Mercantile_Bank-01-0256-75.

³⁴⁰ 9/15/06 PMB account opening documentation, PSI-Pacific_Mercantile_Bank-01-0259-60, 262-63, 281, 290; 9/15/06 Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Substitute Form W-8BEN, PSI-Pacific_Mercantile_Bank-01-0223.

³⁴¹ 9/15/06 PMB account opening documentation, PSI-Pacific_Mercantile_Bank-01-0210-219.

³⁴² *Id.*, at 213, 222, 232-33, and 242.

³⁴³ *Id.*, at 217.

³⁴⁴ *Id.*, at 221. See also 9/15/06 Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Substitute Form W-8BEN, PSI-Pacific_Mercantile_Bank-01-0223.

³⁴⁵ See 9/15/06 PMB form to purchase a CD, PSI-Pacific_Mercantile_Bank-01-0184; 9/18/06 PMB Certificate of Deposit Receipt, PSI-Pacific_Mercantile_Bank-01-0188. Despite these documents, PMB told the Subcommittee that the \$1 million wire transfer never arrived, and the CD was never actually purchased. Subcommittee interview of Pacific Mercantile Bank officials, November 17, 2009. See also 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0005.

³⁴⁶ 9/15/06 PMB Individual Account Holder form, PSI-Pacific_Mercantile_Bank-01-0194-95. See also PMB Individual Account Holder form, PSI-Pacific_Mercantile_Bank-01-0280.

³⁴⁷ PMB new account forms, See PSI-Pacific_Mercantile_Bank-01-0184, 198, 210.

³⁴⁸ See, e.g., 9/15/06 PMB Individual Account Holder form, PSI-Pacific_Mercantile_Bank-01-0194.

³⁴⁹ See copy of social security card, PSI-Pacific_Mercantile_Bank-01-0203 (Sealed Exhibit). This social security number was assigned to Mr. Obiang by the Social Security Administration, apparently in connection with his

In addition, Mr. Obiang provided the following memorandum bearing his signature to Pacific Mercantile Bank:

“If Teodoro Nguema Obiang is out of the country and needs to conduct an internal transfer via phone, it is acceptable between personal and business accounts, and vice versa. ... This internal transfer from business to personal is approved by [the PMB Executive Vice President].”³⁵⁰

This document established a clear link between the Obiang personal and corporate accounts.

Due Diligence Review. Within a few days after opening the five accounts, PMB initiated a due diligence review of Mr. Obiang. On July 21, 2006, the PMB Vice President sent an email to his colleagues: “This is a prospect who really we need to check his background with regard to all regulatory compliances including OFAC and Bank Secrecy Act/MLA. ... Pat, I would suggest that you check his background thoroughly through all means available and then we can decide if the risk is warranted to have him as a client.”³⁵¹ On July 25, 2006, his colleague responded:

“I can relay that the country is not on any government AML watch-list, including the FATF. The individual is not an SDN on OFAC and has no derogatory information in Lexis Nexis. Our main challenge is the BSA [Bank Secrecy Act] monitoring, especially as it relates to an attorney representing a PEP (Professional Front Scheme is a common AML scheme and one the regulators will be right on top of when they monitor our accounts). So it becomes a business risk decision, and keeping in mind that we have a BSA Officer (in contrast to a dept that larger banks have to monitor).”³⁵²

Three weeks later, on September 18, 2006, PMB’s outside vendor, E-Funds, which performed “verification checks” for prospective clients reported that Mr. Obiang was a government official in Equatorial Guinea and a Politically Exposed Person (PEP), but also incorrectly stated that he was a U.S. citizen.³⁵³ PMB told the Subcommittee that it found “no derogatory information in Lexis Nexis” about Mr. Obiang, even though in 2004, the Subcommittee had issued a widely-publicized report and held hearings which raised questions about him.³⁵⁴ In addition, because Equatorial Guinea was not on any government AML watch-list, PMB decided to rank it as a “low risk” country.³⁵⁵

After collecting the due diligence information, PMB used an internal risk scoring model which determined that Mr. Obiang was a high-risk client.³⁵⁶ Under PMB’s individual scoring model, 0 to 5 points was a low risk client; 6 to 9 points was a moderate risk client; and 10 or

California corporation. 12/10/09 letter from the Social Security Administration to the Subcommittee, no bates number.

³⁵⁰ 9/15/06 memorandum from Mr. Obiang to PMB, SEN008995.

³⁵¹ 7/21/06 internal PMB email, PSI-Pacific_Mercantile_Bank-01-0114.

³⁵² 7/25/06 internal PMB email, PSI-Pacific_Mercantile_Bank-01-0114.

³⁵³ E-Funds ID Verification Results for Teodoro N Obiang, PSI-Pacific_Mercantile_Bank-01-0179-81.

³⁵⁴ Subcommittee interview of Pacific Mercantile Bank officials, November 16, 2009.

³⁵⁵ See, e.g., PMB Individual Scoring Model, PSI-Pacific_Mercantile_Bank-01-0094 (Sealed Exhibit).

³⁵⁶ PMB Individual Scoring Model, PSI-Pacific_Mercantile_Bank-01-0092-95 (Sealed Exhibit).

more points was a high risk client requiring “enhanced due diligence.”³⁵⁷ The model automatically assigned a score of 15 to any PEP client.³⁵⁸ PMB documents indicate that its personnel performed two risk ratings of Mr. Obiang, scoring him at 25 and 34, with his elevated scores due primarily to his PEP status.³⁵⁹ PMB also told the Subcommittee that Mr. Obiang was the bank’s first and only PEP client. According to PMB, while it concluded in 2006 that it could open an account for Mr. Obiang with enhanced AML monitoring, it said that, under its current policy, it would no longer open an account for him due the difficulty associated with monitoring PEP accounts.³⁶⁰

On September 19, 2006, PMB sent a letter to Mr. Obiang stating: “Thank you for choosing Pacific Mercantile Bank and the opportunity to serve you.” It confirmed the opening of his accounts and assigned him a “personal banker.”³⁶¹ A copy of the letter was sent to Mr. Nagler.

For the first three months they were open, the accounts were apparently unused. Then on December 14, 2006, Mr. Obiang’s personal checking account received a wire transfer for nearly \$500,000 from Somagui Forestal in Equatorial Guinea.³⁶² Over the next month, Mr. Obiang wrote eight checks for various purposes, including one to pay for more than \$253,000 in California property taxes. Those disbursements, which exceeded \$446,000, consumed nearly all the available funds in the account. The eight checks were as follows.

Transactions Involving Obiang Account at PMB December 2006-January 2007				
Date	Transaction	Amount	Source or Recipient	Bates
12/14/06	Wire deposit	\$ 499,943.53	“Somagui Forestal”	PSI-Pacific_Mercantile_Bank-01-0020
12/18/06	Check No. 1001	\$ 5,400.00	“Las Vegas Golf & Tennis”	PSI-Pacific_Mercantile_Bank-01-0023
12/19/06	Check No. 1002	\$ 2,174.00	“DMV” for “Porsche”	PSI-Pacific_Mercantile_Bank-01-0025
12/20/06	Check No. 1007	\$ 22,289.00	“Dolce & Gabana”	PSI-Pacific_Mercantile_Bank-01-0027
12/21/06	Check No. 1008	\$ 54,720.00	“Saurman Inv. SC”	PSI-Pacific_Mercantile_Bank-01-0029
12/21/06	Check No. 1009	\$ 51,903.14	“Starlink Tours”	PSI-Pacific_Mercantile_Bank-01-0031
12/21/06	Check No. 1010	\$ 50,000.00	“Washington Mutual” ³⁶³	PSI-Pacific_Mercantile_Bank-01-0087, 0088
12/21/06	Check No. 1011	\$ 253,204.46	“LA County Tax Collector” for “Tax-property 07”	PSI-Pacific_Mercantile_Bank-01-0033
1/04/07	Check No. 1012	\$ 56,544.00	“Saurman Inv.Svc”	PSI-Pacific_Mercantile_Bank-02-0001
Source: Pacific Mercantile Bank		\$499,943.53 – Total Deposits \$496,234.60 – Total Disbursements		

Prepared by Subcommittee

PMB told the Subcommittee that the \$500,000 wire transfer in mid-December triggered a review of the account.³⁶⁴ In addition, other documentation indicates that Washington Mutual

³⁵⁷ Id., at 93.

³⁵⁸ Id.

³⁵⁹ Id., at 92, 95 (Sealed Exhibit).

³⁶⁰ Subcommittee interview of Pacific Mercantile Bank officials, November 17, 2009.

³⁶¹ 9/19/06 letter from PMB to Mr. Obiang, PSI-Pacific_Mercantile_Bank-01-0089.

³⁶² 12/14/06 PMB Wire Original Information Report, PSI-Pacific_Mercantile_Bank-01-0020-21.

³⁶³ This check apparently was not cashed. An internal PMB email indicated that the check was intended to pay a Washington Mutual credit card bill, but Washington Mutual told PMB that the credit card limit was lower. See PSI-Pacific_Mercantile_Bank-01-0087-88.

contacted PMB to inquire about the authenticity of a \$50,000 check drawn on the Obiang checking account, which further directed the bank's attention to the account activity.³⁶⁵ On February 8, 2007, PMB closed Mr. Obiang's checking account and issued a cashier's check to him for the remaining balance of \$56,693.93.³⁶⁶ PMB told the Subcommittee that it closed the account, because as a small bank, monitoring the account of a known PEP was too burdensome.³⁶⁷ According to PMB, it also viewed at least some of the account activity as suspicious.

(c) Obtaining Insurance for Obiang Assets

In addition to incorporating shell companies, paying his bills, and helping Mr. Obiang open U.S. bank accounts, Mr. Nagler worked with Paul Finestone of Finestone Insurance Agency to obtain insurance for Mr. Obiang's Malibu residence and a fleet of 32 vehicles.³⁶⁸ After several U.S. insurance companies declined to provide either homeowners or automobile insurance to Mr. Obiang, at Mr. Nagler's request, Mr. Finestone undertook an extensive effort to secure insurance for Mr. Obiang's U.S. assets, including by contacting numerous companies, defending Mr. Obiang's reputation, considering leasing arrangements, and utilizing renters and temporary insurance.

Homeowners Insurance for Malibu Property. In 2006, Mr. Nagler asked Mr. Finestone to obtain homeowners insurance for Mr. Obiang's newly purchased residence at 3620 Sweetwater, Malibu, California. Initially, Mr. Finestone sought to transfer the coverage maintained by the previous homeowner.³⁶⁹ Mr. Finestone told Mr. Nagler in an email that given the carrier's history of coverage of the residence, the transfer should be "very easily accomplished" "[a]s long as your client is not 'notorious.'"³⁷⁰ The existing carrier did not, however, agree to transfer coverage, and in May 2006, Mr. Finestone began contacting other insurance companies.³⁷¹ On June 2, 2006, Mr. Finestone notified Mr. Nagler that American International Group, Inc. (AIG) had decided to withdraw an offer after learning more about Mr. Obiang.³⁷²

"We have very bad news indeed. We have this instant received a fax from the AIG underwriters representative who advises that they have reviewed web sites concerning Teodoro Obiang and that they are withdrawing the written quotations submitted to us for you on all of the coverage for the estate."³⁷³

³⁶⁴ Subcommittee interview of Pacific Mercantile Bank officials, November 17, 2009.

³⁶⁵ See 1/11/07 internal PMB email, PSI-Pacific_Mercantile_Bank-01-0087; 1/11/07 review of checking account activity, PSI-Pacific_Mercantile_Bank-01-0090. See also 2/5/07 review of checking account, PSI-Pacific_Mercantile_Bank-01-0096.

³⁶⁶ 2/8/07 check from PMB to Mr. Obiang, PSI-Pacific_Mercantile_Bank-01-0038.

³⁶⁷ Subcommittee interview of Pacific Mercantile Bank officials, November 17, 2009.

³⁶⁸ 12/12/06 email from Mr. Nagler to Ms. Everett, SEN013561; 6/14/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010929; 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.

³⁶⁹ 5/5/05 email from Mr. Finestone to Mr. Nagler, SEN011296.

³⁷⁰ Id.

³⁷¹ 5/24/06 email from Mr. Finestone to Mr. Nagler, SEN011148.

³⁷² 6/2/06 email from Mr. Finestone to Mr. Nagler, SEN011137.

³⁷³ Id.

Another insurance company submitted five questions to Mr. Finestone seeking additional information about Mr. Obiang, including his occupation and need for armed security guards at the Malibu residence.³⁷⁴ Mr. Finestone responded that Mr. Obiang was “independently wealthy,” an “investor and collector,” and required armed security because of the threat of kidnapping and ransom inherent with his wealth.³⁷⁵ Additionally, Mr. Finestone noted that Equatorial Guinea “is a major supplier of oil to America and a critical interest of American energy needs;” and stated that “the father [President Obiang] is no better and no worse than the Saudi Royal family. ... We insure billions and billions of dollars of Saudi property bought with our oil money here in America and AIG has no problem handling a great deal of that business.”

On June 9, 2006, Mr. Finestone advised Mr. Nagler that Homeland Insurance had offered to provide one year of homeowners coverage for about \$85,000.³⁷⁶ In his email to Mr. Nagler, Mr. Finestone wrote: “WE ARE CERTAIN THAT THE INSURER KNOWS WHO THEY ARE INSURING.”³⁷⁷ On June 14, 2009, Mr. Nagler advised Mr. Obiang to accept the coverage, because it was the only policy available.³⁷⁸

Mr. Nagler provided Mr. Obiang with a “Homeowner’s Summary” from Mr. Finestone showing that he had contacted eleven insurance agencies and only one had agreed to provide insurance on the Malibu property.³⁷⁹ The summary prepared by Mr. Finestone showed that two major insurers, Chubb Insurance and AIG Private Client, had declined to provide the homeowners insurance, because “client profile too high” and “will not write due to political exposure.”³⁸⁰ Although others cited brush fire dangers and a high property value as reasons for the declination, Mr. Finestone noted in his summary that “clearly politics is part of the placement process on this property.”³⁸¹ Mr. Finestone characterized one insurer’s decision, presumably that of Homeland Insurance, to provide property damage but not liability insurance, in the following email to Mr. Nagler:

“We had a single market prepared to accept coverage on the homeowners and they refused liability coverage given whom the client is and their perceived exposure to political risk and ‘social’ risk.”³⁸²

He also wrote that “Farmers Insurance does not fully appreciate whom their client is at this time and we hesitate to trip them into a detailed review given the current automobile savings.”³⁸³ Mr. Finestone was negotiating with Farmers at the time to provide both homeowners and automobile insurance to Mr. Obiang.³⁸⁴

Approximately one year later, in August 2007, it appears that, although Homeland Insurance had provided property damage coverage, property liability insurance had still not been

³⁷⁴ 6/7/06 email from Mr. Finestone to Mr. Nagler, SEN011068.

³⁷⁵ Id at 11069.

³⁷⁶ Id.

³⁷⁷ 6/9/06 email from Mr. Finestone to Mr. Nagler, SEN011045.

³⁷⁸ 6/14/06 email from Mr. Nagler to Mr. Obiang, SEN010918.

³⁷⁹ 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.

³⁸⁰ Id.

³⁸¹ Id.

³⁸² 4/29/07 email from Mr. Finestone to Mr. Nagler, SEN008867-69.

³⁸³ 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.

³⁸⁴ 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010296, 010300-301.

obtained.³⁸⁵ In an email to Mr. Obiang, Mr. Nagler recommended that he create the impression he was leasing the Malibu property to justify rental insurance that would provide added liability protection:

“[Y]ou should have a lease prepared between the limited liability company that owns your Sweetwater home and you individually showing that you are leasing the house from the company. This will support the so called renters policy that provides liability protection for your protection.”³⁸⁶

This email suggests that Mr. Nagler, a licensed attorney, was advising his client to create a fictitious lease between himself and Sweetwater Malibu, LLC to “support” a renters insurance policy for the Malibu residence when, in fact, Mr. Obiang was the beneficial owner of that company and thus would be leasing the house from himself.

Automobile Insurance. Mr. Nagler and Mr. Finestone also worked together to obtain insurance for Mr. Obiang’s fleet of 32 motorcycles and automobiles.

On June 12, 2006, Mr. Finestone notified Mr. Nagler that Mr. Obiang’s lack of a valid California driver’s license was prohibitive to obtaining reasonably priced motorcycle insurance.³⁸⁷ Apart from recommending that Mr. Obiang obtain a California license, he proposed two alternatives to secure the necessary insurance. First, he proposed that Mr. Obiang lease the motorcycles to Mr. Nagler for \$1 per year to be lent back to Mr. Obiang.³⁸⁸ Second, he proposed acquiring insurance for the entire fleet of vehicles, using licensed drivers in addition to Mr. Obiang.³⁸⁹ Mr. Finestone wrote:

“[I]f there were a couple of relatively clean drivers with CA information that the underwriters could verify on the drivers list which forms part of the application, it makes it easier for them to reasonably accept a foreign non California licensed driver as the primary driver. We continue to look for every possibility to best secure and put to bed all of the various problems for Mr. Obiang”³⁹⁰

The two alternatives suggested by Mr. Finestone involve creating either a fictitious lease or the misimpression that other California drivers would be using the vehicles owned by Mr. Obiang.

In July 2006, automobile insurance for all of Mr. Obiang’s vehicles was still unresolved. It appears that Mr. Obiang was receiving temporary coverage for at least some vehicles through State Farm using a 15-day grace period on pending applications for insurance.³⁹¹ However, on July 24, State Farm advised Mr. Finestone that the temporary coverage would expire on July 26.³⁹² To keep Mr. Obiang covered for an additional 15 days, it appears that Mr. Finestone used

³⁸⁵ 8/11/07 email from Mr. Nagler to Mr. Obiang, SEN004091.

³⁸⁶ Id.

³⁸⁷ 6/12/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010987.

³⁸⁸ Id.

³⁸⁹ 6/14/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010929-32, 34.

³⁹⁰ Id. Mr. Finestone also provided Mr. Nagler with a sample letter from the Government of Equatorial Guinea to certify that Mr. Obiang had a clean driving record in that country. 6/13/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010960-61.

³⁹¹ 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010300.

³⁹² 7/25/06 email from Ms. DeHaven to Mr. Finestone, SEN010306.

his friendship with a State Farm employee to renew the pending applications, as explained in this email he sent to Mr. Nagler.

“We are going to get another 15 days by collapsing the current applications. ... My friend will then re enter all of the data for a second new application in return for an outrageously expensive sushi dinner at his favorite place. ... I think I can only do this once (depending on his appetite for a sushi fix and the risk of doing this if his superiors observe the action – they would not approve). ...[T]hat gives us another 15 days from today to get this done.”³⁹³

Mr. Finestone openly advised Mr. Nagler of this deceptive scheme to obtain a continuance of automobile insurance for Mr. Obiang in violation of State Farm policy.

Billing records obtained by the Subcommittee indicate that Mr. Obiang was able to obtain automobile and motorcycle insurance for the year 2007 to 2008, from Hagerty Insurance, Essex Insurance, and Progressive Insurance, at a cost of more than \$274,000. These policies appear to have ensured 32 motorcycles and automobiles, including seven Ferraris, five Bentleys, four Rolls Royces, two Lamborghinis, two Maybachs, two Mercedes, two Porches, one Aston-Martin, and one Bugatti, with a collective insured value of \$9.5 million.³⁹⁴

(d) Awareness of the Suspect Origins of Obiang Funds

During the two years that Mr. Nagler worked for Mr. Obiang, he was well aware of Mr. Obiang’s background and the suspect origins of his funds. On August 11, 2005, approximately one month before Mr. Nagler began working for Mr. Obiang, Rosalina Roma, an Obiang assistant, informed Mr. Nagler in an email that his future client “is Teodoro Nguema Obiang from Equatorial Guinea, his father is the president of this country.”³⁹⁵ In July 2006, Mr. Nagler sent a previously-cited email to Pacific Mercantile Bank defending Mr. Obiang’s reputation and noting that, “Neither Mr Nguema nor his father has ever been convicted or even charged with violating US law.”³⁹⁶ Throughout 2006, in connection with his work to obtain home and automobile insurance for Mr. Obiang, Mr. Nagler was exposed to insurance company concerns about Mr. Obiang’s reputation and source of funds.

In late 2006, Mr. Nagler asked the public relations firm Winner & Associates to propose a strategic communications plan for Mr. Obiang. On November 21, 2006, Winner & Associates sent Mr. Nagler a proposal which stated in part:

“[W]e understand that Mr. Nguema desires to communicate on a range of issues including the progress being made by Equatorial Guinea. Several of the issues that have helped bring about that progress involve positive developmental programs that are unknown or misunderstood by certain non-governmental organizations which have been communicating negatively about Mr. Nguema and the government of Equatorial Guinea. ... [W]e believe that our services in the areas of crisis communication, media relations,

³⁹³ 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEB010297.

³⁹⁴ 9/17/07 policy statement from Hagerty Insurance, SEN000213 to SEN000221; 10/15/07 invoice from Finestone Insurance Agency, SEN000222; 6/21/07 invoice from Finestone Insurance Agency, SEN000293.

³⁹⁵ 8/11/05 email from Ms. Romo to Mr. Nagler, SEN005794.

³⁹⁶ 7/20/06 email from Mr. Nagler to PMB, PSI-Pacific_Mercantile_Bank-01-0114-15.

third-party advocacy, and strategic positioning can assist in communicating positive information about Mr. Nguema, his government, and his country, while at the same time curtailing what has become a tide of misinformation put into a negative context by Mr. Nguema's adversaries. ... The negative communications we are monitoring seem to be more frequent and the sooner we can intervene, the better."³⁹⁷

Approximately one month later on January 19, 2007, Winner & Associates emailed Mr. Nagler an article entitled, "Malibu Bad Neighbor; A Dictator in Training Buys His Way in as Politically Active Superstars Stay Mum."³⁹⁸ The next month, on February 6, 2007, apparently without an agreement to provide services, Winner & Associates sent Mr. Nagler an article entitled, "Dictator's Son Moves in; Time for Malibu to Speak Out," and warned: "Dear George, The communications context for your client appears to be going further downhill. There will be a point beyond which we will be unable to help."³⁹⁹

On another occasion in June 2006, when Mr. Obiang had instructed his staff to secure space for a private jet he had just purchased,⁴⁰⁰ the owner of an airplane hangar who was an acquaintance of Mr. Nagler sent him the following email:

"I got the feeling when I did not get the material that he was not interested in disclosing his client's [Mr. Obiang's] background. I don't feel comfortable in being responsible for someone I have no idea who he is and on top of that, one who has diplomatic credentials."⁴⁰¹

Mr. Nagler responded with a recommendation for Mr. Obiang in which he listed four professional references, two associated with his luxury car collection, one associated with his private jet, and Neil Baddin, a Coldwell Banker realtor who helped arrange Mr. Obiang's purchase of his Malibu property.⁴⁰² Mr. Nagler also disclosed that Mr. Obiang was the EG Minister of Agriculture and Forests, requested that information be kept confidential, and asked the hangar owner to call him directly to discuss his concerns.⁴⁰³

Two months later, on August 14, 2007, an Obiang employee, Ms. Romo, sent an email to Mr. Berger stating that Mr. Obiang had terminated his relationship with Mr. Nagler.⁴⁰⁴ Mr. Nagler told the Subcommittee that his employment by Mr. Obiang ended in September 2007.

(3) Analysis

The Obiang case history demonstrates how a determined PEP can employ the services of U.S. attorneys to bring millions of dollars in suspect funds into the United States through U.S.

³⁹⁷ 11/21/06 email from Winner & Associates to Mr. Nagler, SEN008925.

³⁹⁸ 1/19/07 email from Winner & Associates to Mr. Nagler, SEN008895.

³⁹⁹ 2/6/07 email from Winner & Associates to Mr. Nagler, SEN008880.

⁴⁰⁰ 6/7/06 fax from Mr. Nagler to airport hanger contact, SEN011075.

⁴⁰¹ 6/7/06 email to Ms. DeHaven, SEN011096.

⁴⁰² 6/7/06 fax from Mr. Nagler to airport hanger contact, SEN011075.

⁴⁰³ Id.

⁴⁰⁴ 8/14/07 email from Ms. Romo to Mr. Berger, SEN000589. Throughout the email, Ms. Romo referred to a "Mr. Smith," seemingly in place of Mr. Obiang's name. This practice has been noted in other messages as well. See, e.g, SEN011704-05; SEN010918; SEN005767; SEN004091.

financial institutions. Mr. Berger and Mr. Nagler helped Mr. Obiang utilize accounts at six different U.S. banks, both large and small, from 2004 to 2008. Most of these accounts were not opened in Mr. Obiang's name, but were set up for him to use without alerting the host bank and often without triggering the bank's AML and PEP controls for months or sometimes years. The tactics used in this case history expose a variety of AML and PEP deficiencies at U.S. banks that ought to be strengthened.

Union Bank of California, for example, had designated Equatorial Guinea as a high-risk country in 2004, and identified and closed an Obiang employee account and a shell company account receiving EG funds. The bank did not know for three years, until 2007, that Mr. Obiang was still using the bank's services by utilizing two U.S. shell company accounts for Unlimited Horizon as well as Mr. Berger's law office account at the bank. Mr. Berger opened each of those accounts, but did not disclose that Mr. Obiang was the beneficial owner of Unlimited Horizon or that the law office account would be conducting transactions on Mr. Obiang's behalf. In 2006, UBOC's routine monitoring systems flagged high-dollar EG wires that had begun to be sent to the Berger law office account. But UBOC personnel took six months to initiate a review of those wire transfers, ironically because its AML personnel were negotiating a deferred prosecution agreement with the U.S. Justice Department over its inadequate AML program. When the AML department finally reviewed the EG wire transfers, UBOC immediately uncovered Mr. Obiang's use of the shell company and law office accounts, and immediately closed them. The key AML deficiencies that allowed Mr. Obiang to take advantage of UBOC were the absence of beneficial ownership information for Unlimited Horizon and the bank's failure to promptly review the data it had collected on high risk wire transfers.

Bank of America also opened accounts for a U.S. shell company, Beautiful Vision, at the request of Mr. Berger, a longstanding customer of the bank. Mr. Berger did not disclose that Mr. Obiang was the beneficial owner of the company or explain why Mr. Obiang was the sole signatory on one of the Beautiful Vision accounts. From 2004 to 2005, Mr. Obiang made open use of one of the Beautiful Vision accounts by signing numerous, high-dollar checks that together exceeded \$7.6 million in less than a year, but Bank of America did not conduct a due diligence review of him, did not learn of his PEP status, and did not review the account activity, even after Mr. Obiang used Beautiful Vision account funds to purchase a \$3.3 million cashier's check and cashed it in Equatorial Guinea. In 2005, a flurry of wire transfers involving a newly-opened Beautiful Vision account did trigger a review, and Bank of America quickly discovered Mr. Obiang's connection to the company, and closed its accounts. However, the bank took no action against the Berger accounts, even though he had opened the Beautiful Vision accounts in the first place and hidden Mr. Obiang's involvement. Over the next year, Mr. Obiang sent a number of high-dollar EG wire transfers to Mr. Berger's attorney-client account at Bank of America, most of which Mr. Berger transferred within days to other Obiang-related accounts, but the bank did not review the account activity. It was only in 2007, that Bank of America conducted a review, quickly discovered Mr. Obiang's use of the account, and closed it. The AML deficiencies here include the failure to review high-risk wire transfers sent to an attorney-client account; the failure to take action against an attorney who violated bank policy by hiding the beneficial owner behind a shell company account; the failure to examine shell company accounts with multi-million-dollar account activity; and the failure to perform a due diligence of all account signatories.

Like UBOC and Bank of America, Citibank also opened a U.S. shell company account at the request of Mr. Berger, but before doing so, conducted a much more detailed due diligence review of Unlimited Horizon. Citibank asked, for example, for information about the company's beneficial owners, inquired about any PEP involvement, and physically visited the business address of the company. Its oversight efforts, however, were frustrated by Mr. Berger's willingness to provide deceptive information about the company. Mr. Berger was also careful to ensure that no high-dollar EG wire transfers were sent to the Unlimited Horizon account at Citibank that might trigger a bank review, instead providing funding through checks drawn on his attorney-client account at Bank of America. Despite these precautions, Citibank's monitoring of the account activity led the bank to question the transactions taking place, and it closed the account ten months after it opened. Despite its reasonable AML efforts, Citibank was taken advantage of by Mr. Obiang and Mr. Berger. The key problem was Citibank's inability to identify the true owner of Unlimited Horizon, a problem that would have been less difficult if U.S. shell companies were required to identify their beneficial owners, under oath, to the State where the company was formed. That type of incorporation requirement might also have led Mr. Berger to provide accurate beneficial ownership information for the company to protect his law license.

Cal National Bank opened accounts for still another set of U.S. shell companies associated with Mr. Obiang, Sweetwater Malibu and Sweetwater Management. Unlike Citibank, however, Cal National Bank knowingly allowed a property manager, who was a long-time customer of the bank, to open these accounts without disclosing the beneficial owners of the companies. Due to a fortunate series of events, within one month, Cal National Bank discovered Mr. Obiang's connection to the companies and, in light of the bank's policy against opening accounts for PEPs, immediately closed them. It also placed Mr. Obiang on a "hot list" to prevent him from using bank services in the future. The bank took no action, however, against the property manager, even though he was the one who hid Mr. Obiang's involvement from the bank and violated its no-PEP policy. The key AML deficiencies exposed here include the bank's willingness to allow a longstanding customer to skip a basic disclosure requirement and then, after discovering the customer took advantage of the bank, to continue to do business with him.

City National Bank had the longest history with Mr. Obiang of the six banks examined in this case history. From 2001 to 2003, the bank allowed Mr. Obiang to open five accounts for his California company, TNO Entertainment, without learning of his PEP status. In 2004, the bank allowed Mr. Obiang to open a personal checking account, again without learning of his PEP status. When a \$1 million EG wire transfer triggered a review of the account two months later, the bank learned for the first time that Mr. Obiang was an EG official, the son of the EG President, and the subject of corruption allegations. The bank immediately closed the account and put Mr. Obiang on a "hot list" to block his doing business with the bank. Despite this action, during the summer of 2006, Mr. Nagler printed checks with Sweetwater Management, Inc. at the top and the account number of his attorney-client or law office account at the bottom and used them to pay Obiang bills and expenses. In 2008, Mr. Obiang sent an EG wire transfer to still another third party account at City National Bank and then withdrew the funds at ATM machines and casinos in the United States.

City National Bank's experiences with Mr. Obiang expose a variety of tactics that can be used to access U.S. bank accounts, even after a PEP is explicitly barred from a bank. Key AML

and PEP deficiencies include the bank's poor due diligence efforts that failed to uncover Mr. Obiang's PEP status from 2001 until 2004; and Mr. Nagler's use of his attorney-client and law office accounts as checking accounts for Mr. Obiang's shell companies. In addition, after learning of the checks that Mr. Nagler created, the bank chose not to close the Nagler accounts, but simply designate them as "high risk" warranting enhanced monitoring. That decision, like that of Cal National Bank regarding the property manager, demonstrates the banks' reluctance to end relationships with longstanding customers, even when they are discovered to be facilitating a PEP's use of bank services without informing the bank. A final problem is City National Bank's failure to detect and block high risk wire transfers before they deliver funds to an account, including the \$1 million EG wire transfer in 2006, the \$40,000 in EG wire transfers sent to the Nagler attorney-client account, and the \$30,000 in EG wire transfers to the third party account in 2008. City National Bank had added Mr. Obiang's to its internal "hot list" to block his use of bank services, but its interdiction software failed to block wire transfers bearing his name or to flag wire transfers from Equatorial Guinea for further inspection.

Pacific Mercantile Bank is the only one of the six banks that opened an account in the name of Mr. Obiang, while knowing of his PEP status. It did so in 2006, after Mr. Nagler supplied a letter of recommendation, its staff conducted a limited due diligence review that missed press articles containing negative information about Mr. Obiang, and its staff reached the surprising conclusion that Equatorial Guinea was a low risk country. On the other hand, to the bank's credit, when the Obiang account received a \$500,000 EG wire transfer and disbursed nearly all of the funds within a month, the bank decided that it was ill-equipped to oversee such high risk transactions and immediately closed the account.

Together, these six banks provided evidence that U.S. financial institutions need to strengthen their AML and PEP controls if they are to keep foreign corruption out of the United States. Stronger measures include using better PEP lists to identify PEP clients and obtain accurate information about them; obtaining beneficial ownership information for U.S. shell companies; providing prompt reviews of high-dollar wire transfers from high risk jurisdictions; and strengthening the monitoring of PEP, attorney-client, law office, and shell company accounts by designating them as high risk accounts. Banks should also consider obtaining a written certification from each attorney-client and law office account that the account will not be used to bypass AML or PEP controls at the bank, conceal PEP activity from the bank, bring suspect funds into the bank, or provide services to a PEP who had been excluded from the bank.

C. Obiang Use of Real Estate and Escrow Agents To Purchase U.S. Property With Suspect Funds

In addition to members of the U.S. legal profession, Mr. Obiang employed members of the U.S. real estate industry to help him buy and sell high-end real estate in California, using millions of dollars in suspect funds transferred from Equatorial Guinea. Neal Baddin, a real estate agent at Coldwell Banker, helped Mr. Obiang purchase the \$30 million property in Malibu, while John Kerrigan, a real estate agent with Mirzo International, Inc., helped Mr. Obiang sell a Los Angeles area house for \$7.7 million. First American provided key escrow services for the Malibu purchase, accepting \$30 million in wire transfers from Equatorial Guinea to complete the transaction. Neither the real estate agents nor the escrow company asked Mr. Obiang about the source of his funds, even when he made a multi-million-dollar real estate

purchase without using a mortgage and wire transferred the needed funds from a country known for corruption, since none had a legal obligation to inquire.

As explained earlier, since 1988, U.S. AML laws have identified “persons involved in real estate closings and settlements” as vulnerable to money laundering abuses due to the large sums of money involved in their transactions.⁴⁰⁵ The 2001 Patriot Act required this group to establish AML programs, unless exempted by the Treasury Department.⁴⁰⁶ In 2002, the Treasury Department issued a “temporary” exemption for persons involved in real estate closings and settlements from the new requirement; eight years later, the Treasury Department still has not required them to establish AML programs.⁴⁰⁷ Nor has the real estate industry issued AML guidance to its members. That means, under current law, U.S. real estate and escrow agents operate without any legal obligation to know their customers, evaluate the source of their funds, or exercise special precautions when dealing with PEPs.

(1) Real Estate Agent Neil Baddin

Neal Baddin has been involved in the real estate business for 29 years.⁴⁰⁸ Originally from Minnesota, he moved to Los Angeles in 1979, and over the years worked at a number of real estate firms. He currently works as an independent contractor in a branch office of Coldwell Banker.

Mr. Baddin’s office is located in the Hollywood Hills, and he told the Subcommittee that he works with many people in the entertainment industry.⁴⁰⁹ He stated that he usually works with clients seeking property in the \$800,000 to \$2 million price range. Mr. Baddin said he attracts clients through referrals, telephone calls, and advertising. He indicated that the \$30 million purchase of the Malibu property by Mr. Obiang was the largest transaction he has worked on.

Introduction to Mr. Obiang. Mr. Baddin stated that he was introduced to Mr. Obiang by Michael Jay Berger, whom he has known since the early 1990s when Mr. Berger moved into Mr. Baddin’s neighborhood.⁴¹⁰ Mr. Baddin stated that Mr. Berger called him in August or September 2004, said he was representing a wealthy client who wanted to buy a property, and the client was looking for a new real estate agent. Mr. Baddin wasn’t sure if Mr. Berger mentioned the client’s name at that time, but understood that it would be a “delicate and intricate sales transaction.”

Mr. Baddin said that, in or around October 2004, Mr. Berger arranged a meeting at the Beverly Wilshire Hotel where he introduced Mr. Baddin to Mr. Obiang.⁴¹¹ Mr. Baddin said the

⁴⁰⁵ See 31 U.S.C. § 5312(a)(2)(U)(including “persons involved in real estate closings and settlements” in the list of “financial institutions” subject to U.S. AML requirements).

⁴⁰⁶ See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 U.S.C. § 5318(h).

⁴⁰⁷ See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

⁴⁰⁸ Subcommittee interview of Mr. Baddin, May 12, 2008.

⁴⁰⁹ Id.

⁴¹⁰ Id.

⁴¹¹ Id. Prior to meeting Mr. Obiang, Mr. Baddin stated that in or around April 2004, he had visited Mr. Obiang’s then residence on Antelo Road during an open house. Mr. Baddin wrote: “Regarding my visit to Mr. Ngeuma’s

meeting took place in a suite, that Mr. Obiang was accompanied by a woman that may have been his girlfriend, and that his impression was that Mr. Obiang was “bigger than life.” Mr. Baddin reported that they spoke very little about real estate, except in general terms. Mr. Baddin said Mr. Berger had told him that Mr. Obiang had a house in mind and had made previous bids on the residence without success. At the end of the meeting, Mr. Baddin said that he did not know if he would ultimately be representing Mr. Obiang.

Mr. Baddin said that, about a month later, Mr. Berger telephoned and told him that Mr. Obiang wanted to work with him.⁴¹² On November 1, 2004, Mr. Baddin entered into an exclusive retainer agreement to locate property for Mr. Obiang. The retainer agreement said that the real estate agent fee for the purchase of a property would comply with the Multiple Listing Service (MLS), and that, “The first and only house for now to be covered by this agreement is 3620 Sweetwater Mesa Road, Malibu CA.”⁴¹³ The agreement was signed by Mr. Berger as president of Beautiful Vision, Inc.⁴¹⁴ Mr. Baddin told the Subcommittee he didn’t know why the retainer agreement was signed by Mr. Berger or what business Beautiful Vision was engaged in, but knew that it was a company that had been created by Mr. Obiang with Mr. Berger, and had no employees.⁴¹⁵

Bidding on the Property. In November 2004, Mr. Baddin and Mr. Berger went to look at the Sweetwater property in an exclusive gated community in Malibu, California. Mr. Baddin said that the property was “one of the most extraordinary pieces of property I’ve ever seen in my life.”⁴¹⁶ He described it as “12 acres of land overlooking one of the most famous surfing beaches in California. The main house was 15,000 square feet in a Mediterranean style. There was a 2500 square foot guest house, 2 gate houses, a pool overlooking the ocean, a small putting green, and a tennis court.” The asking price was \$35 million. Mr. Baddin said that an assistant from the listing company, Hilton & Hyland, met them at the property to show it to them.

Over the course of more than a year, he said that Mr. Obiang made five offers on the property. The first, in November, was for \$27 million.⁴¹⁷ Mr. Baddin submitted this offer in person to Hilton & Hyland which countered with an offer of \$32 million.⁴¹⁸ Mr. Obiang

house on Antelo, My wife and I saw it advertised as an Open House on a Sunday approximately around 4/04. ... Mr. Kerrigan was holding it open. We were amazed at this round Nautilus shaped house, but what was more amazing was the car collection in the garage that John showed us. We asked John, ‘who owns this house?’ He said, I shouldn’t really say, but he’s a minister of a very wealthy country in Africa. ... I did not try to make contact with the Owner. ... By coincidence and by a mutual friend, I was introduced to Mr. Nguema around 10/04.”
Memorandum from Mr. Berger, PSI-Coldwell_Banker-01-000502.

⁴¹² Subcommittee interview of Mr. Baddin, May 12, 2008.

⁴¹³ 11/1/04 Exclusive Retainer Agreement to Locate Real Property, PSI-Coldwell_Banker-01-000501.

⁴¹⁴ Id. This was the only retainer agreement that was signed between Mr. Baddin and Mr. Berger acting as an agent of Mr. Obiang.

⁴¹⁵ In a statement later submitted in connection with an arbitration proceeding, Mr. Obiang described Beautiful Vision as “my company.” January 2007 Declaration of Michael Berger, *Mirzo International, Inc. v. Hyland*, Case No. AB06-15 (Beverly Hills/Greater Los Angeles Association of Realtors Arbitration Complaint Case), SEN007574-76, at 7575.

⁴¹⁶ Subcommittee interview of Mr. Baddin, May 12, 2008.

⁴¹⁷ 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell_Banker-03-0002.

⁴¹⁸ Mr. Baddin reported that although he submitted this offer, he understood that another real estate agent, John Kerrigan, had submitted an offer for Obiang prior to the offer Mr. Baddin submitted. In a written statement,

responded with an offer of \$27.5 million.⁴¹⁹ Mr. Baddin said that, on November 8, 2004, Hilton & Hyland countered with \$31.5 million.⁴²⁰

Mr. Baddin said that about six months then went by without further developments.⁴²¹ He said that he ran into Mr. Berger and inquired about the property but received no new information. In September 2005, Mr. Baddin stated that he received a call from either Mr. Obiang or Mr. Berger informing him that Mr. Obiang wanted to make a new offer. Mr. Baddin confirmed that the property was still on the market, and called Mr. Obiang with that information. He said that Mr. Obiang said “Let’s give it another try,” and informed him that another attorney who specialized in real estate, George Nagler, would be involved in the transaction. Mr. Baddin said that he began dealing with Mr. Nagler as well as Mr. Berger, but that Mr. Obiang remained the primary contact.⁴²² On September 30, 2005, Mr. Obiang submitted a new offer for \$28.5 million.⁴²³

In November 2005, Mr. Baddin took Mr. Nagler to see the property.⁴²⁴ On December 21, 2005, Mr. Baddin submitted a fourth offer on behalf of Mr. Obiang to buy the property for \$30 million.⁴²⁵ The seller countered on December 28 for \$31 million. Mr. Baddin said at that point, the transaction was becoming complicated, and the attorneys began dealing directly with one another.⁴²⁶ In December 2005, Mr. Obiang contacted Mr. Baddin who presented Hilton & Hyland with a fifth offer for \$30.5 million. In early January 2006, Mr. Nagler called Mr. Baddin and informed him that the seller had accepted the offer. According to Mr. Baddin, the final price was \$30 million for the residence and \$750,000 for specified furnishings in the house.⁴²⁷

Mr. Baddin wrote, “I asked both Mr. Berger and Mr. Ngeuma why they weren’t continuing to work with Mr. Kerrigan. They both explained to me jointly and separately that Mr. Kerrigan had bungled the sale of Mr. Nguema’s property on Antelo. They said he let the Buyer move in to Antelo before the close of escrow without Mr. Nguema’s permission. The Buyer also refused to close the escrow on time and the transaction became litigious.” Memorandum from Mr. Baddin, PSI-Coldwell_Banker-01-000502.

⁴¹⁹3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell_Banker-03-0002. Mr. Baddin noted that throughout the negotiations, Mr. Obiang was very difficult to reach and didn’t always return Mr. Baddin’s phone calls. He also noted that at times he would have an appointment with Mr. Obiang, and he would spend hours waiting at his house and Mr. Obiang wouldn’t come downstairs or he wouldn’t show up.

⁴²⁰ 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions , PSI-Coldwell_Banker-03-0002.

⁴²¹ Subcommittee interview of Mr. Baddin, May 12, 2008.

⁴²² A September 29, 2005, email from Lina Romo, an Obiang assistant, confirms Mr. Nagler’s involvement in the transaction when she asks Mr. Nagler to send the documents for the Malibu property to Mr. Obiang at the Hotel Crillon in Paris. See 9/29/05 email from Mr. Nagler to Mr. Baddin, PSI-Coldwell_Banker-01-000385.

⁴²³ 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell_Banker 03-0002.

⁴²⁴ Subcommittee interview of Mr. Baddin, May 12, 2008.

⁴²⁵ 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell_Banker 03-0002.

⁴²⁶ According to Mr. Baddin, the complicating factors included whether or not the furniture would remain with the house and the date when the seller would vacate the property.

⁴²⁷ 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell_Banker-03-0002.

Escrow Deposits. To complete the purchase of the Malibu property, in January 2006, Hilton & Hyland and Coldwell Banker opened an escrow account at First American Title Company.⁴²⁸ Mr. Baddin stated that the seller chose the escrow agent.⁴²⁹

Mr. Baddin told the Subcommittee that, a few months earlier, Hilton & Hyland had asked for funds to be placed in escrow at Coldwell Banker to demonstrate that Mr. Obiang was making a serious bid on the Malibu property. In an email dated October 3, 2005, Hilton & Hyland wrote: “In order for us to present your offer on Sweetwater Mesa to the owner’s attorney, we need verification of funds from your buyer.”⁴³⁰ Mr. Baddin said that, in response, Mr. Obiang transferred \$500,000 to an escrow account at West Coast Escrow, which was affiliated with Coldwell Banker.⁴³¹ On December 22, 2005, Mr. Obiang sent an additional \$900,000 to the escrow account, sending the funds from another U.S. account rather than from Equatorial Guinea.⁴³² On February 2, 2006, West Coast Escrow, on behalf of Mr. Obiang, wire transferred the \$900,000 to First American Title Company as a down payment on the purchase of the Malibu residence. The funds were placed in First American’s escrow account at Wachovia Bank.⁴³³

Mr. Baddin told the Subcommittee that, after the price was agreed on and the escrow deposits made, he spent the next 45 days, from January into February 2006, helping to conduct detailed inspections of the property.⁴³⁴ He said that Mr. Obiang did not accompany him, and he dealt exclusively with Mr. Nagler. He said that several repairs were needed, and the seller agreed to credit \$80,000 to \$100,000 back to the buyer for the repairs.

Confidentiality Agreement. Mr. Baddin told the Subcommittee that, on March 31, 2006, just prior to the purchase of the Malibu property, Coldwell Banker was asked to and did sign a confidentiality agreement regarding the purchase.⁴³⁵ The agreement stated that the identity of Mr. Obiang was “confidential” and “not to be disclosed to anyone.”⁴³⁶

⁴²⁸ California law requires that the real estate buyer place money in escrow. First American Title Company owns First American Trust Company; First American Title Company is, in turn, owned by its parent company, First American Corporation. Subcommittee interview of First American officials, January 15, 2010.

⁴²⁹ Subcommittee interview of Mr. Baddin, May 12, 2008.

⁴³⁰ 10/3/05 email from Hilton & Hyland to Mr. Baddin, PSI-Coldwell_Banker-01-000386. In a February 1, 2008 telephone call with the Subcommittee, Alla Furman of Hilton & Hyland stated that she knew something was unusual with this transaction because it was “all confidential” and it “sounded weird to us.”

⁴³¹ See fax from Mr. Baddin, PSI-Coldwell_Banker 01-000706-7 (instructions from Mr. Baddin to Mr. Obiang’s attorney, Mat Hsu, to send funds to the West Coast Escrow account at Comerica Bank).

⁴³² See 12/22/05 email from Sidley Austin to Citibank Private Bank requesting the wire transfer to West Coast Escrow, and accompanying email showing the transfer was completed, PSI-Sidley Austin-01-000028. The \$900,000 was wire transferred by Sidley Austin LLP, a law firm, from its account at Citibank Private Bank to the West Coast Escrow account at Comerica Bank, on behalf of Mr. Obiang. Sidley Austin had received a much larger sum from a U.S. escrow account at Gulfstream Aerospace Corporation, which had been negotiating with Mr. Obiang over the purchase of an aircraft, as explained below. The negotiations were unsuccessful, and Gulfstream had returned Mr. Obiang’s escrowed funds, sending them to Sidley Austin at his direction. See 12/17/09 letter from Sidley Austin to the Subcommittee, PSI-Sidley Austin-01-000001-3.

⁴³³ 2/6/06 receipt for deposit from First American Title Co., SEN011816.

⁴³⁴ Subcommittee interview of Mr. Baddin, May 12, 2008.

⁴³⁵ 3/31/06 Broker Confidentiality Agreement, PSI-Coldwell_Banker-01-000509-10.

⁴³⁶ Id. Mr. Baddin had signed the confidentiality agreement a few days earlier, on March 23, 2006, but the manager of his branch office officially signed it on behalf of Coldwell Banker. 3/23/06 Broker Confidentiality Agreement, SEN012339-41.

Mr. Baddin stated that he had signed a few confidentiality agreements in the past, “usually for a celebrity type of person.” Mr. Baddin stated that being asked to sign a confidentiality agreement did not raise a red flag for him, because people are “nosy.” Hilton & Hyland told the Subcommittee that both the seller and the buyer wanted a confidentiality agreement.⁴³⁷

Mr. Baddin told the Subcommittee that, in addition to signing the confidentiality agreement, he decided not to list his name in the real estate MLS system as the buyer’s real estate agent. Mr. Baddin said that he didn’t want to be listed in the MLS system because it was a very high end sale and if he had been listed, he would have been “bombarded” by other agents. Mr. Baddin reported that Hilton & Hyland had asked him if he wanted to be listed as the buyer’s agent, and he declined. He said that he usually puts his name in the system, and there have been only a few times when he hasn’t. Mr. Baddin noted that he could have been fined \$250 for not putting his name in the system.

\$30 Million in EG Wire Transfers. The grant deed for the Malibu property indicates that the seller sold the residence to Sweetwater Malibu, LLC on February 27, 2006.⁴³⁸ According to Mr. Baddin, while the deed was signed and notarized on February 27, the deal was not recorded and therefore not finalized until April 27, 2006, because the property was not actually delivered until April.⁴³⁹

Mr. Baddin also told the Subcommittee that the original offer for the property had been made in the name of Beautiful Vision, Inc., but the final offer had been made in the name of Teodoro Nguema Obiang. During the escrow process, Mr. Baddin said that Mr. Nagler arranged to remove Mr. Obiang’s name from the deed and for the title to be recorded in the name of Sweetwater Malibu, LLC, a shell company Mr. Nagler had formed two months earlier in February 2006.⁴⁴⁰

In April 2006, Mr. Obiang actually paid for the purchase of the Malibu residence, which Forbes magazine later described as the sixth most expensive residential purchase in the United States that year.⁴⁴¹ In doing so, Mr. Obiang did not use a mortgage. Instead, according to the settlement document, Mr. Obiang paid for the property outright, in six installments, as follows:

On February 6, 2006, he paid \$900,000.

⁴³⁷ Subcommittee interview of Jeffrey Hyland, December 20, 2007.

⁴³⁸ 2/20/06 Grant Deed from First American Title Co., PSI-Coldwell_Banker-01-000069-70. The seller sold the property under the name Sweetwater Mesa, LLC.

⁴³⁹ Subcommittee interview of Mr. Baddin, May 12, 2008. Mr. Baddin stated in another document that “the deed to the buyer was executed prior to close of the sale. The deed remained in escrow until the Buyer placed sufficient funds into escrow, when the sale closed. During most of this time the buyer’s contingencies had not been removed. A supplemental escrow instruction dated April 16, 2006, to the effect that the buyer would release another \$500,000 to the seller to extend the escrow to May 15, 2006, was circulated by the escrow holder.” 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell_Banker-03-0003.

⁴⁴⁰ 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell_Banker-03-0002. See 3/23/06 supplemental escrow instructions submitted by Mr. Nagler to First American Title Company, SEN011514. These instructions stated that Mr. Obiang would take title to the property in the name of Sweetwater Malibu, LLC and asked for all documentation to reflect that vesting change.

⁴⁴¹ Forbes Magazine, “Most Expensive Home Sales 2006,” December 12, 2006, http://www.forbes.com/home/2006/12/11/most-expensive-sales-forbeslife-cx_mw_1212mostexpensivehomesales_slide_7.html?thisSpeed=15000.

On April 5, 2006, he paid \$5,908,400.
 On April 10, 2006, he paid \$5,908,400.
 On April 19, 2006, he paid \$5,908,400.
 On April 21, 2006, he paid \$5,908,400.
 On April 26, 2006, he paid \$5,908,400.⁴⁴²

Documentation reviewed by the Subcommittee shows that Mr. Obiang provided the initial payment of \$900,000 from a bank account belonging to a U.S. law firm, as explained earlier.⁴⁴³ The remaining payments were wire transferred directly from Equatorial Guinea to the First American Trust escrow account at Wachovia Bank. Specifically, the funds originated at Societe Generale de Banque in Equatorial Guinea where Mr. Obiang had a personal account; passed through correspondent accounts held by the Bank of Central African States and Banque de France; and were deposited with Wachovia Bank in California, where First American Trust had its escrow account. This chart summarizes the five EG wire transfers used to fund the purchase of the Malibu residence.

EG Wire Transfers To Purchase Malibu Residence					
Date	Amount	Originating Institution	Through	Beneficiary	Bates
4/05/06	\$5,908,400	Obiang Account at Societe Generale de Banque- Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00004
4/10/06	\$5,908,400	Obiang Account at Societe Generale de Banque- Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00010
4/19/06	\$5,908,400	Obiang Account at Societe Generale de Banque- Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00016
4/21/06	\$5,908,400	Obiang Account at Societe Generale de Banque- Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00019
4/26/06	\$5,908,400	Obiang Account at Societe Generale de Banque- Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00022
Total- \$29,542,000			Source- Wachovia		

Prepared by Subcommittee Staff

Mr. Baddin told the Subcommittee that the Obiang purchase was unique in his experience, not only because of the high price involved, but also because no mortgage was used.⁴⁴⁴ When questioned, he stated that none of the parties involved in the transaction had asked how Mr. Obiang would provide the funds needed for the purchase price. Mr. Baddin noted that it is up to the seller to determine whether or not they believe the buyer has the ability to pay for the property.

⁴⁴² 4/28/06 Buyer's Final Settlement Statement from First American Title Co., PSI-Coldwell_Banker-02-000367.

⁴⁴³ The U.S. law firm was Sidley Austin Brown & Wood LLP (now Sidley Austin LLP) which sent the \$900,000 to West Coast Escrow in December 2005. On February 6, 2006, West Coast Escrow sent the funds to First American. 2/6/06 receipt for deposit from First American Title Co., SEN011816.

⁴⁴⁴ Subcommittee interview of Mr. Baddin, May 12, 2008.

When questioned about whether Mr. Baddin knew the source of Mr. Obiang's funds, Mr. Baddin responded that he did not. He said that he knew Mr. Obiang was involved in the government in his country, and that Mr. Berger had told him Mr. Obiang was qualified to purchase the property. Mr. Baddin stated that he never asks his clients questions about their finances, since he had no legal obligation to do so and such questions made most clients uncomfortable. He said that, from his viewpoint, there were "no red flags" raised by either the transaction or Mr. Obiang.

First American told the Subcommittee that it had a voluntary AML program and that, among other measures, each time it receives a wire transfer from a foreign account, it checks the name of the originator against lists compiled by OFAC of terrorists, narcotics traffickers, and other criminals, as required by law.⁴⁴⁵ It noted that Mr. Obiang was not on the OFAC list. Its other AML controls did not prevent First American from accepting the wire transfers from Mr. Obiang.

First American's bank, Wachovia, told the Subcommittee that its systems automatically screen all incoming wire transfers against the OFAC lists, as required by law.⁴⁴⁶ Wachovia indicated that, because the Obiang name is not on the OFAC lists, the wire transfers from Equatorial Guinea did not trigger a review, even though Wachovia had designated Equatorial Guinea as a high risk country. Instead, the \$30 million in EG wire transfers were deposited into the First American escrow account with no questions asked. Wachovia noted that, under current law, it has no legal obligation to perform due diligence on the clients of its client, First American.⁴⁴⁷

Split Commission. One last issue related to the purchase of the Malibu residence involves the \$615,000 commission paid to the real estate agent. Mr. Baddin said that, in September 2005, about a year after he began working with Mr. Obiang, Rosalina Romo, an Obiang assistant, telephoned and asked him if he would be willing to credit half of his commission on the Malibu purchase back to Mr. Obiang. Mr. Baddin said that he agreed. While unusual, Mr. Baddin noted that he had split his commission with clients in the past, though not often. He said he agreed to it in this case, because he did not want Mr. Obiang to back out of the deal and knew the commission would be large due to the high purchase price.

On September 18, 2005, Mr. Baddin handwrote a letter in which he agreed to split his commission with Mr. Obiang. The letter stated: "This is a letter to confirm the agreement that Neal Baddin of Coldwell Banker will share the commission on 3620 Sweetwater 50/50 with Teodoro Ngeuma Obiang."⁴⁴⁸ The letter was signed by both Mr. Baddin and Mr. Obiang. Mr. Baddin said that he was later told by Mr. Obiang's attorney, Matt Hsu, that Mr. Obiang wanted to amend the letter agreement. On December 16, 2005, Mr. Obiang sent Mr. Baddin a more formal letter stating that Mr. Baddin was representing Mr. Obiang as his real estate agent

⁴⁴⁵ Subcommittee interview of First American, January 11, 2010. All U.S. financial institutions also perform this wire transfer screening, so Wachovia, as First American's bank, would also have performed this function.

⁴⁴⁶ 11/21/08 legal counsel to Wachovia's written response to Subcommittee questions. PSI Wachovia 10-0001-15.

⁴⁴⁷ *Id.*, at 5, 8. Wachovia has since informed the Subcommittee that it has added Mr. Obiang to an internal list within the bank that blocks wire transfers bearing specified names, as explained further below.

⁴⁴⁸ 9/18/05 letter from Mr. Baddin and Mr. Obiang, PSI-Coldwell_Banker-01-000388.

and asking Mr. Baddin to provide Mr. Obiang with 50% of his commission on the Malibu property.⁴⁴⁹

The total commission on the Malibu property was \$615,000.⁴⁵⁰ Mr. Obiang received \$305,000, and Mr. Baddin received \$305,000, although after taxes and processing fees, Mr. Baddin ultimately received about \$241,000.⁴⁵¹ The remaining \$5,000 was retained by Coldwell Banker. Mr. Baddin also paid Mr. Berger a referral fee of \$60,000.⁴⁵²

Ongoing Relationship. Mr. Baddin told the Subcommittee that he continued to work with Mr. Obiang after the closing on the Malibu property.⁴⁵³ About a month or two after the closing, Mr. Obiang called Mr. Baddin and asked him if he knew a good interior decorator. Mr. Baddin recommended a decorator, and he and the decorator met with Mr. Obiang at the Pacific Design Center.

In the fall of 2006, Mr. Obiang called Mr. Baddin and told him that he wanted to purchase a condominium. An Obiang assistant, Melinda DeHaven, arranged to view four to six properties with Mr. Baddin, but at the last minute canceled and did not reschedule. In 2007, Mr. Obiang called again and asked Mr. Baddin to show him properties of interest. Mr. Baddin said he took Mr. Obiang to see two or three houses in the Los Angeles area, but Mr. Obiang was not interested in any of them.

Mr. Baddin stated that Mr. Obiang still occasionally calls him. He stated that Mr. Obiang called him in early 2008, and said he was thinking about selling the Malibu property. Mr. Baddin said that he was not surprised since Mr. Obiang did not live there very much and traveled a great deal.

(2) Real Estate Agent John Kerrigan

Prior to Mr. Baddin, Mr. Obiang worked with another California real estate agent, John Kerrigan. Mr. Kerrigan told the Subcommittee that he had been in the real estate business since 1984, and currently worked for Mirzo International, Inc.⁴⁵⁴ He said that, from 1999 to 2004, he had shown Mr. Obiang a number of properties for sale, but was never selected as the buying agent. In 2004, however, Mr. Kerrigan helped Mr. Obiang sell a Los Angeles residence for \$7.7 million.

Mr. Kerrigan has also filed a complaint against real estate agent Neil Baddin, alleging that he inappropriately lured away his client by offering to split the commission related to the purchase of the Malibu property.⁴⁵⁵ That complaint was referred for arbitration, and a number of

⁴⁴⁹ 12/16/05 letter from Obiang to Mr. Baddin, PSI-Coldwell_Banker-01-000505.

⁴⁵⁰ 3/27/06 NRT cash receipt statement, PSI-Coldwell_Banker-01-000549.

⁴⁵¹ Id.; 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell_Banker-03-0003.

⁴⁵² 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell_Banker-03-0003.

⁴⁵³ Subcommittee interview of Mr. Baddin, May 12, 2008.

⁴⁵⁴ Subcommittee interview of Mr. Kerrigan, May 15, 2008.

⁴⁵⁵ Mirzo International, Inc. v. Hyland, Arbitration Complaint Case No. AB06-15. 11/6/06 email from Mr. Baddin to Mr. Obiang, PSI-Coldwell_Banker-01-000498.

pleadings were filed in the arbitration case providing information about the Antelo and Malibu properties.

Introduction to Mr. Obiang. Mr. Kerrigan said that, in 1999, when he was working at Remax, he received a “cold call” from Mr. Obiang who was looking for properties in the \$10 to \$15 million range.⁴⁵⁶ Mr. Kerrigan reported that soon after he received the call, he met Mr. Obiang at the Beverly Hills Hotel and showed him photographs of residences for sale. Mr. Kerrigan stated that, from 1999 to 2003, he showed Mr. Obiang approximately 20 to 30 properties in the \$15 to \$20 million price range and, in 2004, made multiple offers on his behalf to purchase the Malibu property that Mr. Obiang eventually purchased in 2006, using a different real estate agent, Mr. Baddin.⁴⁵⁷

In a statement submitted in connection with his complaint against Mr. Baddin, Mr. Kerrigan described his relationship with Mr. Obiang in the following manner:

“I have had [an] extensive, continuous, and ongoing real estate agency relationship with the Buyer, Mr. Teodoro Nguema Obiang, for the past seven years, from September 1999 all the way to the present, October 2006. In addition to helping Mr. Ngeuma with his real estate needs, I have been closely connected to helping him adjust to living here in the U.S. over the last seven years. Whenever he came to town I would always make myself available to him, at his request, to run errands, help him out with selecting furniture, finding the best hotels online for him to travel to on vacation, and finding rental apartments for his friends, all with no commission compensation to me. ... I was always willing to help him any way I could in order to build a strong working relationship with this client.”⁴⁵⁸

Mr. Kerrigan also stated that he showed Mr. Obiang:

“a number of condominiums that he wanted to lease or purchase because he was getting tired of staying in hotels. He wanted a condo in addition to a large home and the plan was to let his out of town friends stay in the condo after he purchased a home. He put in offers to purchase with me on two penthouse condos for \$8,000,000 and \$7,500,000 on Wilshire Blvd. Corridor. The offer for \$7,500,000 was accepted and he opened escrow in May 2002. Then, two and a half months later, he abruptly cancelled the escrow for no reason in August 2002 and walked away from most of his deposit. I continued to work with him.”⁴⁵⁹

Antelo Property Sale. According to Mr. Kerrigan, in 2001, Mr. Obiang purchased a very contemporary house on Antelo Road, in the Los Angeles area, for \$6.5 million.⁴⁶⁰

⁴⁵⁶ “Exhibit 1A, Detailed Information by John Kerrigan on the Agency Relationship of John Kerrigan with the Buyer, Leading up to the Purchase of the Malibu Property,” (hereinafter “Kerrigan Statement”), Mirzo International v. Hyland, Arbitration Complaint Case No. AB06-15, PSI-Coldwell_Banker-01-000009-24; Subcommittee interview of Mr. Kerrigan, May 15, 2008.

⁴⁵⁷ Kerrigan Statement, Mirzo International, Inc. v. Hyland, Arbitration Complaint Case No. AB06-15, PSI-Coldwell_Banker-01-000014.

⁴⁵⁸ Id.

⁴⁵⁹ Id., at 15-16.

⁴⁶⁰ Id., at 15.

Mr. Obiang did not use him as his agent when he purchased the Antelo property.⁴⁶¹ Mr. Kerrigan told the Subcommittee that he understood Mr. Obiang had purchased the property in his own name, did not use a mortgage, and provided funds to pay the entire \$6.5 million cost.⁴⁶² The Subcommittee subsequently located documentation of a wire transfer sent on March 19, 2001, for \$6.2 million from an Obiang account at Riggs Bank, Account No. 76923450, to a Union Bank of California account for Beverly Hills Escrow in connection with property on Antelo Road in Los Angeles.⁴⁶³ Mr. Kerrigan told the Subcommittee that he was not aware of and did not ask about the source of Mr. Obiang's funds.⁴⁶⁴

Mr. Kerrigan said that a few years later, in or around March 2004, Mr. Obiang decided to sell the Antelo property, and telephoned him to act as his agent in the sale.⁴⁶⁵ Mr. Kerrigan said that Mr. Obiang had never actually moved into the property. He said he originally listed the property for \$10 million at Mr. Obiang's request, even though that was an unrealistically high price. On October 8, 2004, the Antelo property sold for \$7.7 million, which meant that Mr. Obiang had secured a gross profit of more than \$1 million from the \$6.5 million purchase price he had paid in 2001.⁴⁶⁶

On October 19, 2004, the escrow agent who handled the Antelo property sale, D&G Escrow Corp., transferred over \$4 million from the purchase price to a Beautiful Vision, Inc. account at Bank of America.⁴⁶⁷ Beautiful Vision had been formed the prior week by Mr. Berger, on October 12, 2004. It's not clear where the remainder of the \$7.7 million was sent.

Subsequent to the sale, disagreements apparently arose among Mr. Kerrigan, Mr. Berger, and Mr. Obiang.⁴⁶⁸

⁴⁶¹ Id. Mr. Kerrigan told the Subcommittee that he had told Mr. Obiang about the Antelo property, and Mr. Obiang "did not want to see it because it was a contemporary style and he preferred Mediterranean. After all the time and effort I spent I was disappointed that he did not buy it from me but I continued to work with him just the same."

⁴⁶² Subcommittee interview of Mr. Kerrigan, May 15, 2008.

⁴⁶³ See UBOC Case Report with information on this wire transfer, PSI-Union_Bank_of_California-04-0452.

⁴⁶⁴ Id.

⁴⁶⁵ Id.

⁴⁶⁶ See 10/15/04 Grant Deed, signed by Mr. Obiang, from Commonwealth Land Title Co., SEN003674.

⁴⁶⁷ November 2004 statement for Beautiful Vision special checking account, BAC-PSI-02474.

⁴⁶⁸ Mr. Kerrigan told the Subcommittee that, as part of the Antelo sale, he entered into an agreement with the buyer's representative, R & B Realty, to provide it with 1% of the commission, while Mr. Kerrigan would keep 4%. Mr. Kerrigan said that normally on a 5% commission, the buyer and seller's agent split the commission evenly. Mr. Kerrigan said that Mr. Berger "made an issue" of the commission division and "tried to disrupt the escrow." Mr. Kerrigan stated that, in the end, he received a \$308,000 commission and the buyer's agent received \$77,000 for the Antelo property. Subcommittee interview of Mr. Kerrigan, May 15, 2008.

Mr. Kerrigan also stated that, prior to the sale, the Antelo property needed repair work. Mr. Kerrigan said that a Riggs Bank employee, Simon Kareri, asked him to recommend a construction firm. Mr. Kerrigan recommended Pacific National Construction (PNC) which was selected for the work. He said the repair work ultimately cost \$80,000, and Mr. Berger would not pay the bill. Mr. Kerrigan stated that PNC put a lien on the property and was ultimately paid for its work.

In a written statement, Mr. Baddin wrote: "I asked both Mr. Berger and Mr. Nguema why they weren't continuing to work with Mr. Kerrigan. They both explained to me jointly and separately that Mr. Kerrigan had bungled the sale of Mr. Nguema's property on Antelo. They said he let the Buyer move in to Antelo before the close of escrow without Mr. Nguema's permission. The Buyer also refused to close the escrow on time and the transaction became litigious." Memorandum by Mr. Baddin, PSI-Coldwell_Banker_01-000502. According to Mr. Kerrigan, Mr. Berger had authorized the new client moving in early.

Malibu Property. Mr. Kerrigan stated that, in 2003, he showed Mr. Obiang the Malibu property that Mr. Obiang eventually purchased in 2006.⁴⁶⁹ He said that he showed the property to Mr. Obiang several times from 2003 to 2005, and, at Mr. Obiang's direction, submitted multiple offers for the property, in the range of \$21 to \$29 million, none of which were accepted.⁴⁷⁰ Mr. Kerrigan stated that as late as December 2005, he was still communicating with Mr. Obiang about purchasing the Malibu property.

Mr. Kerrigan wrote that, in December 2005, "Jeff Hyland reluctantly told me that my client Teodoro Ngeuma had been to the property in the late summer of 2005 with Neal Baddin."⁴⁷¹ Mr. Kerrigan wrote that he called Mr. Obiang and asked him whether he was working with Mr. Baddin, and Mr. Obiang said that Mr. Baddin "had offered to kick him back 50% of the selling commission if he bought the Malibu property through him."⁴⁷² Mr. Kerrigan later filed suit against Mr. Baddin for allegedly inappropriately luring away his client.

No Questions. When asked about the source of Mr. Obiang's funds, Mr. Kerrigan indicated that he had no legal obligation to ask such questions and didn't inquire. He told the Subcommittee that he did not know who Mr. Obiang was initially, but ultimately "found out his family was running Equatorial Guinea." He said he did an Internet search, learned that Mr. Obiang was the son of the EG President whom some people were trying to overthrow. He said he didn't know how much to believe regarding what he saw on the Internet. He said he had no understanding of where Mr. Obiang's money came from, but assumed it was legitimate. Mr. Kerrigan stated: "Who am I to question it?"

Mr. Kerrigan said that Mr. Obiang "rolled up to showings in a Bentley," and he wasn't about to turn Mr. Obiang away. He told the Subcommittee: "If he said 'I want to buy a house for \$10 million' and I said, 'no,' he'd go to someone else." He also noted that clients don't want to divulge financial information, and he never talked to Mr. Obiang about finances because he didn't want to "get someone upset."

When questioned about whether or not real estate agents should conduct due diligence in order to know who their clients are and avoid facilitating real estate purchases with suspect

⁴⁶⁹ Subcommittee interview of Mr. Kerrigan, May 15, 2008.

⁴⁷⁰ According to Mr. Kerrigan, Mr. Obiang had authorized him to submit a written offer on the property on October 18, 2003, for \$21 million. 10/18/03 Residential Purchase Agreement, PSI-Coldwell_Banker-01-000179-190. On January 29, 2004, Mr. Kerrigan submitted a second offer for \$24 million (see 1/29/04 California Residential Purchase Agreement, PSI-Coldwell_Banker-01-000148-159) and received a counter offer for \$33.9 million (see 2/3/04 counter offer form, PSI-Coldwell_Banker-01-000144-147). On February 5, 2004, Mr. Obiang submitted a written offer of \$27 million (see 2/5/04 counter offer form, PSI-Coldwell_Banker-01-000140). On February 9, 2004 the seller sent back a counter offer of \$33.5 million (see 2/9/04 counter offer form, PSI-Coldwell_Banker-01-000139). On August 27, 2004, Mr. Kerrigan submitted a written offer for \$28 million (see PSI-Coldwell_Banker-01-000113-124.). On September 1, 2004, the seller countered with a written offer of \$32 million (see PSI-Coldwell_Banker-01-000109-112) Mr. Kerrigan wrote: "We had not come to an agreement on price yet, but as time went on we were getting closer to making a deal on the Malibu home." Kerrigan statement, Mirzo International, Inc. v. Hyland, Arbitration Complaint Case No. AB06-15, PSI-Coldwell_Banker-01-000017-18.

⁴⁷¹ Statement of Facts Describing the Controversy, Mirzo International, Inc. v. Hyland, Arbitration Complaint Case No. AB06-15, PSI-Coldwell_Banker-01-000024. Mr. Kerrigan reported that he never signed a retainer agreement with Mr. Obiang.

⁴⁷² Id.

funds, Mr. Kerrigan responded that if those were legal requirements, real estate agents would comply with the law.

(3) Analysis

Real estate agents, Mr. Baddin and Mr. Kerrigan, assisted Mr. Obiang in his efforts to buy and sell high-end real estate in California. They operated, and continue to operate, without any legal obligation to know their customers, analyze the source of their funds, or exercise special precautions when dealing with PEPs. The escrow agents who handled the Malibu purchase, West Coast Escrow and First American, together accepted more than \$30 million in suspect funds wire transferred from Equatorial Guinea. D&G Escrow Corporation, which handled the Antelo property sale, received \$7.7 million from the buyer and transferred the sale proceeds to Obiang-controlled accounts, including \$4 million to a shell company account at Bank of America. Those sale proceeds included a \$1 million profit on the funds that Mr. Obiang had used to buy the property three years earlier. Like their real estate agent counterparts, these escrow agents operated, and continue to operate, without any legal obligation to know their customers, analyze the source of their funds, or exercise special precautions when dealing with PEPs.

In addition, the banks that housed the escrow agent accounts did not stop the multi-million-dollar wire transfers sent to or from the accounts of the escrow agents, relying on the principle that a bank is not obligated to know the clients of its client. These banks' AML and PEP controls depended upon the escrow agents policing their own clients, but under current law, U.S. escrow agents selling multi-million-dollar real estate are not required to have AML safeguards in place.

Because of these gaps in U.S. AML law, Mr. Obiang was able to buy and sell U.S. real estate without having to account for the source of the funds he used in his transactions. The end result was that he sent millions of dollars in suspect funds into and out of the United States in connection with his real estate transactions. If AML safeguards are to be applied to these types of transactions in the future, real estate and escrow agents should be required to establish AML programs.

D. Obiang Use of a U.S. Escrow Agent To Purchase A Private Jet with Suspect Funds

In 2006, Mr. Obiang used a shell corporation called Ebony Shine International, Ltd. to purchase a private jet with \$38.5 million wire transferred from Equatorial Guinea to a U.S. escrow agent that facilitated the purchase. After one U.S. escrow agent, McAfee & Taft, learned of Mr. Obiang's involvement in the purchase and refused to complete the transaction without information on the source of the funds being supplied by him, another U.S. escrow agent, Insured Aircraft Title Services, Inc. (IATS), stepped in and completed the transaction without questioning the source of the funds. The \$38.5 million was transferred from an Obiang account in Equatorial Guinea to an IATS escrow account at UBS Bank in London, and later to various U.S. bank accounts. Mr. Obiang now routinely uses the jet to travel throughout the United States and around the world.

Like persons involved with real estate closings and settlements, since 1988, “business[es] engaged in vehicle sales, including automobile, airplane, and boat sales,” have been identified in U.S. AML laws as vulnerable to money laundering abuses due to the large sums involved in their transactions.⁴⁷³ The 2001 Patriot Act required such businesses to establish AML programs, unless exempted by the Treasury Department.⁴⁷⁴ In 2002, the Treasury Department provided a “temporary” exemption from the statutory requirement to “seller[s] of vehicles, including automobiles, airplanes, and boats.”⁴⁷⁵ Today, eight years after enactment of the Patriot Act, the Treasury Department has yet to propose an AML rule for businesses engaged in vehicle sales. Treasury has also never made it clear whether such an AML rule would extend to escrow agents holding the funds needed to complete the vehicle sales. This business sector has also failed to develop AML guidance for its members. That means, under current law, U.S. escrow agents that handle aircraft sales operate without any legal obligation to know their customers, evaluate the source of funds used to purchase aircraft, or exercise special precautions when dealing with a PEP.

2005 Purchase Attempt. In February 2005, Mr. Obiang employed a U.S. law firm, Sidley Austin Brown & Wood LLP (now Sidley Austin LLP), to help him purchase an aircraft from Gulfstream Aerospace Corporation (Gulfstream).⁴⁷⁶ At some point, Mr. Obiang sent more than \$21 million to an escrow account associated with Gulfstream for the purchase of the aircraft,⁴⁷⁷ but according to the law firm, the “negotiations between Gulfstream and Mr. Obiang were unsuccessful.”⁴⁷⁸ Sidley Austin agreed to accept a wire transfer of the \$21 million from Gulfstream, after first obtaining a letter from the U.S. Department of Justice that, “at the present time,” it had “no basis for either restraining or seizing proceeds used to finance this proposed sale as potentially forfeitable property” and “no basis for believing that the monies used to purchase the aircraft would violate the U.S. money laundering laws.”⁴⁷⁹

On July 28, 2005, Gulfstream wire transferred the \$21 million to Sidley Austin’s attorney-client account at Citibank Private Bank.⁴⁸⁰ According to the law firm, the transfer “was done at the direction of Mr. Obiang with the understanding that the funds would be remitted to Mr. Obiang.”⁴⁸¹ The funds remained at the law firm for more than four months. On December 8, 2005, at Mr. Obiang’s request, Sidley Austin wire transferred \$250,000 of his funds to Aero Records & Title Co. Escrow.⁴⁸² Sidley Austin also applied about \$266,000 of the funds to pay

⁴⁷³ See 31 U.S.C. § 5312(a)(2)(T)(including “a business engaged in vehicle sales, including automobile, airplane, and boat sales; in the list of “financial institutions” subject to U.S. AML requirements).

⁴⁷⁴ See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 U.S.C. § 5318(h).

⁴⁷⁵ See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

⁴⁷⁶ 12/17/09 letter from Sidley Austin LLP to Subcommittee, PSI-Sidley Austin-01-000001-3.

⁴⁷⁷ Id.

⁴⁷⁸ Id.

⁴⁷⁹ 4/18/05 letter from U.S. Department of Justice to Sidley Austin Brown & Wood LLP, PSI-Sidley Austin-01-000005.

⁴⁸⁰ See Sidley Austin Trust Transaction Detail Report for 1/1/04 to 1/1/07 for the Republic of Equatorial Guinea and Minister Obiang, PSI-Sidley Austin-01-000006-7.

⁴⁸¹ 12/17/09 letter from Sidley Austin LLP to Subcommittee, PSI-Sidley Austin-01-000001.

⁴⁸² Id., at 2. This money was placed in escrow and used in Mr. Obiang’s second, ultimately successful attempt to purchase a Gulfstream jet in 2006, as explained below.

Mr. Obiang's outstanding legal fees and accepted another \$100,000 "as a retainer payment."⁴⁸³ The next day, December 22, 2005, at Mr. Obiang's direction, Sidley Austin wire transferred \$900,000 of his funds to West Coast Escrow.⁴⁸⁴

Sidley Austin attempted to send the remaining funds, about \$19.5 million, to Mr. Obiang's personal bank account in Equatorial Guinea. On December 21, 2005, Sidley Austin sent a wire transfer of the funds to Societe Generale de Banques in Equatorial Guinea for Mr. Obiang's account, but Societe General "did not approve the transfer."⁴⁸⁵ A month later, on January 24, 2006, after obtaining a second letter from the U.S. Justice Department that the transfer did not violate U.S. AML laws, Sidley Austin sent a second wire transfer with the \$19.5 million to Societe General in Equatorial Guinea. That time, the bank accepted the transfer and credited the funds to Mr. Obiang's account.⁴⁸⁶

2006 Purchase Offer. In 2006, Mr. Obiang made a second attempt to purchase a Gulfstream aircraft, this time from an owner rather than the manufacturer. On February 23, 2006, Ebony Shine International, Ltd., acting on behalf of Mr. Obiang, submitted a purchase offer to Blue Sapphire Services, Ltd. to buy a Gulfstream G-V jet airplane registered in the United States.⁴⁸⁷ Ebony Shine International, Ltd. is a British Virgin Islands (BVI) shell company. Mr. Obiang was represented in the transaction by a non-U.S. attorney, Duret Sieraczek-Abilan, also known as Eric Duret.

Blue Sapphire Services, Ltd. is also a BVI shell corporation, that was used to facilitate the sale of the aircraft by the Bakrie family of Indonesia.⁴⁸⁸ The Bakrie family was represented in the transaction by a non-U.S. citizen referred to as Dick Brown. At the time of the transaction, the aircraft was registered with the Federal Aviation Administration (FAA) in Oklahoma City, but physically located in Singapore.⁴⁸⁹ Because U.S. registered aircraft require a U.S. registered owner, Blue Sapphire employed Wells Fargo Bank Northwest as the aircraft's registered owner.⁴⁹⁰

⁴⁸³ Id.

⁴⁸⁴ Id. See also 12/22/05 letter from Sidley Austin to Citibank Private Bank regarding the wire transfer, and several emails of the same date showing the transfer was completed, no bates numbers. The \$900,000 was placed in escrow and later used in Mr. Obiang's purchase of the Malibu residence, as explained earlier.

⁴⁸⁵ Id.

⁴⁸⁶ Id.

⁴⁸⁷ The Gulfstream G-V is a high performance corporate-style jet airplane that seats up to sixteen passengers and crew, and has an ultra-long flight range of 6,500 nautical miles. It is manufactured in the United States by Gulfstream Aerospace Corp., a subsidiary of General Dynamics. The Gulfstream G-V can be used to transport senior government officials or corporate management, and serve military and homeland defense roles. See Gulfstream Aerospace Corp, News Release, November 6, 2008, <http://www.gulfstream.com/news/releases/2007/070618a.htm>.

⁴⁸⁸ Subcommittee staff interview with McAfee & Taft officials, 2/20/09. See also 2/23/06 Offer to Purchase from Ebony Shine International LTD, BSSL000001.

⁴⁸⁹ As is common with foreign owners of U.S. registered aircraft, Blue Sapphire Services, Ltd. had entered into an owner-trustee relationship with Wells Fargo Bank N.A. to hold title of the aircraft to satisfy domestic ownership requirements for registration purposes. See also 2/23/05 Offer to Purchase from Ebony Shine International Ltd., BSSL000001.

⁴⁹⁰ See 6/29/06 FAA Aircraft Bill of Sale and 8/16/06 letter from Wells Fargo canceling U.S. registration of the aircraft, PSI-Insured_Aircraft-01-0159-60.

McAfee & Taft, a U.S. company headquartered in Oklahoma City, initially acted as the escrow agent in the sale. According to McAfee officials, their company was chosen because it had assisted in the original purchase of the jet by Blue Sapphire Services, and so was familiar with the unique leasing structure used to finance that purchase.⁴⁹¹

The February 2006 purchase offer proposed a total purchase price of \$38.5 million payable in three installments to the escrow agent, consisting of an initial payment of \$4.7 million at the time of the offer; a second payment of \$10.3 million due at the pre-purchase inspection of the jet on or about March 25, 2006; and a final payment of \$23.5 million upon delivery of the aircraft.⁴⁹² The offer was signed by Mr. Duret on behalf of Ebony Shine International and by Irma Pujiastuti on behalf of Blue Sapphire Services.⁴⁹³ An escrow agreement, that was drafted but not signed by either party, indicated that all payments would be made to an escrow account at McAfee & Taft in Oklahoma City.⁴⁹⁴

A second U.S. company, Insured Aircraft Title Services (IATS) of Oklahoma City, was selected to serve as the escrow agent for Ebony Shine International. On February 27, 2006, IATS sent an email to Eric Duret, the attorney representing Ebony Shine International, stating that IATS had received a deposit of about €3.9 million from Mr. Obiang to purchase the aircraft.⁴⁹⁵ The funds had been deposited into an IATS escrow account at UBS bank in London.

Those funds were supposed to be transferred to the seller's escrow agent, McAfee & Taft, which had its account at Bank of America in Oklahoma City.⁴⁹⁶ On March 6, 2006, however, Mr. Duret sent an email to McAfee & Taft, with a copy to Blue Sapphire's representative, Dick Brown, requesting alternate wire arrangements:

“Further to Dick’s correspondence he has noted deposit to be made in a bank in Oklahoma [C]ity.

The future owner of this plane is from an African origin and therefore it is complicated for him to make a wire transfer to the USA instead of Europe or to Asia.

He presently hold[s] an account with UBS London. Would it be possible for you to manage this escrow account in London in order to proceed further with this transaction and guarantee our client interest.”⁴⁹⁷

McAfee & Taft replied the same day, stating: “We cannot manage an account with UBS London. With that said, the parties may choose to use another escrow agent for funds (possibly a London firm/company) and we would simply hold the documents in escrow.”⁴⁹⁸ Mr. Brown of Blue Sapphire Services, however, insisted on using McAfee & Taft as the escrow agent for the funds, sending the following email:

⁴⁹¹ Subcommittee interview of McAfee & Taft officials, 2/20/09.

⁴⁹² 2/23/06 Offer to Purchase, BSSL000001, 10-11.

⁴⁹³ Id., at 03.

⁴⁹⁴ Id., at 11.

⁴⁹⁵ Id., at 04.

⁴⁹⁶ Escrow Agreement, BSSL000054.

⁴⁹⁷ 3/6/06 email from Ms. Nasrallah, BSSL000093.

⁴⁹⁸ 3/6/06 email from McAfee & Taft, BSSL000145.

“As I advised from the outset of this transaction, the funds have to be in Escrow with MCAFEE & TAFT. We have no way of managing funds in overseas accounts. If your client has an account with UBS in London, he can transfer the funds from Africa to his UBS account in London, and from there it is a simple transaction to move the funds to McAfee & Taft.

If you can't have these funds moved into an Escrow acceptable to McAfee & Taft, then I don't see how we are going to get this deal done.”⁴⁹⁹

On March 15, 2006, an internal McAfee & Taft email noted that the company had not received any funds regarding the Gulfstream purchase, and that Ebony Shine must “direct IATS to transfer the \$3,912,504.94 to our escrow account.”⁵⁰⁰ On March 16, 2006, Mr. Brown emailed Mr. Duret to request the immediate transfer of the funds:

“Eric, we have not received any advice from [McAfee & Taft] that they have received funds into Escrow despite your advice earlier in the week that the funds have been sent. This is very disturbing and it is a long way from your commitment.”⁵⁰¹

Mr. Duret replied:

“[F]unds will arrive on Wednesday. As I told you in my email of March 6th, my client is [of] African origin and therefore it is complicated for him to make a wire transfer to the USA. That's the reason why the funds [are] not in your account. Please be patient.”⁵⁰²

McAfee & Taft Raises Patriot Act Concerns. After reviewing the IATS wire transfer documentation, McAfee & Taft became aware of Mr. Obiang's involvement in the transaction.⁵⁰³ It then researched Mr. Obiang, learned of his political status and reputation, and became concerned about the source of the funds he would be supplying to purchase the aircraft.⁵⁰⁴

Although in 2002, the U.S. Treasury Department exempted U.S. businesses engaged in aircraft sales from requirements in the 2001 Patriot Act to establish AML programs, McAfee & Taft told the Subcommittee that it had voluntarily chosen to implement the Patriot Act's AML safeguards to avoid facilitating transactions involving suspect funds.⁵⁰⁵ The 2006 escrow agreement to be used in the Gulfstream purchase, for example, stated that McAfee & Taft “maintains a Customer Identification Program (CIP) in accordance with the Patriot Act.”⁵⁰⁶ McAfee & Taft told the Subcommittee that its CIP program required it to identify the officers and principals of the purchasing company, Ebony Shine International; to understand the source of the purchaser's funds; and to ensure that the funds were sent from an account held in the name

⁴⁹⁹ 3/6/06 email from Mr. Brown to Mr. Duret, BSSL000093.

⁵⁰⁰ 3/15/06 internal McAfee & Taft email, BSSL000100.

⁵⁰¹ 6/16/06 email from Mr. Brown to Mr. Duret, BSSL000144.

⁵⁰² 3/17/06 email from Mr. Duret to Mr. Brown, BSSL000144.

⁵⁰³ Subcommittee interview of McAfee & Taft officials, February 20, 2009.

⁵⁰⁴ Id.

⁵⁰⁵ Id.

⁵⁰⁶ 3/06 Escrow Agreement Draft 46, BSSL000205.

of the purchaser, Ebony Shine International, rather than from a parent, subsidiary, related company, officer, or director.⁵⁰⁷

On March 19, 2006, McAfee & Taft sent an email to Mr. Brown and Mr. Duret stating: “We need some information to assure compliance with the U.S. Patriot Act. Funds must arrive from an account held in the name of Ebony Shine International, Ltd. (Ebony). We also need copies of Ebony’s formation documents, list of officers and principals and identity of the source of funds.”⁵⁰⁸

On March 23, 2006, IATS wire transferred about \$4.7 million from its UBS account in London to a McAfee & Taft escrow account at Bank of America in Oklahoma City. An email from a McAfee employee stated that the funds were to be held pending further instruction from Teodoro Nguema Obiang.⁵⁰⁹

McAfee & Taft sent an email to Mr. Brown confirming receipt of the funds but also noting: “The funds, until such time as a final escrow agreement is executed by all parties, [are] being held by us and subject to the discretion of the purchaser. We of course will not execute the escrow agreement until we are satisfied that the Patriot Act documentation is sufficient. We have not received any further documentation from Eric, since our last meeting.”⁵¹⁰

McAfee & Taft and Mr. Brown sent multiple emails to Mr. Duret and his assistant, Christine Nasrallah, in an attempt to obtain the information about Ebony Shine International and the source of its funds to satisfy the company’s compliance with the Patriot Act.⁵¹¹ On March 30, 2006, Mr. Brown sent the following email to Mr. Duret:

“We are approaching the end of another week, and nothing has been done by you to enable compliance with the Patriot Act. I have sent you several emails on this matter and have not even had the courtesy of a reply.

As explained to you previously, because you have not complied with the requirements of the Patriot Act, we do not have a deposit as required under the Sale and Purchase Agreement. The fact that you have actually transferred the funds to the Escrow Account has no meaning if you are unable to comply with the Patriot Act.

In the absence of a constructive reply from you by return, we will have to assume that you no longer wish to continue with this transaction.”⁵¹²

Ignoring the McAfee & Taft requests for additional customer information, Mr. Obiang wire transferred \$10.3 million from his account in Equatorial Guinea to the McAfee & Taft escrow account at Bank of America in Oklahoma City, in three installments:

⁵⁰⁷ See 3/06 Escrow Agreement Draft 46, BSSL000205; and 3/19/06 email from McAfee & Taft to Mr. Brown and Mr. Duret, BSSL000159.

⁵⁰⁸ 3/19/06 email from McAfee & Taft to Mr. Brown and Mr. Duret, BSSL000159.

⁵⁰⁹ See 3/23/06 email from McAfee & Taft, BSSL000222; 3/23/06 email from McAfee & Taft to Mr. Brown, BSSL000223; 3/24/06 email from McAfee & Taft to Mr. Brown, BSSL000226.

⁵¹⁰ 3/24/06 email from McAfee & Taft to Mr. Brown, BSSL000226, see also 3/06 Escrow Agreement Draft 46, BSSL000205.

⁵¹¹ See 3/17/06 - 3/28/06 emails between McAfee & Taft, Mr. Brown, and Mr. Duret, BSSL000230-235.

⁵¹² 3/30/06 email from Mr. Brown to Duret, BSSL000238.

On April 4, 2006, Mr. Obiang wired \$2,575,000 to the McAfee & Taft escrow account. The originating institution was Societe Generale De Banque (SGDB) in Equatorial Guinea.⁵¹³

On April 6, 2006, he wired another \$2,575,000 from SGDB to the McAfee & Taft escrow account.⁵¹⁴

On April 7, 2006, Mr. Obiang wired \$5,150,000 from SCDB to the McAfee & Taft escrow account in Oklahoma City.⁵¹⁵

In each case, the funds moved from his bank in Equatorial Guinea to a correspondent account at Wachovia Bank which then transferred the funds to Bank of America in Oklahoma City. The plan was that, once the sale of the jet was complete, the funds would move from the McAfee & Taft escrow account at Bank of America to an account for the benefit of the seller, Blue Sapphire.⁵¹⁶

On April 7, 2006, Mr. Duret's assistant, Ms. Nasrallah, wrote to Mr. Brown about the \$10.3 million that had been transferred to the U.S. escrow account as follows:

“The 1st and 2nd settlements of \$2,175,000.00 each were transferred to the credit of [McAfee & Taft's] account value April 6th, 2006 and the 3rd \$5,150,000.00 value April 7th. ... We have contacted the Wells Fargo Bank re the compliances of Patriot Act. Taking into account the difficulties linked with their client's political activities, we have decided not to proceed with a U.S. registration but to go for a registration in the Caymand [sic] Islands or Bermuda.”⁵¹⁷

On April 7, 2006, Mr. Brown responded with an email to Mr. Duret, Ms. Nasrallah, McAfee & Taft, and others:

“We seem to have reached an impass[e] on the Patriot Act compliance. ... The buyer has decided to take the aircraft off the US Register because they feel that complying with the requirements of the Patriot Act for Well[s] Fargo will take too long. ... We are just about at the stage where we will have to either restructure this sale to take it entirely outside the Patriot Act (i.e. we sell it to one of their associates in Singapore, and accept payment there).”⁵¹⁸

Minutes later, McAfee & Taft replied:

“I just want to make sure everyone is on the same page and aware that for us to continue to hold the funds I must be provided with the Patriot Act due diligence by Monday morning. ... [I]f I don't have the information or if I am in anyway unsure, I will wire the

⁵¹³ 4/5/06 wire transfer record, BSSL000254.

⁵¹⁴ Id., at BSSL000255.

⁵¹⁵ 4/6/06 wire transfer record, BSSL000258.

⁵¹⁶ Wells Fargo was the appointed trustee for Blue Sapphire. See 7/26/06 Escrow Agreement, PSI-Insured_Aircraft-01-0196-205.

⁵¹⁷ 4/7/06 email Ms. Nasrallah to Mr. Brown, Mr. Duret, McAfee & Taft, BSSL000259.

⁵¹⁸ 4/7/06 email from Mr. Brown to McAfee & Taft, Mr. Duret, and other others, BSSL000279.

funds back to the account of the party sending said funds to us. Or we can wire the funds back to IATS if they are willing to act as escrow agent.

The parties could use the same form of escrow agreement with IATS.”⁵¹⁹

Five days later, on April 12, 2006, having received no information from Ebony Shine International, McAfee & Taft cancelled the transaction and returned the funds that had been provided to them to purchase the Gulfstream jet. McAfee & Taft told the Subcommittee that it expected an angry phone call from Mr. Duret, but received no further communication from him.⁵²⁰ On April 12, 2006, McAfee & Taft sent three wire transfers totaling \$10,299,950.00 to Mr. Obiang in Equatorial Guinea and one wire transfer for \$4,723,262.22 to IATS at UBS in London.⁵²¹ These amounts corresponded to the “initial payment” and “second payment” amounts specified in the draft escrow agreement, less fees.

IATS Steps In. After McAfee & Taft declined to complete the transaction without information on the source of the \$38.5 million being provided to purchase the Gulfstream jet, IATS stepped in, agreeing to serve as escrow agent for the transaction and to facilitate the purchase of the jet by Mr. Obiang’s company.

On April 20, 2006, Ms. Nasrallah sent an email to IATS noting that “the transaction was cancelled via Mcafeetaft” and requesting IATS to open an escrow account in the name of “Blue Sapphire (NGUEMA).”⁵²² Later that day, IATS sent Mr. Duret a confirmation that it had deposited \$4.7 million into an IATS escrow account at UBS Bank in London for “Blue Sapphire Services LTD (Nguema).”⁵²³ Mr. Duret subsequently provided IATS with a Power of Attorney form, signed by Mr. Obiang, in which Mr. Obiang authorized Mr. Duret to represent him in the purchase of the aircraft.⁵²⁴

Two weeks later, on May 4, 2006, Mr. Brown emailed Mr. Duret and Ms. Nasrallah to warn them “if the deposit held by IATS is not made non refundable (in accord with the Purchase Agreement) and confirmed as non refundable by IATS, by close of business tomorrow Friday May 5, then we will have to abort the sale to your client.”⁵²⁵ The next day, on May 5, 2006, Mr. Brown wrote:

“It is good to hear that your client still wants to buy the aircraft, and we are still interested to sell him the aircraft, but weeks go by and there is no progress and no action from your side. We can understand the problems that have occurred with the banking, but not the long periods on no action by your side were the major contributor to the banking problems.

Your client has indeed sent the US\$4,700,000 back to [IATS] however the funds are still held by IATS for the account of your clients, and not for the escrow account of Blue

⁵¹⁹ 4/7/06 email from McAfee & Taft, BSSL000280.

⁵²⁰ Subcommittee interview of McAfee & Taft officials, February 20, 2009.

⁵²¹ 4/11/06 internal McAfee & Taft email, BSSL000331; 4/12/06 Bank of America wire transfer record, BSSL000335-38.

⁵²² 4/19/06 email from Ms. Nasrallah to IATS, PSI-Insured_Aircraft-01-0222.

⁵²³ 4/20/06 IATS Deposit Confirmation, PSI-Insured_Aircraft-01-0229.

⁵²⁴ 4/20/06 Bordreau De Transmission, PSI-Insured_Aircraft-01-0226-28.

⁵²⁵ 5/4/06 email from Mr. Brown to Mr. Duret and Ms. Nasrallah, PSI-Insured_Aircraft-01-0258.

Sapphire in accordance with the Purchase Agreement. Your client still has total control over these funds, we do not have them.

The Pre Purchase inspection can be scheduled as soon as the funds are moved into escrow on a non refundable basis in accordance with the terms of the Purchase Agreement.

Please contact Eric by phone today to get this matter resolved.”⁵²⁶

Mr. Brown sent a second email on May 5, 2006, as follows:

“As explained in my earlier email the US\$4,700,000 is in the IATS Escrow Account and is being held for the Credit of your client. ... We can be patient while all the other problems are sorted out, but we must have the US\$4,700,000 made non refundable in accordance with the terms of the Sale and Purchase Agreement. ... I would suggest you contact Fred Weissmann and arrange for Jet Aviation to advise you on this matter and assist you in completing this transaction. They are experts in these matters and can help you get this transaction finalized.”⁵²⁷

On May 9, 2006, Ms. Nasrallah sent an email stating: “The management of the aircraft will be done by Jet Aviation in accordance to the instructions of the buyer.”⁵²⁸

That same day, Mr. Obiang sent the second installment of \$10.3 million to purchase the aircraft, using three wire transfers to do so. Each transfer was sent from an Obiang account at Societe Generale De Banque in Equatorial Guinea to the IATS account at UBS in London. On May 9, 2006, UBS notified IATS that \$2,574,975 had arrived from Banque De France by order of Mr. Obiang.⁵²⁹ This email clearly disclosed Mr. Obiang’s involvement in the aircraft sale. On May 10, 2006, UBS received an additional \$5,149,975 from Banque De France by order of Mr. Obiang.⁵³⁰ And again, on May 11, 2006, another \$2,574,975 was sent from Banque De France by order of Mr. Obiang.⁵³¹ At that point, IATS held about \$15 million in its escrow account at UBS in London.

On May 18, 2006, IATS notified Mr. Brown of Blue Sapphire Services and Mr. Duret of Ebony Shine International, among others, that IATS was in possession of the first and second payments specified in the draft escrow agreement for the purchase of the jet.⁵³²

Seller Invokes Patriot Act. On May 23, 2006, Mr. Brown sent an email to Mr. Duret notifying him that the seller of the aircraft, Blue Sapphire, wanted a legal opinion that the proposed purchase was not subject to provisions of the Patriot Act:

⁵²⁶ 5/5/06 email from Mr. Brown to Ms. Nasrallah and Mr. Duret, PSI-Insured_Aircraft-01-0257.

⁵²⁷ 5/5/06 email from Mr. Brown to Mr. Duret and Ms. Nasrallah, PSI-Insured_Aircraft-01-0250.

⁵²⁸ 5/9/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured_Aircraft 01-0265; see also 5/9/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured_Aircraft-01-0268.

⁵²⁹ 5/5/06 email from UBS to IATS, PSI-Insured_Aircraft-01-0275.

⁵³⁰ 5/10/06 email IATS to UBS, PSI-Insured_Aircraft-01-0264.

⁵³¹ 5/11/06 email from UBS to IATS, PSI-Insured_Aircraft-01-0276.

⁵³² 5/18/06 email from IATS to Mr. Brown, PSI-Insured_Aircraft-01-0281.

“The owner of the GV is very concerned that this sale to your client is not in compliance with the Patriot Act. As such he requires a Legal Opinion from IATS’s Counsel that the transaction as structured by IATS is not subject to the provisions of the Patriot Act, or if it is, that all requirements of the Patriot Act have been complied with.”⁵³³

Wells Fargo Bank Northwest, which acted as Blue Sapphire’s U.S. registered owner of the aircraft, normally complied with the Patriot Act’s AML provisions and wanted a legal determination as to whether the \$38.5 million being paid in the sale was subject to a due diligence review to evaluate the source of the funds.

Ms. Nasrallah responded with an email on May 31, 2006, arguing that the Patriot Act was not applicable to the transaction:

“Please allow me to pinpoint the following points: the client is Indonesian, the sale will take place in Singapore between 2 [BVI] companies out of which one is detained by an African, the guarantee is based in London, both intermediaries (you and me) are non US Citizens. Based on the above, could you please explain to me how an American law can be applied to this contract knowing that the plane has already been re-registered at the Cayman Islands?”⁵³⁴

Despite this email, the escrow agreement had been revised to require the purchaser to provide a legal opinion that the transaction was exempt from the Patriot Act.⁵³⁵ On June 9, 2006, William J. Robinson, an Oklahoma City attorney, provided the requested legal opinion to Blue Sapphire, Ebony Shine International, IATS, and Wells Fargo Bank. He wrote in part:

“In accordance with Paragraph 4 of the June 5, 2006 Aircraft Sale and Purchase Amendment Agreement herein relative to the applicability of the Uniting and Strengthening America By Providing Appropriate Tolls Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act Of 2001 thereto, you are advised that while the transaction may not be specifically ‘exempt’ from same, it is my opinion, subject to qualification hereinafter expressed, that nothing in said Act prevents the parties hereto, or their agents, from consummating the purchase and sale or identifies the transaction as a violation of said Act.”⁵³⁶

On June 27, 2006, Mr. Robinson provided a supplemental legal opinion further explaining his reasoning. First, he observed that IATS was not a “financial institution” as defined in the Patriot Act.⁵³⁷ Second, he noted that it was the banks that were wiring funds in connection with the transaction that were subject to the Patriot Act.⁵³⁸ Finally, he stated that the two banks that would be involved with completing the sale, Wells Fargo Bank and the International Bank of Commerce, were both in compliance with the Patriot Act.⁵³⁹

⁵³³ 5/23/06 email from Mr. Brown to Mr. Duret, PSI-Insured_Aircraft-01-0328.

⁵³⁴ 5/31/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured_Aircraft-01-0327.

⁵³⁵ See 5/6/06 Escrow Agreement, PSI-Insured_Aircraft-01-0326.

⁵³⁶ 6/9/06 legal opinion, PSI-Insured_Aircraft-01-0299.

⁵³⁷ 6/27/06 legal opinion, PSI-Insured_Aircraft-01-0309.

⁵³⁸ Id.

⁵³⁹ Id. International Bank of Commerce administered IATS’ escrow accounts in the United States.

Apparently this legal analysis was sufficient for Wells Fargo and International Bank of Commerce to accept the funds supplied by Mr. Obiang in his purchase of the jet.

Purchase Completed. On June 26, 2006, Mr. Brown emailed IATS that the “full amount of funds were in escrow with IATS” to complete the sale of the aircraft.⁵⁴⁰ On June 27, 2006, Mr. Brown forwarded a revised escrow agreement to IATS. The revisions included identifying IATS instead of McAfee & Taft as the escrow agent for the buyer’s funds, specifying that the escrow account was at UBS London, and deleting the requirement that the escrow agent maintain a Customer Identification Program in compliance with the Patriot Act.⁵⁴¹ On June 28, 2006, Mr. Obiang and Blue Sapphire Services, Ltd. executed a final Escrow Agreement and Instructions to Fund the purchase of the aircraft.⁵⁴²

The following charts summarize the source of the \$38.5 million used to purchase the aircraft and what happened to the funds.⁵⁴³ Essentially, the funds were provided by Mr. Obiang from his personal account in Equatorial Guinea. Because his payments were in U.S. dollars, they went through several correspondent accounts, including Wachovia Bank in the United States, before arriving at the IATS account at UBS in London.⁵⁴⁴ Once IATS received the funds, it divided the purchase price among five parties. It wire transferred the largest amount, over \$27 million to PMA Capital Management, an escrow agent based in the Cayman Islands with an affiliate in Hong Kong, which used the funds to pay off an outstanding mortgage on the aircraft.⁵⁴⁵ IATS wire transferred the next largest amount, over \$11 million, to a Blue Sapphire account at Credit Suisse in Singapore. Since the funds were in U.S. dollars, they went through Credit Suisse’s U.S. dollar correspondent account at Bank of New York. IATS then transferred about \$22,000 to its U.S. account at International Bank of Commerce in Oklahoma as its escrow fee, and sent additional amounts to two lawyers.⁵⁴⁶

⁵⁴⁰ 6/26/06 email from Mr. Brown to IATS, BSSL000339.

⁵⁴¹ See Escrow Agreement, PSI-Insured_Aircraft-01-0196-205; Escrow Agreement Draft 46, BSSL000204-213; and 6/28/06 Escrow Agreement, PSI-Insured_Aircraft-01-0313

⁵⁴² 6/28/06 Escrow Agreement, BSSL000364-366.

⁵⁴³ See Escrow Worksheet, PSI-Insured_Aircraft-01-0182; list of transaction parties, PSI-Insured_Aircraft-01-0202; 6/16/06 email from UBS to IATS, PSI-Insured_Aircraft-01-0306; 5/10/06 email from UBS to IATS, PSI-Insured_Aircraft-01-0264; and 5/11/06 email from UBS to IATS, PSI-Insured_Aircraft-01-0276.

⁵⁴⁴ See chart in next section identifying the transfers.

⁵⁴⁵ See, e.g., 6/29/06 FAA Release and Disclaimer, signed by PMA Capital Management Ltd, PSI-Insured_Aircraft-01-0161.

⁵⁴⁶ See 4/20/06 Escrow Report, PSI-Insured_Aircraft-01-0225; Subcommittee interview of IATS, December 17, 2009.

FUNDS SENT TO IATS ACCOUNT AT UBS LONDON IN 2006 AIRCRAFT SALE					
Date	Amount	Originating Institution	Through	Beneficiary	Bates
4/13/06	\$4,723,262.22	McAfee & Taft Escrow Account at Bank of America (returning Obiang funds)		Insured Aircraft Title Service, Inc.	BSSL0003321, 38
5/9/06	\$2,574,975.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0025, 26
5/11/06	\$5,149,975.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0028, 29
5/12/06	\$2,574,975.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0031, 32
6/13/06	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0034, 35
6/13/06	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0037, 38
6/19/06	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0040, 41
TOTAL- \$38,523,112.21			Source: Wachovia and McAfee & Taft		

FUNDS DISBURSED FROM IATS ACCOUNT AT UBS LONDON IN 2006 AIRCRAFT SALE				
Date	Funds Sent To	Account	Amount	Bates
6/29/06	PMA Capital Management Ltd.	HSBC account in Hong Kong (through a US dollar correspondent account at HSBC in New York)	\$27,238,963.17	BSSL000347
6/29/06	Blue Sapphire Services, Ltd.	Credit Suisse account in Singapore (through a US dollar correspondent account at Bank of New York)	\$11,232,011.83	BSSL000347
6/29/06	Insured Aircraft Title Services, Ltd.	International Bank of Commerce account in Oklahoma	\$ 22,525.00	BSSL000347
6/29/06	Clifford Chance, LLP	HSBC account in Hong Kong (through a US dollar correspondent account at HSBC in New York)	\$ 6,500.00	BSSL000347
6/30/06	WJ Robin	Account information not available	\$ 4,000.00	PSI-Insured_ Aircraft-01-0225
Source: McAfee & Taft		TOTAL- \$38,504,000.00		

Charts prepared by Subcommittee

On June 28, 2006, Mr. Obiang signed a Form of Acceptance acknowledging receipt of the Gulfstream G-V jet airplane, as well as a memorandum verifying completion of the aircraft inspection.⁵⁴⁷ In a subsequent email, Mr. Brown requested a 48 hour hold on the Transfer of

⁵⁴⁷ 6/28/06 inspection memorandum, BSSL000368; 6/28/06 Form of Acceptance Certificate, BSSL000369.

Title to allow the jet to be flown from Singapore to Basel, Switzerland.⁵⁴⁸ Documents reviewed by the Subcommittee indicate that the jet was registered in the Cayman Islands under the management of a private company, Jet Aviation, using registration Tail No. VP-CES.⁵⁴⁹ Other documentation obtained by the Subcommittee indicates that, in June 2006, Mr. Obiang was looking for space in an aircraft hangar in California to house a private jet.⁵⁵⁰

Flight records reviewed by the Subcommittee for Mr. Obiang's Gulfstream G-V aircraft show that over the last two and a half years, from March 2007 through November 2009, Mr. Obiang's aircraft has arrived and departed from the United States thirty-five times.⁵⁵¹ These flights have originated or departed from a variety of countries, including Bermuda, Brazil, the Dominican Republic, Dubai, France, and Switzerland. Common locations in the United States were airports at Los Angeles, Miami, New Jersey, Tucson, and Yuma, a small airport in Arizona near the Mexican border.

Analysis. Mr. Obiang's 2006 purchase of the Gulfstream jet involved multi-million-dollar funding transfers across international lines to and from the escrow agents retained by the buyer and seller. The seller's original escrow agent, McAfee & Taft, as an AML precaution, asked for information on the source of the \$38.5 million sent to its escrow account in the United States. When Mr. Obiang's associates refused to disclose the source of the funds, McAfee & Taft declined to complete the transaction and returned the funds it had been given. In contrast, its competitor IATS chose not to question the source of the funds, but to facilitate the purchase.

In addition, none of the banks who administered accounts for the escrow agents stopped the transfers. The banks were relying on the escrow agents themselves to police their clients, but under current law, U.S. escrow agents selling multi-million-dollar aircraft have no legal obligation to know their customers, evaluate the source of the funds used in aircraft purchases, or take special precautions when dealing with PEPs. Because of this gap in U.S. AML law, Mr. Obiang was able to send \$38.5 million in suspect funds into the United States to purchase the Gulfstream jet. To prevent similar suspect sales of aircraft in the future – as well as sales of luxury automobiles, yachts, and other high-end vehicles using escrow accounts – escrow agents need to be required to establish AML programs.

E. Obiang Use of U.S. Wire Transfer Systems To Move Millions of Dollars in Suspect Funds

In addition to making use of U.S. lawyers, real estate and escrow agents, Mr. Obiang has made frequent use of U.S. wire transfer systems to bring millions of dollars in suspect funds from Equatorial Guinea into the United States. He has used these EG wire transfers to send funds, not only to U.S. bank accounts that he controlled or utilized, but also to purchase U.S. goods and services and transact other business in the United States. Mr. Obiang has been able to utilize U.S. wire transfer systems because major U.S. banks that provide correspondent accounts

⁵⁴⁸ 6/28/06 email from Mr. Brown, BSSL000372.

⁵⁴⁹ 7/6/06 email from Mr. Brown, PSI-Insured_Aircraft-01-0184; 10/7/07 email from Jet Aviation to Ms. Romo, SEN006229.

⁵⁵⁰ 6/7/06 fax from Mr. Nagler, SEN011075; 6/7/06 email from Ms. DeHaven to Mr. Nagler, SEN011096.

⁵⁵¹ See 1/6/10 letter from Customs and Border Protection (CBP) to the Subcommittee, with attached flight records, PSI-CBP-01-00001-03. CBP began tracking flight information for private aircraft in 2007.

to foreign banks have not established procedures which would allow them routinely to detect, block, and analyze high-dollar wire transfers sent by PEPs from high-risk jurisdictions.

Two examples illustrate the problem: over a two-month period in 2006, Mr. Obiang was able to move \$73 million from Equatorial Guinea into the United States using wire transfer systems operated by Wachovia Bank; and over a four-year period from 2002 to 2006, he was able to move \$37 million through wire transfer systems operated by Citibank.

(1) \$73 Million Wired Through Wachovia Bank

In just over two months, from April 5, 2006 to June 19, 2006, Mr. Obiang was able to complete fourteen wire transfers that brought more than \$73 million in suspect funds from Equatorial Guinea into the United States through a Banque de France correspondent account at Wachovia Bank.⁵⁵² Mr. Obiang used these funds to complete the purchase of the \$30 million Malibu residence and the \$38.5 million Gulfstream G-V jet airplane described earlier in this section.⁵⁵³

This section has already examined the roles of the real estate and escrow agents and their banks in those transactions; this section takes the next step and examines the role of the U.S. banks that provide correspondent accounts that serve as gateways into the U.S. financial system for foreign banks sending wire transfers on behalf of their customers. Such correspondent accounts are not the final destination of the funds sent by wire transfer, but serve as intermediary accounts that link the originator of the wire transfer to its final beneficiary. Normally, U.S. correspondent accounts automatically transmit numerous wire transfers each day, and the funds represented by the wire transfers remain only briefly in the correspondent accounts. However, all U.S. banks are equipped with interdiction software that can detect and block wire transfers bearing particular names or countries to meet the requirements of U.S. law, such as prohibitions against transmitting wire transfers for terrorists, narcotics traffickers, and other criminals specified on OFAC lists or for countries against which the United States has imposed trade sanctions. This interdiction software has rarely been employed, however, in the battle to keep foreign corruption outside of the United States.

The \$73 million in wire transfers sent through Wachovia's correspondent account in the spring of 2006, occurred nearly two years after this Subcommittee held a hearing and released a well-publicized report describing how EG officials including Mr. Obiang, had used accounts at Riggs Bank to move suspect funds. Related criminal and regulatory investigations led to a \$16 million criminal fine, a \$25 million civil fine, and the sale of Riggs Bank.⁵⁵⁴ The report also sparked tougher oversight by Federal regulators of bank procedures to combat money laundering and foreign corruption, including by PEPs.

Wachovia told the Subcommittee that, in response to the Subcommittee's investigation, in 2005, the bank had designated Equatorial Guinea as a high-risk jurisdiction in its "enterprise-

⁵⁵² 4/5/06 – 6/19/06 Integrated Funds Transfer System, History Transaction Listings, BF-G-00001-56 (Sealed Exhibit).

⁵⁵³ \$44,099,999.99 was wired to McAfee & Taft and Insured Aircraft Title Services, Ltd. for escrow and title services related to the purchase of Gulfstream G-V S/N 669; and \$29,542,000.00 was wired to First American Title Company for the purchase of 3620 Sweetwater Blvd., Malibu, CA.

⁵⁵⁴ Associated Press, "Final Chapter Nears in Riggs Bank Drama," March 29, 2005.

wide list.”⁵⁵⁵ Wachovia also told the Subcommittee that it considered Mr. Obiang to be a senior foreign political figure whose financial activities required enhanced due diligence.⁵⁵⁶ Nevertheless, Wachovia failed to identify or stop the \$73 million in wire transfers that passed through the bank from April to June 2006. Each of these fourteen wire transfers involved a minimum of \$2 million, referenced Mr. Obiang on the wire transfer documentation, and showed the funds originating from a bank in Equatorial Guinea, but Wachovia’s interdiction software did not block any of the transfers. In each case, Wachovia had relied on its client – Banque De France, the foreign bank transmitting the funds to the United States – to ensure that it was not transmitting suspect funds. This case history shows that reliance was not well placed.

In January 2007, the Foreign Corruption Unit of the U.S. Immigration and Customs Enforcement (ICE) division alerted Wachovia to Mr. Obiang’s wire activity through the bank during the prior year, directing Wachovia’s attention to the Banque De France correspondent account.⁵⁵⁷ Even after receiving this warning, however, Wachovia did not place the Banque De France correspondent account under any additional scrutiny, or take steps to restrict wire transfers bearing Mr. Obiang’s name.⁵⁵⁸

After the 2006 wire transfers involving the \$73 million, Mr. Obiang did not openly use the Wachovia wire transfer system for over a year. Then, in 2008, he struck again. In response to a Subcommittee inquiry seeking Obiang-related financial records, Wachovia conducted a search of its wire transfer records and found that, in February and July of 2008, Mr. Obiang had sent two wire transfers totaling about \$145,000 from his personal account at a bank in Equatorial Guinea, through Fortis Bank, a French bank with a correspondent account at Wachovia, to accounts at other banks in the United States.⁵⁵⁹ Wachovia had again served as the gateway into the United States for his suspect funds.

This chart summarizes the Obiang wire transfers that were sent through foreign bank correspondent accounts at Wachovia from 2006 to 2008, and enabled Mr. Obiang to bring \$73 million in suspect funds into the United States.

OBIANG WIRE TRANSFERS THROUGH WACHOVIA 2006-2008					
Date	Amount	Originating Institution	Through	Beneficiary	Bates
4/05/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00001-03
4/05/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00004-06

⁵⁵⁵ Subcommittee interview of Wachovia Bank officials, 2/6/09; PSI-WACHOVIA-10-0007.

⁵⁵⁶ Subcommittee interview of Wachovia Bank officials, 2/6/09.

⁵⁵⁷ 1/16/07 email from ICE to Wachovia, BF-F00007.

⁵⁵⁸ 11/21/08 Wachovia’s written responses to Subcommittee questions, PSI-WACHOVIA-10-0004; Subcommittee interview of Wachovia Bank officials, 2/6/09.

⁵⁵⁹ 2/7/08-7/31/08 Wachovia Transaction Reports, BF-G-00043-56. Fortis Bank is affiliated with BNP Paribas.

4/10/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00007-09
4/10/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00010-12
4/10/06	\$5,150,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00013-15
4/19/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00016-18
4/21/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00019-21
4/26/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00022-24
5/09/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00025-27
5/11/06	\$5,150,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00028-30
5/12/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00031-33
6/13/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00034-36
6/13/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00037-39
6/19/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00040-42
2/06/08	\$ 144,017.99	Teodoro Obiang Account at CCEI Bank GE	Fortis Bank → Wachovia	Tia Ping Carpets account at Wachovia	BF-G-00050-56
7/30/08	\$ 1,458.51	Teodoro Obiang Account at CCEI Bank GE	Fortis Bank → Wachovia	Eulalia Salome Obono Nze account at Wachovia	BF-G-00043-49
Total- \$72,687,476.49			Source- Wachovia		

Chart prepared by Subcommittee

Wachovia has advised the Subcommittee that as of January 2009, it has taken steps for the first time to restrict Mr. Obiang's ability to wire funds through Wachovia's wire transfer system.⁵⁶⁰ According to Wachovia, it has added Mr. Obiang and his family members to the bank's pre-execution interdiction filter for wire clearing operations. Wachovia told the Subcommittee that any wires blocked by this software related to Mr. Obiang or his family would be scrutinized by funds transfer specialists for a determination of legitimacy, referred to anti-money laundering specialists where appropriate, and, if necessary, returned to the originating financial institution.⁵⁶¹ Wachovia's actions show that U.S. banks offering correspondent accounts to foreign banks can become powerful guardians of the gateways into the U.S. financial system and provide vital services in the battle to keep foreign corruption outside of the United States.

(2) \$37 Million Wired Through Citibank

A second example of Mr. Obiang's ability to take advantage of U.S. wire transfer systems involves wire transfers sent through Citibank. Wire transfer records reviewed by the Subcommittee indicate that, over a four-year period from 2002 to 2006, Mr. Obiang benefited from wire transfers sent through Citibank totaling in excess of \$37 million.⁵⁶²

Most of these wire transfers sent funds from Equatorial Guinea to the United States, drawing on accounts held by two Obiang companies, Somagui Forestal and Socage, or accounts held in the name of Mr. Obiang personally. Some of these wire transfers appear to have deposited substantial sums into Obiang-related accounts in the United States. For example, on July 11, 2003, \$1.5 million was deposited into an Obiang account at Riggs Bank.⁵⁶³ On May 21, 2004, \$1 million was deposited into an account held by his company, TNO Entertainment, LLC.⁵⁶⁴ Other wire transfers appear to have been direct payments to U.S. high-end retail establishments, presumably to pay Obiang-related bills. For example, on September 23, 2004, Somagui Forestal wire transferred \$97,588.05 to a Beverly Hills Porsche Audi dealership.⁵⁶⁵ Payments also went to a U.S. yacht company, corporate jet service, high-end automobile dealers, and a luxury vacation retailer. Still other wire transfers, totaling nearly \$2.5 million, appear to have been payments to satisfy American Express credit card charges.⁵⁶⁶

One of the wire transfers, for \$19.5 million in January 2006, was sent by a U.S. law firm, Sidley Austin, to Mr. Obiang in Equatorial Guinea, returning funds that he had sent to an escrow account related to an attempted purchase of a Gulfstream jet, as explained earlier. Before initiating this wire transfer, Sidley Austin obtained a letter from the U.S. Department of Justice confirming that the funds transfer would not violate U.S. AML laws and there was no basis to restrain or freeze such proceeds at the time of transfer.⁵⁶⁷

⁵⁶⁰ Subcommittee interview of Wachovia Bank officials, 2/6/09.

⁵⁶¹ Id.

⁵⁶² 2002-2006 wire transfer records, C00000065-116 (Sealed Exhibit).

⁵⁶³ 7/11/06 wire transfer record, C00000116.

⁵⁶⁴ 5/21/04 wire transfer record, C00000085.

⁵⁶⁵ 9/23/04 wire transfer record, C00000105.

⁵⁶⁶ 11/12/04 wire transfer record, C00000070; 7/14/04 wire transfer record, C00000075; 7/20/04 wire transfer record, C00000083.

⁵⁶⁷ 12/17/09 letter from Sidley Austin to the Subcommittee, PSI Sidley Austin 01-000001.

This chart summarizes the Obiang-related wire transfers that moved through Citibank from 2002 to 2006.

OBIANG WIRE TRANSFERS THROUGH CITIBANK 2002-2006					
Date	Amount	Originator	Through	Beneficiary	BATES
6/19/02	\$150,000.00	Somagui Forestal	CCEI Bank GE → Citibank → City National Bank	TNO Entertainment LLC	C00000090
7/22/02	\$50,000.00	Somagui Forestal	CCEI Bank GE → Citibank → City National Bank	TNO Entertainment LLC	C00000089
3/19/03	\$33,638.28	Somagui Forestal	CCEI Bank GE → Citibank → Bank of America	Timeshare Specialist – Mega Yacht Services	C00000088
3/19/03	\$300,000.00	Somagui Forestal	CCEI Bank GE → Citibank → Riggs Bank	T.N.O.	C00000087
7/11/03	\$1,500,000.00	Somagui Forestal	CCEI Bank GE → Citibank → Riggs Bank	Teodoro Nguema Obiang	C00000116
9/17/03	\$1,000,000.00	Somagui Forestal	CCEI Bank GE → Citibank → Riggs Bank	Teodoro Nguema Obiang	C00000086
3/9/04	\$1,000,000.00	Socage	CCEI Bank GE → Citibank → Riggs Bank	Teodoro Nguema Obiang	C00000068
3/15/04	\$999,975.00	Socage	CCEI Bank GE → Citibank → City National Bank	Teodoro Nguema Obiang	C00000066
3/18/04	\$500,000.00	Socage	CCEI Bank GE → Citibank → Bank One	Gulfstream Aerospace Corporation	C00000067
5/6/04	\$42,595.50	Somagui Forestal	CCEI Bank GE → Citibank → First Arizona Savings	Global Jet Corporation	C00000078
5/21/04	\$1,000,000.00	Somagui Forestal	CCEI Bank GE → Citibank → City National Bank	Teodoro Nguema Obiang (TNO Entertainment LLC)	C00000085
6/24/04	\$1,000,000.00	Somagui Forestal	CCEI Bank GE → Citibank → Riggs Bank	Teodoro Nguema Obiang	C00000091
6/29/04	\$30,000.00	Somagui Forestal	CCEI Bank GE → Citibank → California Bank and Trust	Pacific National Construction	C00000076
6/29/04	\$50,000.00	Somagui Forestal	CCEI Bank GE → Citibank → Wells Fargo Bank	Platinum Motors, LLC	C00000072
7/7/04	\$182,000.00	Somagui Forestal	CCEI Bank GE → Citibank → First Arizona Savings	Global Jet Corporation	C00000073
7/13/04	\$1,000,000.00	Somagui Forestal	CCEI Bank GE → Citibank → City National Bank	Teodoro Nguema Obiang	C00000074
7/14/04	\$999,975.00	Somagui Forestal	CCEI Bank GE → Citibank → American Express	JPMorgan Chase American Express	C00000075
7/20/04	\$999,950.00	Somagui Forestal	CCEI Bank GE → Citibank → American Express	JPMorgan Chase American Express	C00000083
8/4/04	\$270,000.00	Somagui Forestal	CCEI Bank GE → Citibank → First Arizona Savings	Global Jet Corporation	C00000077

8/24/04	\$421,155.09	Somagui Forestal	CCEI Bank GE → Citibank → Comerica Bank	MILLER-DM INC	C00000071
8/24/04	\$1,328,739.00	Somagui Forestal	CCEI Bank GE → Citibank → Wells Fargo Bank	JAMES W HARRIS	C00000079
8/31/04	\$397,594.21	Somagui Forestal	CCEI Bank GE → Citibank → Bank of America	O'Gara Coach, LLC	C00000080
9/13/04	\$297,490.00	Somagui Forestal	CCEI Bank GE → Citibank → First National Bank	Investment Cars (SA)	C00000081
9/13/04	\$250,000.00	Somagui Forestal	CCEI Bank GE → Citibank → First National Bank	Pearl Automotive PTY LTD (SA)	C00000082
9/16/04	\$580,000.00	Somagui Forestal	CCEI Bank GE → Citibank → Wells Fargo Bank	James W Harris	C00000103
9/20/04	\$230,400.00	Somagui Forestal	CCEI Bank GE → Citibank → Bank of America	Svetlana Safieva	C00000108
9/22/04	\$27,428.00	Somagui Forestal	CCEI Bank GE → Citibank → Wells Fargo Bank	Save-On Insurance	C00000107
9/23/04	\$312,473.59	Somagui Forestal	CCEI Bank GE → Citibank → COMERICA BANK	Miller-DM INC	C00000106
9/23/04	\$97,588.05	Somagui Forestal	CCEI Bank GE → Citibank → Mercantile Bank	Beverly Hills Porche Audi	C00000105
10/7/04	\$225,986.05	Somagui Forestal	CCEI Bank GE → Citibank → First Arizona Savings	Global Jet Corporation	C00000104
10/28/04	\$218,099.00	Somagui Forestal	CCEI Bank GE → Citibank → First Arizona Savings	Global Jet Corporation	C00000109
11/12/04	\$500,000.00	CCEIGQGQ	CCEI Bank GE → Citibank → JPMorgan Chase	American Express	C00000070
11/17/04	\$314,440.65	Somagui Forestal	CCEI Bank GE → Citibank → First National Bank	Pearl Automotive PTY LTD (SA)	C00000102
11/30/04	\$325,000.00	Somagui Forestal	CCEI Bank GE → Citibank → UBS AG	G5 Executive AG	C00000101
12/17/04	\$50,000.00	Somagui Forestal	CCEI Bank GE → Citibank → First National Bank	Teodoro Nguema Obiang	C00000100
1/27/05	\$274,610.00	Somagui Forestal	CCEI Bank GE → Citibank → First National Bank	Investment Cars (SA)	C00000099
2/11/05	\$75,000.00	Somagui Forestal	CCEI Bank GE → Citibank → Mellon Bank	ADT Security Services	C00000098
2/28/05	\$74,950.00	Somagui Forestal	CCEI Bank GE → Citibank → Mellon Bank	ADT Security Services	C00000097
4/13/05	\$599,069.46	Somagui Forestal	CCEI Bank GE → Citibank → Comerica Bank	Miller-DM INC	C00000096
5/9/05	\$79,960.22	Somagui Forestal	Natexis Banques Populaires → Citibank → Citi National Bank	TJB Gearys LLC	C00000095
1/24/06	\$19,570,635.18	Sidley & Austin	Citibank → Societe Generale S.A. (NY) → Societe Generale de Banque – Equatorial Guinea	Account of Teodoro Nguema Obiang	C00000112

2/23/06	\$59,970.01	Somagui Forestal	Natexis Banques Populaires → Citibank → Citi National Bank	Roland Sands Design Inc	C00000094
2/23/06	\$69,090.95	Somagui Forestal	Natexis Banques Populaires → Citibank → Citi National Bank	Eve Jeffers	C00000093
3/7/06	\$157,794.68	Somagui Forestal	Natexis Banques Populaires → Citibank → Citi National Bank	Paradise Island Vacations	C00000092
6/16/06	\$68,965.50	Socage	Natexis Banques Populaires → Citibank → Citi National Bank	Eve Jeffers	C00000065
TOTAL: \$37,714,573.42		Source- Citigroup			

Prepared by Subcommittee

The transactions identified in this chart involve wire transfers that moved funds through a foreign bank correspondent account at Citibank on the way to an account at another bank. Citibank is a major provider of U.S. dollar correspondent accounts for foreign financial institutions, and often serves as an intermediary in wire transfers by foreign banks seeking to pay a beneficiary with U.S. dollars. According to Citibank, it screens all of its correspondent wire activity through real-time interdiction filters designed to comply with legal prohibitions on transmitting certain funds, such as funds transmitted by persons on the OFAC lists.⁵⁶⁸

Citibank told the Subcommittee that, although it is aware of Mr. Obiang's PEP status and deliberate use of U.S. wire transfer systems to bring suspect funds into the United States, it currently does not plan to set up procedures to block his wire transfers and automatically refer them for analysis to its AML specialists.⁵⁶⁹ Citibank explained that any addition to its current blocking lists could result in thousands of false positives that would delay the completion of the affected wire transfers, and significantly increase the workload of its AML and compliance staff to clear the wire transfers that would be frozen as a result.⁵⁷⁰ Citibank also noted that, under existing law, it already conducts careful reviews of the foreign financial institutions for which it opens correspondent accounts and relies on those institutions to adequately screen their own customers. Citibank officials characterized the bank's role in correspondent wire transfer transactions as extremely brief and expressed concern over any expectation that it be required to screen its customers' customers.

Analysis. Right now, U.S. banks that provide correspondent accounts to foreign banks do not generally screen the wire transfers that go through these accounts for high-dollar amounts sent by PEPs from high-risk countries. Adding such a requirement to U.S. AML and PEP controls would provide a powerful new weapon in the battle to keep foreign corruption out of the United States.

⁵⁶⁸ Subcommittee interview of Citibank officials, 4/24/2009.

⁵⁶⁹ Id.

⁵⁷⁰ Id.

F. Conclusion

This case history shows how a controversial political figure, from the ruling family of a country plagued by corruption, moved vast amounts of wealth into the U.S. financial system, by employing American professionals such as attorneys, real estate and escrow agents to help him bypass U.S. AML and PEP controls, and by taking advantage of U.S. wire systems unequipped to screen out high-dollar transfers sent by PEPs from high-risk countries. Over a four year period, from 2004 to 2008, Teodoro Obiang was able to move over \$100 million in suspect funds into or through the US. financial system. If the United States is to keep foreign corruption outside of its borders, U.S. AML and PEP safeguards have to be further strengthened, not only at U.S. financial institutions, but also at law firms, real estate agencies, and escrow companies.

IV. BONGO CASE STUDY: USING LOBBYIST, FAMILY, AND U.S. TRUST ACCOUNTS TO BRING SUSPECT FUNDS INTO THE UNITED STATES

El Hadj Omar Bongo Ondimba, the President of Gabon for 41 years until his death in June 2009, was long suspected of having accumulated his wealth through corruption. His eldest son, Ali Ben Bongo, assumed the office of the President of Gabon on October 16, 2009. For the ten years prior, he served as the Minister of Defense in Gabon.

This case history shows how President Omar Bongo used a U.S. lobbyist to bring over \$18 million in suspect funds into the U.S. financial system to purchase U.S.-built armored cars and to obtain U.S. government authorization to purchase U.S.-built C-130 aircraft to support his regime. President Omar Bongo also brought substantial amounts of cash into the United States, including \$1 million to support his daughter, Yamilee Bongo-Astier, who deposited the cash into U.S. bank accounts or safe deposit boxes. On occasion, Ms. Bongo-Astier also used her U.S. accounts to transact business for her father. Three different banks, HSBC, Commerce, and JPMorgan Chase Bank, provided her with banking services for several years without being aware of her PEP status. President Ali Bongo's first wife, Inge Lynn Collins Bongo, also kept substantial funds in the United States, at times using a U.S. trust to open accounts that masked her connection to the Bongo family.

A. Background

Gabon. Gabon, a country on the west coast of Africa about the size of Colorado, is the third largest oil producing state in Africa. It has a population of over 1.4 million.

Gabon declared its independence from France in 1960, but continues strong ties with that country and has adopted French as its official language. According to the CIA World Fact book, while Gabon enjoys a per capita income that is four times that of most of sub-Saharan African nations due to its oil resources, there is a significant disparity in incomes within the country and a large proportion of its population remains poor.⁵⁷¹ The CIA estimated that, in 2006, Gabon's unemployment rate was 21 percent.⁵⁷²

The U.S. State Department presents a mixed view of Gabon. On the one hand, the State Department applauds Gabon's willingness to work with the United States:

“Relations between the United States and Gabon are excellent. In 1987, President Omar Bongo made an official visit to Washington, DC. In September 2002, Secretary of State Colin Powell made a brief but historic visit to Gabon to highlight environmental protection and conservation in the Central Africa region. This was followed by a visit to the White House by President Omar Bongo in May 2004.

⁵⁷¹ CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/gb.html>.

⁵⁷² Id.

The United States imports a considerable percentage of Gabonese crude oil and manganese and exports heavy construction equipment, aircraft, and machinery to Gabon. Through a modest International Military Education and Training program, the United States provides military training to members of the Gabonese armed forces each year. Other bilateral assistance includes the funding of small grants for qualified democracy and human rights, self-help, and cultural preservation projects. U.S. private capital has been attracted to Gabon since before its independence.”⁵⁷³

On the other hand, in its 2008 Human Rights Report, the U.S. State Department condemns Gabon’s use of torture, imprisonment, and restrictions on free speech, as well as the country’s “widespread government corruption”:

“The country’s human rights record remained poor. The following human rights problems were reported: limited ability of citizens to change their government; use of excessive force, including torture toward prisoners and detainees; harsh prison conditions; arbitrary arrest and detention; an inefficient judiciary susceptible to government influence; restrictions on the right to privacy; restrictions on freedom of speech, press, association, and movement; harassment of refugees; widespread government corruption; violence and societal discrimination against women, persons with HIV/AIDS, and noncitizen Africans; trafficking in persons, particularly children; and forced labor and child labor.”⁵⁷⁴

Bongo Family. President Omar Bongo, born Albert Bernard Bongo, was one of 12 children from a farming family in southeast Gabon.⁵⁷⁵ He joined the French Air Force, was appointed to the staff of then Gabon President Leon Mba, and was elected Vice President of Gabon in 1967.⁵⁷⁶ He assumed the office of the Presidency later that year, when President Mba died in office from illness. President Omar Bongo ruled the country for the next 41 years, until his death on June 8, 2009.

Omar Bongo was elected President of Gabon six times, in elections held in 1975, 1979, 1986, 1993, 1998, and 2005. According to Freedomhouse in 2006:

“President Omar Bongo, already Africa’s longest-serving ruler, won another seven-year term in a flawed November 2005 election, which was marred by a lack of competition and continuing military influence over the electoral process. Poor fiscal management and declining oil revenues have lowered the living standards of many Gabonese, though new oil discoveries and higher prices on the world market bolstered an economic turnaround in 2005. Three decades of autocratic and corrupt rule have made Bongo among the

⁵⁷³ 2006 State Department Report, <http://www.state.gov/outofdate/bgn/g/55947.htm>.

⁵⁷⁴ U.S. Department of State, 2008 Human Rights Report: Gabon, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119002.htm>.

⁵⁷⁵ BBC News/Africa, “Obituary: Omar Bongo,” June 8, 2009, <http://news.bbc.co.uk/2/low/africa/8088399.stm>.

⁵⁷⁶ Id.

world's richest men, although some money has trickled down to rural areas and contributed to higher education standards.”⁵⁷⁷

Ten years ago, in 1999, the Subcommittee held a hearing and released a report which included a case history examining President Omar Bongo’s use of U.S. private banking accounts.⁵⁷⁸ Materials released by the Subcommittee showed that, from 1985 to 1999, President Omar Bongo had used accounts opened by Citibank Private Bank in the United States to deposit, invest, and transfer over \$130 million in funds suspected to be the proceeds of corruption. These documents showed that, in 1985, Cititrust provided President Omar Bongo with a Bahamian shell corporation called Tendin Investments, and Citibank Private Bank then opened a number of bank accounts in the name of that shell corporation as well as several accounts in Paris under the name of a second shell corporation, Leontine, Ltd. In addition, in 1995, Citibank Private Bank opened an account for President Omar Bongo in New York under the name “OS,” a word which was simply the title of the account and not a corporation or other legal entity. The documents showed that Citibank Private Bank provided President Omar Bongo with extensive investment and banking services as well as tens of millions of dollars in loans.

The Subcommittee released copies of a number of Citibank Private Bank documents discussing the source of President Omar Bongo’s wealth. A 1996 client profile, for example, noted that he did not come from a wealthy family and provided the following explanation of President Omar Bongo’s source of wealth:

“Head of State for over 25 Years ... Source of Wealth/business Background: Self-made as a result of position. Country is oil producer.”⁵⁷⁹

A 1997 client profile elaborated further:

“Self-made. President of African oil producing country for 30 years. Wealth created as a result of position and connection to French oil companies (Elf) since country is a major oil [supplier] to France. Wealth invested in real estate locally and in financial instruments overseas. It is believed that subject through affiliated [entities] retains ownership in many oil related ventures in the country which over the past 30 years resulted in significant accumulation of wealth estimated at \$200MM.”⁵⁸⁰

Internal Citibank Private Bank emails dated April 9, 11, and 14, 1997, reported that certain “security” or “political” funds were set aside in the Gabon budget, in the range of \$111 million per year, which were “understood to be used at the discretion of the Presidency” and were “at the disposal of the Presidency, without any limitation.”⁵⁸¹ The 1999 Report concluded: “The plain

⁵⁷⁷ FreedomHouse, Country Report: Gabon 2006 Edition,

<http://www.freedomhouse.org/template.cfm?page=22&country=6965&year=2006&view=mof>.

⁵⁷⁸ See “Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities,” hearing before the Permanent Subcommittee on Investigations (November 9, 1999), the report issued by the Minority Staff at 39-53, reprinted in the hearing record at 910-924 (hereinafter “1999 Report on President Omar Bongo”).

⁵⁷⁹ 1999 Report on President Omar Bongo at 42, reprinted in the hearing record at 913, converted from all capitals in original text.

⁵⁸⁰ 1999 Report on President Omar Bongo at 43, reprinted in the hearing record at 914.

⁵⁸¹ Id., at 915.

meaning of these documents is that the private bank was identifying Gabon government funds as a primary source of funds in the Bongo accounts.”⁵⁸² In response to the hearing, Citibank Private Bank closed the Bongo accounts.

Over the course of the following ten years, President Omar Bongo has continued to be the subject of corruption allegations.⁵⁸³ In March 2007, as explained in the prior section, three nonprofit anti-corruption organizations, Sherpa, Survie, and the Federation of the Congolese Diaspora, filed a legal complaint before the French Public Prosecutor alleging the ruling families of Gabon, Equatorial Guinea, Angola, Burkina Faso, and Congo owned millions of dollars worth of properties in France “that could not be the fruits of their official salaries ... but would have likely required the use of stolen public assets.”⁵⁸⁴ The complaint attached articles and reports with alleged information about property and vehicles owned by the Heads of State and their relatives, including the Bongos. The complaint alleged, for example, that President Omar Bongo was involved in the Elf oil corruption scandal, had private banking accounts with millions of dollars, and multiple expensive properties in France.⁵⁸⁵ According to a later legal pleading filed in the case, a police investigation was launched in response to the complaint in June 2007, which confirmed most of the allegations and uncovered additional luxury properties, vehicles, and bank accounts belonging to the cited Heads of State and their relatives.⁵⁸⁶ The police allegedly confirmed, for example, that the Bongo family owned 39 luxury properties in “the wealthiest districts of Paris,” and the President’s wife bought an automobile “paid for by direct transfers from the Gabonese public treasury.”⁵⁸⁷

In November 2007, the police investigation was halted by the French Public Prosecutor. Since then, additional litigation has ensued over whether a nonprofit organization such as Transparency International France (TI France) has standing to file a complaint against foreign

⁵⁸² Id.

⁵⁸³ See, e.g., New York Times, “Underneath Palatial Skin, Corruption Rules Gabon,” September 14, 2009 (“The ‘Bongo System,’ as people here refer to it – forsaking roads, schools and hospitals for the sake of Mr. Bongo’s 66 bank accounts, 183 cars, 39 luxury properties in France and grandiose government constructions in Libreville – is etched in the streets of this languid seaside capital, where he ruled for 41 years, and also in the minds of its inhabitants.”); Washington Post, “Leader of Troubled Gabon Marks 40 Years in Office; Oil Rich Nation’s Inequalities Likely to Tarnish Legacy,” (“Bongo’s accession to power coincided with the discovery of oil here in the late 1960s, boosting the president’s popularity and providing billions of petrodollars to grease one of Africa’s most effective patronage machines ... Bongo drew international attention in the 1990s, when a French court case exposed corrupt dealings in Gabon by the oil company Elf.”); New York Times, “The Billion-Dollar Shack,” December 10, 2000 (“Citibank has admitted to handling billions of dollars from all kinds of corrupt leaders and their kin: Omar Bongo, the president of Gabon...”).

⁵⁸⁴ Legal memorandum prepared by Sherpa & Transparency International France (TI France), Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 1. This memorandum recounts the history of the anti-corruption case filed by the three organizations from 2007 to 2009. The initial 2007 complaint is *Plainte Pres le Tribunal de Grande Instance de Paris*, undated, PSI-OECD-00001-13.

⁵⁸⁵ *Plainte Pres le Tribunal de Grande Instance de Paris*, undated, PSI-OECD-00004.

⁵⁸⁶ Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 1, PSI-Transparency-USA.org 000160-22.

⁵⁸⁷ Id., at 1-2. Later, in 2009, a 600-page compilation of documents related to the French police investigation was leaked to the press. See, e.g., MCW News, “France Halts African Leaders Probe,” October 30, 2009, mwcnews.net/content/view/full/34091/51/ (“[P]olice documents ... also implicate his son and successor, Ali Bongo.... The Bongo family owns 39 properties in France, mostly in exclusive districts of Paris and on the Riviera.”); The First Post, “Avenue Bongo,” June 15, 2009; Agence France, “French Corruption Suit Targets African Leaders,” December 2, 2008.

officials and obtain an official investigation. In October 2009, a French appeals court ruled that TI France did not have standing to file the petition and dismissed it.⁵⁸⁸ That ruling is now on appeal to France's highest court.⁵⁸⁹

During his tenure in office, President Omar Bongo had several wives and is reported to have fathered over 30 children.⁵⁹⁰ His eldest son, Ali Ben Bongo, born Alain Bernard Bongo, served in various posts in the Gabon government, including ten years as the Minister of Defense from 1999 to 2009. On August 30, 2009, after his father's death, Ali Bongo won a contested election to assume office as President of Gabon, with 42 percent of the vote split among 17 candidates. Riots protesting his election occurred in Libreville, Gabon's capital, and Port Gentil, Gabon's second largest city. On October 16, 2009, President Ali Bongo was sworn into office. In 1994, Ali Bongo married Inge Lynn Collins, a U.S. citizen who is now estranged from him and living in California. He is also married to a Gabonese citizen, Sylvia Ajma Valentin Bongo.

President Omar Bongo's daughters include Pascaline Bongo, who was his chief of staff, and Yamilee Bongo Astier, a Canadian citizen who has lived at times in the United States.

B. Bongo Use of U.S. Lobbyist To Purchase Armored Cars and C-130 Aircraft

From 2003 through at least 2007, President Omar Bongo employed the services of a U.S. lobbyist, Jeffrey Birrell, to help him purchase U.S.-built armored vehicles, and obtain U.S. government authorization to purchase U.S.-built C-130 aircraft, to support his regime. In connection with those two transactions, over \$18 million in suspect funds were wire transferred from Gabon into U.S. bank accounts maintained by Mr. Birrell in the name of The Grace Group LLC, a corporation formed by him and his wife. Mr. Birrell received the funds primarily from President Omar Bongo and an entity called Ayira. He later transferred \$9.2 million of the Ayira funds to an account in the name of President Omar Bongo in Malta, and he made other large payments from The Grace Group accounts to a variety of individuals and entities, apparently at the direction of President Omar Bongo or his advisers. For at least a two-year period from 2005 to 2007, Mr. Birrell's corporate accounts served as a conduit for millions of dollars in suspect funds flowing into and out of the United States.

Mr. Birrell provided documents in response to a Subcommittee subpoena, and provided limited information to the Subcommittee through his legal counsel. Mr. Birrell refused, however, to participate in an interview or answer written questions provided by the

⁵⁸⁸ Cour D'Appel De Paris Pole 7 Deuxieme Chambre De L'Instruction, Appel D'une Ordonnance De Recevabilite De Constitution De Partie Civile Arret, October 29, 2009, PSI-Transparency-usa.org 00006-15. See also TI France Press Release, "Appealing for justice: three African presidents and their French assets," October 29, 2009; MWC News, October 30, 2009, "France Halts African Leaders Probe," mwcnews.net/content/view/34091/51/; Impunity Watch, "French Court Halts Corruption Probe," October 31, 2009, http://www.impunitywatch.com/impunity_watch_europe/2009/10/french-court-halts-corruption-probe.html.

⁵⁸⁹ TI France Press Release, "Appealing for justice: three African presidents and their French assets," October 29, 2009.

⁵⁹⁰ BBC News/Africa, "Obituary: Omar Bongo," June 8, 2009, <http://news.bbc.co.uk/2/low/africa/8088399.stm>; Yamilee Bongo told Commerce Bank that she had 60 siblings. 12/13/05 Commerce Bank memorandum on "Enhanced Due Diligence," Commerce 158.

Subcommittee regarding his business relationship with President Omar Bongo or his corporate accounts, asserting instead his Constitutional rights under the Fifth Amendment.⁵⁹¹

Birrell Services. Mr. Birrell is a longtime lobbyist in the Washington, D.C. area.⁵⁹² He has been doing business with President Omar Bongo and the Republic of Gabon since at least 1998.⁵⁹³ Documentation obtained by the Subcommittee indicates that Mr. Birrell had direct access to President Omar Bongo, met with him on a number of occasions, and communicated with him by letter and email.

This Report focuses on two business transactions in which President Omar Bongo used Mr. Birrell's services to purchase and ship three U.S.-built armored vehicles and three other U.S. automobiles to Gabon, and to obtain U.S. government authorization to purchase six U.S.-built C-130 military grade cargo aircraft owned by the Saudi Arabian Government.⁵⁹⁴ After obtaining the necessary authorization from the United States, Mr. Birrell attempted to but was unsuccessful in completing the transfer of the aircraft to Gabon.

Barron-Birrell Inc. and The Grace Group. Mr. Birrell used two U.S. companies to transact business with President Omar Bongo and Gabon. The first was Barron-Birrell, Inc., a District of Columbia corporation that Mr. Birrell originally formed with David Henry Barron in 1991. The incorporation papers list Mr. Birrell as the Chief Executive Officer and President of the company, and Mr. Barron as the Chairman and Vice President of the company.⁵⁹⁵ In 1998 and for most of the following years through 2006, Barron-Birrell Inc. submitted FARA filings with the U.S. Government stating that the company provided "public relations" services to President Omar Bongo and acted as a "U.S. Policy consultant" to Gabon.⁵⁹⁶

In 2004, Mr. Birrell formed a second company, The Grace Group LLC, which is the company primarily involved in the armored car and C-130 aircraft transactions. On June 8,

⁵⁹¹ See, e.g., the written questions submitted to Mr. Birrell by the Subcommittee on March 13, 2009.

⁵⁹² For a number of years, Mr. Birrell has registered his company, Barron-Birrell Inc. under the Foreign Agents Registration Act (FARA) as a representative of Gabon. He has not registered his company under the Lobbying Disclosure Act, since that Act requires representatives of foreign governments to complete the more detailed FARA registration. While Mr. Birrell thus qualifies as a registered "foreign agent" rather than a registered "lobbyist," this Report refers to him as a lobbyist to avoid any confusion that might result from referring to him as a "foreign agent."

⁵⁹³ See FARA filing submitted by Barron-Birrell Inc. stating that the firm provided "lobbying/public relations" services to Gabon during 1998. Report of the Attorney General to the Congress of the United States on the Administration of FARA for the six months ending June 30, 1998.

⁵⁹⁴ Mr. Birrell also proposed other projects for President Omar Bongo and Gabon. See, e.g., 3/27/07 memorandum from Mr. Birrell to "His Excellency Charles MBA," Grace 0636-37 (proposing bringing U.S. airline service to Gabon); 10/18/06 letter from Mr. Birrell to President Omar Bongo, Grace 0733-34 (urging President Omar Bongo to invest in the "Atlantic Fund"). See also 2003 and 2004 bank account statements for a Barron-Birrell Inc. account showing multiple cash deposits totaling \$360,000 in just over one year, Psi-ub-000375 (\$50,000 cash deposit on March 31, 2003); Psi-ub-000377 (\$50,000 cash deposit on July 22, 2003); Psi-ub-000381 (\$50,000 cash deposit on November 25, 2003); Psi-ub-000383 (\$210,000 cash deposit on May 24, 2004); and Psi-ub-000385 (\$150,000 check deposited from a Riggs Bank account in the name of "Payeur du Gabon A. Washington"). In addition, Birrell made a cash deposit into the BBI account in the amount of \$160,000 in October of 2005.

⁵⁹⁵ See, e.g., 3/13/2003 Barron and Birrell Inc. Corporate Authorization Resolution, Psi-ub-000147.

⁵⁹⁶ See, e.g., FARA filings for Barron-Birrell Inc. in the Reports of the Attorney General to the Congress of the United States on the Administration of FARA for the six months ending June 30, 1998, 1999, 2002, 2003, 2004, 2005, and 2006.

2004, Mr. Birrell formed this limited liability company in the State of Virginia.⁵⁹⁷ The organization papers list him as the sole “Member” or owner.⁵⁹⁸ Six months later, however, on December 20, 2004, a filing with the State of Virginia replaced him with his wife, Diane Duffy, as the sole “Managing Member” or owner of the company.⁵⁹⁹ Two years later, in October 2007, a Virginia filing by Mr. Birrell once more listed him as the sole Member or owner of the company, replacing Ms. Duffy.⁶⁰⁰

Other corporate filings with the State of Virginia variously name Mr. Birrell or his wife as the owner, manager, president, or agent of The Grace Group.⁶⁰¹ Despite these filings, the documentation reviewed by the Subcommittee indicates that Mr. Birrell alone managed and operated The Grace Group; none showed Ms. Duffy’s active involvement in the transactions examined in this Report. At times when his wife was listed as the sole Managing Member of the company, Mr. Birrell nevertheless held himself out as the Managing Member and company owner.⁶⁰²

As of 2009, Virginia incorporation records showed that The Grace Group continued to be registered and in good standing with the State. The Subcommittee was unable to locate any FARA filings for The Grace Group, or for Mr. Birrell personally.⁶⁰³ Mr. Birrell did register The Grace Group as a broker for the C-130 aircraft transaction with the U.S. State Department.

⁵⁹⁷ 6/8/04 certificate of incorporation for The Grace Group LLC from the Commonwealth of Virginia, Grace 1107-08.

⁵⁹⁸ 6/8/04 The Grace Group LLC Operating Agreement, Grace 1112-23. See also August 23, 2004 IRS letter identifying Mr. Birrell as the “Sole Mbr” of the company, Grace 1105-06. A letter dated September 15, 2004, sent by Mr. Birrell’s legal counsel to the IRS states that “Grace Group LLC is solely owned by Diane Duffy, Mr. Birrell’s wife,” and that she “is the single member of this company,” Grace 1104. A letter dated April 4, 2008 from Mr. Birrell’s legal counsel to the Subcommittee, explains further:

“Ms. Duffy is not involved in the Company and has no ownership interest therein. In case of Mr. Birrell’s death or disability, Ms. Duffy is currently a signatory on the Company’s bank account. Our law firm formed the LLC entity at Mr. Birrell’s request on June 8, 2004. At that time, Mr. Birrell indicated that he intended to be the sole owner. ... Subsequent to forming the LLC, Mr. Birrell decided to make his wife the sole member. However, this change created an administrative issue with the IRS which continued to address the registration form to “Birrell, Jeffrey Sole Mbr.” After consultation with counsel and inasmuch as Ms. Duffy had no involvement with Company operations, and as the administrative issues with the IRS persisted and as Mr. Birrell was advised by this firm that there were no tax or estate planning benefits associated with the change, in July, 2005, Mr. Birrell sought our assistance and the original terms of the Operating Agreement were restored. Accordingly, from that point forward, all Company paperwork ... [has] consistently shown Mr. Birrell as the sole owner of the Company.”

⁵⁹⁹ 12/20/04 Commonwealth of Virginia, Statement of Change of Registered Office and/or Registered Agent, Grace 1124.

⁶⁰⁰ 10/21/07 Commonwealth of Virginia, Statement of Change of Registered Office and/or Registered Agent, Grace 1110-11.

⁶⁰¹ See, e.g., 6/17/05 corporate resolution naming Ms. Duffy as the manager and president and Mr. Birrell as a company “agent,” Psi-ub-000136; 9/14/05 corporate resolution naming Mr. Birrell as the manager and agent, without mentioning Ms. Duffy, Psi-ub-000132.

⁶⁰² See, e.g., 7/29/05 filing with the U.S. State Department to register as a broker in which Mr. Birrell lists himself as the “Managing Member” of The Grace Group LLC, Grace 0749; 4/7/05 United Bank Account Agreement to open an account for The Grace Group LLC in which Mr. Birrell is listed as a “Co-Owner,” Psi-ub-000127.

⁶⁰³ FARA requires persons to file a registration form with the U.S. Department of Justice within ten days of becoming an “agent for a foreign principal,” including a foreign government official. 22 U.S.C. § 612(a). An exception is provided, however, for persons who engage in commercial rather than lobbying or political activity. 22 U.S.C. § 613(d). Mr. Birrell may have viewed his work for President Omar Bongo as falling within the commercial

Bank Accounts. Mr. Birrell opened four corporate bank accounts that were used by Barron-Birrell Inc. or The Grace Group LLC, as well as a personal account, at a bank in a Washington, D.C. suburb. The bank was United Bank in McLean, Virginia, a state-chartered institution with about \$8 billion in assets.

The five accounts were as follows:

- 1) Barron-Birrell Inc. or BBI Account No. 4359-9687;
- 2) Grace Group LLC Account No. [xxxxxxx];
- 3) Grace Group LLC Escrow Account No. 4389-9095;
- 4) Grace Group LLC Special Project Account No. 4360-0485; and
- 5) Mr. Birrell and Ms. Duffy joint Account No. [xxxxxx].

The BBI account was opened as a small business checking account on March 13, 2003, and shows transactions involving President Omar Bongo and Gabon beginning that year.⁶⁰⁴ The account had two signatories, Mr. Birrell and Mr. Barron. It was closed three years later at the request of the firm on November 6, 2006.

The three Grace Group accounts were opened during 2005, and were funded primarily with wire transfers from Gabon. The first Grace Group LLC account was opened in June 2004, and has been the primary business account for the company.⁶⁰⁵ Mr. Birrell and Ms. Duffy were listed as “co-owners,” and both were signatories on the account. That account has remained active. The next account was opened a year later on June 17, 2005, as “The Grace Group Client Escrow Account.”⁶⁰⁶ Mr. Birrell and Ms. Duffy were both signatories, and this account was the key repository for funds associated with the C-130 aircraft transaction. A month later, in August 2005, Mr. Birrell and Ms. Duffey opened The Grace Group LLC Special Project Account, which was briefly used in connection with the armored car transaction.⁶⁰⁷ Two months after that, on October 24, 2005, Mr. Birrell and Ms. Duffy opened a joint personal account at the bank.⁶⁰⁸ The client escrow and special project accounts have since been closed on January 26, 2009, while the joint personal account remained open.⁶⁰⁹

activity exception, even though, with respect to the C-130 aircraft, he repeatedly contacted U.S. Government officials to obtain U.S. Government approval of the sale of the aircraft to Gabon.

⁶⁰⁴ See 3/13/03 United Bank account opening documentation, Psi-ub-000145.

⁶⁰⁵ June 2004 United Bank account statement, Psi-ub-000153. See also update of account on April 7, 2005, United Bank Account Agreement, Psi-ub-000127.

⁶⁰⁶ 6/17/05 United Bank Account Agreement, Psi-ub-000133-4.

⁶⁰⁷ 9/30/05 United Bank Statement of Accounts, Psi-ub-000212.

⁶⁰⁸ 10/24/05 United Bank Account Agreement, Psi-ub-000142. Mr. Birrell wrote the following to United Bank on October 24, 2005: “Can you please do the paperwork for a joint mm account for my wife (Diane T. Duffy) and me. Under the advice of my lawyer and CPA, I want to transfer the majority [of] the funds in the new Grace Group account to a personal (joint) account. Diane and I will stop by at some point this afternoon.” PSI United Bank 05-000011.

⁶⁰⁹ Subcommittee interview of United Bank officials, December 3, 2009.

(1) Purchase of Armored Cars

Documentation obtained by the Subcommittee indicates that, in early 2005, President Omar Bongo asked Mr. Birrell to assist him in the purchase and transport of armored cars to Gabon for his personal protection. President Omar Bongo apparently requested three vehicles that would be armored and three that would not. To finance the purchase of all six vehicles, President Omar Bongo sent over \$1.2 million from his and other accounts in Gabon to The Grace Group LLC accounts in the United States. Mr. Birrell used the funds to purchase, armor, and ship the vehicles to Gabon. By the end of 2005, three armored H2 Hummers including an armored stretch limousine, one unarmored stretch H2 Hummer limousine, a Cadillac Deville, and a Jeep had been shipped to President Omar Bongo in Gabon,⁶¹⁰ and Mr. Birrell had allowed his U.S. bank account to serve as a conduit for over \$1.2 million in suspect funds brought into the United States from Gabon.

Order Placed. Documentation obtained by the Subcommittee indicates that President Omar Bongo initiated the armored vehicle transaction in early 2005.

In March or April 2005, Mr. Birrell and General Nzengui Nzoundou Flavien, a senior official in the office of the Gabon presidency, traveled to California, Utah, and Florida, in connection with the armored vehicle transaction.⁶¹¹ In Palm Springs, California, they visited Exotic Motor Cars, which showed them a Cadillac Deville. They also traveled to Ogden, Utah, to visit International Armoring Corporation (IAC), a Utah firm which specializes in preparing armored vehicles for heads of state.⁶¹²

An IAC invoice dated April 1, 2005, indicates that IAC agreed to prepare four 2005 GM Hummer vehicles for The Grace Group.⁶¹³ Later documentation makes clear that, of the four vehicles, two H2 Hummer sports utility vehicles would be armored, one H2 Hummer limousine would be both armored and “stretched,” and a fourth H2 Hummer limousine would be “stretched” but not armored.⁶¹⁴ A handwritten notation on the IAC invoice indicates that the total cost for all four vehicles was \$399,615.

Initial Transfer of \$850,000. In late March and early April, to pay for the vehicles, President Omar Bongo sent two wire transfers from Gabon, totaling nearly \$850,000, to The

⁶¹⁰ Subcommittee interview of International Armoring Corporation officials, November 24, 2008.

⁶¹¹ See, e.g., 7/7/05 memorandum from Barron-Birrell to President Omar Bongo, Travel to California/Utah/Florida (Nzengui/Birrell/Campbell)”, Grace 0414; 4/7/05 check for \$4,720 drawn on The Grace Group account and payable to Ms. Duffy for “CA/UT Trip Exp. Rept.”, Grace 0019; 4/6/05 email from IAC to Mr. Birrell (“It was a pleasure to welcome General Nzengui and Jeff Birrell to the headquarters and the production facilities of the International Armoring Corporation.”), Grace 0907.

⁶¹² Mr. Birrell had communicated with IAC prior to the trip. On March 7, 2005, he sent an email to IAC stating: “I will know tomorrow about our date of arrival in UT to place the order for the 4 h2s. However, I was able to convince the president to add one more vehicle in support of his re-election program. Can you please advise if you can stretch an h2 to 14 or 15 meters and add a stand up portal for him to wave/address the crowd? The portal would not be an armored bubble.” Grace 0966.

⁶¹³ 4/1/05 International Armoring Corporation invoice, Grace 0396. See also undated email, likely sent around April 6, 2005, from IAC to President Omar Bongo (“The contract to build the vehicles was signed on 31 Mar 05....”), Grace 0946.

⁶¹⁴ See also Subcommittee interview of International Armoring Corporation officials, November 24, 2008.

Grace Group LLC at United Bank in Virginia. The first wire transfer was sent on March 31, 2005, from an account in the name of “El Hadj Omar Bongo Ondimba” at BGFI Bank in Libreville, Gabon, and deposited \$599,933.01 into the primary Grace Group Account No. [xxxxxxx].⁶¹⁵ One week later, on April 7, 2005, the same Bongo account at BGFI Bank in Gabon wired nearly \$242,000, this time through Banque Populaire in Paris, to the same Grace Group LLC account at United Bank.⁶¹⁶

Shortly after receiving the first wire transfer from President Omar Bongo, on April 4, 2005, Mr. Birrell wire transferred \$67,500 from his Grace Group account to an account in the name of Exotic Motor Cars at Pacific Western Bank in California.⁶¹⁷ This amount matches a vehicle transfer form showing that, a few days earlier, Exotic Motor Cars had transferred a 2005 Cadillac to “The Gabonese Republic” and “Gen Nzengui Nzoundou Flavien” for \$67,500.⁶¹⁸ Priority Worldwide Services, a U.S. company experienced in shipping vehicles overseas, later arranged for the transport of the Cadillac to Gabon. A Priority Worldwide Services invoice indicates that, for \$4,903.75, the Cadillac was picked up on June 6, 2005, and driven on a flat bed truck to New York in preparation for a flight to Gabon.⁶¹⁹ Mr. Birrell paid that invoice by sending a wire transfer from The Grace Group account to Priority Worldwide Services for \$4,903.75 on June 29, 2005.⁶²⁰ He had earlier sent a wire transfer to Priority Worldwide Services on June 6, 2005, for \$28,020, presumably to pay for the flight itself.⁶²¹

On April 8, 2005, in response to the invoice prepared a week earlier by International Armoring Corporation to armor and stretch the four H2 Hummer vehicles, Mr. Birrell sent a wire transfer from The Grace Group account to an IAC account at Zions Bank SLC for \$399,615.⁶²²

Armoring Delays. According to a Birrell email, IAC had promised to deliver the first two H2 Hummers on April 9 and the second two on May 16.⁶²³ The company missed both

⁶¹⁵ 3/31/05 wire transfer record, Psi-ub-000404. The original swift message for the wire requests that \$600,000 be transferred, and notes that transfer fees of \$45 would be deducted. 3/31/05 wire transfer record, Grace 0387-8.

⁶¹⁶ 4/7/05 wire transfer record, Psi-ub-000408; 4/7/05 Funds Transfer Notification, Grace 0393.

⁶¹⁷ 4/4/05 United Bank Domestic Wire Transfer Authorization, Grace 0391. A few days earlier, on April 1, 2005, a check was drawn on the Grace Group LLC account for \$9,000 and made out to “Cash.” Grace 0019, Check No. 1032. On April 4, this check was cashed, with the notation “4K for Max Hotel[:]; 5K to A[illegible]sh. – wire in, cash out.”

⁶¹⁸ 5/31/05 DMV title transfer, Grace 0981. A week later, on April 6, \$6,500 was deposited into The Grace Group account with the notation, “Caddy Commission Deposit,” Grace 0020.

⁶¹⁹ 6/24/05 Priority Worldwide Services invoice, Grace 0406. See also 6/7/09 email from Priority Worldwide Services to Mr. Birrell (providing details on shipping the Cadillac Deville), Grace 0902; 6/9/05 email from Mr. Birrell to Abass Haidara (“The Cadillac is in safe hands in New York and the air shipper is looking for new air routes.”), Grace 0958.

⁶²⁰ 6/29/05 United Bank funds transfer notification, Grace 0408, with handwritten note: “Air Transport Remainder Storage & Trucking Caddy;” 6/29/05 United Bank Domestic Wire Transfer Authorization, Grace 0410.

⁶²¹ 6/6/05 United Bank Domestic Wire Transfer Authorization, Grace 0400.

⁶²² 4/8/05 United Bank WireHouse Message Details, Psi-ub-000410. 4/1/05 IAC invoice, Grace 0396. Zions Bank SLC is located in Salt Lake City. On March 29, 2005, another company, Armor Auto Sales in Fort Wayne, Indiana, wire transferred \$5,000 to The Grace Group. Psi-ub-000402.

⁶²³ 6/9/05 email from Mr. Birrell to Abass Haidara, a Gabon official states: “I have forcefully pointed out that we were offered hard assurances on delivery dates (April 9 and May 16) and that these dates have come and gone.” Grace 0958.

deadlines, and Mr. Birrell expended substantial effort in pressuring the company to complete the work and ship the armored vehicles to Gabon.

On April 6, 2005, after it had become clear IAC would miss the first deadline, Mr. Birrell sent an email to Daniel Dresser, IAC Vice President of Operations, urging him to write a personal letter to President Omar Bongo, explaining the delay.⁶²⁴ Mr. Birrell provided a sample letter, and Mr. Dresser sent an undated letter to President Omar Bongo, providing a status report on the vehicles and apologizing for the delay:⁶²⁵

“Unfortunately we have experienced some delays common for our head of state vehicles from our suppliers which have caused us to pass the original due date for the first two vehicles. ... These delays are no reflection on your faithful representative Mr. Birrell; he has done everything within his power to see that these vehicles meet the deadlines established in the contract.”⁶²⁶

On April 14, 2005, Mr. Birrell sent an email to IAC directing the company to keep the work they were doing for President Omar Bongo confidential:

“I am making a series [of] acquisition[s] for the Head of State, and these actions have created a lot of interest among certain individuals. It is an election year in Gabon and not all of the individuals within the office of the president are from his party. Information regarding these transactions could be used to his political detriment. I am so advising all of the contractors and suppliers with which I am currently dealing. Please direct any and all inquiries to me and I will forward them directly to the appropriate official within the office of the president. **Any and all.**”⁶²⁷ [Emphasis in original document.]

On April 18, 2005, the Grace Group wire transferred another \$36,750 to IAC at Zions Bank SLC.⁶²⁸

While the work on the vehicles continued, Mr. Birrell contacted Priority Worldwide Services to arrange for the shipment of six vehicles to Gabon, three that would be armored and three that would not.⁶²⁹ Priority explained that the armored vehicles would require an export license from the U.S. Commerce Department, while the unarmored vehicles would not.

In response to a Priority Worldwide Services request for information, on May 19, 2005, Mr. Birrell sent a letter detailing the shipment request for the three armored vehicles.⁶³⁰ He wrote: “This firm has been requested by the Gabonese Head of State to source three armored vehicles for the personal protection of the Head of State.”⁶³¹ He also stated that the purchaser

⁶²⁴ 4/6/05 email from Mr. Birrell to Mr. Dresser, Grace 0907.

⁶²⁵ 6/10/05 letter from Mr. Dresser to Mr. Bongo, Grace 0946.

⁶²⁶ Id.

⁶²⁷ 4/14/05 email from Mr. Birrell to Mr. Dresser, Grace 0916.

⁶²⁸ 4/18/05 United Bank Funds Transfer Notification, Grace 0999.

⁶²⁹ Emails dated May 17 and 18, 2005, between Mr. Birrell and Priority Worldwide Services, Grace 1058.

⁶³⁰ 5/19/05 letter from Mr. Birrell to Mr. Libutti, Grace 0397-98.

⁶³¹ Id.

and end user of the three armored vehicles would be “the Gabonese Government, Executive Office of the President,” and that the vehicles would not have any military application.

The next day, on May 20, 2005, Priority Worldwide Services applied to the U.S. Commerce Department for a license to export “3 armored Humvee SUVs [sport utility vehicles]. NIJ Level 3, unarmed.”⁶³² The application stated that the vehicles had a value of \$120,000 apiece and a total value of \$360,000.

Delays in the armoring continued. On May 31, 2005, Mr. Birrell emailed Mr. Dresser that his company was “running behind schedule and I can tell you that I am now in a tough position with President Omar Bongo.”⁶³³

On June 7, Mr. Birrell sent a letter to Gabon General Nzengui providing “titles of five of the vehicles that have been ordered for President Omar Bongo. These vehicles have been paid for from the funds wired to me.”⁶³⁴ The letter noted that the Cadillac was in New York and ready for shipment, two Hummer H2s were “nearly completed,” and two more were “under construction and there will not be a lengthy delay” in shipping them.

At some point, Mr. Birrell and a delegation of Gabon officials traveled to IAC to inspect the vehicles.⁶³⁵ On June 9, 2005, Mr. Birrell sent an email to Mr. Dresser at IAC stating, “I regret the tone of our conversation,” but noting that President Omar Bongo had been “waiting since April 9th for shipment notification.”⁶³⁶ Mr. Birrell wrote:

“I need all 4 H2s done without any further delay. It is not acceptable that the stretched H2 is still in CA and the armor has not started – waiting 10 days for a truck – or that the first two H2s have not moved at all since my trip to your HQ.

As requested, I will expect your correspondence regarding shipment date by Friday, COB eastern standard time. I will forward your letter directly to President Omar Bongo. ...

The the [sic] H2s and the Caddy need to be in Libreville by the 26 or this moves into a new level. It will be out of my hands. The stretched H2s need to follow closely behind.”⁶³⁷

On June 24, 2005, the Commerce Department granted an export license to Priority Worldwide Services allowing shipment of three armored vehicles to Gabon any time before June 24, 2007.⁶³⁸ Within days, two of the H2 Hummer vehicles were shipped to Gabon. A Priority Worldwide Services invoice dated June 27, 2005, indicates that the vehicles had been picked up

⁶³² 5/20/05 U.S. Commerce Dept. Export License Application, Grace 0403-05. The license from the Commerce Department was validated on 6/24/05, and expired on 6/24/07.

⁶³³ 5/31/05 email from Mr. Birrell to Mr. Dresser, Grace 0894.

⁶³⁴ 6/7/05 email from Mr. Birrell to General Nzengui, Grace 0959.

⁶³⁵ Subcommittee interview of International Armoring Corporation officials, November 24, 2008.

⁶³⁶ 6/9/05 email from Mr. Birrell to Mr. Dresser, Grace 0929.

⁶³⁷ Id. The email could be read as suggesting shipment of five vehicles, but the Subcommittee was able to document the shipment of only four.

⁶³⁸ 6/24/09 U.S. Department of Commerce Export License No. D339614, Grace 0401-02.

that day in Utah at IAC, transported on a flatbed truck to New York, and put on a flight to Gabon for \$72,002.50.⁶³⁹ On June 29, Mr. Birrell sent a wire transfer from The Grace Group account to Priority Worldwide Services for \$72,002.50; a handwritten notation on the wire transfer documentation states: “Air Transport 2 H2s.”⁶⁴⁰

The two remaining H2 Hummer vehicles took another three months to complete. On July 7, 2005, prior to Mr. Birrell’s traveling to Gabon, Barron-Birrell Inc. sent a memorandum to President Omar Bongo, entitled, “Special Project Budget Recap,” listing the expenses in connection with the armored car transaction.⁶⁴¹ The document referenced six cars: the Cadillac, four Hummer H2s, and a Jeep. It stated that the expenses paid to date associated with armoring, stretching, trucking, storing, and transporting the vehicles by air totaled \$614,362, and that another \$426,675 in expenses remained. In addition, it stated that the “Total Income” provided was \$842,000 and that an additional \$199,000 was “required.”

On July 14, 2005, Mr. Birrell sent an email to Mr. Dresser at IAC stating that he had met with the President in Gabon that night and was meeting with him again in the morning. Mr. Dresser responded on July 15, 2005, with a long email apologizing for the delay and stating that IAC was “applying every resource possible” to complete work on the remaining two vehicles for President Omar Bongo. Mr. Dresser noted that, “We currently have (9) head of state vehicles in process with the 34 vehicles currently in the shop.”⁶⁴²

On July 19, 2005, Mr. Birrell wire transferred an additional \$84,950 to IAC to complete work on the remaining two vehicles.⁶⁴³ These funds were taken from The Grace Group accounts which had been replenished with additional funds from Gabon.⁶⁴⁴

A month later, on September 14, 2005, Mr. Birrell sent a memorandum with an update on the vehicles to Mr. Haidara, President Omar Bongo’s adviser who was then in New York.⁶⁴⁵ Mr. Birrell wrote that the “two remaining Hummer (H2) cars” were finished. His letter then provided two alternatives for shipping them to Gabon, on a direct charter flight from Miami to Gabon for \$332,650, or on an indirect flight with other cargo from New York to Gabon for \$111,600. Mr. Birrell stated that he had also purchased three mobile “electronic counter measure equipment” (ECM) units for use in the President’s vehicles for about \$59,000, and that he had “purchased the General’s Jeep for \$23,948.”⁶⁴⁶ As a result of the purchase of the Jeep and ECM units, Mr. Birrell stated that “the additional budget needed has increased to about \$120,000.”

⁶³⁹ 6/27/05 Priority Worldwide Services invoice, Grace 0407.

⁶⁴⁰ 6/29/05 United Bank Funds Transfer Notification, Grace 0409; 6/29/05 United Bank Domestic Wire Transfer Authorization, Grace 0410.

⁶⁴¹ 7/7/05 Barron-Birrell memorandum to President Omar Bongo, Grace 0414.

⁶⁴² 7/15/05 email from Mr. Dresser to Mr. Birrell, Grace 1075.

⁶⁴³ 7/22/05 email from Mr. Birrell to IAC, Grace 1076.

⁶⁴⁴ See, e.g., the wire transfers totaling \$17 million sent to the Grace Group LLC account by Ayira from a Gabon bank account on June 17 and July 18 and 21, 2005, as explained in the next section.

⁶⁴⁵ 9/14/05 memorandum from Mr. Birrell to Mr. Haidara, Grace 1060-61.

⁶⁴⁶ Id. See also a similar memorandum which Mr. Birrell sent to General Nzengui on the same date, Grace 0418. In addition, see an earlier 7/18/05 memorandum from Mr. Birrell to Mr. Haidara, in which Mr. Birrell discussed the ECM purchase and additional vehicles for “General Nz.” Grace 0630.

On September 22, 2005, The Grace Group wire transferred \$90,490 to IAC. A notation on the wire transfer document states that the transfer was “payment for cost of 2 vehicles shipped to Africa.”⁶⁴⁷ On the same date, the Grace Group escrow account sent \$332,650 to Priority Worldwide Services for “payment for the cost of 2 vehicles shipped to Africa.”⁶⁴⁸

IAC told the Subcommittee that, altogether during 2005, The Grace Group paid \$611,805 to IAC for the purchase, stretching, and armoring of four vehicles.⁶⁴⁹ The documentation shows that The Grace Group also wire transferred at least \$437,575 to Priority Worldwide Services. In addition, Mr. Birrell reported paying \$67,500 to Exotic Motor; \$23,948 to an unknown dealer for the Jeep; and \$59,000 to an unknown vendor for the ECM units. Altogether, The Grace Group had spent nearly \$1.2 million.

To pay these expenses, during the six-month period from April to October 2005, Mr. Birrell received millions of dollars wire transferred from Gabon into The Grace Group accounts. He used these funds to provide substantial wire transfers and checks to various parties across the United States.

Compensation. The compensation paid to Mr. Birrell for his work on the armored car transaction is unclear. It appears that the last two H2 Hummer vehicles were shipped to Gabon in September or October 2005. On October 24, 2005, Mr. Birrell and Ms. Duffy opened a new joint personal account at United Bank.⁶⁵⁰ On October 25, 2005, the day after the account was opened, a check for \$600,000 was signed by Mr. Birrell, drawn on the Grace Group LLC Special Project Account No. 4360-0485, and deposited into the new joint account.⁶⁵¹

A United Bank statement for The Grace Group Special Project Account shows that earlier in the day on October 25, 2005, \$534,430.11 was deposited into the Special Project Account by “Phone Tsfr.”⁶⁵² A United Bank receipt shows that \$534,430.11 had been transferred from The Grace Group LLC account.⁶⁵³ When added to the \$67,059.23 already in the account, the balance in the Special Project Account exceeded \$600,000. After the \$600,000 check withdrew those funds, the Special Project Account held about \$1,400.

These documents show that the bulk of the \$600,000, almost all of which came from Gabon, went from The Grace Group LLC account, to The Grace Group LLC Special Project Account, to the new Birrell-Duffy joint account. The joint account then spent the money on credit card bills, taxes, other expenses, and on making deposits to accounts at other financial

⁶⁴⁷ 9/22/05 wire transfer, Psi-ub-000432-33.

⁶⁴⁸ United Bank WireHouse Message Details, Psi-ub-000434-35.

⁶⁴⁹ 12/6/08 email from IAC to the Subcommittee, no bates number.

⁶⁵⁰ 10/24/05 United Bank Account Agreement, Psi-ub-000142.

⁶⁵¹ 10/25/05 Check No. 951, Psi-ub-000233.

⁶⁵² October 2005 United Bank Statement of Accounts for The Grace Group LLC Special Project Account, Psi-ub-000213.

⁶⁵³ 10/25/05 United Bank deposit slip, Grace 0007.

institutions.⁶⁵⁴ The documentation suggests that Mr. Birrell also received a \$6,500 commission for the Cadillac sold to President Omar Bongo.⁶⁵⁵

The documentation indicates that, throughout 2005, Mr. Birrell expended significant effort to carry out President Omar Bongo's purchase of three armored and three unarmored U.S.-built vehicles, including by arranging the funding, pressuring IAC to fulfill its contract on a timely basis, and arranging shipment of the vehicles to Gabon. In addition, Mr. Birrell allowed his corporate accounts to serve as a conduit for at least \$1.2 million in suspect funds from Gabon to purchase armored cars for the Bongo regime. Mr. Birrell declined to disclose to the Subcommittee whether he was paid in excess of \$600,000 for his efforts.

(2) Purchase of C-130 Aircraft

From 2005 to 2007, President Omar Bongo also employed Mr. Birrell's services to obtain authorization to purchase six U.S.-built C-130 aircraft from the Government of Saudi Arabia. The United States had originally sold these military grade aircraft to Saudi Arabia with restrictions on any future transfer or sale. To comply with the Arms Export Act, Saudi Arabia had to obtain the U.S. State Department's approval prior to selling the C-130 aircraft to Gabon. At the direction of President Omar Bongo, Mr. Birrell undertook extensive efforts to obtain U.S. approval of the sale. After that approval was provided, however, the aircraft sale did not take place.⁶⁵⁶ Mr. Birrell subsequently attempted to arrange a purchase of the aircraft using funds supplied by private companies, but that effort was also unsuccessful.

During the course of this transaction, an entity called Ayira transferred \$17 million from Gabon into the Grace Group accounts at United Bank to pay for the purchase of the C-130 aircraft. Mr. Birrell declined to explain to the Subcommittee what he knew about Ayria or to clarify the relationship between Ayria and President Omar Bongo. After the aircraft sale fell through, Mr. Birrell wire transferred \$9.2 million of the Ayira funds to an account in the name of President Omar Bongo at a bank in the country of Malta. In addition, Mr. Birrell used the Ayira funds to send wire transfers totaling over \$4.2 million to President Bongo's senior adviser, Abass Haidara Cherif, and another \$1 million to a handful of "consultants." By accepting the \$17 million and initiating subsequent wire transfers at the apparent direction of President Omar Bongo or his senior advisers, Mr. Birrell allowed his corporate accounts to be used as a conduit for millions of dollars in suspect funds. As compensation for his efforts on the C-130 transactions, Mr. Birrell requested \$850,000 plus expenses which, at one point, exceeded \$253,000. Mr. Birrell declined to disclose to the Subcommittee how much he was actually paid.

Selling Military Grade Aircraft. The International Traffic in Arms Regulations (ITAR) are U.S. Government regulations which control the export and import of military-related items

⁶⁵⁴ See United Bank account statements, Psi-ub-000001-489.

⁶⁵⁵ See 4/6/05 United Bank deposit slip for \$6,500 deposit into the Grace Group LLC account, with handwritten notation: "Caddy Commission Deposit," Grace 0020.

⁶⁵⁶ A letter from one of the consultants who worked on the sale, former Saudi Brigadier General (Retired) Hamid Bakhsh, told the Subcommittee that the "deal [was] not finalized by the government of Gabon." Undated letter from Mr. Bakhsh to the Subcommittee received on October 23, 2009, PSI-Baksh-01-0001.

on the United States Munitions List.⁶⁵⁷ These regulations implement the Arms Export Control Act, and are enforced by the U.S. Department of State working with the U.S. Department of Defense (DOD). Under the ITAR regulations, technology related to military equipment may be shared only with U.S. persons, absent State Department approval. Should the U.S. State Department discover that ITAR products have been shared with a non-U.S. person, the company that shared such technologies can face steep fines.⁶⁵⁸

C-130 aircraft are military grade aircraft that are included on the U.S. Munitions List and subject to export controls under the ITAR regulations. The C-130 Hercules is a four-engine turboprop military transport aircraft built by Lockheed. It can land and takeoff from unprepared runways, and was originally designed as a troop, medical evacuation, and cargo transport aircraft. It has also been used as a gunship, for search and rescue, scientific research support, weather reconnaissance, aerial refueling, maritime patrol, and aerial firefighting. It is a common tactical airlift for military forces. Over 70 models have been sold to more than 60 nations.⁶⁵⁹



In general, to transfer an item on the U.S. Munitions List to a non-U.S. person, the seller must apply for an export license from the State Department. The State Department forwards the application to relevant U.S. offices within the State Department, DOD, and other U.S. agencies to determine whether there are concerns about the proposed transfer. If the State Department intends to rule favorably on a proposed transfer and it involves items valued at \$14 million or more, Congress must also be notified of the proposed transfer.⁶⁶⁰ Typically, the State Department notifies the House Foreign Affairs Committee and the Senate Foreign Relations Committee on an informal basis twenty days in advance of an official notification of the

⁶⁵⁷ See ITAR regulations at 22 CFR §§ 120-130.

⁶⁵⁸ U.S. Department of State website, Directorate of Defense Trade Controls, http://pmdtc.state.gov/compliance/consent_agreements.html.

⁶⁵⁹ See U.S. Air Force, Factsheets: C-130 Hercules, October 2009, <http://www.af.mil/information/factsheets/factsheet.asp?fsID=92>. See also Lockheed Martin press release, “2300th Lockheed Martin C-130 Hercules Rolled Out,” October 4, 2006, http://www.lockheedmartin.com/news/press_releases/2006/2300THLOCKHEEDMARTINC130HERCULESROL.html.

⁶⁶⁰ See Section 36b of the Arms Export Control Act, codified at 22 U.S.C. § 2776(b).

proposed transfer so that the committees have sufficient time to consider it. Once the committees are formally notified, they have thirty days to object to the transfer.⁶⁶¹

Individuals like Mr. Birrell, who wish to negotiate the transfer of an item on the U.S. Munitions List, must register with the State Department as either a broker or general exporter.⁶⁶² In order to register, a prospective broker must submit an application to the State Department which either approves or rejects the application. Even if approved, registration of a broker does not convey authority to complete a transfer; it is only after a specific export license has been approved for the transfer that the applicant meets the legal requirements to act as a broker in the sale.⁶⁶³ Registered brokers are required to submit an annual report of their brokerage activities to the State Department; brokers that fail to do so are subject to civil action. In response to a Subcommittee question, State Department officials estimated that only about 1% of export license requests related to the U.S. Munitions List are denied.⁶⁶⁴

Documentation obtained by the Subcommittee demonstrates that, beginning in June 2005 and continuing for at least two more years, Mr. Birrell expended substantial effort to complete the C-130 aircraft transaction initiated by President Omar Bongo.

\$17 Million Transfer. The first major event in connection with the C-130 aircraft transaction was the transfer of nearly \$17 million into The Grace Group accounts at United Bank in Virginia in June 2005. The funds were provided through multiple wire transfers sent from Gabon by an entity called “Ayira.” Mr. Birrell declined to describe the origins or owners of Ayira or its relationship to President Omar Bongo. The documentation reviewed by the Subcommittee suggests that Ayira is a shell entity operating at the direction of President Omar Bongo.⁶⁶⁵

On June 14, 2005, Mr. Birrell sent a letter to Abass Haidara Cherif, a senior advisor to President Omar Bongo and Mr. Birrell’s primary Gabonese government contact in the C-130 aircraft transaction. In it, Mr. Birrell wrote: “The funds noted in our conversation can be sent to the following address. I will hold these funds in total until otherwise directed by you.” His letter then provided instructions for sending a wire transfer to The Grace Group LLC account at United Bank.⁶⁶⁶

Three days later, on June 17, 2005, a wire transfer for nearly \$5 million was sent by Ayira from an account at BGFBI Bank in Libreville, Gabon to the primary Grace Group account at

⁶⁶¹ Subcommittee interview of State Department officials, October 16, 2008.

⁶⁶² ITAR Section 122.1. Individuals seeking to act as brokers must register; governments are not required to do so.

⁶⁶³ Subcommittee interview of State Department officials, October 16, 2008.

⁶⁶⁴ Id.

⁶⁶⁵ See, e.g., several other Ayira wire transfers sending funds to the daughter of President Omar Bongo, Ounaida Bongo. 3/14/01 wire transfer for \$74,943.20 from Ayira to an Ounaida Bongo account at Citibank in Washington, D.C., A 00043084; 9/26/01 wire transfer for \$99,733.09 from Ayira to the same Citibank account, A 00043103; and 8/27/03 wire transfer for \$64,882 from an Ayira account at BGFBI Bank in Gabon to the same Citibank account, A 00043219.

⁶⁶⁶ June 14, 2005 letter from Mr. Birrell to Mr. Haidara, Grace 0634.

United Bank.⁶⁶⁷ This wire transfer included the notation: “RSAF C-130E Aircraft.”⁶⁶⁸ On the same day The Grace Group received the funds, it transferred them to The Grace Group LLC Client Escrow Account, which Mr. Birrell and Ms. Duffy had opened earlier that day.⁶⁶⁹

On June 29, 2005, Mr. Birrell sent Mr. Haidara an email acknowledging receipt of the \$5 million and asking him to convey certain information about the funds to President Omar Bongo.

“Will you please advise President Omar Bongo of the following information. The Grace Group LLC has received \$5,000,000.00 USD in its general operating account. These funds were received by wire. This same amount, minus wire transfer fees, has been re-deposited into a separate account titled, ‘Grace Group LLC, Client Escrow Account.’ These funds will remain in this account until otherwise directed by the client. Expenses incurred by the Grace Group with specific regard to the purchase of the C-130s, will be deducted from this account and repaid to the Grace Group’s general operating account. A full accounting of these expenses will be made available to the client.”⁶⁷⁰

This email makes it clear that the \$5 million sent by Ayira was intended to be used to advance the C-130 aircraft purchase that President Omar Bongo had hired Mr. Birrell to help arrange.

One month after the first \$5 million wire transfer, Ayira sent The Grace Group two more wire transfers from Gabon providing another \$12 million. On July 18, 2005, Ayira sent a wire transfer from BGFIBank in Gabon to The Grace Group LLC Account No. xxxxx for nearly \$6 million.⁶⁷¹ The wire transfer documentation again referenced “RSAF C 130 E Aircraft.” The next day, on July 19, 2005, The Grace Group LLC transferred the funds to its Client Escrow Account.⁶⁷² Three days later, on July 21, 2005, Ayira sent another \$6 million from its account in Gabon to The Grace Group LLC account at United Bank.⁶⁷³ Like the two prior emails, it referenced, “RSAF C 130 E Aircraft.” On July 26, 2005, The Grace Group transferred the funds into its Client Escrow Account.⁶⁷⁴

On July 22, 2005, The Grace Group Client Escrow Account withdrew \$1 million from its account and wire transferred the funds to Mr. Haidara at KBC Bank in Brussels, Belgium.⁶⁷⁵ The wire transfer documentation noted that the transfer was at the “Request of the Head of

⁶⁶⁷ United Bank WireHouse Message Details, Psi-ub-000416-17. The actual amount transferred was \$4,999,934, which appears to be \$5 million less various fees.

⁶⁶⁸ United Bank WireHouse Message Details, Psi-ub-000416-17. “RSAF” refers to the Royal Saudi Air Force.

⁶⁶⁹ 6/17/05 United Bank transaction receipt, Psi-ub-000268; 6/17/05 United Bank Account Agreement, Psi-ub-000133-34.

⁶⁷⁰ 6/29/05 email from Mr. Birrell to Mr. Haidara, Grace 0681.

⁶⁷¹ 7/18/05 United Bank WireHouse Message Details, Psi-ub-000422-23; 7/18/05 United Bank Funds Transfer Notification, Grace 0276. The amount sent was \$5,999,934, which appears to be \$6 million less various fees.

⁶⁷² July 2005 United Bank Statement for The Grace Group Client Escrow Account, Psi-ub-000240, showing a July 19 “PHONE TSFR-CREDIT” depositing \$5,999,934 into the account. See also 7/19/05 United Bank documents showing transfer between the two accounts, Psi-ub-000269.

⁶⁷³ 7/21/05 United Bank WireHouse Message Details, Psi-ub-000426-27.

⁶⁷⁴ July 2005 United Bank Statement for The Grace Group Client Escrow Account, Psi-ub-000240, showing a July 26 “PHONE TSFR-CREDIT” depositing \$5,999,934 into the account. See also 7/26/05 United Bank documents showing transfer between the two accounts, Psi-ub-000270.

⁶⁷⁵ 7/22/05 United Bank WireHouse Message Details, Psi-ub-000428-29.

State.” Since all of the funds in the escrow account came from the Ayira wire transfers, this transaction indicates that Mr. Birrell was willing to and did disburse the Ayira funds at the direction of President Omar Bongo, including by sending them to a Belgium account in the name of his advisor, Mr. Haidara. Mr. Birrell did not explain the purpose of this transfer or how it may have related to the C-130 aircraft transaction.⁶⁷⁶

Registered Broker. On July 29, 2005, Mr. Birrell applied to register The Grace Group LLC with the State Department as a broker to sell aircraft and vehicles on the U.S. Munitions List.⁶⁷⁷ Mr. Birrell was the only signatory on the application and signed as the “Managing Member” of The Grace Group, even though in December 2004, a change of agent form had been filed with the State of Virginia and replaced Mr. Birrell with his wife as the sole managing member or owner of the company.⁶⁷⁸ The State Department approved the brokering application in August 2005.⁶⁷⁹

At the end of the year, Mr. Birrell sent a letter to the State Department reporting on his brokerage activities during 2005. His letter stated that The Grace Group “had no brokering activities” during 2005, but had applied for authorization to broker a transfer of C-130 aircraft from Saudi Arabia to Gabon.⁶⁸⁰ The letter also stated that authorization had been granted on January 17, 2006. The next year, on January 25, 2007, Mr. Birrell sent a letter reporting on his brokerage activities during 2006, and again described his effort to broker the proposed transfer of C-130 aircraft from Saudi Arabia to Gabon.⁶⁸¹ His letter stated that an export license had been approved for the transfer in August 2006, but the transfer had not yet taken place.⁶⁸²

Brokering Authorization. Once The Grace Group received approval to act as a broker for materials on the U.S. Munitions List, the next step in the C-130 aircraft transaction was for Mr. Birrell to file a request with the State Department’s Directorate of Defense Trade Controls (DDTC) to authorize The Grace Group to broker a sale of the C-130 aircraft owned by Saudi Arabia to Gabon.

⁶⁷⁶ A month later, on August 31, 2005, The Grace Group Client Escrow Account wire transferred \$200,000 to Mr. Haidara at a bank account at Societe Generale Agency Fontenoy in Paris. 8/31/05 United Bank WireHouse Message Details, Psi-ub-000430-31. The notation on the wire transfer documentation stated that the money was to “Feed starving refugees in Mali and Niger.”

⁶⁷⁷ 7/29/05 U.S. Department of State Statement of Registration, Grace 0749.

⁶⁷⁸ See 10/20/04 Commonwealth of Virginia Statement of Change of Registered Office and/or Registered Agent, Grace 1124. See also 7/28/05 letter from Mr. Birrell to DTCC, Grace 0620.

⁶⁷⁹ Subcommittee interview of State Department officials, October 16, 2008. See also 10/24/05 email from Mr. Birrell to the U.S. Ambassador to Gabon, Grace 0589 (“The Grace Group LLC ... received its Brokering License (Brokering Registration Code K-1117) from the Department of State in August 2005.”).

⁶⁸⁰ 1/31/06 letter from Mr. Birrell to the State Department, Grace 0774. Mr. Birrell signed the letter as “President & Senior Managing Member” of The Grace Group LLC, even though in Virginia records, his wife was then the sole managing member of the company.

⁶⁸¹ 1/25/07 letter from Mr. Birrell to the State Department, Grace 0723-24.

⁶⁸² Mr. Birrell again signed the letter as “President & Senior Managing Member” of The Grace Group, even though it would not be for another ten months that he would file a change of agent form with the State of Virginia replacing his wife as the sole Managing Member of the company. 10/21/07 Commonwealth of Virginia Statement of Change of Registered Office and/or Registered Agent, Grace 1110-11.

Mr. Birrell filed the necessary application with the DDTC in August 2005. Initially, The Grace Group proposed a two-step process involving another U.S. company, Hoover Aviation, Inc., based in Texas. In its August 18, 2005 letter to the DDTC, Mr. Birrell proposed that six C-130 aircraft “be sold by the Saudi government to Hoover Aviation, who in turn will sell two of them to an end-user in Gabon,” and requested approval for The Grace Group to broker the sale of the two C-130 aircraft to the Gabon end-user.⁶⁸³ Mr. Birrell’s letter identified Hoover Aviation as the seller of the two aircraft and Delta Synergie, a “privately owned Gabon company that is owned in part by Gabon’s head of state,” as the purchaser.⁶⁸⁴

A month later, Hoover Aviation was dropped from the transaction.⁶⁸⁵ In September 2005, Mr. Birrell sent a letter to the DDTC amending his brokering application so that the seller of the C-130 aircraft would no longer be Hoover Aviation, but the Government of Saudi Arabia.⁶⁸⁶

In October 2005, Delta Synergie sent a formal request to the State Department for authorization to “reexport” the C-130 aircraft from Saudi Arabia to Gabon. On October 13, 2005, Henri Claude Oyima, the “Administrateur Directeur General of Delta Synergie,” wrote to the DDTC requesting authorization for Delta Synergie, “a privately owned Gabon company owned in part by Gabon’s Head of State (in his private capacity)” to purchase two C-130 aircraft from the Royal Saudi Air Force.⁶⁸⁷ Mr. Oyima described Delta Synergie as “a cargo and freight company established to develop an intra-gabonese trade and distribution network,” and stated that the planes would be used for “transporting heavy loads and for short takeoffs and landings at Gabon’s airfields.”⁶⁸⁸

The documentation reviewed by the Subcommittee indicates that Mr. Birrell expected the brokering application to be approved and the sale consummated within a few months. The funds to purchase the first two aircraft had already been sent to the Grace Group in June and July. On July 18, 2005, Mr. Birrell obtained an “escrow kit” from an aircraft title insurance company to safeguard the funds during the purchase.⁶⁸⁹ On August 31, 2005, Mr. Birrell obtained a letter from United Bank confirming that \$10 million was available in Grace Group accounts to purchase the aircraft.⁶⁹⁰ On September 4, 2005, Mr. Birrell sent a series of letters tendering a formal offer to the Royal Saudi Air Force (RSAF) to purchase two C-130 aircraft for \$4.3 million each and four more for \$4.5 million each,⁶⁹¹ engaging a retired RSAF Brigadier General,

⁶⁸³ 8/18/05 letter from Mr. Birrell to DDTC, Grace 0614-16.

⁶⁸⁴ *Id.*, at Grace 0615.

⁶⁸⁵ 8/31/05 letter from Mr. Birrell’s legal counsel to Hoover Aviation, Grace 0612.

⁶⁸⁶ 9/15/05 letter from Mr. Birrell to DDTC, Grace 0601-2. See also Subcommittee interview of State Department officials, October 16, 2008.

⁶⁸⁷ 10/13/05 letter from Mr. Oyima to DDTC, Grace 0593-95.

⁶⁸⁸ *Id.*, at Grace 0595.

⁶⁸⁹ 7/18/05 email from Mr. Birrell to Mr. Haidara, Grace 0631. Mr. Birrell contacted Insured Aircraft Title Services, Inc. (IATS), the same company cited in the Obiang case history. Mr. Birrell wrote: “I think with a lawyer and with the title company (and the two of us watching the funds) we can conduct this purchase without any problems.” See also 11/07 draft Aircraft Purchase Agreement, Grace 0457, a provision indicating that Mr. Birrell had intended to use IATS as the escrow agent during the actual purchase of the C-130 aircraft.

⁶⁹⁰ 8/31/05 letter from United Bank to Mr. Birrell, Grace 0613.

⁶⁹¹ 9/4/05 letter from Mr. Birrell to the Royal Saudi Air Force, Grace 0606-07.

Hamid Bakhsh, to assist in the sale;⁶⁹² and later raising the offer to \$4.5 million per airplane for a total of \$27.6 million.⁶⁹³ Later in September, Mr. Birrell traveled to Saudi Arabia to advance the transaction.⁶⁹⁴ On October 18, 2005, the Grace Group Escrow Client Account wire transferred \$136,765 to a Saudi company, Al Ahnaf Trading, to arrange to fly the aircraft to Gabon.⁶⁹⁵

While waiting for the State Department to rule on his brokering application, Mr. Birrell contacted the U.S. Ambassador to Gabon, Barrie Walkley, with whom he was personally acquainted, about the proposed transaction and enlisted his help. In an October 4, 2005 email, the Ambassador stated: “Regarding the C-130, we’ll do all we can to help. Please talk to the Charge when you are in Libreville, as well as our Defense Attache.”⁶⁹⁶ On October 24, Mr. Birrell sent an email “to follow up on your kind offer to assist President Omar Bongo (via a private company in Gabon i.e. Delta Synergie) obtain two C-130E aircraft for regional commercial transport operations.”⁶⁹⁷ Mr. Birrell wrote:

“It would be very helpful to know the status of this submission and to know how the process can be moved along. President Omar Bongo raised this matter with you directly many months ago and he is very interested in a timely resolution. These types of aircraft are in great demand and any further delay in this process could greatly impair this purchase. ... [A] call from you or [your staff] to ... DDTC ... to determine the status of this submission would be most helpful and may speed the approval process.” [Emphasis in original.]

Denial of Application. Despite Mr. Birrell’s efforts, in early November, the State Department denied his application to broker the transfer of the C-130 aircraft.

⁶⁹² 9/4/05 Agreement of Services, Grace 0280-81; 9/4/05 letter from Mr. Birrell to Mr. Bakhsh, Grace 0285; 9/30/05 United Bank account statement, Grace 0056 (Grace Group Client Escrow Account check for \$5,000 to Hamid Baksh for “Advance Commission C-130 Project.”).

⁶⁹³ 9/23/05 letter from Mr. Birrell to the Royal Saudi Air Force, Grace 0599.

⁶⁹⁴ See 3/8/06 memorandum prepared by The Grace Group, Grace 0792-93 (“In September 2005, members of The Grace Group, LLC, and the firm’s legal counsel, traveled to Saudi Arabia and met with senior officials of the Royal Saudi Air Force (RSAF) to discuss the availability of its C-130 aircraft.”); Grace 0056 (Grace Group Escrow Account check for \$18,352 issued to Grace Group LLC for “9/27/2005 Ep. Rep. SA trip C-130.”).

⁶⁹⁵ 10/18/05 United Bank WireHouse Message Details, Psi-ub-000436; United Bank International Wire Transfer Authorization, Grace 0218. The wire transfer documentation included the notation: “1st half of the payment for C130E.” See also September 28, 2005 agreement among Delta Synergie, Sofab Aerospace, and Al-Ahnaf Trading, in which Al-Ahnaf Trading agreed to help “move two (2) C-130 aircrafts from Jeddah to Gabon.” Grace 0627. On November 18, 2006, Sofab Aerospace sent an invoice for \$254,360 to Delta Synergie for the cost of moving two C-130 aircraft. Grace 0705. The invoice notes that “payment may be made to Al Ahnaf Trading.”

One action which raises questions about President Omar Bongo’s true intent regarding the transaction at this point was the withdrawal in late October of more than \$3 million from the funds that The Grace Group had set aside for the C-130 purchase. On October 22, 2005, The Grace Group Client Escrow Account wire transferred \$3,061,809 to Mr. Haidara at KBC Bank in Brussels, due to a “Request by the head of the State.” United Bank WireHouse Message Details, Psi-ub-000438-39. See also The Grace Group LLC Client Escrow Account statement for October 2005, Psi-ub-000244-45. The purpose of this transfer, which depleted the funds needed for the C-130 aircraft purchase, is unclear. After this transfer, The Grace Group Client Escrow Account had about \$11.6 million left for the C-130 transaction.

⁶⁹⁶ 10/4/05 email from Ambassador Walkley to Mr. Birrell, Grace 1091.

⁶⁹⁷ 10/24/05 email from Mr. Birrell to Ambassador Walkley, Grace 0589. Mr. Birrell was personally acquainted with the Ambassador. See 10/4/05 email from requesting him to bring frozen turkeys to Gabon in time for Thanksgiving if possible.

During October, several U.S. officials had raised objections to the proposed transfer. On October 6, 2005, DOD sent a memorandum to the State Department objecting to export of the C-130 aircraft to Gabon for “what appears to be non military use.”⁶⁹⁸ The DOD memorandum stated: “DOD is unclear as to what State’s intent was by staffing a brokering agreement that appears to be an unlawful export transaction.”⁶⁹⁹ An October 24 email from a State Department employee also objected to the proposed transfer, noting that “permitting the sale of two C-130s to any private African party is inviting mischief.”⁷⁰⁰

On November 3, 2005, the State Department sent a letter to Mr. Birrell denying his application to broker the sale of the C-130 aircraft to Delta Synergie. The letter explained: “Commercial ownership and end use of C-130 aircraft for transportation of goods by a private company as outlined in this request is inconsistent with the provisions of the Arms Export Control Act pertaining to exports in support of internal security or self defense.”⁷⁰¹

When asked about this decision, the State Department told the Subcommittee that it had two reasons for denying the brokerage application, involving both the proposed end use and the proposed end user.⁷⁰² First, the State Department told the Subcommittee that the particular military capabilities of the C-130 aircraft rendered them inappropriate for “in country transport and regional trade,” since such activities do not require military grade aircraft. The State Department said these commercial needs could be met with an L100 aircraft. Second, the State Department told the Subcommittee that Section 4 of the Arms Export Control Act states that private end buyers are not qualified to receive military items such as C-130 aircraft.

State Department representatives told the Subcommittee that, had they seriously considered approving the transfer, they would have investigated the proposed end user, Delta Synergie, more closely.⁷⁰³ The State Department also stated that it does not usually look at how the transactions it approves will be financed.

Approval of Revised Application. Two weeks after the application was denied, The Grace Group re-applied to broker the sale of the C-130 aircraft. Its new application, dated November 18, 2005, proposed selling the six C-130 aircraft to the Government of Gabon, rather than Delta Synergie, and proposed using the aircraft for humanitarian peacekeeping missions

⁶⁹⁸ 10/6/05 Official Department of Defense Position for Munitions Case BA L0039-05, PSI State Dept. 03-0028.

⁶⁹⁹ Id.

⁷⁰⁰ The October 24, 2005 internal State Department email, PSI State Dept. 03-0042, also states: “The U.S. Applicant, Jeffrey Birrell, of The Grace Group LLC, is likely the same person who is mentioned in a Justice Dept. investigation during the Clinton years, which targeted a Belgian lobbyist [redacted by Subcommittee], who obtained secret USG documents, and tried to sell the[m] to different African leaders. Birrell worked (or, maybe still does) for a Washington, D.C. African lobbying company that bears his name. Through intermediaries mentioned in this report, Birrell could have had tangential contacts with [redacted], who later reportedly was a gray arms dealer in profitable gun-running to various African countries. Even if the Gabon company said they knew all about the C-130 purchase, we’d have no way of knowing whether they’d turn around and lease the C-130 to bad parties in neighboring countries. If you can provide some reasoning for us to go forward with the BL (reasons to approve the potential sale), I could incorporate those reason[s] into a BL cable. But, I’ve still got a bad feeling, overall, about approving these a/c/ for sale.”

⁷⁰¹ 11/3/05 letter from the State Department to Mr. Birrell, Grace 0588.

⁷⁰² Subcommittee interview of State Department officials, October 16, 2008.

⁷⁰³ Id.

rather than commercial trade.⁷⁰⁴ The application apparently proposed the new end user and new end use for the aircraft to address the objections raised to the prior brokering application.

Around the same time that Mr. Birrell filed the new application, he wire transferred nearly \$750,000 in consulting fees to persons outside of the United States. On November 16, 2005, The Grace Group Client Escrow Account wire transferred \$496,500 to Michael Moussa at Rothschild Bank in Monaco.⁷⁰⁵ The wire transfer documentation included the notation: “Business Consulting Agreement.” On November 18, 2005, The Grace Group Client Escrow Account wire transferred \$250,000 to Maxime Gandzion at KBC Bank in Brussels.⁷⁰⁶ The wire transfer documentation included the notation: “Consulting Fee.” The Subcommittee attempted to contact both individuals to inquire about their role in the C-130 transaction, but was unable to reach either individual, and Mr. Birrell declined to provide contact information for either person.

On November 22, 2005, Mr. Birrell sent a memorandum to his C-130 consultant in Saudi Arabia, retired RSAF Brigadier General Bakhsh, providing an update on the second application.⁷⁰⁷ Mr. Birrell wrote:

“[W]e are attempting to receive official U.S. government approval on an expedited basis. To this end, our legal team is working closely with their counterparts within the Department of State and I have separately engaged the U.S. Ambassador to Gabon to inquire as to the status of this submission. I believe that he has offered his points to the central decision makers.”

Mr. Birrell asked General Bakhsh to advise Saudi officials of his ongoing efforts and the remaining approval process. He also offered comments on a draft contract to purchase the C-130 aircraft.

On December 2, 2005, Mr. Birrell sent a letter to the State Department’s DDTC urging them to approve the proposed transfer:

“This request ... is now extremely time sensitive. ... In planned meetings next week with the Assistant Secretary of State for Africa on this and other matters, I would very much like to report that this request has been acted upon and is being processed. ... [A]ny and all expedited treatment that can be afforded this request will be greatly appreciated by the Gabonese government and this firm.”⁷⁰⁸

On December 8, 2005, Mr. Birrell sent President Omar Bongo a three-page letter updating him on the C-130 transaction and other matters.⁷⁰⁹ Mr. Birrell began the letter by congratulating President Omar Bongo on his recent re-election to office. He wrote: “It was a pleasure to organize the U.S. Assessment and Observation Team.”

⁷⁰⁴ 11/18/05 The Grace Group LLC Application, PSI State Dept. 03-0051; Subcommittee interview of State Department officials, October 16, 2008.

⁷⁰⁵ United Bank WireHouse Message Details, Psi-ub-000440-43.

⁷⁰⁶ Id., at 000442-43.

⁷⁰⁷ 11/22/05 memorandum from Mr. Birrell to Gen. Bakhsh, Grace 0585-87.

⁷⁰⁸ 12/2/05 letter from Mr. Birrell to DDTC, Grace 0583-84.

⁷⁰⁹ 12/8/05 letter from Mr. Birrell to President Omar Bongo, Grace 0580-82.

Mr. Birrell discussed some meetings in Washington on other matters related to Gabon, and then spent the next two pages providing a detailed description of his efforts to advance acquisition of the C-130 aircraft. Among other matters, Mr. Birrell described several actions taken by Ambassador Walkley, including meeting with DDTC officials, writing to the Assistant Secretary of State, and directing his Defense Attache to contact DOD. Mr. Birrell concluded by stating that “all of the necessary approvals can be received ... over the next two weeks.”

One month later, on January 17, 2006, the State Department approved the new application to broker the sale, stating in its approval letter that the C-130 aircraft would be used by the Gabon government “to support the following missions:

- a. Government and military transport of cargo and/or Personnel,
- b. Support for regional peacekeeping missions,
- c. Response to international disaster,
- d. Search and rescue operations on a regional and sub-regional basis,
- e. Border and coastal observations.”⁷¹⁰

DOD offered “no objection” to the sale.⁷¹¹

The State Department told the Subcommittee that it approved the new application because it addressed both of the Department’s earlier concerns, by specifying new non-commercial end uses for the aircraft and by specifying a new end user, the Government of Gabon rather than a private company partially owned by President Omar Bongo.⁷¹²

Export License. Once Mr. Birrell’s brokering application was approved by the State Department, the next step in the process was to submit an application to the State Department for formal approval to re-export the aircraft from Saudi Arabia to Gabon. That application had to be filed by the seller, Saudi Arabia.

On December 13, 2005, Mr. Birrell sent a letter to the Royal Saudi Air Force stating that, to advance the transaction, the RSAF needed to send a letter to the State Department requesting re-export of the aircraft.⁷¹³ On December 16, 2005, Mr. Birrell wire transferred \$184,000 from

⁷¹⁰ 1/17/06 letter from State Department to Mr. Birrell, Grace 0696-97. The documentation suggests that Mr. Birrell contributed to the identification of these non-commercial uses for the C-130 aircraft. In a September 2005 letter to the RSAF, for example, Mr. Birrell suggested using the aircraft for “famine relief efforts in the Western Sahara that have been organized by” President Omar Bongo and others. Grace 0599. In a September 5, 2006 email to Mr. Haidara, Mr. Birrell wrote: “Gabon can ‘help’ the [Saudi] Kingdom with political-military affairs in the Middle East. The Kingdom cannot fly in relief supplies to Palestine (or neighboring states) w/o dealing directly with Israel. This alliance between El Hadj and Abdullah could be very useful to the Kingdom.” Grace 0750-51.

In a later memorandum, dated March 13, 2006, Mr. Birrell described a meeting with United Nations officials to discuss leasing the aircraft to the United Nations for peace keeping operations. Mr. Birrell wrote: “[T]here is a terrific demand for these planes and the return on investment of leasing to the United Nations or other organization[s], government or private contractor, is very positive.” Grace 0789.

⁷¹¹ See 11/21/05 Official DOD Munitions Case BA-L-0061-05, PSI-State_Dept-03-0057.

⁷¹² Subcommittee interview of State Department officials, October 16, 2008.

⁷¹³ 12/13/05 letter from Mr. Birrell to Mr. Al Faisal, Grace 0569. Mr. Birrell wrote: “Because the re-export of these military items falls under specific U.S. law regarding their transfer, the Grace Group LLC has been instructed by the

The Grace Group Client Escrow Account to General Bakhsh, labeling it a “consulting fee aircraft purchase.”⁷¹⁴

After two months, in February, Mr. Birrell traveled to Saudi Arabia and “obtained a signed and official ‘Re-export Request’ from the Commander of the Royal Saudi Air Force.”⁷¹⁵ The letter was submitted to the State Department on February 23, 2006.⁷¹⁶

On March 12, 2006, the RSAF sent a memorandum to Mr. Birrell accepting Gabon’s offer to purchase its six C-130 aircraft for \$27.6 million.⁷¹⁷ The memorandum also stated that the price had to be paid within five days or the “offer will be invalid.” A month later, on April 11, 2006, The Grace Group Client Escrow Account wire transferred \$124,152 to Al Ahnaf Trading, the Saudi company that had agreed to help fly the C-130 aircraft to Gabon.⁷¹⁸

On April 21, 2006, the State Department issued a letter to Mr. Birrell approving the re-export of the six C-130 aircraft to Gabon.⁷¹⁹ Because the \$27.6 million sales price for the aircraft exceeded the \$14 million threshold, however, the letter stated that approval of the transfer required one last step, notification to Congress:

“The Department of State has no objection in principle to approving the re-export of these six (6) C-130E aircraft from the Government of the Kingdom of Saudi Arabia to the Government of Gabon. This transaction, however, does require Congressional Notification. We are in the process of informing Congress of this transaction and we will advise you when final approval can be given.”

Mr. Birrell had attempted to convince the State Department to issue final approval of the transaction without notifying Congress. In an April 18, 2006 email to the State Department’s Congressional Advisor for Political-Military Affairs, Mr. Birrell wrote: “[T]his C130 re-export has been approved but we’ve [been] at this for nearly a year. If the approval now moves thru the Congressional notification process, I believe that both the Saudi government and the Gabonese government will abandon the effort.”⁷²⁰ In an undated 2006 email to Ambassador Walkley, Mr. Birrell wrote:

U.S. Department of State to seek a letter of application from an authorized Saudi official requesting a re-export license.”

⁷¹⁴ United Bank WireHouse Message Details, Psi-ub-000448-49. See also a 12/24/05 letter from General Bakhsh to the RSAF requesting the needed letter on the C-130 transfer, Grace 0571.

⁷¹⁵ 3/8/06 “confidential” memorandum prepared by The Grace Group, Grace 0792-93. On February 19, 2006, The Grace Group Client Escrow Account issued a check to General Bakhsh for another \$50,000. Grace 0080.

⁷¹⁶ Undated letter from RSAF to the State Department, Grace 0806-07. The letter noted: “These aircraft were sold to the Government of the Kingdom of Saudi Arabia in a direct commercial sale by the Lockheed Martin Corporation in the United States. The Gabonese Ministry of Defense will be the end-user of these C-130E aircraft.” See also 3/8/06 “confidential” memorandum prepared by The Grace Group, Grace 0792-93 (“On February 23, 2006, the official request from the RSAF was supplied to [DDTC].”).

⁷¹⁷ 3/12/06 memorandum from RSAF to Mr. Birrell, Grace 0718.

⁷¹⁸ 4/11/06 United Bank International Wire Transfer Authorization, Grace 0217.

⁷¹⁹ 4/21/06 letter from State Department to Mr. Birrell, Grace 0556. See also 4/12/06 Official DOD Position for Munitions Case GC-0247-06, PSI State Dept. 03-0083 (position listed as “no objection”).

⁷²⁰ 4/18/06 email from Mr. Birrell to the State Department, PSI State Dept. 03-0086-89.

“If the now-approved re-export is tossed up to the Hill, the deal is dead. President Omar Bongo will just back out and all of this will have been for nothing. Worse than that, the President will see this as another indication of his lesser status in Washington and it will prove to be problematic in other areas. And after all, these air craft will be put to good use – as we have discussed on many occasions.”⁷²¹

Despite Mr. Birrell’s efforts, the State Department followed its standard practice and provided informal notice of the proposed C-130 transfer to the key Congressional Committees prior to sending an official notice. In response, a Congressional staffer raised a number of questions about the transaction which the State Department relayed to Mr. Birrell to help answer.⁷²²

On April 24, 2006, The Grace Group Client Escrow Account wrote a check for \$9.2 million to United Bank, to purchase two cashiers checks.⁷²³ Each cashiers check was for \$4.6 million, and each was made payable to HH Prince Abdurrahman Al Faisal.⁷²⁴ In late April, Mr. Birrell traveled to Saudi Arabia, presumably to provide the checks to the Saudi Government to purchase the first two C-130 aircraft.⁷²⁵

On May 1, 2006, however, Mr. Birrell returned to United Bank and re-deposited the two cashiers checks into The Grace Group Client Escrow Account.⁷²⁶ According to United Bank, Mr. Birrell told the bank that he didn’t use the checks, so United Bank wrote “not used for purpose” on the back of the checks and credited the money back to the Grace Group escrow account.⁷²⁷

During June and July, Mr. Birrell continued to press the State Department for final approval of the transfer.⁷²⁸ In mid-July, the key Congressional Committees unofficially cleared the transfer. On July 20, 2006, Mr. Birrell sent a letter to the Saudi Defense Attache with the news, quoting an undated email from a State Department official as follows:

⁷²¹ Id.

⁷²² 5/17/06 DOD questions and responses regarding the C-130 transfer, PSI State Dept. 03-0102-3; 5/1/06 email from the State Department to Mr. Birrell with questions about the proposed C-130 transfer, Grace 0812; 5/2/06 letter from Mr. Birrell to Saudi Defense Attache requesting assistance in answering the Congressional questions, Grace 819-21; chart sent by Mr. Birrell to the Saudi Defense Attache with the Congressional “inquiries,” “Grace comments,” and “RSAF Responses,” Grace 0817.

⁷²³ 4/24/06 check from The Grace Group LLC, Grace 0083; Subcommittee interview of United Bank officials, 5/5/07.

⁷²⁴ United Bank copies of the cashier checks, Psi-ub-000279.

⁷²⁵ See 5/1/06 email from Mr. Birrell to a State Department official, Grace 0812 (“I’ve just come back from Riyadh where I had meetings with the RSAF Commander.”).

⁷²⁶ April 2006 United Bank statement, Psi-ub-000254; Subcommittee interview of United Bank officials, 5/5/07.

⁷²⁷ Subcommittee interview of United Bank officials, 5/5/07.

⁷²⁸ See, e.g., 6/9/06 letter from Mr. Birrell to the Royal Embassy of Saudi Arabia, Grace 0837; 7/12/06 letter from Mr. Myer to U.S. Department of State, Grace 0848; 7/17/06 email, Grace 0871; 6/30/06 letter from Mr. Birrell to the Royal Embassy of Saudi Arabia, Grace 0873-74.

“Jeff,

You can use this email. The Hill has pre-cleared the case. While there always exists the possibility of a resolution of disapproval in an effort to block the sale, I would not expect one in this case. That is why we work so hard to pre-clear the cases. I will also seek to have the informal 20 day period waived; however, that might prove a stretch. Please tell the Kingdom that we appreciate their patience and support during this period of time that we worked with our Congress. This delay had nothing to do with the source of the aircraft; yet there were some issues, that have been resolved, with the destination of the planes.

VR, John”⁷²⁹

On July 24, 2006, the State Department formally notified Congress of the proposed C-130 aircraft transfer.⁷³⁰ After a month, the Saudi Government expressed frustration that the export license for the transfer had not yet been issued. On August 22, 2006, a Saudi official informed the Grace Group by letter: “[I]f you are unable to get issued the re-export license by the US [D]epartment of State in 30 days from 22nd August your Offer will be invalid and these will be sold to [an]other company.”⁷³¹

Congress officially cleared the transaction on August 24, 2006.⁷³² On the same day, the State Department sent a letter to Mr. Birrell stating: “The Department of State has no objection to the permanent re-export of the six (6) C-130 B/E aircraft and approves your request.”⁷³³

Sale Falls Through. It had taken nearly one year for the State Department to approve the transfer of the C-130 aircraft from Saudi Arabia to Gabon. During the delay, Saudi officials had expressed increasing skepticism that Gabon would finalize the transaction. In May 2006, for example, Mr. Birrell learned from retired RSAF General Bakhsh that the RSAF did not think that The Grace Group had enough money to buy all six C-130 planes.⁷³⁴ Mr. Birrell responded by writing a letter to the Saudi Arabian Embassy: “We are committed to accept and to pay for the aircraft in pairs of two. As the Grace Group is operating with funds provided by the Gabonese Government, the ability to pay for the aircraft is not in question.”⁷³⁵ [Emphasis in original.]

At some point, however, Mr. Birrell was informed that President Omar Bongo was considering cancelling the purchase. In a September 6, 2006 letter to President Omar Bongo, Mr. Birrell strongly advised against cancellation.⁷³⁶ Mr. Birrell wrote: “[T]he Grace Group has

⁷²⁹ 7/20/06 letter from Mr. Birrell to the Royal Embassy of Saudi Arabia, Grace 0767.

⁷³⁰ Subcommittee interview State Department officials, October 16, 2008.

⁷³¹ 8/22/06 letter from the Saudi Government to the Grace Group, Grace 0757.

⁷³² Subcommittee interview of State Department officials, October 16, 2008. See also official State Department approval pursuant to Section 36(D) of the Arms Export Control Act at PSI State Dept. 03-0110-12.

⁷³³ 8/24/06 letter from the U.S. State Department to Mr. Birrell, Grace 0754-55.

⁷³⁴ 5/20/06 email from General Bakhsh to Mr. Birrell, Grace 0826.

⁷³⁵ 5/25/06 letter from Mr. Birrell to the Saudi Defense Attache, Royal Embassy of Saudi Arabia, Grace 0832-34.

⁷³⁶ 9/6/06 letter from Mr. Birrell to President Omar Bongo, Grace 0752-53.

travel[ed] to Saudi Arabia on six occasions and held lengthy and complicated negotiations with senior staff officers of the Royal Saudi Air Force and others in the Saudi Government” regarding the C-130 transfer. He warned that a cancellation of the sale “will invite the negative review of the White House, the Departments of State and Defense and the Congress. ... [It] will likely have a negative impact on Your Excellency’s personal relationship with King Abdullah and with the Royal Saudi Government. ... [It] will have negative financial ramifications for Your Excellency.” Mr. Birrell also stated, however, that should President Omar Bongo “wish the immediate return of the funds held in escrow ... I will transfer the total remainder within 24 hours and without question or exception.”

On September 18, 2006, Mr. Birrell sent an email to President Omar Bongo’s legal counsel, Francois Meyer, requesting an additional \$10.6 million so that The Grace Group could complete the purchase of the six C-130 aircraft.⁷³⁷ He also sent copies of the email to President Omar Bongo and Mr. Haidara. Although United Bank records do not show any influx of funds as a result of that request, the documentation also suggests that President Omar Bongo appears to have accepted Mr. Birrell’s advice and determined to complete the purchase of the aircraft.

On October 24, 2006, President Omar Bongo sent a letter to Saudi Prince Sultan Bin Abdelaziz stating that Gabon was ready to purchase the six C-130 aircraft for \$27.6 million, would begin by purchasing two for cash, and would purchase the remaining four aircraft soon after.⁷³⁸ Three days later, Mr. Birrell sent a letter to Prince Bandar Bin Mohamed Bin Abdul Rahman Al Saud stating that he had met with President Omar Bongo on October 25th regarding the aircraft, and offered to “assist the Kingdom identify potential buyers for any [other] surplus items it may wish to sell and to obtain any and all required re-export approval from the United States Government.”⁷³⁹

In November, Mr. Birrell once again prepared two cashiers checks related to the C-130 transaction. On November 10, 2006, he withdrew \$9.2 million from the Grace Group Client Escrow Account and purchased two cashiers checks.⁷⁴⁰ Each cashiers check was for \$4.6 million, and each was made payable to the “Royal Saudi Air Force, Kingdom of Saudi Arabia.”⁷⁴¹ Although difficult to read, the internal debit slip for the cashiers checks appears to state: “to purchase two official checks per Mr. Birrell request” and “for Grace Group LLC C-130 Purchase.”⁷⁴²

On November 12, 2006, Mr. Birrell sent a letter to the RSAF stating: “At the request of the Gabonese Republic, I am providing to the Royal Saudi Air Force with two ‘Official Bank Checks’ in the amount of \$4,600,000 USD each. These checks are for payment of two C-130 aircraft ... to be counted against the total transaction cost for all six aircraft.”⁷⁴³ A few days later, on November 18, 2006, Mr. Birrell sent a letter to the RSAF stating: “The Gabonese

⁷³⁷ 9/18/06 email from Mr. Birrell to “avocatfm,” Grace 0748.

⁷³⁸ 10/24/06 letter from President Omar Bongo to Saudi Prince Sultan Bin Abdelaziz, Grace 0554-55.

⁷³⁹ 10/27/06 letter from Mr. Birrell to the Prince, Grace 0725.

⁷⁴⁰ United Bank debit slip, Grace 0354; October 2006 United Bank statement, Psi-ub-000261.

⁷⁴¹ 11/10/06 cashiers checks, Grace 0355.

⁷⁴² United Bank debit slip, Grace 0354.

⁷⁴³ 11/12/06 letter from Mr. Birrell to the Saudi Government, Grace 0714.

Government is fully committed to buying all six C130 aircraft.”⁷⁴⁴ The letter also stated, however, that President Omar Bongo would like to proceed by immediately purchasing two of the aircraft with “the next four aircraft with some delay, but as soon as possible.” The letter asked to meet that day “to conclude this matter.”

A month later, on December 14, 2006, Mr. Birrell sent another letter to the RSAF proposing that Gabon pay \$9.2 million in cash for the two C-130 aircraft and \$18.4 million for the remaining four aircraft within 30 to 45 days.⁷⁴⁵ The letter noted that Mr. Haidara, representing Gabon, “has been in Riyadh for several weeks” and “has \$9.2 million in hand.” It stated that Mr. Haidara “is urgently needed by President Omar Bongo in India on very pressing matters” and asks to complete “the first part of this transaction as soon as possible.” On December 16, 2006, Mr. Birrell wire transferred \$50,000 to General Hakhsh in Saudi Arabia as a “Consultant Fee: Aircraft Purchase.”⁷⁴⁶

Another month passed with no apparent progress. It is not clear why the sale was not consummated by Saudi Arabia at this time.

On January 30, 2007, Mr. Birrell sent a letter to Francois Meyer, President Omar Bongo’s legal counsel, about the C-130 transaction:

“It was my pleasure to meet you again in Riyadh, Saudi Arabia. ... I trust ... you can now offer a briefing to [President Omar Bongo] that will result in a definitive course of action. Any decision taken by His Excellency regarding [sic] will have my complete support.”⁷⁴⁷

Mr. Birrell provided him with a summary of the expenses associated with the C-130 transaction over the 18-month period from June 2005 to the end of 2006. He indicated that of the \$17 million he had received in connection with the transaction, he had allocated \$6.8 million to Mr. Haidara, \$304,000 to “Consultants,” and \$253,299 to The Grace Group for expenses. He had also prepared two \$4.6 million checks for the RSAF, though the RSAF had yet to accept or cash them.

By early February 2007, the C-130 aircraft sale had been cancelled. On February 3, 2007, Mr. Birrell sent an email to Mr. Meyer stating:

“Thank you for your letter of February 2, 2007. As noted, I will need you to return to me the two certified checks which are payable to the Kingdom of Saudi Arabia. Please send

⁷⁴⁴ 11/18/06 fax copy of the letter sent by The Grace Group to the RSAF, Grace 0712. Also on November 18, 2006, Sofab Aerospace sent an invoice for \$254,360 to Delta Synergie for the cost of moving two C-130 aircraft to Gabon. Grace 0705. The invoice notes that payment may be made to Al Ahnaf Trading. According to a 7/14/06, United Bank email, “Mr. Birrell just stopped by and told me that he is expecting \$10,600,000.00 incoming wire from his client, when I asked him about the wire, he told me that this [sic] funds is for purchasing of the C130 plan[e].” PSI-United_Bank-05-000028.

⁷⁴⁵ 12/14/06 letter from Mr. Birrell to Lt. General Abdul Rahman Bin Fahad Al Faisal, Royal Saudi Air Force Commander, Grace 0685.

⁷⁴⁶ 12/16/06 United Bank International Wire Transfer Authorization, Grace 0283.

⁷⁴⁷ 1/30/07 letter from Mr. Birrell to Mr. Meyer, Grace 0374-75.

these checks to my office. ... I will redeposit these in the account and wire these funds to you without any delay. You may write on the back of each check, 'Not Used for Intended Purpose.'"⁷⁴⁸

On the same day, Mr. Birrell sent an email to Sofab Aerospace stating: "I am very sorry to report that after months of trying, our efforts to buy the six C-130 aircraft have concluded without a purchase agreement. I, therefore, must ask you to reconcile our account with SOFAB. ... I deeply regret the termination of this particular project."⁷⁴⁹

\$9.2 Million to Malta. On February 8, 2007, Mr. Birrell re-deposited the two cashiers checks, explaining to United Bank that the checks had not been used as intended.⁷⁵⁰ Mr. Birrell deposited the \$9.2 million into the Grace Group Client Escrow Account. Written on the back of each cashiers check was: "Not Used for Intended Purpose."⁷⁵¹ According to United Bank, Birrell "said that the embassy gave him the wrong amount."⁷⁵²

On the same day, February 8, 2007, Mr. Birrell authorized a wire transfer of \$9.2 million to an account in the name of "The Gabonese Republic (H. E. Omar Bongo Ondimba)."⁷⁵³ That account was not at a bank in Gabon, however, but at a bank in the country of Malta.

The wire transfer had to be processed twice, because it was rejected the first time. The wire transfer authorization provided by Mr. Birrell had specified sending the \$9.2 million from The Grace Group Client Escrow Account to "The Gabonese Republic (H. E. Omar Bongo Ondimba)" at "BDFI Bank SA" located at "FimBank" in Sliema, Malta.⁷⁵⁴ The purpose of the transfer was listed as the "return of escrow funds" and identified "Francios [sic] Meyer" as the contact. When United Bank entered the transaction into its wire transfer system, the receiving bank was listed as "BGFI Bank for further credit BDFI Bank" and used "Fim Bank" in the address line.⁷⁵⁵

Wells Fargo, acting as an intermediary bank for this transaction, reported that the transfer was rejected, because Wells Fargo could not identify either BGFI Bank or BDFI Bank.⁷⁵⁶ In addition, Wells reported that "FIM Bank" had a "cross match to First Merchants Bank which is on OFAC block list." Wells Fargo told the Subcommittee that it processed the \$9.2 million wire transfer again on February 9, 2007, and that the transfer was successful that time, because after speaking with United Bank, it entered the beneficiary as "HE Omar Bongo Ondimba the

⁷⁴⁸ 2/3/07 email from Mr. Birrell to Mr. Meyer, Grace 0360.

⁷⁴⁹ 2/3/07 email from Mr. Birrell to Sofab, Grace 0227.

⁷⁵⁰ Subcommittee interview of United Bank officials, 5/5/07.

⁷⁵¹ 2/8/07 United Bank documents, Psi-ub-000289.

⁷⁵² 9/13/06 internal United Bank email, PSI United Bank 05-000030.

⁷⁵³ January 2007 United Bank statement, Psi-ub-000265.

⁷⁵⁴ 2/8/07 United Bank International Wire Transfer Authorization, Grace 0357; 2/8/07 United Bank transaction records, Psi-ub-000289-90.

⁷⁵⁵ Wells Fargo item No. 021562, no bates number.

⁷⁵⁶ Id.

Gabonese Republic,” identified the proper bank in Malta, and confirmed that FIM Bank was unrelated to the bank on the OFAC list.⁷⁵⁷

Also on February 8, 2005, The Grace Group sent an additional sum of \$65,061 to the same Bongo account at the same bank in Malta.⁷⁵⁸ The purpose of the wire was also listed as “return of escrow funds” and identified Mr. Meyer as the contact. After the completion of these wire transfers, the funds remaining in The Grace Group Client Escrow Account totaled about \$491,000.⁷⁵⁹

Private Equity Alternative. Even after aircraft purchase was canceled and President Omar Bongo took possession of the \$9.2 million once set aside for the C-130 aircraft, Mr. Birrell did not cease his efforts to make use of the export license that he had spent a year to obtain. For more than six months, from March to October 2007, Mr. Birrell continued to attempt to arrange the purchase of the aircraft, by enlisting a consortium of private firms to provide the financing and negotiating with them to design a transaction that would meet the export license requirements.

On March 19, 2007, Mr. Birrell sent a three-page memorandum to Mr. Meyer, President Omar Bongo’s legal counsel, with a detailed proposal for the purchase of the six C-130 aircraft.⁷⁶⁰ He wrote that he had met with four corporate representatives in South Africa “regarding the financing and use of the proposed Gabonese C-130 fleet.” He stated that, as a result, he had secured a “private equity placement for 85 percent or more of the funds” required to purchase the six aircraft and was seeking a second equity placement to cover the remaining 15 percent. He wrote that one of the private firms, Norse Air, was interested in operating the aircraft and had tentatively agreed to base the airplanes in Gabon, with possible “exclusive use” of two of the aircraft by the Gabon Government. Mr. Birrell suggested an “equity split” between Norse Air and the Gabon Government regarding use of the aircraft for “commercial cargo use and United Nations leasing (and other uses outlined in the approved reexport license.)” He also seemed to suggest that Gabon lend the funds to the private firms to purchase the aircraft, to be repaid over five years, with the expectation that the fees generated by the aircraft would likely offset the purchase price in three years.

In May 2007, after a round of meetings with U.S. Government officials, Mr. Birrell sent an email announcing that the U.S. Government had agreed the C-130 transaction under consideration could take place under the existing export license. On May 16, 2005, Mr. Birrell sent this email to Norse Air and several others:

“After some considerable discussion with the concerned parties here in Washington, D.C., we have struck an agreement on the re-notification to the USG regarding the price change for the six C-130s. It has been agreed that because the material aspects of the

⁷⁵⁷ Subcommittee interview of Wells Fargo Bank officials, 10/5/07 and 12/21/09. See also Wells Fargo spreadsheet on transactions from 2/1/07 to 6/1/07, no bates number; and 2/8/07 Wells Fargo wire transfer records, no bates number, which note that the wire was processed on February 9, 2007.

⁷⁵⁸ See also 2/8/07 United Bank WireHouse Message Details, Psi-ub-000462-63; January 2007 United Bank statement, Psi-ub-000265.

⁷⁵⁹ January 2007 United Bank statement, Psi-ub-000265.

⁷⁶⁰ 3/19/07 memorandum from Mr. Birrell to Mr. Meyer, Grace 0560-62.

transaction remains unchanged (to wit: the actual aircraft, physical characteristics of the aircraft i.e. no offensive capabilities such as fixed gun mounts, etc, the end-user, scope of use, etc.) that a re-notification is not required by the Arms Control Export Act.”⁷⁶¹

Mr. Birrell described “the officials at the Department of State as EXTREMELY supportive and up-beat about the prospects of the 130 lift capacity in the region and believe that there will be many opportunities to utilize the A/C [aircraft] for governmental and NGO [nongovernmental organization] uses. It was also noted that the addition of the USMIL in the region could add value to the service center in LBV [Libreville, the capital of Gabon].” He wrote: “[We’re] all green-lighted here in WDC [Washington, D.C.]. As soon as the agreement has been signed with the GoG [Government of Gabon], I will be at the UN and State [to] propose a cargo lease, as per the terms of the re-export license.”

In June 2007, the transaction seemed to be moving forward. In a June 3 letter to the RSAF Commander, Mr. Birrell wrote: “This letter follows our meeting in your office today. This letter reiterates, in writing, and delivered by hand, the firm offer to purchase the six C-130 aircraft offered for sale by the Royal Saudi Air Force.”⁷⁶² In a June 24 letter, Mr. Birrell stated: “It is my understanding that steps are now being taken for Norse Air to inspect the six C130 aircraft. Pending the outcome of that inspection, I believe that it will be acceptable to purchase the aircraft in, ‘AS IS’ condition.”⁷⁶³

Throughout July 2007, Mr. Birrell and his legal counsel negotiated with the private firms over a proposed memorandum of understanding (MOU) to govern financing and use of the aircraft. Mr. Birrell’s legal counsel raised multiple concerns about the structure of the transaction to ensure that it met the terms of the U.S. export license, criticizing in particular proposals to sell or lease the aircraft to a special purpose vehicle (SPV). In a July 10, 2007 email, Mr. Birrell wrote: “Upon my representation today of the proposed agreement between the SPVs and the Gabonese government, there is some concern that the structure would be contrary to the terms agreed to by the U.S. Government. It is essential that the Gabonese Government maintain ownership of the aircraft and that the terms of the re-export license is respected w/o exception.”⁷⁶⁴ In a July 11, 2007 email Mr. Birrell wrote: “The issue of concern among the lawyers here is the ‘leasing’ of the aircraft by the GOG to the SPV. The lawyers believe that the SPVs and/or Norse, etc., need to be identified as ‘contractors’ to the GOG. As such there would be no question as to the ownership of the aircraft.”⁷⁶⁵ On July 20, he wrote: “According to counsel, the ‘leasing’ aspects of the agreement are not consistent with the re-export license.”⁷⁶⁶

⁷⁶¹ 5/16/07 email from Mr. Birrell to Norse Air and others, Grace 0434.

⁷⁶² 6/3/07 letter from Mr. Birrell to Lt. General Abdul Rahman Bin Fahad Al Faisal, Royal Saudi Air Force Commander, Grace 0433.

⁷⁶³ 6/24/07 letter from Mr. Birrell to Lt. General Abdul Rahman Bin Fahad Al Faisal, Royal Saudi Air Force Commander, Grace 0430-31.

⁷⁶⁴ 7/10/07 email from Mr. Birrell to Norse Air and others, Grace 0542.

⁷⁶⁵ 7/11/07 email from Mr. Birrell to Norse Air, Grace 0541.

⁷⁶⁶ 7/20/07 email from Mr. Birrell to Norse Air and others, Grace 0538.

The key SPV contemplated for the transaction was apparently Singpart Ltd., a shell corporation formed under the laws of Mauritius.⁷⁶⁷ An undated agreement entitled, “Heads of Agreement between the Government of the Gabonese Republic and Singpart Ltd,” which was reviewed by the Subcommittee, essentially proposed that Singpart lend \$56 million to the Government of Gabon as a prepayment of the maintenance and services which the government would derive from Singpart’s operation of the aircraft. Gabon would then lend back \$20 million to Singpart and use the remaining \$36 million to purchase the aircraft.⁷⁶⁸ After reviewing this proposal, Mr. Birrell’s legal counsel wrote: “[I]t’s not clear why it makes sense to have Singpart loan the \$20 million to GovCo, which lends it back to Singpart – what is the purpose of that?”⁷⁶⁹

On July 24, 2007, Mr. Birrell informed his legal counsel: “The RSAF has formally accepted the Gabonese bid on the six AC. We are going to need the new MOU awfully quick.”⁷⁷⁰ A 17-page draft contract, emailed on July 24, 2007, had been drawn up for Saudi Arabia to sell the six C-130 aircraft to Gabon for \$36 million.⁷⁷¹ This contract was in addition to the MOU that was still under negotiation with the consortium of private firms.⁷⁷²

On August 13, 2007, Norse Air sent an email stating that it had a successful meeting with Cameroon Bank which “will be drawing up a loan agreement.”⁷⁷³ The email noted, however, that the purchase agreement required payment within 7 days of the signing of the contract, but that at least three weeks would be needed to provide the funds. On August 14, 2007, Mr. Birrell sent a letter to the RSAF stating: “Please be advised that the final legal review of the sale of the C-130 aircraft has been completed.”⁷⁷⁴ Arrangements were made for all parties to meet in Riyadh, Saudi Arabia, on October 20, 2007, to complete the purchase of the six C-130 aircraft.⁷⁷⁵

Two days before the meeting was to take place, however, on October 18, 2007, Mr. Birrell sent a letter to the RSAF stating that President Omar Bongo had instructed his representative, Mr. Haidara, “to continue with other immediate matters of State” and that Mr. Haidara would not be able to attend the meeting. Although Mr. Birrell proposed an alternative date of November 10th, it appears that the meeting never took place, and the C-130 transaction was never finalized.

Three years later, as of January 11, 2010, the C-130 aircraft was listed in Saudi Air Force maintenance records as “for sale.”⁷⁷⁶ The State Department told the Subcommittee that, in June

⁷⁶⁷ See 8/3/07 email from Norse Air to Mr. Birrell and others, Grace 0513-16 (describing Singpart as “a Mauritian shell used to contract for the MOU [Memorandum of Understanding]”). Singpart was apparently represented by Maxime Grandzion, an individual who earlier received a \$250,000 “consulting fee” from The Grace Group.

⁷⁶⁸ Undated draft agreement, Grace 0466-86.

⁷⁶⁹ 8/7/07 email from Mr. Birrell’s legal counsel to him, Grace 1140.

⁷⁷⁰ 7/24/07 email from Mr. Birrell to his legal counsel, Grace 0535.

⁷⁷¹ 7/24/07 Draft Contract on the Sale of Six (6) C-130 Aircraft, Grace 0492-508.

⁷⁷² See, e.g., emails exchanged on August 3 and 4, 2007 regarding the MOU, Grace 0513-16; 8/7/07 email, Grace 0510; 8/7/07 email, Grace 1146; 8/7/07 email, Grace 0510; 8/7/07 and 8/8/07 emails, Grace 1139-41; 8/8/07 email, Grace 0445.

⁷⁷³ 8/13/07 email from Norse Air to Mr. Birrell, Grace 0437; Grace 0445.

⁷⁷⁴ 8/14/07 letter from Mr. Birrell to RSAF, Grace 0436.

⁷⁷⁵ 10/18/07 letter from Mr. Birrell to Lt. General Abdul Rahman Bin Fahad Al Faisal, Royal Saudi Air Force Commander, Grace 0683.

⁷⁷⁶ Subcommittee interview of State Department officials, January 13, 2010.

2008, The Grace Group LLC submitted an application to re-register as a broker, but the application was incomplete and therefore not approved. The State Department indicated that, aside from the C-130 aircraft transaction, The Grace Group had not been involved in other activities requiring State Department approval.⁷⁷⁷

Compensation. Mr. Birrell began work on the C-130 transaction in or around June 2005, and continued that work until at least October 2007, a period of nearly two and a half years. He expended considerable effort to complete the acquisition of the C-130 aircraft for Gabon, but was unsuccessful. The compensation paid to Mr. Birrell for his efforts is unclear.

Among the documents produced by Mr. Birrell to the Subcommittee was a draft “Brokerage Agreement” dated September 21, 2006 – more than a year after he began work on the C-130 transaction – which requests that The Grace Group be paid \$850,000 plus expenses for its work on the C-130 transaction. This draft agreement “confirms” Gabon’s “engagement of The Grace Group LLC ... to serve as its broker” in the purchase of six C-130 aircraft, and states that The Grace Group “will receive a fee of \$850,000, plus normal and documented expenses.”⁷⁷⁸ The document reviewed by the Subcommittee, however, is unsigned, and Mr. Birrell declined to disclose whether The Grace Group actually received the \$850,000.

On April 18, 2006, Mr. Birrell withdrew \$57,392.57 from The Grace Group Client Escrow Account and deposited it into The Grace Group LLC Account, with a notation “Feb & March interest ... per Mr. Birrell request.”⁷⁷⁹ It is unclear whether this transfer related to the firm’s work on the C-130 transaction. On January 30, 2007, Mr. Birrell sent President Omar Bongo’s representative, Mr. Meyer, a memorandum which stated that, as of that date, The Grace Group had incurred expenses in connection with the C-130 transaction totaling more than \$253,000.⁷⁸⁰ It is unclear whether all of those expenses had been or were later reimbursed.

On January 31, 2007, Mr. Birrell withdrew \$125,000 from The Grace Group Client Escrow Account and deposited it into his personal joint account with his wife at United Bank.⁷⁸¹ The check contained the notation: “Grace Gp 2006 P. Sharing.” It is unclear whether this transfer represented compensation for his work on the C-130 transaction.

(3) Conduit for Suspect Funds

Throughout the course of the armed car and C-130 aircraft transactions, Mr. Birrell allowed his Grace Group accounts to act as a conduit for millions of dollars in suspect funds from Gabon. In March and April 2005, for example, The Grace Group accepted more than \$850,000 wire transferred from President Omar Bongo’s account in Gabon, and later used funds from Gabon that had been wired into The Grace Group Client account to complete the armored car transaction. In addition, in June and July 2005, The Grace Group received wire transfers totaling \$17 million from Gabon sent by Ayira to complete the C-130 aircraft transaction.

⁷⁷⁷ Id., November 30, 2009.

⁷⁷⁸ 9/21/06 unsigned Brokerage Agreement, Grace 1087-88.

⁷⁷⁹ 4/18/06 United Bank transaction receipt, Grace 0083.

⁷⁸⁰ 1/30/07 memorandum from Mr. Birrell to President Omar Bongo, Grace 0374-75.

⁷⁸¹ 1/31/07 United Bank check, Psi-ub-000237.

From 2005 until February 2007, Mr. Birrell disbursed most of the funds he had received. He spent nearly \$1.2 million to purchase, armor, and ship six vehicles to Gabon, enabling President Omar Bongo to obtain U.S.-built vehicles to support his regime. With respect to the C-130 aircraft transaction, the biggest disbursement made by Mr. Birrell was to send \$9.2 million to an account in President Omar Bongo's name in Malta. Mr. Birrell declined to explain why he did not return the \$9.2 million to Ayira, and why the President of Gabon maintained an account in Malta or had substantial funds sent there. By sending the \$9.2 million to Malta as directed, Mr. Birrell participated in a suspicious transaction.

The next largest disbursement made by Mr. Birrell from the Grace Group accounts involved sending substantial funds to Mr. Haidara, President Omar Bongo's adviser, at accounts in Mr. Haidara's name at banks outside of Gabon.⁷⁸² A January 2007 accounting by Mr. Birrell indicates that, in connection with the C-130 transaction, he had allocated \$6.8 million of the Ayira funds to Mr. Haidara.⁷⁸³ The Subcommittee was able to document the transfer of about \$4.2 million in payments as follows.

- On July 22, 2005, the Grace Group Client Escrow Account wired \$1 million to Mr. Haidara at KBC Bank in Brussels, with a notation that indicated the transfer was at the "request of the head of state."⁷⁸⁴ The purpose of this transfer and whether or how it related to the C-130 transaction was not explained.
- On August 31, 2005, the same Grace Group account wired \$200,000 to "Baba A Haidara" at Societe Generale Agency Fontenoy in Paris; the stated purpose of the transfer was to "Feed starving refugees in Mali and Niger."⁷⁸⁵ Why these funds were sent to Paris, why they were deposited in an account in the name of Mr. Haidara, and what happened to them next remain unclear.
- On October 20, 2005, the same Grace Group account wired \$3,061,809 to Mr. Haidara at KBC Bank in Brussels, with the notation that the transfer was at the "request of the head of the state-president."⁷⁸⁶ The purpose of this \$3 million transfer, whether and how it related to the C-130 aircraft transaction, and why the funds were sent to Brussels in an account in the name of Mr. Haidara were not explained.

In each case, at the direction of President Omar Bongo or his adviser, Mr. Birrell transferred substantial funds to banks outside of Gabon, using funds that had been supplied by Ayira and depositing those funds into accounts in the name of Mr. Haidara, rather than President Omar Bongo or Gabon. Such transactions must be viewed as suspicious, since they enabled President Omar Bongo to divert substantial funds from Gabon, move the funds through the international

⁷⁸² The Subcommittee attempted to contact Mr. Haidara to discuss these transactions, but was unsuccessful in reaching him. Mr. Birrell declined to provide contact information for Mr. Haidara.

⁷⁸³ 1/30/07 letter from Mr. Birrell to Mr. Meyer, Grace 0374-75.

⁷⁸⁴ 7/22/05 United Bank WireHouse Message Details, Psi-ub-000428-29. See also 7/22/05 United Bank International Wire Transfer Authorization, Grace 0279.

⁷⁸⁵ 8/31/06 United Bank WireHouse Message Details, Psi-ub-000430.

⁷⁸⁶ 10/20/05 United Bank WireHouse Message Details, Psi-ub-000438-39.

wire transfer system to accounts not openly associated with him, and make it difficult to trace the movement of such funds from Gabon through the United States to their final destination.

The final group of large disbursements made by Mr. Birrell from The Grace Group accounts went to “consultants” associated with the ultimately unsuccessful C-130 transaction. In January 2007, Mr. Birrell told Mr. Haidara that the “consultants” in the C-130 transaction were owed a total of \$304,000,⁷⁸⁷ but bank records show these consultants actually received in excess of \$1 million.

- In 2005, The Grace Group entered into a contract with retired RSAF Brigadier General Hamid Bakhsh, Executive Manager of Bekhsh Aviation Consultant Services, promising him a fee equal to 8% of the purchase price of the C-130 aircraft.⁷⁸⁸ The Subcommittee was able to document payments to him totaling \$289,000. When he was hired on or around September 23, 2005, the Grace Group Client Escrow Account wrote him a check for \$5,000, with a notation: “advance commission c-130 project.”⁷⁸⁹ On December 16, 2005, the same Grace Group account sent him a wire transfer for \$184,000, with a notation, “consultant fee air craft purchase.”⁷⁹⁰ On February 19, 2006, the same Grace Group account issued him a check for \$50,000.⁷⁹¹ On December 16, 2006, the same Grace Group account wire transferred to him another \$50,000 as a “Consultant Fee: Aircraft Purchase.”⁷⁹² These documents indicate that over the course of over one year, General Bakhsh was paid fees in connection with the unsuccessful C-130 transaction totaling \$289,000. The Subcommittee contacted Mr. Bakhsh who confirmed his contract with The Grace Group, confirmed that the payments were for his consulting work on the C-130 transaction, and claimed that The Grace Group owed him still more money for his efforts.⁷⁹³
- On November 16, 2005, the Grace Group Client Escrow Account wired \$496,500 to Michael Moussa at Rothschild Bank in Monaco with a notation, “Business Consultant Agreement.”⁷⁹⁴ The Subcommittee attempted to contact Mr. Moussa to discuss his work on the C-130 transaction and this payment, but was unable to reach him. Mr. Birrell declined to provide contact information for Mr. Moussa.
- On November 18, 2005, Grace Group Client Escrow Account wired \$250,000 to Maxime Gandzion at KBC Bank in Belgium as a “consulting fee.”⁷⁹⁵ It is unclear what role he played in the C-130 transaction during 2005. Two years later, he represented the Mauritian shell company, Singpart Ltd. The Subcommittee also attempted to contact Mr. Gandzion to discuss his work on the C-130 transaction and this payment, but was

⁷⁸⁷ 1/30/07 letter from Mr. Birrell to Mr. Meyer, Grace 0374-75.

⁷⁸⁸ 9/4/05 Agreement for Services, Grace 0280-81 and Grace 0575-76.

⁷⁸⁹ 9/23/05 check from the Grace Group LLC to Mr. Baksh, Grace 0056.

⁷⁹⁰ 12/16/05 United Bank WireHouse Message Details, Psi-ub-000449.

⁷⁹¹ 2/19/06 check from the Grace Group LLC to Mr. Baksh, Grace 0080.

⁷⁹² 12/16/06 United Bank International Wire Transfer Authorization, Grace 0283.

⁷⁹³ Undated letter from Mr. Bakhsh to the Subcommittee, received on 10/23/09, no bates number.

⁷⁹⁴ 11/16/05 United Bank WireHouse Message Details, Psi-ub-000440 -41.

⁷⁹⁵ 11/18/05 United Bank WireHouse Message Details, Psi-ub-000442.

unable to reach him. Mr. Birrell declined to provide contact information for Mr. Gandzion.

Altogether, these consulting fees added up to \$1,035,500, all of which were paid by The Grace Group using suspect funds from Gabon.

Mr. Birrell also used funds from Gabon for his own compensation. While the Subcommittee was unable to determine the total amount of compensation that President Omar Bongo provided to Mr. Birrell during the course of the armored car and C-130 aircraft transactions, an October 2006 check for \$600,000 and a January 2007 check for \$125,000, both deposited into Mr. Birrell's personal joint account at United Bank, suggest that he too was a significant beneficiary of the suspect funds sent from Gabon.

(4) Analysis

President Omar Bongo employed the services of Mr. Birrell to obtain, not only U.S.-built armored cars and U.S. Government permission to purchase U.S.-built military transport aircraft to support his regime, but also use of Mr. Birrell's U.S. bank accounts. President Omar Bongo sent Mr. Birrell nearly \$850,000 from the President's own account in Gabon; another \$17 million was sent from "Ayira" in Gabon. President Omar Bongo and his advisers then instructed Mr. Birrell to spend over \$1 million in the United States to obtain and ship the vehicles, and wire transfer additional, substantial amounts to a variety of foreign bank accounts. Mr. Birrell participated in several suspicious transactions, including sending \$9.2 million to a President Omar Bongo account in the country of Malta, sending millions more to a Belgium bank account in the name of his senior advisor, and sending another \$1 million to various "consultants." This case history shows how a politically powerful PEP can take advantage of the U.S. financial system by using a U.S. lobbyist's bank account as a conduit for his funds. If the United States is to keep foreign corruption outside of its borders, lobbyists representing foreign officials and governments will have to exercise greater due diligence before accepting foreign funds into their U.S. bank accounts and paying bills and expenses as directed by a foreign client.

C. Bongo Use of a Daughter's U.S. Bank Accounts To Move Suspect Funds Into the United States

President Omar Bongo brought substantial amounts of suspect funds into the United States, not only through the bank accounts of a U.S. lobbyist, but also by using U.S. bank accounts and safe deposit boxes opened by one of his daughters, Yamilee Bongo-Astier.

Yamilee Bongo-Astier is the daughter of President Omar Bongo and Marie-Yva Astier. She is a Canadian citizen who has lived at times in the United States. From 2000 to 2003, Ms. Bongo-Astier reportedly was a full-time student at New York University, and later at the Parsons School of Design. In 2000, she opened a checking account at HSBC Bank in New York City. Over the next three years, she made repeated large cash deposits into her account, totaling about \$315,000, and on occasion used her accounts to purchase automobiles for her father or other Gabon officials. In 2003, she received a \$183,500 wire transfer from the "Republic of Gabon Casier" which triggered an HSBC review of her account. When the bank conducted the review,

it learned for the first time, three years after the account opening, that Ms. Bongo-Astier was the daughter of President Omar Bongo and qualified as a PEP. After the bank reviewed her transactions, it closed her account due to “concerns about Omar Bongo.”

Two months later, Ms. Bongo-Astier opened an account at Commerce Bank in New York City without disclosing her PEP status or relationship to President Omar Bongo. The vendor that provides PEP screening services for Commerce Bank failed to identify her as a PEP due to an incomplete list of President Omar Bongo’s family members and a policy of requiring publicly available information before adding a PEP to its PEP list. Commerce Bank maintained accounts for Mr. Bongo-Astier for four years, from 2003 to 2007. Over that time period, she made multiple large cash deposits into her account, totaling \$1.6 million, and continued on occasion to purchase vehicles requested by her father. In 2005, after two large cash deposits triggered a review of her account, Commerce Bank learned that President Omar Bongo was the primary source of the funds in her accounts. The bank immediately designated her a PEP and began enhanced monitoring of her accounts. In 2007, Ms. Bongo-Astier asked the bank to count certain cash she had stored in safe deposit boxes at the bank. The bank found she had stored in her safe deposit boxes \$100 bills wrapped in plastic totaling \$1 million. Ms. Bongo-Astier explained that President Omar Bongo had provided the funds when he came to New York City and often brought cash into the country. President Omar Bongo did not declare his transport of the \$1 million into the United States as required by law. The bank learned that Ms. Bongo-Astier expected additional funds from him to help her purchase a \$2.2 million condominium in New York City. Commerce Bank deposited the \$1 million into a new money market account, but a few weeks later decided to close her accounts. The bank also blocked her receipt of an additional \$1 million wire transfer from Gabon.

In 2007, Ms. Bongo-Astier moved her funds to JPMorgan Chase, without disclosing her relationship to President Omar Bongo or her PEP status. She deposited over \$800,000 at the account opening, and over the next two years, withdrew the funds to pay for living expenses. She made no additional deposits. JPMorgan Chase told the Subcommittee that the bank was unaware of her PEP status until the Subcommittee disclosed her relationship with President Omar Bongo in 2009.

Ms. Bongo-Astier spoke with Subcommittee staff in a brief telephone conversation, but declined through her legal counsel to participate in an interview to answer questions about her account activity at HSBC, Commerce Bank, and JPMorgan Chase.

(1) HSBC Bank

Yamilee Bongo-Astier began banking with HSBC Bank in New York City in 2000, and maintained an account there for about three years. She first opened a personal checking account in 2000, Account No. 031305202. HSBC was unable to locate any account opening documentation, but other bank documents indicate it was opened on September 28, 2000, with an initial deposit of \$48,180.⁷⁹⁶ HSBC told the Subcommittee that it believed Ms. Bongo-Astier

⁷⁹⁶ October 2000 HSBC Bank statement, HSBC-PSI 036987. At the time HSBC opened the account, the 2001 Patriot Act, which required banks to establish AML programs, customer identification programs, and enhanced due

was then a student at New York University.⁷⁹⁷ Two years later, Ms. Bongo-Astier closed that account and, on September 12, 2002, opened a premier checking account, Account No. 03132254, with a deposit of over \$118,000.⁷⁹⁸ In connection with opening this account, HSBC obtained a copy of her passport which indicated she was a Canadian citizen. The 2002 account opening documentation also listed her occupation as “full time student” at the Parsons School of Design.⁷⁹⁹

Ms. Bongo-Astier’s account opening documentation did not include any indication as to the source of her wealth. HSBC told the Subcommittee that its records did not show that anyone at the bank questioned why an unemployed university student had over \$100,000 in her account. The bank told the Subcommittee that, because Ms. Bongo-Astier was a Canadian citizen, her middle name did not suggest to the bank a tie to either President Omar Bongo or Gabon.⁸⁰⁰ HSBC said that it did not realize that Ms. Bongo-Astier was related to the Gabon family until 2003.⁸⁰¹

Cash Deposits and Car Purchases. The bank account statements show that Ms. Bongo-Astier used her checking account primarily to pay for living expenses. They also show that, beginning in 2002, she began making large cash deposits into her account. These deposits included the following.

- On January 23, 2002, Ms. Bongo-Astier made a cash deposit of \$58,000.⁸⁰²
- On June 18, 2002, she made a cash deposit of \$49,900.⁸⁰³
- On September 20, 2002, she made a cash deposit of \$50,000.⁸⁰⁴
- On February 27, 2003, she made a cash deposit of \$107,649.⁸⁰⁵
- On May 9, 2003, she made a cash deposit of \$50,000.⁸⁰⁶

These five deposits show that, over an 18-month period, Ms. Bongo-Astier brought over \$315,000 in cash into the bank.

According to HSBC, its account monitoring system “detected a change in activity in the last year of the relationship, prompting the bank to file five Currency Transaction Reports on large cash deposits” into Ms. Bongo-Astier’s account.⁸⁰⁷ But HSBC told the Subcommittee that it did not know whether anyone from the bank actually spoke to Ms. Bongo-Astier concerning

diligence for accounts opened for senior foreign political figures, their relatives, and close associates was not yet enacted into law.

⁷⁹⁷ Subcommittee interview of HSBC officials, August 11, 2008.

⁷⁹⁸ September 2002 HSBC Bank statement, HSBC-PSI 037061.

⁷⁹⁹ 9/12/02 HSBC account opening documentation, HSBC-PSI 037060.

⁸⁰⁰ Subcommittee interview of HSBC officials, August 11, 2008.

⁸⁰¹ Id.

⁸⁰² 7/29/03 HSBC transaction report, HSBC-PSI 037413.

⁸⁰³ Id., at 037408.

⁸⁰⁴ Id., at 037409.

⁸⁰⁵ 2/27/03 HSBC transaction report, HSBC-PSI 037412.

⁸⁰⁶ 5/9/03 HSBC transaction report, HSBC-PSI 037414.

⁸⁰⁷ 5/6/08 HSBC’s written responses to Subcommittee questions, PSI HSBC-36-0009.

these cash transactions or asked her about the source of the cash or what she did with the funds.⁸⁰⁸

On May 7, 2003, a wire transfer for \$183,500 from a “Republic of Gabon Casier” account at Citibank in Gabon was sent to Ms. Bongo-Astier’s account.⁸⁰⁹ HSBC told the Subcommittee that this large wire transfer from Gabon triggered a review of her account activity. According to HSBC, HSBC’s compliance department contacted the branch where the transfer occurred and quickly determined that Ms. Bongo-Astier was the daughter of the President of Gabon.⁸¹⁰ HSBC told the Subcommittee that, prior to this review, it had been unaware of her relationship to President Omar Bongo. HSBC said that, in 2003, the bank re-classified Ms. Bongo-Astier as a “special category of client connected to a public official.”⁸¹¹

On May 9, 2003, Ms. Bongo-Astier purchased a cashiers check from the bank for \$172,888 payable to a Lincoln Mercury car dealer.⁸¹² When asked about this check, HSBC told the Subcommittee that Ms. Bongo-Astier had indicated that she sometimes purchased cars for her father, step father, and delegates from Gabon.⁸¹³ Additional evidence of this activity is a December 20, 2002 check for \$66,085 from Manhattan Ford to Ms. Bongo-Astier, containing a notation that the funds represented a “refund of dep[osit].”⁸¹⁴

About two and a half months later, on July 31, 2003, HSBC sent a letter to Ms. Bongo-Astier informing her that her account would be closed “based upon our Know Your Customer Rule.”⁸¹⁵ HSBC told the Subcommittee that it had closed the account “in light of concerns about Omar Bongo.”⁸¹⁶

(2) Commerce Bank

Two months after HSBC closed her account in July 2003, Ms. Bongo-Astier opened a new account at Commerce Bank in New York City without revealing her PEP status or relationship to President Omar Bongo.⁸¹⁷ For over four years, from 2003 to 2007, she maintained three accounts and three safe deposit boxes at Commerce Bank.

Ms. Bongo-Astier began her relationship with Commerce Bank on September 11, 2003, when she walked into the bank’s Manhattan South Branch with \$53,000 in cash, two HSBC

⁸⁰⁸ Subcommittee interview of HSBC officials, August 11, 2008.

⁸⁰⁹ HSBC History/Trend Analysis Report from 06/2002 to 05/2003, HSBC-PSI 037444-46.

⁸¹⁰ Subcommittee interview of HSBC officials, August 11, 2008.

⁸¹¹ Id.

⁸¹² 5/9/03 HSBC cashiers check, HSBC-PSI 037473.

⁸¹³ Subcommittee interview of HSBC officials, May 2, 2008.

⁸¹⁴ 12/20/02 check to Ms. Bongo-Astier, HSBC-PSI 037588.

⁸¹⁵ 7/31/03 letter from HSBC to Ms. Bongo-Astier, HSBC-PSI 037418.

⁸¹⁶ Subcommittee interview of HSBC officials, August 11, 2008.

⁸¹⁷ Commerce Bank is a federally chartered bank which, as of December 31, 2007, had about \$50 billion in assets, 475 branches, and 14,000 employees. 7/23/08 Commerce Bank’s written responses to Subcommittee questions, Commerce_Bank-03-0001.

cashiers checks for \$40,000 from her closed account, and several smaller checks.⁸¹⁸ Her total initial deposit exceeded \$98,000.

A Commerce employee opened the account, with the approval of the branch manager.⁸¹⁹ As part of the account opening process, Commerce obtained a copy of Ms. Bongo-Astier's Canadian passport and U.S. visa.⁸²⁰ The account opening documentation showed that she said she was residing in New York City and attending graduate school at the Parsons School of Design.⁸²¹ Commerce Bank filed a CTR regarding her \$53,000 cash deposit, but apparently did not inquire into the source of the funds other than to learn they came from a closed account at HSBC.

At the time of the account opening, Commerce Bank conducted a due diligence review which included conducting a "Prime" search, an OFAC screening, and a Lexis-Nexis search to identify information related to Ms. Bongo-Astier.⁸²² According to Commerce, "Prime Associates is a private vendor that provides financial institutions with various software programs to assist in discharging the institution's responsibilities under the Bank Secrecy Act. Initially, the Bank obtained the software necessary to perform OFAC screening. Subsequently, in 2005, the Bank purchased software to identify so-called Politically Exposed Persons."⁸²³

According to Commerce Bank, at no time did Ms. Bongo identify herself as the daughter of President Omar Bongo, nor did her name come up in the Prime, OFAC, or Lexis-Nexis reviews as a PEP. Commerce Bank told the Subcommittee that very few of President Omar Bongo's children are listed in PEP databases maintained by vendors like Prime Associates.⁸²⁴ The bank said that it did not learn of her PEP status for two more years, until 2005.

On September 11, 2003, Ms. Bongo-Astier opened a personal checking account at the bank, Account No. 7916245777.⁸²⁵ A year later, on November 24, 2004, she opened a joint account with another individual, Account No. 7918918561, with \$1,000 in cash.⁸²⁶ Commerce Bank told the Subcommittee that it believed this individual was a friend of Ms. Bongo-Astier.

⁸¹⁸ Her initial deposit was \$98,563.54, which included a cash deposit of \$53,500; two cashiers check from HSBC made out to Yamilee Bongo Astier, one for \$7,505.14 and one for \$37,478.40; a check from Submarine Communications Corp. for \$7505.14; and a check from Lionfish Design LLC for \$80.00. Commerce 284.

⁸¹⁹ 7/23/08 Commerce Bank's written responses to Subcommittee questions, Commerce_Bank-03-0003.

⁸²⁰ On May 5, 2004, Ms. Bongo filed a W-8 form, Certificate of Foreign Status, Commerce 2. Commerce Bank copy of Ms. Bongo-Astier's American Visa, Commerce 3; Commerce Bank copy of Ms. Bongo-Astier's Canadian passport, Commerce Bank 4.

⁸²¹ 9/11/03 Commerce Bank account opening documentation, Commerce Bank 115.

⁸²² Commerce_Bank-03-0002. The U.S. Office of Foreign Assets Control (OFAC) maintains lists of persons and entities with which U.S. financial institutions are prohibited from doing business. U.S. banks are required to check these lists prior to accepting any funds or wire transfers.

⁸²³ Commerce_Bank-03-0002. Prime Associates, now known as Fidelity National Information Services, Inc. or FIS, maintains a wide range of lists for screening the clients of its subscribers, including lists prepared by OFAC, the European Union, and other government bodies, a PEP database, FBI Ten Most Wanted List, lists of government officials of sanctioned countries, lists of persons suspected of involvement with financial fraud, and others. See "Prime Compliance Databank Overview," at 2-3, attachment to 1/22/10 letter from FIS to the Subcommittee, no bates number.

⁸²⁴ Subcommittee interview of Commerce Bank officials, June 18, 2008.

⁸²⁵ 9/11/03 Commerce Bank account opening documentation, Commerce Bank 115.

⁸²⁶ 12/2/04 Commerce Bank Customer Account Setup forms, Commerce Bank 112-13.

The branch manager approved the account opening, which subsequently showed minimal account activity.⁸²⁷ A year after that, on October 2, 2007, Ms. Bongo-Astier opened a money market account, Account No. 7924332914, at another Commerce Bank branch in Manhattan in which she deposited a substantial sum, as described below.⁸²⁸ This account opening was also approved by the branch manager.⁸²⁹

In addition, Ms. Bongo-Astier paid for three safe deposit boxes at the bank. On August 21, 2007, she was given a key to Box 637.⁸³⁰ The next month, on September 26, 2007, she was given keys to Boxes 53 and 54.⁸³¹

Cash Deposits. From the opening of her Commerce Bank checking account in 2003 until its closure in 2007, Ms. Bongo-Astier made multiple large cash deposits into the account. Over the four-year account relationship, her cash deposits totaled more than \$1.6 million. The cash deposits involving more than \$10,000 included the following.

- On September 11, 2003, she made an initial cash deposit of \$53,000.
- On February 9, 2004, she made a cash deposit of \$34,431.30.
- On September 21, 2004, she made a cash deposit of \$150,000.
- On September 23, 2004, she made a cash deposit of \$79,600.
- On August 24, 2005, she made a cash deposit of \$90,000.
- On September 26, 2005, she made a cash deposit of \$40,000.
- On October 26, 2005, she made a cash deposit of \$70,000.
- On December 21, 2005, she made a cash deposit of \$65,000.
- On September 10, 2007, she made a cash deposit of \$11,000.
- On October 2, 2007, she made a cash deposit of \$1 million.
- On October 31, 2007, she made a cash deposit of \$44,100.⁸³²

For the first two years her account was open, there is no evidence that any Commerce Bank personnel asked Ms. Bongo-Astier about the source of these funds or how an unemployed student was able to make such large cash deposits.

On December 11, 2005, Commerce Bank's account monitoring system flagged two cash deposits to Ms. Bongo-Astier's checking account, in September for \$40,000 and in October for \$70,000. After receiving the system alert, on December 12, 2005, a Commerce Bank anti-money laundering (AML) investigator sent an email to the branch manager asking about Ms. Bongo-Astier's account. The email noted that the account "appears to have been transacting large currency deposits recently," commented that the "usual balance is not this high," and asked about cashiers checks that had been written to a management company by Ms. Bongo-Astier.⁸³³ The

⁸²⁷ Subcommittee interview of Commerce Bank officials, June 18, 2008.

⁸²⁸ 10/2/07 Commerce Bank account opening documentation, Commerce Bank 114.

⁸²⁹ Subcommittee interview of Commerce Bank officials, June 18, 2008.

⁸³⁰ 8/21/07 Commerce Bank safe deposit box opening record, Commerce Bank 120-21.

⁸³¹ 9/26/07 Commerce Bank safe deposit box opening records, Commerce Bank 116-17.

⁸³² Commerce Bank internal account record, Commerce Bank 0547. Commerce filed CTRs for each of these cash deposits. See 7/23/08 Commerce letter to the Subcommittee, Commerce_Bank-03-0002.

⁸³³ 12/12/05 Commerce Bank internal email, Commerce Bank 47. On 10/26/05, Ms. Bongo-Astier wrote a cashiers check to Orb Management for \$33,600, ultimately cashed on 11/07/05. On 11/2/05, she wrote a cashiers check to

email asked, “do you happen to know where the money is coming from.” The branch manager responded that “as much as we try, we can’t know everyone and every transaction,” but also asked the weekend supervisor to make inquiries into the account.⁸³⁴

That same day, December 12, 2005, the branch manager sent an email to the AML investigator and weekend supervisor stating:

“Yes, I know her[.] She is the Princess of 2 African Royalty. They are citizens of Canada.

She is ok. The monies come when her parents ... visit the United Nations for Pres. Bush’s meetings. The monies are directly from the Federal Reserve.”⁸³⁵

The branch manager also forwarded a message from the weekend supervisor who said that he’d recently spoken with the branch’s head teller about Ms. Bongo-Astier, and was told “she is a princess or something from some African country, and the money she gets is from her father.”⁸³⁶ The branch manager wrote: “Let me know if you need anything else.”⁸³⁷ The Commerce AML investigator responded: “No that is all I needed thank you so much.”⁸³⁸

The next day, December 13, 2005, the AML investigator referred the account to the bank’s Enhanced Due Diligence Oversight (EDDO) unit for additional research.⁸³⁹ That same day, the EDDO director telephoned Ms. Bongo-Astier to ask about her account.⁸⁴⁰ Commerce Bank told the Subcommittee that the EDDO director handled the telephone call, because he thought that Ms. Bongo-Astier was potentially a PEP.

Commerce Bank told the Subcommittee that, during the course of the telephone call, Ms. Bongo-Astier readily disclosed that her funds came from her father, President Omar Bongo. According to the bank, she also stated that she often made purchases at the request of her father, such as a 2004 purchase of two Cadillacs.⁸⁴¹

Orin Management for \$21,600. Commerce later determined that Orin and Orb were management companies for rental properties, and that Ms. Bongo was paying rent in advance for certain periods of time, such as six months.

⁸³⁴ 12/12/05 Commerce Bank internal email, Commerce Bank 49.

⁸³⁵ 12/12/05 Commerce Bank internal email, Commerce Bank 48. Commerce personnel did not know the basis for the statement that “the monies are directly from the Federal Reserve,” since to their knowledge the monies were not from the Federal Reserve. They speculated that the reference could have been to the way that the cash was shrink wrapped, in the same manner as funds from the Federal Reserve. Subcommittee interview of Commerce Bank officials, June 18, 2008.

⁸³⁶ 12/12/05 Commerce Bank internal email, Commerce Bank 48.

⁸³⁷ Id.

⁸³⁸ Id.

⁸³⁹ Subcommittee interview of Commerce Bank officials, June 18, 2008. Commerce Bank’s Anti Money Laundering (AML)/Bank Secrecy Act (BSA) Department was then divided into three units: (1) AML Investigations; (2) BSA; and (3) Enhanced Due Diligence Oversight (EDDO). According to Commerce, those units had “primary and overlapping responsibilities” to investigate suspicious transactions and possible money laundering.

⁸⁴⁰ The EDDO director, a former FBI agent, had joined Commerce Bank in March 2005, as the head of the EDDO office.

⁸⁴¹ Subcommittee interview of Commerce Bank officials, June 18, 2008. See also 7/23/08 Commerce Bank’s written responses to Subcommittee questions, Commerce_Bank-03-0008.

After the EDDO division head spoke with Ms. Bongo-Astier, he sent an email to the branch manager stating that Ms. Bongo-Astier had been “very forthcoming.”⁸⁴² He then wrote a memorandum memorializing the telephone call and sent an email, with the memorandum attached, to the Commerce Bank AML director and director of AML Investigations. He wrote:

“This individual is the daughter of a PEP. The PEP is [the] President of Gabon. Her only source of income is from her father. Other than the large cash deposits that are explained in attachment everything else is OK.”⁸⁴³

His memorandum described his conversation with Ms. Bongo-Astier and the issues surrounding her account:

“This communication is being generated to address high volume dollar account activity, which is outside the scope for a customer who has no apparent occupation or source of income. During the time span of 8/24/05 to 12/11/05 a total of over \$86,000 in large withdrawals occurred. During this same period cash deposits were made aggregating to \$235,000.00. ...

Bongo-Astier advised that she is the daughter of El Hadj Omar Bongo who is currently the elected president of Gabon. Bongo has been the president of Gabon since 12/2/1967 and was recently re-elected on 11/27/2005. Gabon is a sub-sahara country on the western section of Africa. Bongo-Astier advised that she does not have a job and her only source of income is monies received from her father. The monies are received in the form of US currency and a CTR is immediately filed by her when the funds are deposited. The deposits coincide with the arrival of her father when he comes to the United States for official purposes. On other occasions cash is sent by her father through Gabon emissaries.”⁸⁴⁴

A Subcommittee review of the bank documentation confirms that, on at least two occasions, Ms. Bongo-Astier appears to have used her account funds to purchase automobiles at her father’s request. As she indicated during her conversation with the EDDO director, on November 24, 2004, Ms. Bongo-Astiers purchased a cashiers check from the bank for \$127,000 and appears to have used it to pay for two Cadillac Escalades.⁸⁴⁵ She told the EDDO director that the vehicles were for the Gabonese mission, and that she had purchased them at the request of her father, President Omar Bongo.⁸⁴⁶ In addition, on June 17, 2004, Ms. Bongo-Astier deposited a \$16,295 check into her checking account from a Lincoln Mercury car dealer.⁸⁴⁷ It was the same dealership to which she sent a cashiers check while banking with HSBC.

⁸⁴² 12/13/05 internal Commerce Bank email, Commerce Bank 249.

⁸⁴³ Id., at 248.

⁸⁴⁴ 12/13/05 Commerce Bank Memorandum of Enhanced Due Diligence, Commerce Bank 158-9.

⁸⁴⁵ Commerce Bank 366. Cashiers check drawn on the Bongo-Astier checking account and made payable to ATX Leasing Corp. with the notation: “(2) 2005 Cadillac Escalade ESV.” ATX Leasing Corp. is a company located on Long Island.

⁸⁴⁶ Subcommittee interview of Commerce Bank officials, June 18, 2008.

⁸⁴⁷ 2004 check from Lincoln Mercury, Commerce Bank 335.

PEP Designation. On December 13, 2005, the same day Commerce discovered Ms. Bongo-Astier's relationship to President Omar Bongo, the bank officially designated her as a PEP.⁸⁴⁸ In addition, that same day, the EDDO director sent an email to the branch manager where her account was located stating that Commerce Bank policy required Ms. Bongo-Astier's account to be transferred to the bank's Private Banking Division:

“The only thing is that it is Commerce policy that any PEP accounts are to be handled by Private Banking. Because she is a daughter of an elected political figure she is by definition a PEP.”⁸⁴⁹

The branch manager suggested that her account be assigned to a private banker in Manhattan. The EDDO director replied: “That would be a help. Advise [the Commerce Private Banking head] that I will forward the interview memo to her for her records.”⁸⁵⁰ That afternoon, the branch manager sent an email to the Private Banking head, stating that “Yamilee is under Commerce policy a PEP account and needs to be handled by Private Banking.”⁸⁵¹

Despite Commerce Bank's PEP policy, in December 2005, the bank decided against assigning Ms. Bongo-Astier's account to a private banker. Commerce Bank told the Subcommittee that its Private Bank required a minimum of \$500,000 in annual income and \$1 million in investable liquid assets, and Ms. Bongo-Astier did not meet either requirement.⁸⁵² The bank decided instead to monitor Ms. Bongo-Astier as if she were a private banking client, but not officially to classify her as a private banking client since she did not meet the bank's criteria. Commerce Bank told the Subcommittee that, beginning in December 2005, its computer and account monitoring systems clearly designated Ms. Bongo as a PEP so that all Commerce employees would know of her PEP status.

Concerned that the bank had been unaware of Ms. Bongo-Astier's PEP status for two years, the EDDO director instructed his staff to contact its AML vendor, Prime Associates, and find out why her name hadn't been flagged as a PEP during the account opening process. On December 15, 2005, Commerce Bank wrote to Prime Associates, and noted that while President Omar Bongo was included in the vendor's PEP list, Yamilee Bongo-Astier was not, and asked for the criterion by which a name would be placed on the PEP list.⁸⁵³ The email commented: “I would think that the daughter of the president of a country would be considered a PEP.”⁸⁵⁴ On December 20, 2005, Prime Associates responded that it was unable to find “any publicly accessible information that confirms” the information regarding Yamilee Bongo-Astier, and stated: “[O]ur data researches continue to work on expanding the PEP list. In a future distribution, if there is publicly accessible confirmation of this person, it will be added to the list.”⁸⁵⁵

⁸⁴⁸ 7/23/08 Commerce Bank's written responses to Subcommittee questions, Commerce_Bank-03-0004.

⁸⁴⁹ 12/13/05 internal Commerce Bank email, Commerce Bank 249.

⁸⁵⁰ Id.

⁸⁵¹ 12/13/05 internal Commerce Bank email, Commerce Bank 248.

⁸⁵² 7/23/08 Commerce Bank's written responses to Subcommittee questions, Commerce_Bank-03-0005.

⁸⁵³ See 12/15/05 email from Commerce Bank to Prime Associates, Commerce Bank 51.

⁸⁵⁴ Id.

⁸⁵⁵ 12/20/05 email from Prime Associates to Commerce Bank, Commerce Bank 50.

Prime Associates did not consider Ms. Bongo-Astier's admission of her relationship to President Omar Bongo and her receipt of large sums of cash from him to be sufficient evidence to add her to its PEP list, without "publicly accessible information" confirming her admission. Commerce Bank told the Subcommittee that even today, Yamilee Bongo-Astier is not included in the Prime PEP list, which identifies only two of President Omar Bongo's children, Ali Ben Bongo and Pascaline Bongo.⁸⁵⁶ The bank noted that the law was clear that the children of a senior foreign political figure are also to be treated as PEPs requiring enhanced due diligence.⁸⁵⁷

Commerce told the Subcommittee that, partly in response to this information from Prime Associates, in December 2006, the bank ran a PEP filter search of all 50,000 customers, but did not identify any new PEP clients.⁸⁵⁸

The Subcommittee contacted Prime Associates, now known as Fidelity National Information Services, Inc. (FIS), which confirmed that, as of January 2010, it still had not added Yamilee Bongo to its PEP list due to its policy of not adding a name to its list unless it is able to verify from a public source that the person or entity is a PEP.⁸⁵⁹ In a subsequent letter to the Subcommittee, FIS expressed its interest in "assisting the United States government in its mission to prevent and detect illegal activity in our financial system ... with the most effective tools and data possible." FIS recommended that "a joint government and vendor committee be formed to develop standards" for PEP lists, including "the level of documentation required to list someone as a PEP, when that information is known exclusively to [a financial institution] but not to the vendor."⁸⁶⁰

⁸⁵⁶ Id.

⁸⁵⁷ Section 312 of the Patriot Act requires U.S. financial institutions to exercise enhanced due diligence when opening or monitoring private banking accounts for a "senior foreign political figure." 31 CFR. § 103.175(r). Treasury regulations define the term "senior foreign political figure" as follows:

"(r) Senior foreign political figure.

(1) The term senior foreign political figure means:

(i) A current or former:

(A) Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);

(B) Senior official of a major foreign political party; or

(C) Senior executive of a foreign government-owned commercial enterprise;

(ii) A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;

(iii) An immediate family member of any such individual; and

(iv) A person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual.

(2) For purposes of this definition:

(i) Senior official or executive means an individual with substantial authority over policy, operations, or the use of government-owned resources; and

(ii) Immediate family member means spouses, parents, siblings, children and a spouse's parents and siblings."

31 CFR §103.175. PEP lists are intended to help U.S. financial institutions comply with this regulatory definition and the Patriot Act requirement.

⁸⁵⁸ Subcommittee interview of Commerce Bank officials, June 18, 2008.

⁸⁵⁹ Subcommittee interview of Prime Associates officials, now FIS, January 8, 2010. In 2005, Prime Associates was purchased by Metavente Technologies Inc. which four years later, in 2009, was purchased by Fidelity National Information Services, Inc. (FIS).

⁸⁶⁰ 1/22/10 letter from FIS to the Subcommittee regarding "Filtering Data Committee Proposal," no bates number.

Commerce Bank told the Subcommittee that, after first discovering Ms. Bongo-Astier's PEP status in December 2005, the bank conducted its own research into Ms. Bongo-Astier, President Omar Bongo, and Gabon.⁸⁶¹ Commerce Bank said that it was unable to find any indictment against President Omar Bongo, and took comfort from the fact that the White House's website contained a photograph of President George Bush meeting with President Omar Bongo.⁸⁶² Commerce Bank said that it also noted that the International Monetary Fund had provided funding to Gabon in recent years which it took as an encouraging sign of the country's international standing. Commerce Bank told the Subcommittee that it had also filed CTRs on each of Ms. Bongo-Astier's cash deposits, and had not heard any concerns from law enforcement.

Monitoring the Bongo Accounts. After December 2005, Commerce Bank initiated enhanced monitoring of Ms. Bongo-Astier's accounts due to her PEP status. Commerce Bank policy requires PEP accounts to be monitored on a day-to-day basis, reviewed every six months, and for a decision to be made every six months as to whether or not to keep the account open.⁸⁶³

During 2006, the account was relatively quiet, with no cash transactions and little account activity other than a few large wire transfers and the payment of normal living expenses. Commerce Bank told the Subcommittee that it was unable to locate a written document summarizing its six month review of the Bongo-Astier accounts from January to June 2006, but that it was "confident that a six month review was in fact performed with respect to Ms. Bongo-Astier's banking transactions and that such review did not reveal any transactions that were inconsistent with her historical activity."⁸⁶⁴

The next six month review did not encompass the six month period from July to December, but instead covered the time period October 2006 to March 2007. A memorandum written by a Commerce Bank AML investigator, dated March 5, 2007, summarized the account activity during that period. It stated:

"This customer [has] maintained a relationship with Commerce Bank since September, 2003. She is the daughter to the Prime Minister of Gabon. She is the Princess of 2 [sic] African Royalty. She is a Citizen of Canada. She is listed as a PEP, Political Exposed Person, and a file can be found on her, located in EDDO. Funding is primary by Wire from Bongo Ondimba Astier Yamilee at the BGFBI Bank, Boulevard De L'indépendance, Libreville, GA. Currency withdrawals (large amounts) are consistent to this account."⁸⁶⁵

The next review was completed on July 23, 2007, by a senior EDDO investigator. It reviewed the account for a four-month period, from April 7, 2007 to July 9, 2007. It stated the account "activity has remained consistent with past activity for this account relationship."⁸⁶⁶

⁸⁶¹ Subcommittee interview of Commerce Bank officials, June 18, 2008.

⁸⁶² See photograph of President George W. Bush and President Omar Bongo in the Oval Office, Commerce 201.

⁸⁶³ Commerce told the Subcommittee that it had initiated the six-month PEP review policy earlier in 2005. 7/23/08 Commerce Bank's written responses to Subcommittee questions, Commerce_Bank-03-0005.

⁸⁶⁴ Id., at 04.

⁸⁶⁵ 3/5/07 Commerce Bank memorandum AML Hot List Daily Wire Review, Commerce Bank 100.

⁸⁶⁶ 7/23/07 Commerce Bank memorandum re Yamilee Bongo-Astier, Commerce Bank 156.

Commerce Bank noted that, throughout the time they were open, Ms. Bongo-Astier's accounts received occasional wire transfers from individuals and entities outside the United States. Bank records show that her mother, Marie-Yva Astier, for example, sent her several wire transfers from accounts in Haiti and Canada, and Mr. Seydou Kane sent her funds from Monaco. She also received wire transfers from an account in her name at BGFI Bank in Libreville, Gabon. The largest wire transfer she received was from an entity called "Imagine" which also had a BGFI Bank account in Gabon. For example, on February 27, 2006, Imagine wire transferred \$171,732.29 from Gabon to Ms. Bongo's checking account at Commerce Bank.⁸⁶⁷ When asked about Imagine, Commerce Bank told the Subcommittee that the "review that was conducted at the time did not reveal any information that would have suggested that the activity involving Imagine was suspicious."⁸⁶⁸

Commerce Bank provided the following information identifying large wire transfers into and out of Ms. Bongo-Astier's accounts from 2003 to 2007.⁸⁶⁹

LARGE WIRE TRANSFERS TO AND FROM BONGO-ASTIER ACCOUNT AT COMMERCE BANK			
Date	Credit	Debit	Summary
01/23/04	\$ 11,200.00		Wire transfer from Marie-Yva Astier sender- Bank of America NYC instructing- Sogebank Port Au Prince, Haiti
05/27/04	\$ 9,975.00		Wire Transfer from Monsieur Seydou Kane Credit Lyonnais NY – BERLMCMC Banque De Gestion Edmund Rothschild Monaco
06/16/04	\$ 9,988.00		Wire transfer from Marie-Yva Astier sender- JPM Chase instructing- Royal Bank of Canada Toronto
03/24/05	\$ 9,975.00		Wire transfer from Monsieur Seydou Kane
04/04/05	\$ 10,000.00		Wire transfer from Marie-Yva Astier sender- Bank of America NYC instructing- Sogebank Port Au Prince, Haiti
02/27/06	\$171,732.29		Wire transfer from Imagine Libreville Gabon- sender DBTCI Americas NY- instructing Banque Belgoise Paris
03/01/06	\$ 22,478.63		Wire transfer from Bongo Ondimba Astier Yamilee sender- C A Lyons- originating Bank- Bred Banque Populaire Paris France
02/01/07	\$ 28,103.44		Wire transfer from Bongo Ondimba Astier Yamilee- orig bank BGFI Bank Libreville Gabon- instructing Standard Charter Bank London England
11/06/07		\$15,000.00	Wire transfer to receiver Bank of America Sogebank, Port Au Prince NA in the name of Marie-Yva Astier
TOTAL CREDIT-\$273,452.36			SOURCE-COMMERCE BANK
TOTAL DEBIT- \$15,000.00			

Safe Deposit Box Cash. In the fall of 2007, in August and September, as previously mentioned, Ms. Bongo opened three Commerce safe deposit boxes, numbered 53, 54 and 637, at the Manhattan South Branch. Typically, Commerce personnel escort a customer to a room where the safe deposit boxes are kept and provide the customer with privacy while the customer opens his or her safe deposit box.

On October 2, 2007, Ms. Bongo-Astier traveled to the Commerce Manhattan South branch and informed Commerce personnel that she had cash in two of her safe deposit boxes,

⁸⁶⁷ 2/27/06 wire transfer record, Commerce Bank 89.

⁸⁶⁸ See 7/23/08 Commerce Bank letter to the Subcommittee, Commerce_Bank-03-0005.

⁸⁶⁹ 7/23/08 Commerce Bank's written responses to Subcommittee questions, Commerce_Bank-03-0012.

Boxes 53 and 54, which she wanted to use to purchase a cashiers check.⁸⁷⁰ The branch manager and head teller counted the cash in both boxes and determined that it totaled \$1 million. Contemporaneous handwritten notes prepared at the time by a Commerce AML investigator indicate that the money was “all \$100 bills in sealed/bar coded bags like would come in from the fed.”⁸⁷¹

A Commerce employee described the incident as follows:

“Customer came in to purchase a[n] Official Check in the amount of \$202,500 to purchase a condo. Customer explained that she had funds in her safe deposit box she needed to deposit for the check. We went to her safe deposit box where we took out 10 sealed stacks of \$100 bills each totaling \$100,000.00 for a grand total of \$1,000,000.00. According to Yamilee the money was given to her by her father, who she explained is the President of Gabon. The money was counted and verified The deposit was made and a CTR was filled out. Official check #41515816 was purchased for \$202,500.00 made payable to ‘Martin Shaw, Esq. As Escrow Agent.’ The remaining \$797,500 was transferred to a new Ultra MM account #7924332914.”⁸⁷²

Commerce Bank had immediately opened a new money market account for Ms. Bongo-Astier, deposited the \$1 million, arranged for the cashiers check, and suggested she speak with one of the bank’s private banking staff. The assistant branch manager sent an email to a private banker at Commerce Private Bank and alerted him to Ms. Bongo-Astier’s large cash deposit and disclosed that her father was the President of Gabon. The private banker responded, “What is Gabon?”⁸⁷³ The assistant branch manager replied:

“Gabon is a country in Africa, right on the equator along the western coast. She just deposited \$1 MM in cash and says she has approx \$700M more she would like to set aside. She used some of the funds (\$202M) to purchase a condo in the area. Existing relationship is a checking account (7916245777) that keeps anywhere from \$1,000 to \$30,000 in it.”⁸⁷⁴

The private banker replied, “Can you forward me emails with due diligence request? Given the nature of this transaction there should obviously be some searches.”⁸⁷⁵

The same day, October 2, 2007, the matter was forwarded to the EDDO director. He assigned it to an EDDO senior investigator and, in an October 2, 2007 email to his staff, stated:

“Either PB [Private Banking] or us may have to contact her to determine source of funds and ultimate usage. We have to be certain that the funds are not being derived from

⁸⁷⁰ See 10/2/07 Commerce Bank internal email, Commerce Bank 254 as well as 10/27/07 handwritten notes by AML coordinator for private banking, Commerce Bank 25.

⁸⁷¹ 10/27/07 handwritten notes by AML coordinator for private banking, Commerce Bank 25.

⁸⁷² 10/3/07 Commerce Bank internal email at 12:30 p.m., Commerce Bank 258; 7/23/08 Commerce Bank’s written responses to Subcommittee questions, Commerce_Bank-03-0007.

⁸⁷³ 10/2/07 Commerce Bank internal email, Commerce Bank 256.

⁸⁷⁴ Id., at 255.

⁸⁷⁵ Id.

proceeds of illegal or unethical actions. Run her through OneSource ... and use standard databases to determine current info. ... [W]e review this account every 6 months. The last review was done on 7/23/07. At that time there were no significant deposits, the balance was about \$33,000 and the majority of the activity was derived from check debits. There were charges made in France that her father, Gabon President Omar Bongo was involved with buying property in France with embezzled funds.”⁸⁷⁶

In a subsequent email that day, the EDDO director stated that the bank needed to call Ms. Bongo-Astier directly to “determine the source of funds and how she obtained the physical cash.”⁸⁷⁷

Two days later, on October 4, 2007, the EDDO director telephoned Ms. Bongo-Astier and asked her about the source of the cash in her safe deposit boxes. According to the EDDO director, Ms. Bongo responded that her father, President Omar Bongo, often visited New York to attend diplomatic meetings. He said she then provided the following explanation:

“She stated that upon his most recent visit to the United Nations (9/27/2007) to give a speech he gave her a gift of \$1MM to be used for the purchase of a condo in New York City. The condo is located at 344 Bowery, New York, N.Y. Bongo-Astier added that she often receives gifts from her father and will be anticipating an additional \$700M to add to the purchase of the condo. Yamilee stated that the total price of the condo was \$2.025 MM and the realtor handling the transaction was Sotheby realty.

Bongo-Astier stated that it is her belief that her father brought the \$1MM US currency in from Gabon and added that he most probably received the money at Citibank in Gabon. Bongo-Astier advised that because her father is a head of state he is not required to fill out any US paperwork when bringing in currency to the US over \$10M. ...

Commerce bank confirmed that President Omar Bongo did give a speech at the United Nations 62nd General Assembly on 9/27/2007. Research revealed that there is a preliminary investigation by French authorities into possible embezzlement of Gabon funds for the purchase of real estate in France. The probe specifically relates to Bongo’s homes in Paris and the French coast. As of this writing the probe is ongoing by Paris prosecutor’s offices. ...

At this point absent of any definitive information to the contrary relating to the ownership of the condo, Commerce Bank will continue the account relationship with special PEP monitoring in place.”⁸⁷⁸

The EDDO director did not express concerns about the source of the \$1 million being deposited into Commerce Bank, despite his acknowledgement of ongoing criminal investigations in France “into possible embezzlement of Gabon funds.” He noted that those criminal investigations were examining whether embezzled funds were used to purchase real estate in France, without any

⁸⁷⁶ 10/2/07 email from EDDO director to his colleagues, Commerce Bank 254.

⁸⁷⁷ Id., at 253.

⁸⁷⁸ 10/4/07 Commerce Bank memorandum from EDDO director re Yamilee Bongo Astier, Commerce Bank 260-61.

analysis of whether the same embezzled funds could be the source of the funds that Ms. Bongo-Astier intended to use to purchase real estate in the United States.

Two weeks later, on October 17, 2007, the EDDO director wrote in an email that he had been in contact with law enforcement who informed him that President Omar Bongo did not file a Report of International Transportation of Currency or Monetary Instruments (CMIR) when he visited the United States in September, as required by law.⁸⁷⁹ Despite this development, in the same email, he stated that he continued to believe that the Commerce account should be kept open with ongoing monitoring.⁸⁸⁰ He noted that a colleague leaned towards closing the account, but:

“My opinion is that although there are numerous accusations and allegations concerning Bongo and possible embezzlement of Gabon funds there have been no indictments or criminal charges levied against him. We have researched both Bongo and Bongo-Astier, ad nauseam [sic], and have not definitely found anything solid that would preclude our continuing relationship. This specific transaction is the sole transaction in Bongo-Astier’s account that would be considered inconsistent with this type.”⁸⁸¹

A Commerce Bank senior vice president responded:

“I agree that we conducted all necessary research, completed appropriate due diligence and made the right conclusion in accepting Bongo-Astier as a customer. However, now whether we keep her as a customer depends [on] our determination on the source of the \$1 million. I believe that she is purchasing a property. But considering the history on this family, we must absolutely make a determination of the source of funds. Her initial statement brings her father into the equation, which raises the red flags. If we can’t get a full understanding, we need to discuss closing the account. Stop by, if you want to discuss. Thanks for dealing with this sensitive matter.”⁸⁸²

On October 31, 2007, the EDDO director sent an email to the director of the New York High Intensity Financial Crime Area (HIFCA), U.S. Immigration and Customs Enforcement, regarding the Bongo-Astier accounts. He wrote:

“As per our conversation we will keep this account in an active status and will assist whomever you assign this matter to ... and can answer any specific questions you may have. This customer is the daughter of the President of Gabon, Omar Bongo, who has had and still has several alleged money laundering issues relating to public funds from Gabon. This specific transaction, although may be legitimate, [*Redacted by Commerce Bank*].”⁸⁸³

⁸⁷⁹ 10/17/07 Commerce Bank internal email, Commerce Bank 268.

⁸⁸⁰ Id.

⁸⁸¹ Id.

⁸⁸² Id.

⁸⁸³ 10/31/07 Commerce Bank email to HIFCA, Commerce Bank 266.

Commerce Bank told the Subcommittee that it asked HIFCA whether it wanted Commerce to keep the account open, but never heard back.

In response to a Subcommittee request, the Financial Crimes Enforcement Network of the U.S. Treasury Department performed a search, but could not locate a CMIR filed by or on behalf of President Omar Bongo declaring the \$1 million that his daughter said he provided to her in September 2007.

Closing the Accounts. In November 2007, Commerce Bank decided to close Ms. Bongo-Astier's accounts. The bank told the Subcommittee that the \$1 million cash deposit combined with the possible French indictment of President Omar Bongo had made the bank reconsider the account. In addition, it had considered the reputational risk, the fact that the bank could lose money, and the need to file repetitive Suspicious Activity Reports.

On November 14, 2007, the EDDO director wrote an internal memorandum on closing the account. He wrote:

“Recent activities by customer, in addition to potential overseas criminal and civil actions against Omar Bongo, [have] caused Commerce Bank to initiate this closing request and terminate the existing banking relationship.

Bongo-Astier advised that because her father is a Head of State, he is allowed to enter the US with as much US currency that he desires and is exempt from having to file any US documents (CMIR). (The writer contacted US Customs and was advised that everyone, regardless of position, must file a Currency or Monetary Instruments Report when entering the US with more than \$10,000 in cash or monetary instruments). Bongo-Astier also stated that she is expecting another ‘gift’ from her father for approximately \$750,000 to pay for the remainder of the apartment.

... [I]t has been learned that Omar Bongo is presently being investigated by the French government relating to multiple allegations that he has embezzled considerable funds from the Gabonese government and is purchasing real estate in France with the proceeds of the alleged criminal activities. President Omar Bongo has been investigated in the past relating to his relationship with Citibank and a US Congressional Sub-Committee has had testimony by Citibank officials that have advised that their KYC indicated that the primary source of wealth for Bongo is as Head of State for Gabon. Citibank officials were chastised by the subcommittee in not requiring a more exact determination in where the source of funds were derived from that were being deposited in Bongo's Citibank account. It was further explained that it was not reasonable to believe that the hundreds of millions of dollars in Citibank [sic] for accounts maintained by Bongo were funded from a Presidential salary.

Commerce Bank has known about above issue and has monitored referenced accounts closely. Due to the most recent transaction and statement made by the customer to Commerce officials it has become necessary to re-evaluate the banking relationship. With the most recent deposit in US currency and the knowledge that Bongo-Astier's accounts

are solely funded by monies she receives from her father, Omar Bongo, as stated by Bongo-Astier, and the ongoing investigation of possible money laundering relating to purchases of international real estate, it is in the best interest of Commerce Bank to fully terminate the relationship with Bongo-Astier.”⁸⁸⁴

On November 15, 2007, Commerce sent Ms. Bongo-Astier a letter informing her that her accounts were being closed.⁸⁸⁵ The decision to close the accounts had been made by the EDDO director and his supervisor, the AML director. The letter informed Ms. Bongo-Astier: “Based upon a review of the transaction history for the above referenced account(s), Commerce Bank has elected to discontinue this banking relationship.” Because Commerce Bank considered Ms. Bongo-Astier to be a PEP, the Private Banking division officially closed the accounts.

On November 23, 2007, just before the accounts were officially closed, President Omar Bongo sent a wire transfer for nearly \$1 million from his account at BGFI Bank in Gabon to Ms. Bongo-Astier’s checking account. Commerce Bank had already frozen the account, and reversed the wire transfer on November 27, 2007.⁸⁸⁶ On November 27, 2007, Commerce Bank closed Ms. Bongo-Astier’s accounts by providing her with two checks for \$802,542.14 and \$18,327.30.

(3) JPMorgan Chase

Three weeks later, on December 18, 2007, Ms. Bongo-Astier deposited both of the Commerce Bank cashiers checks into two new accounts she had opened at JPMorgan Chase Bank in New York City.⁸⁸⁷ As before, when she opened these accounts, she did not reveal her relationship with President Omar Bongo or PEP status.

On December 17, 2007, Ms. Bongo-Astier opened a personal checking account, Account No. [xxxx]55, and a personal savings account, Account No. [xxxx]61.⁸⁸⁸ She deposited \$18,327.30 into her checking account, and \$802,542.14 into her savings account.⁸⁸⁹ As part of the account opening process, she provided a copy of her Canadian passport, but did not identify any occupation.⁸⁹⁰ JPMorgan told the Subcommittee that all of its accounts are run each night against a World Check PEP list, but Ms. Bongo-Astier’s name was never flagged.⁸⁹¹ JPMorgan Chase told the Subcommittee that it was unaware of her PEP status until contacted as part of this investigation.⁸⁹²

Ms. Bongo Astier appeared to use the two accounts to pay for her living expenses. The bank statements reviewed by the Subcommittee indicate that from 2007 to November 2009, her

⁸⁸⁴ 11/14/07 EDDO director memorandum, Request to Close Account, Commerce Bank 262-64.

⁸⁸⁵ 7/23/08 Commerce Bank’s written responses to Subcommittee questions, Commerce_Bank-03-0013.

⁸⁸⁶ 7/23/08 Commerce Bank’s written responses to Subcommittee questions, Commerce_Bank-03-0015-16.

⁸⁸⁷ Commerce Bank copies of checks dated 11/27/07, Commerce Bank 278-79.

⁸⁸⁸ See 12/17/07 JPMorgan Chase account opening documentation, PSI-JPMorgan_Chase-06-0015; copy of passport, PSI-JPMorgan_Chase 06-0047.

⁸⁸⁹ December 2007 JPMorgan Chase account statement, PSI-JPMorgan_Chase 04-0005-8; PSI-JPMorgan_Chase-04-0045.

⁸⁹⁰ JPMorgan Chase photocopy of Ms. Bongo-Astier’s Canadian passport, PSI-JPMorgan_Chase-04-0004.

⁸⁹¹ Subcommittee interview of JPMorgan officials, February 9, 2009.

⁸⁹² Subcommittee interview of JPMorgan officials, October 27, 2008.

savings account contained between \$300,000 and \$500,000 at a time. Funds were gradually transferred to her checking account to pay her bills and expenses. In July 2009, a wire transfer from Etude Maitre Anne Gey in Gabon provided an additional \$341,000 to her savings account.⁸⁹³

(4) Analysis

For a nine-year period, from 2000 to 2009, Ms. Bongo-Astier opened accounts at three U.S. banks without revealing her relationship to President Omar Bongo or her PEP status. The banks that serviced the accounts were unaware of her PEP status for years, even though at least two banks checked her name against PEP lists provided by outside vendors. When one bank later told its vendor about Ms. Bongo-Astier's PEP status, that vendor declined to add her name to its PEP list, asserting it needed public confirmation of the private information provided by the bank before doing so. That vendor still has not added her name to its PEP list three years later.

For years, two of the banks allowed Ms. Bongo-Astier, with few questions asked and despite her self-portrayal as an unemployed student, to make repeated large cash deposits into her accounts, accept large wire transfers from foreign jurisdictions such as Gabon, Haiti, and Monaco, and purchase large cashiers checks. When two of the banks finally asked her about this account activity, she immediately disclosed her PEP status and the source of her funds, and it appears as if she would have been willing to have done so earlier if anyone had inquired. It is difficult to understand why no one did.

One bank, HSBC, responded by closing her account; the other, Commerce Bank, despite internal misgivings about accepting funds from the President of Gabon, allowed her accounts to remain active for nearly two additional years with enhanced monitoring. In October 2007, Ms. Bongo-Astier disclosed to Commerce that she had been keeping \$1 million in cash given to her by her father in the bank's safe deposit boxes. Even after discovering this hidden cash, learning that her father had brought it into the United States without declaring it to government authorities as required by law, and acknowledging that the President was under investigation in France for possibly embezzling public funds and using those funds to purchase real estate, the bank's Enhanced Due Diligence Oversight director insisted that the bank had "not definitely found anything solid that would preclude our continuing [the] relationship." It is this reluctance to close accounts containing suspect funds that makes it so difficult to keep foreign corruption outside of the United States.

D. Bongo Use of U.S. Trust Account

Inge Collins Bongo is the wife of the current President of Gabon, Ali Ben Bongo, the eldest son of Omar Bongo. For ten years, from 1999 to 2009, her husband was the Minister of Defense in Gabon. On October 16, 2009, he was sworn in as the President of Gabon. As his wife, Ms. Collins Bongo qualifies as a PEP.

⁸⁹³ See July 2009 Chase account statement for Ms. Bongo-Astier's checking account, PSI-JPMorgan_Chase-09-0124 (showing 7/10/09 wire transfer of \$341,402.85 from Etude Maitre Anne Gey account at BGFI Bank in Gabon).

Born Inge Lynn Collins in the United States, Ms. Collins Bongo married her husband in 1994. Over the next decade, they lived at times in several locations in California, including a luxury residence rented from a Hollywood celebrity for \$25,000 per month.⁸⁹⁴ They also traveled extensively and lived at times in Gabon and France. In 2005, Ms. Collins Bongo became estranged from her husband and settled in California.⁸⁹⁵ President Ali Bongo has married a second wife, a Gabonese citizen, Sylvia Ajma Valentin Bongo.

In December 1999, five years after her marriage to Ali Bongo, Ms. Collins Bongo used legal counsel to establish the Collins Revocable Trust, naming herself as the sole trustee.⁸⁹⁶ The Collins Trust does not use her married surname “Bongo.” By making the Trust “revocable,” Ms. Collins Bongo retained access to and control over the trust funds. The trust was established one month after the Subcommittee’s November 1999 hearing which examined a number of U.S. bank accounts used by President Omar Bongo and his relatives.

Ms. Collins Bongo opened several accounts under the name of the Collins Trust at U.S. financial institutions, including Fidelity Investments⁸⁹⁷ and HSBC Bank. In December 1999, soon after the Trust was established, Ms. Collins Bongo opened a mutual fund account in the name of the Collins Trust at Fidelity Investments, a securities firm. Because, at the time, securities firms had no legal anti-money laundering obligations, Fidelity opened this account without exercising customer due diligence or evaluating the source of funds in the account, which was initially funded with nearly \$3 million. Over the next two years, Ms. Collins Bongo treated this mutual fund account as if it were a checking account, using it to move nearly \$2 million to a network of accounts she maintained at other banks, including \$625,000 to Collins Trust accounts at HSBC Bank. The Fidelity mutual fund account balance dropped over time and, after the first two years, showed minimal activity. Fidelity told the Subcommittee that for nine years, from 1999 to 2008, it had been unaware of Ms. Collins Bongo’s PEP status until contacted by the Subcommittee during this investigation. In April 2009, Fidelity designated Ms.

⁸⁹⁴ See Inge Bongo v. Sean Combs, Case No. CV-01-00980 (USDC CD California, July 2001). Mr. and Ms. Bongo were rumored to have purchased a residence in Malibu for \$25 million, after Ms. Bongo was shown on a VH1 television show, *Really Rich Real Estate*, touring homes. See http://www.mamboundou2005.com/2006/12/inge_bongo_et_s.html. From VH1.com: “The premiere episode introduces L.A.’s Westside Estate Agency, which is owned by Stephen Shapiro and Kurt Rappaport. Dealing with the wealthiest clients in the city, WEA’s combined business last year was close to \$1 billion dollars, accounting for 40% of the high-end sales in Southern California. With an average sale of \$5,500,000, WEA is one of the most successful agencies in the nation. ... Inge Bongo, the heiress to a very rich country in Central Africa, is in town to purchase a home. WEA co-owner Kurt Rappaport shows her a \$25,000,000 property in Malibu's exclusive Broad Beach area, but she feels the home ‘lacks grandeur.’ Co-owner Stephen Shapiro shows her a stately \$25,000,000 Beverly Hills mansion that turns out to be just what she’s looking for. Will Kurt and Stephen close the deal?” On January 13, 2009, Kurt Rappaport told the Subcommittee that Inge Bongo did not purchase the \$25 million house, or any similarly priced residence, featured on the VH1 show.

⁸⁹⁵ See ABC News, “Gabon’s First Lady Lives on Food Stamps in California: Inge Bongo Went From Luxury to Poverty, Now Wants to be First Lady,” September 8, 2009.

⁸⁹⁶ See undated application by the “Collins Trust” for an Employer Identification Number, a copy of which was included in the HSBC account opening documentation, HSBC-PSI 037121 (“Date business started or acquired ... 12-23-99”). See also 12/27/99 letter from legal counsel to Ms. Collins Bongo, HSBC-PSI 037120 (“we will complete your irrevocable trust”).

⁸⁹⁷ See 4/3/09 letter from Mintz Levin, acting as legal counsel to Fidelity Investments, to the Subcommittee, PSI-Fidelity-02-001-04, at 02, which clarifies that Fidelity Investments is not a legal entity, but a trade name used to reference a group of companies associated with FMR LLC.

Collins Bongo a PEP client; it continues to maintain her Collins Trust mutual fund account which has had minimal funds and account activity for several years.

In addition to the Fidelity mutual fund account, in April 2000, Ms. Collins Bongo opened checking and savings accounts in the name of the Collins Trust at Republic Bank California N.A., which merged with HSBC Bank in 2000. Neither Republic Bank nor HSBC was aware of her PEP status until two and a half years after the accounts were opened.⁸⁹⁸ During those two and a half years, the Collins Trust accounts received over \$650,000 in wire transfers from accounts in Gabon, Luxembourg, and Belgium, as well as hundreds of thousands of dollars from the Collins Trust account at Fidelity and from two California escrow agents. In November 2002, Ms. Bongo made a \$70,000 cash deposit into the Trust checking account, which triggered a review of the accounts and ultimately led to their closure four months later. HSBC told the Subcommittee that it was “not terribly proud of the relationship.”⁸⁹⁹ The accounts were closed on April 8, 2003.

The two Collins Trust accounts examined in detail here were part of a larger network of U.S. accounts opened in the name of the Collins Trust or Inge Lynn Collins.⁹⁰⁰ The Subcommittee did not attempt to trace all of these accounts or their interconnections. The document reviewed by the Subcommittee, however, indicate that many of the accounts and transactions did not reference the name “Bongo,” raising the question of whether Ms. Collins Bongo was masking her connection to the Bongo family in Gabon when utilizing the U.S. financial system. The Collins Trust accounts appear to be part of that effort.

Ms. Collins Bongo was contacted by the Subcommittee and had several brief communications with Subcommittee staff, but declined to participate in an interview to answer questions about her account activity at Fidelity Investments, HSBC Bank, or other U.S. financial institutions.

(1) Fidelity Investments

On December 9, 1999, Fidelity Investments opened a mutual fund account for the Collins Revocable Trust, Fund Account No. [xxx/xxxx]97.⁹⁰¹ At that time, securities firms offering mutual fund accounts were under no legal obligation to obtain customer identification information, perform a customer due diligence review, or evaluate the source of funds provided

⁸⁹⁸ Subcommittee interview of Fidelity officials, April 24, 2009.

⁸⁹⁹ Subcommittee interview of HSBC officials, May 2, 2008.

⁹⁰⁰ See, e.g., 2006 wire transfer of over \$950,000 from a Collins Trust escrow account at Fidelity National Title Company (which is unaffiliated with Fidelity Investments, 12/28/09 Fidelity letter to Subcommittee, no bates number) to a Collins Trust escrow account at First American Trust Company. The Collins Trust also had an account at Washington Mutual as shown in the chart below.

⁹⁰¹ 4/3/09 letter from Mintz Levin, legal counsel to Fidelity Investments, to the Subcommittee, PSI-Fidelity-02-001-04, at 02. In addition, this letter clarified that Fidelity Investments is not a legal entity, but a trade name used to reference a group of companies associated with FMR LLC. The Collins Trust was also assigned Customer No. xxxxxxxx13. Fidelity later changed its account numbering system and assigned this account No. xxx-xxxx22. SIII 00277.

to open an account.⁹⁰² Some large securities firms had voluntarily implemented AML controls before they were required to do so; however, the Fidelity mutual funds did not.⁹⁰³

Fidelity was unable to locate the 1999 account opening documentation for the Collins Trust account, but in a letter, its legal counsel provided the following information:

“At the time the accounts were opened Ms. Collins identified herself as a United States citizen and provided a United States address to Fidelity. The accounts opened were money market mutual funds, and thus, based on Fidelity’s policies and procedures in effect at that time, further due diligence was not required at that time.”⁹⁰⁴

Two months earlier, on October 21, 1999, Ms. Collins Bongo had opened a similar mutual fund account at Fidelity in the name of “Inge Lynn Collins.” It was designated Account No. 055/0662172337.⁹⁰⁵ The account opening documentation indicated that she was a U.S. citizen, provided her address, date of birth, and social security number, and described her occupation as a “homemaker.”⁹⁰⁶ It made no mention of her husband or the Bongo family.

Over the course of the next year, Ms. Collins Bongo gradually expended the funds in her individual mutual fund account. On January 14, 2002, Ms. Collins Bongo closed her individual mutual fund account and transferred the remaining funds to the Fidelity account opened in the name of the Collins Trust.⁹⁰⁷

Although many investment accounts are fairly quiet, with annual statements that show a limited number of deposits and withdrawals, the first two years of annual statements for the Collins Trust mutual fund account include a long list of transactions, indicating that Ms. Collins Bongo used it more like a checking account than an investment account. She used checks imprinted with “Inge Collins, Trustee” and “Collins Revocable Trust” at the top, for example,

⁹⁰² Investment companies offering mutual fund accounts became legally obligated to establish anti-money laundering programs and identify their customers on June 9, 2003. See Treasury 31 CFR Part 103, Customer Identification Programs for Mutual Funds “...a regulation that, at a minimum, requires investment companies to implement procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; to maintain records of the information used to verify the person’s identity; and to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency. This final regulation applies to investment companies that are mutual funds.” http://www.fincen.gov/statutes_regs/frn/pdf/326mffinal.pdf.

⁹⁰³ In a December 28, 2009, letter to the Subcommittee, Fidelity stated: “[S]ome entities in the Fidelity organization – such as Fidelity Brokerage Services LLC, Fidelity Management Trust Company, and Fidelity Personal Trust Company, FSB – had certain anti-money laundering practices in place in 1999. The Fidelity mutual funds themselves did not, however, and were not required to do so until July 2002.”

⁹⁰⁴ 4/3/09 letter from Mintz Levin, legal counsel to Fidelity Investments, to the Subcommittee, PSI-Fidelity-02-0002.

⁹⁰⁵ 4/3/09 letter from Mintz Levin, legal counsel to Fidelity Investments, to the Subcommittee, PSI-Fidelity-02-0001-04, at 02. Ms. Collins Bongo was also assigned Customer No. T158452119.

⁹⁰⁶ Fidelity Mutual Fund New Account Application, SIII 00001.

⁹⁰⁷ 1/14/02 letter from “Inge Lynn Collins” to Fidelity closing her individual account and transferring the funds to the Collins Trust account, SIII 00267; 4/3/09 letter from Mintz Levin, legal counsel to Fidelity Investments, to the Subcommittee, PSI-Fidelity-02-0002. See also SIII 00543-548 for account statement activity.

and the Fidelity mutual fund account number at the bottom.⁹⁰⁸ From 2000 to 2002, Ms. Collins Bongo used these checks to disburse nearly \$900,000 from the Collins Trust account at Fidelity to other financial institution accounts held in her name or the name of the Collins Trust.⁹⁰⁹ By using her Fidelity mutual fund account as if it were a checking account, Ms. Collins Bongo was able to disburse funds outside of the anti-money laundering controls in place at U.S. banks.

The Collins Trust account was initially funded with two large deposits totaling nearly \$3 million.⁹¹⁰ The first deposit, on December 29, 1999, was a check for about \$406,000.⁹¹¹ Documentation indicates those funds were proceeds from a house sale for \$700,000.⁹¹² On December 30, 1999, in excess of \$2.5 million was deposited into the account via a wire transfer sent by Mara Escrow Company, a California escrow company that handles real estate transactions.⁹¹³ This \$2.5 million transfer was the largest single transaction in the Collins Trust account at Fidelity and provided the majority of the funds in the account.

Moving Funds. Over the next two years, documentation shows that the Collins Trust account at Fidelity repeatedly sent large sums, ranging from \$10,000 to \$100,000 at a time, to a network of other financial institution accounts opened in the name of Inge Lynn Collins or the Collins Trust.⁹¹⁴ These transfers to other accounts, totaling nearly \$2 million, were disbursed primarily from 2000 to 2002. In addition, the Collins Trust account issued numerous checks, often in rounded numbers ranging from \$2,000 to \$50,000, that appear to have been cashed. These transactions continued until late 2002. After that, the account showed increasingly less activity until 2005, after which only an occasional transaction took place.

⁹⁰⁸ See, e.g., 4/14/00 checks from Ms. Collins Bongo, HSBC-PSI 037122-23; 3/29/04 check from Ms. Collins Bongo, SIII 00153. According to Fidelity, it is common for money market mutual fund account holders to be issued a checkbook for check writing activities. See 12/28/09 Fidelity letter to the Subcommittee, PSI-Fidelity-03-0001-5.

⁹⁰⁹ See, e.g., 2000 Fidelity Account History, SIII 00011; 2001 Fidelity Account History, SIII 00014.

⁹¹⁰ 1999 Fidelity Account History, SIII 00010. The Account History indicates that Ms. Collins Bongo also attempted twice to make a \$70,000 deposit on December 10, 1999, but that deposit was twice “canceled” the same day. *Id.* Fidelity does not have any information as to why the deposit was canceled. 12/28/09 Fidelity letter to Subcommittee, PSI-Fidelity-03-0001-5.

⁹¹¹ 1999 Fidelity Account History, SIII 00010.

⁹¹² See 12/27/99 letter from Joseph E. Mudd, legal counsel, to Ms. Collins Bongo, HSBC-PSI 037120. See also 12/27/99 cashier’s check to the Collins Trust, SIII 00541; 4/3/09 letter from Mintz Levin, legal counsel to Fidelity Investments, PSI-Fidelity-02-0003.

⁹¹³ December 1999 Fidelity Investments Account History, SIII 00010. See also 4/3/09 letter from Mintz Levin, legal counsel to Fidelity Investments, PSI-Fidelity-02-0003. The Subcommittee contacted Mara Escrow Company to obtain records related to this transfer, but Mara informed the Subcommittee that it had destroyed the records in 2009 under its record retention policy. Subcommittee interview of Mara Escrow, January 12, 2010.

⁹¹⁴ The Fidelity account was also used to pay for certain living expenses.

Key transactions involving transfers from the Collins Trust account at Fidelity to other accounts include the following:

SELECT TRANSFERS FROM COLLINS TRUST ACCOUNT AT FIDELITY INVESTMENTS					
Date	Amount	Originator	Beneficiary Bank	Ultimate Beneficiary	Bates
2/9/00	\$75,000	Collins Trust	Union Bank of California	Check written to cash, cashed by Inge Collins	SIII 00286-87
2/22/00	\$25,000	Collins Trust	Union Bank of California	Check written to cash, cashed by Inge Collins	SIII 00312
3/17/00	\$20,000	Collins Trust	Union Bank of California	Check written to cash, cashed by Inge Collins	SIII 00318
4/14/00	\$125,000	Collins Trust	HSBC	Two checks written to Collins Trust account	SIII 00308-09
5/19/00	\$50,000	Collins Trust	HSBC	Check written to Inge Collins, deposited in Trust account	SIII 00310-11, HSBC-PSI 032688
6/9/00	\$100,000	Collins Trust	HSBC	Check written to Inge Collins, deposited in Trust account	SIII 00315-16, HSBC-PSI 032691
7/3/00	\$75,000	Collins Trust	HSBC	Check written to Republic Bank, deposited in Trust account	SIII 00336-37, HSBC-PSI 032698
11/9/00	\$50,000	Collins Trust	HSBC	Check written to Inge Collins, deposited in Trust account	SIII 00350-51, HSBC-PSI 032712
1/8/01	\$50,000	Collins Trust	HSBC	Check written to Inge Collins, deposited in Trust account	SIII 00382-83, HSBC-PSI 032719
1/24/01	\$40,000	Collins Trust	HSBC	Check written to Inge Collins, deposited in Trust account	SIII 00292-93, HSBC-PSI 032720
2/9/01	\$30,000	Collins Trust	HSBC	Check written to Inge Collins, deposited in Trust account	SIII 00300-01, HSBC-PSI 032722
3/2/01	\$75,000	Collins Trust	City National Bank	Check written to Inge Bongo, deposited in Trust account	SIII 00356-57,
4/10/01	\$50,000	Collins Trust	City National Bank	Check written to Inge Collins, deposited in Trust account	SIII 00386-87, SIII 00143
4/27/01	\$50,000	Collins Trust	Unknown	Check written to Inge Bongo, deposited in Trust account	SIII 00013, SII 00392-93
6/29/01	\$520,167	Collins Trust	Unknown	Wire transfer to Mara Escrow Company* *Funds were ultimately returned to the Collins Trust and this was not included in the final amount.	PSI-JPMorganChase-07-0002, SIII 00014, PSI Fidelity-02-0003
9/25/01	\$51,000	Collins Trust	Unknown	Check written to Mara Escrow Company	SIII 00419
10/26/01	\$273,000	Collins Trust	Unknown	Wire transfer to Mara Escrow Company	SIII 00014, SIII 00249
2/1/02	\$20,000	Collins Trust	Union Bank of California	Check written to BH Mercedes Benz Ltd.	SIII 00017, SIII 00433-34
2/14/02	\$15,000	Collins Trust	Unknown	Check written to Inge Bongo	SIII 00437-38
4/2/02	\$20,000	Collins Trust	HSBC	Check written to Collins Trust	SIII 00140
5/30/02	\$50,000	Collins Trust	HSBC	Check written to Collins Trust	SIII 00141-42, HSBC-PSI-021153
9/9/02	\$12,000	Collins Trust	HSBC	Check written to Collins Trust	PSI-HSBC-42-0004

9/13/02	\$10,000	Collins Trust	HSBC	Check written to Collins Trust	PSI-HSBC-42-0004
3/24/04	\$82,675	South Beverly Wilshire Jewelry and Loan	Fidelity	Check written to Inge Bongo Collins, deposited in Trust account	SIII 00149, SIII 00068
3/26/04	\$50,000	Inge Collins Bongo	Fidelity	Cashiers check written to Collins Trust	SIII 00150-51, SIII 00068
3/29/04	\$12,000	Collins Trust	Washington Mutual	Check written to Collins Revocable Trust	SIII 00153
4/30/04	\$20,000	Collins Trust	Washington Mutual	Check written to Collins Revocable Trust	SIII 00177, SIII 00073
5/24/04	\$14,995	Collins trust	Washington Mutual	Wire transfer to Inge Lynn Collins, deposited in Collins Trust account	Collins Revocable Trust.xls (Deutsche Bank)
11/30/05	\$30,000	Collins Trust	Fidelity	Check written to "Fidelity Cash Reserves, deposited in Collins Trust account	SIII 00152, SIII 00096
TOTAL - \$1,995,837.00			SOURCES – Multiple		

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Fidelity told the Subcommittee that, until contacted as part of this investigation in the fall of 2008, it had not been aware of Ms. Collins Bongo's PEP status.⁹¹⁵ It re-classified her as a PEP on April 15, 2009.⁹¹⁶ Fidelity told the Subcommittee that, as result of the Subcommittee's inquiry, it conducted an additional review of the Collins Trust account and found no significant account activity since 2007.⁹¹⁷ From 2007 to April 2009, the account held only a de minimus amount.⁹¹⁸

(2) HSBC Bank

On April 14, 2000, four months after opening the mutual fund account for the Collins Trust at Fidelity, Ms. Collins Bongo also opened Checking Account No. 6030051848 and Savings Account No. 2030005263 in the name of the Collins Trust at Republic Bank California, which merged with HSBC that same year.⁹¹⁹ Almost a year later, on February 20, 2001, Ms. Collins Bongo opened a second checking account in the name of the Collins Trust, No. 178-70827-5, and later transferred the funds from both of the earlier accounts into that new account.⁹²⁰

⁹¹⁵ Subcommittee interview of Fidelity officials, April 24, 2009.

⁹¹⁶ Id.

⁹¹⁷ Subcommittee interview of Fidelity officials, April 24, 2009; 4/3/09 letter from Mintz Levin, legal counsel to Fidelity Investments, to the Subcommittee, PSI-Fidelity-02-0002.

⁹¹⁸ 4/3/09 letter from Mintz Levin, legal counsel to Fidelity Investments, to the Subcommittee, PSI-Fidelity-02-0002. See letter from Fidelity to Subcommittee dated December 28, 2009.

⁹¹⁹ 4/14/07 Republic Bank California account opening documentation, HSBC-PSI 037110. Lori Graf was the account officer when the account was opened. In November 2000, the account numbers changed as Republic Bank's systems were merged into the HSBC systems. Checking Account No. 6030051848 became Account No. 178-02673-5. November 2000 HSBC account statement, HSBC-PSI 032713. Savings Account No. 2030005263 became Account No. 178-45266-1. November 2000 HSBC account statement, HSBC-PSI 032741.

⁹²⁰ See April 2001 HSBC account statement, HSBC-PSI 032727 (\$1,343.98 was transferred on 4/25/01 from the old checking account into the new Collins Trust checking account); July 2001 HSBC account statement, HSBC-PSI 032749 (\$4,522.65 was transferred on 7/5/01 from the savings account into the new Collins Trust checking

The April 2000 HSBC account opening documentation identified Ms. Collins Bongo as the sole trustee of the Collins Trust.⁹²¹ A “Know Your Customer Form” stated that the source of funds for the account was a “trust fund.”⁹²² It also indicated that Ms. Collins Bongo had no employer. She was listed as the sole signatory on both the checking and savings accounts, and would be the sole signatory on the second checking account that would be opened the following year.

At the time of the account opening, Ms. Bongo provided the bank with a U.S. passport and a California driver’s license.⁹²³ Her passport listed her name as Inge Lynn Collins; it did not contain the name “Bongo.” Her driver’s license, in contrast, listed her name as “Inge Alia Bongo.” In addition, an HSBC document containing a copy of her driver’s license photograph included a handwritten inscription at the bottom: “Ali Bongo Circle” with an address, suggesting that the bank was aware at the time that she was married to Ali Bongo.⁹²⁴ According to the bank, it did not know at the time that Mr. Bongo was the Gabon Minister of Defense.⁹²⁵

The two initial HSBC checking and savings accounts were funded with \$125,000 from the Collins Trust account at Fidelity Investments. On the day the accounts were opened, April 14, 2000, Ms. Collins Bongo deposited two checks, imprinted at the top with “Collins Revocable Trust,” and drawn on the Fidelity Investments mutual fund account.⁹²⁶ One check was for \$100,000 and was deposited into the checking account; the second check was for \$25,000, and deposited into the savings account.⁹²⁷

As part of the account opening documentation, Ms. Collins Bongo gave Republic Bank a letter from her legal counsel which noted that a check payable to Collins Trust for the amount of \$406,099.87 was enclosed.⁹²⁸ The letter noted that Ms. Collins Bongo had recently sold a house for \$700,000.⁹²⁹

Wire Transfers. Over the course of the following two and a half years, the Collins Trust accounts received about \$650,000 sent via large wire transfers from accounts in Gabon,

account); April 2001 HSBC account statement, HSBC-PSI 021100; July 2001 HSBC account statement, HSBC-PSI 021110. This new checking account was apparently opened when Ms. Collins Bongo hired the Marie Ambrosino Management firm to handle her business affairs, including the Collins Trust accounts. In February 2001, all three Collins Trust accounts were re-designated as “The Collins Revocable Trust c/o Marie Ambrosino Mgmt.” About seven months later, Ms. Collins Bongo stopped using that management company. See 9/18/01 letter from “Inge Collins-Bongo” to Fidelity Investments (“Effective immediately, I no longer retain the firm of Marie Ambrosino Management to handle my business affairs.”) SIII 00273. See also 2/7/03 internal HSBC email, HSBC-PSI 037105.

⁹²¹ 4/14/00 Republic Bank California Trustee Declaration, HSBC-PSI 037125.

⁹²² 4/14/00 Republic Bank California account opening documentation, HSBC-PSI 037110.

⁹²³ U.S. passport and California driver’s license of Ms. Collins Bongo, HSBC-PSI 037111-12.

⁹²⁴ Id.

⁹²⁵ Subcommittee interview of HSBC officials, December 22, 2009. The Patriot Act, which imposed the first statutory obligations for banks to establish AML programs, customer identification programs, and enhanced due diligence for accounts opened for senior foreign political figures, their relatives, and close associates would not be enacted into law until October 2001, a year after this account was opened.

⁹²⁶ 4/14/00 checks to the Collins Trust, HSBC-PSI 037122-23.

⁹²⁷ April 2000 HSBC account statement, HSBC-PSI 032687; June 2000 HSBC account statement, HSBC-PSI 032734.

⁹²⁸ 12/27/99 letter from Mr. Mudd to Ms. Bongo, HSBC-PSI 037120.

⁹²⁹ Id.

Luxembourg, and Belgium. These wire transfer deposits typically arrived four to six weeks apart. The largest group of these wire transfer deposits, totaling about \$350,000, was sent by an entity called “Sofinpar” from accounts in Luxembourg and Belgium. When asked about this entity, HSBC told the Subcommittee that “we believe that Sofinpar is a holding company located at Val ST. Andre 37, Luxembourg 1128. Georges Rocofford is listed as a partner.”⁹³⁰ When asked about the multiple transfers from that company to Ms. Collins Bongo, HSBC responded that the transfers should have received additional scrutiny.⁹³¹

Another large wire transfer deposit, in April 2002, for over \$307,000, came from “Accrombessi Maixent” in Gabon. When asked about this transfer, HSBC told the Subcommittee that “Accrombessi Maixent is either an individual or a company engaged in management consulting located in Paris, France at 83 Rue Michel Ange.”⁹³² It did not have any additional information.

Two additional large deposits came from two California escrow agents. Over \$367,000 was wire transferred into the account in September 2001, by Signature Escrow, and over \$264,000 was wire transferred into the account in May 2002, from Star Escrow. Finally, over the same two and a half year period, the HSBC Collins Trust account received over \$500,000 from the Collins Trust account at Fidelity Investments, later sending back about \$70,000 to that Fidelity account.

The HSBC bank statements show multiple withdrawals each month from the Collins Trust account, primarily via checks written in round numbers for amounts that were often for less than \$10,000, but on occasion reached as high as \$100,000. The largest single withdrawal from the account was a \$251,000 wire transfer in October 2001, sent to the Mara Escrow Company.

The key transactions involving the HSBC Collins Trust account include the following.

SELECT TRANSACTIONS INVOLVING COLLINS TRUST ACCOUNT AT HSBC					
Date	Amount	Originator	Ordering Bank	Ultimate Beneficiary	Bates
4/14/2000	\$125,000	Fidelity		Two checks written to Collins Trust accounts at HSBC	HSBC-PSI 032687, 734
8/7/2001	\$19,978	Sofinpar		Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032610
9/14/2001	\$86,376.59	Signature Escrow		Wire transfers to Collins Trust account at HSBC	HSBC-PSI 032612, PSI-HSBC 42-0004-05
10/29/2001	\$250,959.48	Collins Trust		Wire transfer to Mara Escrow Company	HSBC-PSI 032614
11/2/2001	\$29,975	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust accounts at HSBC	HSBC-PSI 032616
1/2/2002	\$14,978	Sofinpar	KBC Bank Luxembourg	HSBC Collins Trust	HSBC-PSI 032620
1/31/2002	\$6,978	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032620
2/27/2002	\$29,978	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032622

⁹³⁰ 5/6/08 HSBC’s written response to Subcommittee questions, PSI-HSBC-36-0001-12.

⁹³¹ Subcommittee interview of HSBC officials, May 2, 2008.

⁹³² 8/12/08 HSBC’s written response to Subcommittee questions, PSI HSBC 42-00004.

4/3/2002	\$307,985	Accrombessi Maixent	Banque Internationale, Gabon	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032626
4/10/2002	\$50,000	Collins Trust		Check written to Inge Collins, deposited in Trust account at Fidelity	SIII 00142
4/15/2002	\$50,000	Collins Trust		Check illegible	HSBC-PSI 032626, 037939
4/24/2002	\$100,000	Collins Trust		Check written to South Beverly Wilshire Loan	HSBC-PSI 032626, 037940
5/10/2002	\$264,137	Star Escrow	Comerica Bank, South Gate, California	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032628
6/4/2002	\$50,000	Collins Trust		Check written to Collins Rev. Trust	HSBC-PSI 021153, 037941
6/11/2002	\$26,978	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032630
7/20/2002	\$29,975	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032632
8/26/2002	\$79,978	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032634
9/15/2002	\$24,978	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032637
9/17/2002	\$22,000	South Wilshire Jewelry and Loan		Check written to Collins Trust account at HSBC	PSI-HSBC 42-0004
10/16/2002	\$29,976	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032639
1/22/2003	\$19,976	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032646
2/10/2003	\$19,976	Sofinpar	KBC Bank Luxembourg	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032648
2/21/2003	\$14,976	Sofinpar	KBC Bank Belgium	Wire transfer to Collins Trust account at HSBC	HSBC-PSI 032649
TOTAL- \$1,655,158			SOURCE- HSBC		

Prepared by Subcommittee

\$70,000 Cash Deposit. The evidence indicates that none of the large wire transfers from unusual jurisdictions and none of the \$100,000 or \$50,000 checks attracted the attention of HSBC anti-money laundering officials. On November 25, 2002, however, Ms. Collins Bongo made a cash deposit of \$70,000 into the Collins Trust checking account. That cash deposit triggered a bank alert and a review of the account activity.

An HSBC compliance officer contacted the HSBC Beverly Hills branch manager for information about the Collins Trust and Ms. Collins Bongo. On 12/17/02, nearly three weeks after the cash deposit, the branch manager responded: "This account was transferred from private banking dept. I don't know anything about the client."⁹³³ A few hours later the same day, the branch manager wrote: "I know nothing about the client. What should I do?"⁹³⁴ Two weeks after that, on January 31, 2003, the HSBC compliance officer wrote:

"I'm not getting anywhere on this. She deposited 70,000 in cash on 11/25 and I have to explain the source of funds. The CTR indicates homemaker in the occupation field, the

⁹³³ 12/17/02 internal HSBC email, HSBC-PSI 037132.

⁹³⁴ Id., at 037130.

KYC indicates trust fund as the source of funds and according to Linda and Vicki she is a princess from a foreign country. I need your help. She is Inge Collins Bongo.”⁹³⁵

Later the same day, the compliance officer sent an email to a senior vice president in the HSBC Private Bank, and asked for information on the customer.⁹³⁶ A few days later, on February 3, 2003, the Beverly Hills branch manager sent an email to the compliance officer: “I don’t know what to tell you, this client was transferred to the branch recently. Who was the account officer? Did you asked [sic] the account officer.”⁹³⁷

The next day, February 4, 2003, the HSBC compliance officer again asked the Private Bank senior vice president for assistance.⁹³⁸ He responded by sending an email to several HSBC employees, asking if any of them had the Collins Trust as a client and, if so, to respond to the compliance officer.⁹³⁹ One private banker replied that Ms. Collins Bongo “used to be a client” of two other private bankers but had not been a client “for several years.” She wrote that Ms. Collins Bongo was “a S. African princess – she travels extensively.”⁹⁴⁰ In response, the compliance officer sent an email to one of the private bankers who used to have Ms. Collins Bongo as a client and asked her: “[W]as this one of your clients? If so, please explain the source of cash and reason for the cash deposit. Also, please complete the \$50,000 or more cash transaction report. The transaction occurred on November 25, 2002.”⁹⁴¹

When no response was received, the investigation was elevated to a senior HSBC compliance officer who, on February 7, 2003, sent an email to the private banker asking: “What is known about this client, the trustee and the \$70,000 cash deposit. It is critical that this gets answered ASAP. Call me.”⁹⁴² That same day, on February 7, 2003, the private banker responded:

“Inga Collins has been a client of Republic/HSBC for a few years now. She was originally with Lori Graf, when she was represented by a business manager that was a client of Lori’s. She subsequently changed business managers to Marie Ambrosino, whom I have had a relationship with for a number of years. As a result, she became my client. She has since left Marie and to the best of my knowledge, is not represented by a business manager. She is married to an African Diplomat. She says that is why she has unusual cash activities/transactions. However, I don’t personally know her that well. Whatever procedure we need to follow to feel comfortable with this, or not – should that be our decision – is fine with me. Please advise.”⁹⁴³

⁹³⁵ 1/31/03 internal HSBC email, HSBC-PSI 037134.

⁹³⁶ Id., at 037133.

⁹³⁷ 2/3/03 internal HSBC email, HSBC-PSI 037131.

⁹³⁸ 2/4/03 internal HSBC email, HSBC-PSI 037129.

⁹³⁹ Id.

⁹⁴⁰ Id., at 037133.

⁹⁴¹ Id., at 037106.

⁹⁴² 2/7/03 internal HSBC email, HSBC-PSI 037105.

⁹⁴³ Id. See also 9/18/01 letter from Inge Collins Bongo to Fidelity Investments advising that she no longer retained the firm of Marie Ambrosino Management to handle her business affairs. SIII 00273.

While this AML review of the Collins Trust account was continuing, three more wire transfers from a Sofinpar account in Belgium, added about \$55,000 to the Collins Trust account at HSBC, apparently with no questions asked.⁹⁴⁴

On February 10, 2003, the senior compliance officer wrote to the director of the HSBC USA Financial Intelligence Group:

“I have come across a name that might be related (strong possibility) to the Bongo’s in Gabon. Can you help out. We have an account The Collins Revocable Trust, and the Trustee is Inge Alia Bongo (CA drivers license – issued in 1999). Her passport has her a[s] Inge Lynn Collins (issued in 1991). ... I understand her husband is a diplomat (getting more from account officer) and she has received wires from Gabon. Can you check if she has married into the Gabon President’s family?”⁹⁴⁵

Within days, HSBC was able to confirm that Ms. Collins Bongo was married to Ali Bongo and related to President Omar Bongo’s family in Gabon.

In mid-February 2003, three months after the \$70,000 cash deposit, the HSBC compliance department recommended closing the account due to Ms. Collins Bongo’s connection to the Bongo family in Gabon.⁹⁴⁶ The account was not, however, immediately closed. On March 18, 2003, the senior compliance officer sent an email to the private banker noting that the Collins Trust account was still open, had an overdraft of \$467, and must be closed “ASAP.”⁹⁴⁷ The next day, March 19, 2008, the senior compliance officer wrote to both the Beverly Hills branch manager and the private banker and requested that a restraint be placed on the account so that no additional checks would be honored.⁹⁴⁸ The restraint was imposed, Ms. Collins Bongo paid the overdraft, and a month later, HSBC closed the account on April 11, 2003.⁹⁴⁹

When asked why it took the bank nearly four months – from November to April – to close the account after the \$70,000 cash deposit triggered a review of account activity, HSBC told the Subcommittee that once it discovered in February 2003, that the Collins Trust was associated with the Bongo family of Gabon, it acted quickly to close the Collins Trust accounts.⁹⁵⁰

⁹⁴⁴ See 2003 HSBC statements, HSBC-PSI 032646 (\$19,976 deposit from Sofinpar on 1/22/03), HSBC-PSI 021187 (\$19,976 deposit from Sofinpar on 2/10/03), HSBC-PSI 021188 (\$14,976 deposit from Sofinpar on 2/21/03).

⁹⁴⁵ 2/10/03 internal HSBC email, HSBC-PSI 037137.

⁹⁴⁶ 8/12/08 HSBC’s written response to Subcommittee questions, PSI HSBC 42-0003, HSBC writes that “We believe the account was directed to be closed by compliance officials in accordance with HBUS procedure, and with the full support of the relevant business unit.”

⁹⁴⁷ 3/18/03 internal HSBC email, HSBC-PSI 037104.

⁹⁴⁸ 3/19/03 internal HSBC email, HSBC-PSI 037102. See also 8/12/08 HSBC’s written response to Subcommittee questions, PSI-HSBC 42-0003. According to HSBC, a restraint is used to freeze an account.

⁹⁴⁹ 4/11/03 internal HSBC email, HSBC-PSI 037099.

⁹⁵⁰ Subcommittee interview of HSBC officials, May 2, 2008. HSBC also noted that both the Collins Revocable Trust and the Yamilee Bongo accounts were opened prior to the passage of the Patriot Act.

On February 7, 2003, an HSBC compliance official sent an email to the senior compliance officer and wrote:

“I would be grateful if you could arrange for searches to be made in your region in order to determine whether any member of the Group maintains any account or other relationship with” President Omar Bongo or “any other members of the Bongo family.”⁹⁵¹

The senior compliance officer responded the same day: “No match found in these names.”⁹⁵² Yet that very month, at the HSBC Manhattan South Branch in New York City, Yamilee Bongo-Astier made a cash deposit into her checking account of more than \$107,000. HSBC told the Subcommittee that its search had failed to identify her account because she used Bongo as her middle, rather than her last name.⁹⁵³

(3) Analysis

For ten years, from 1999 to 2009, Ms. Collins Bongo maintained a Collins Trust account at Fidelity Investments. In addition, for three years, from 2000 to 2003, she had Collins Trust accounts at HSBC. Both financial institutions were unaware for years of her PEP status, her marriage to the Gabon Minister of Defense, and her association with the Bongo family of Gabon. Their lack of awareness was due in part to her use of Collins, rather than Bongo, to open the accounts and carry out the transactions.

Early on, from 2000 to 2002, Ms. Collins Bongo used her Fidelity mutual fund account like a checking account to move nearly \$2 million among a network of accounts at other U.S. financial institutions. During the same period, she used her HSBC account to receive large wire transfers totaling nearly \$650,000 from offshore locations, with no questions asked. When each financial institution finally took notice of an unusual transaction and examined the account activity, each quickly discovered Ms. Collins Bongo’s PEP status. One bank, HSBC, reacted by closing her account; the other allowed the account to remain open in light of the minimal funds remaining and lack of recent activity.

The Collins-Bongo accounts demonstrate that PEPs have used securities accounts as well as bank accounts to gain access to the U.S. financial system, and have used a U.S. trust to open U.S. accounts, transfer funds, and avoid the enhanced monitoring that might have been applied to an account bearing the name of a widely known PEP.

E. Conclusion

This case history exposes a variety of tactics used by President Omar Bongo to exploit weak AML and PEP controls at U.S. financial institutions. In one instance, he transferred over \$18 million to the bank accounts of a U.S. lobbyist and then directed that lobbyist to wire transfer millions of dollars to accounts across the United States and around the world on his

⁹⁵¹ 2/7/03 internal HSBC email, HSBC-PSI 037108-09.

⁹⁵² Id.

⁹⁵³ 2/2/10 letter from HSBC’s legal counsel to the Subcommittee, at 13.

behalf. In another, he brought undeclared cash into the United States, directed his daughter to deposit the cash in her U.S. bank accounts or safe deposit boxes, and used the cash not only to support her living expenses, but also on occasion to purchase vehicles and U.S. real estate. In the last instance, his daughter-in-law, wife of the current President of Gabon, made use of a U.S. trust and a U.S. securities account to receive and move more than \$2 million through U.S. financial institutions. Like the Obiang case history before it, the tactics exposed in this case history demonstrate the importance of strengthening U.S. AML and PEP safeguards to keep foreign corruption outside of the United States.

V. ABUBAKAR CASE STUDY: USING OFFSHORE COMPANIES TO BRING SUSPECT FUNDS INTO THE UNITED STATES

Jennifer Douglas Abubakar, a U.S. citizen, is the fourth wife of Atiku Abubakar, the former Vice President of Nigeria and a former candidate for the Presidency of Nigeria. This case history examines how, from 2000 to 2008, Ms. Douglas helped her husband bring over \$40 million in suspect funds into the United States, including at least \$1.7 million in bribe payments from Siemens AG, a German corporation, and over \$38 million from little known offshore corporations, primarily LetsGo Ltd. Inc., Guernsey Trust Company Nigeria Ltd., and Sima Holding Ltd.

Over half of the suspect funds, nearly \$25 million, were wire transferred by the offshore corporations into U.S. bank accounts opened by Ms. Douglas. For most of the time period examined, the U.S. banks with those accounts were unaware of Ms. Douglas' PEP status, and allowed multiple large wire transfers into her accounts from the offshore corporations. As, over time, each of the banks began to question the wire transfers into her accounts, Ms. Douglas indicated that all of the funds came from her husband and professed little familiarity with the offshore corporations actually sending her money.

Bank records indicate that Ms. Douglas used most of the funds placed into her accounts to support a lavish lifestyle in the United States, paying credit card bills and household expenses in the range of \$10,000 to \$90,000 per month, including substantial legal and accounting bills. She also transferred funds to accounts she opened for the Gede Foundation, a nonprofit corporation she established in 2002, and the American University of Nigeria (AUN), a university that Mr. Abubakar founded in 2003, and whose name reflects its association with American University in the United States.

An additional \$14 million of the suspect funds were wire transferred by two of the offshore corporations, LetsGo and the Guernsey Trust Company, to American University to pay for consulting fees related to AUN. American University officials told the Subcommittee that they understood the funds came from Mr. Abubakar and never inquired why the wire transfers were sent by unfamiliar offshore corporations. At least another \$2.1 million was wire transferred by the Guernsey Trust Corporation to accounts controlled by Edward Weidenfeld, a U.S. lawyer who provided legal services to Ms. Douglas, Mr. Abubakar, and AUN. Mr. Weidenfeld explained that the funds paid for the Abubakars' legal expenses and an account set up for AUN, and that he had assumed the funds came from Mr. Abubakar.

Over the years, questions have been raised about the source of Mr. Abubakar's wealth. He spent twenty years in the Nigerian Customs Service, and then worked in the private sector for ten years, before serving as Vice President of Nigeria from 1999 to 2007. While Vice President, Mr. Abubakar was the subject of corruption allegations relating to the Nigerian Petroleum Technology Development Fund. In December 2008, the U.S. Securities and Exchange Commission alleged in a formal complaint against Siemens AG, a German company, that, among other actions, in 2001 and 2002, Siemens wire transferred \$2.8 million in bribe payments to a U.S. bank account belonging to Ms. Douglas as part of a scheme to bribe Nigerian officials. In response to this and other legal actions, Siemens admitted to engaging in widespread bribery

payments, pled guilty to criminal violations and settled civil violations of the U.S. Foreign Corrupt Practices Act, and agreed to pay over \$1.6 billion in civil and criminal fines. Ms. Douglas has denied any wrongdoing, but the Subcommittee has obtained financial records showing the transfer of over \$1.7 million from Siemens AG to Ms. Douglas' account at Citibank.

Mr. Abubakar has attributed his substantial wealth to fortunate investments. His wealth is attributable in part to a 16% ownership interest he held in Integrated Logistics Services Inc. (Intels), an oil services company formed in the 1980s, which has now become one of the largest Nigerian companies in the oil industry in Africa. When Mr. Abubakar took office in 1999, he placed his Intels shares in a blind trust. Instead of selecting an independent trustee from a financial firm, however, Mr. Abubakar appointed as trustee of the blind trust Orlean Invest Holding Ltd. (Orlean), a Panamanian corporation that is active in the oil industry in Africa, is closely associated with Intels, and is owned in part by Gabriele Volpi, Mr. Abubakar's trusted friend and business partner. Orlean served as trustee of the Abubakar Blind Trust from 1999 to 2003, when the trustees exchanged the Intels shares for shares in Orlean, thereby making the trust part owner of its own trustee. Orlean then resigned from the Abubakar Blind Trust and was replaced by Guernsey Trust Company Nigeria Ltd., a Nigerian shell company that was formed the day before the appointment. Mr. Volpi is one of three trustees of the Guernsey Trust Company whose sole activity is managing the Abubakar Blind Trust.

From 2003 to 2008, the Guernsey Trust Company wire transferred over \$10 million into the United States, including about \$7 million into Douglas and AUN accounts; \$2.1 million into the Weidenfeld law firm and AUN accounts; and \$900,000 into American University accounts. Two other offshore corporations, LetsGo Ltd. and Sima Holdings Ltd., both of which are private corporations beneficially owned by Mr. Volpi and his family members, wire transferred nearly \$27 million into the United States, including about \$8 million into Ms. Douglas' accounts; \$5.5 million into AUN accounts; and \$13.1 million into American University accounts. Mr. Volpi told the Subcommittee that LetsGo and Sima Holdings sent millions of dollars to Ms. Douglas in connection with Mr. Abubakar's ownership interest in Intels and a line of credit that LetsGo had extended to the Abubakar Blind Trust.

A. Background

Nigeria. Nigeria is located on the west coast of Africa, on the Gulf of Guinea. With more than 145 million citizens, it is the eighth most populous country in the world, and the most populous nation on the African continent.⁹⁵⁴ Nigeria has a diverse ethnic make-up, with three major ethnic groups, the Hausa, Ibo, and Yoruba, comprising nearly 40% of the population.⁹⁵⁵ The official language of Nigeria is English, and the official currency is the naira. The predominant religions are Christianity and Islam, with Islam predominant in the north of the country, and Christianity predominant in the south.⁹⁵⁶

⁹⁵⁴ United Nations, Department of Economic and Social Affairs, 2008 Population Report http://www.un.org/esa/population/publications/wpp2008/wpp2008_text_tables.pdf.

⁹⁵⁵ Embassy of Nigeria, <http://www.nigeriaembassyusa.org/thisisnigeria.shtml>.

⁹⁵⁶ The New York Times, "Deadly Nigeria Clashes Subside," November 30, 2008; see online at <http://www.nytimes.com/2008/12/01/world/africa/01nigeria.html?hp>.

Nigeria gained its independence from the United Kingdom on October 1, 1960,⁹⁵⁷ and now operates as a federal republic of 36 states. Following years of military rule, Nigeria elected its first President in 1999, Olusegun Obasanjo, who was re-elected in 2003. Mr. Abubakar was his Vice President. In 2007, Umaru Yar'Adua won election as President over Mr. Abubakar and another candidate, marking the first peaceful civilian transfer of power in Nigeria. International observers nevertheless criticized the 2007 election, citing vote rigging and fraud. The European Union described the election as “not credible,” and the United States described it as “deeply troubling.”⁹⁵⁸ The President of Nigeria holds a maximum of two, four-year terms. The country also has a bicameral legislature and 36 state governors.⁹⁵⁹

Nigeria ranks among the top ten nations in the world in proven oil reserves,⁹⁶⁰ and is the second largest oil producer in Africa.⁹⁶¹ It is one of the world's largest exporters of oil, and its economy is highly reliant on oil revenues, which make up about 95% of generated revenues in the country.⁹⁶² Its oil production facilities are concentrated in the Niger Delta region, which is an impoverished area despite its oil reserves. Militants have staged numerous attacks against the area's oil production facilities, demanding that a greater share of oil proceeds be allocated to the region. A World Bank report notes that 80% of Nigeria's oil wealth benefits only 1% of the population,⁹⁶³ and the United Nations currently ranks Nigeria as among the world's worst performing countries in life expectancy and infant mortality rate.⁹⁶⁴ In addition, the 2008 U.S. State Department's Human Rights Report characterizes Nigeria's human rights record as “poor” and states that “government officials at all levels continued to commit serious abuses.”⁹⁶⁵

Corruption. Nigeria has long had a problem with corruption. The U.S. State Department's most recent Human Rights Report provides the following description of the corruption problem in Nigeria during 2008:

- “Corruption was massive, widespread, and pervasive, at all levels of government and society. The constitution provides immunity from civil and criminal prosecution to the president, vice president, governors, and deputy governors while in office.”
- “Police mistreated civilians regularly to extort money.”
- “According to the Swiss-based Centre on Housing Rights and Evictions, authorities demolished more than 800,000 homes in the Abuja area since 2003. There was widespread opinion that the demolitions were primarily motivated by corruption and

⁹⁵⁷ CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>.

⁹⁵⁸ The Guardian, “Ruling Party Named Winner in Disputed Nigerian Election,” April 24, 2007; see online at <http://www.guardian.co.uk/world/2007/apr/24/chrismcgreal.international>.

⁹⁵⁹ CIA World Factbook, <http://www.nigeriaembassyusa.org/thisisnigeria.shtml>.

⁹⁶⁰ U.S. Department of Energy, Energy Information Administration, World Proved Reserves of Oil and Natural Gas, Most Recent Estimates, March 3, 2009; <http://www.eia.doe.gov/emeu/international/reserves.html>.

⁹⁶¹ Africa: The Good News, “Africa's Major Oil Producers,” February 17, 2009, <http://www.africagoodnews.com/energy/africas-major-oil-producers.html>.

⁹⁶² Embassy of Nigeria, <http://www.nigeriaembassyusa.org/thisisnigeria.shtml>.

⁹⁶³ Frontline (PBS), “Nigeria: The Hidden Cost of Corruption,” April 24, 2009; see online at <http://www.pbs.org/frontlineworld/stories/bribe/2009/04/nigeria-the-hidden-cost-of-corruption.html>.

⁹⁶⁴ The United Nations World Population Prospects: The 2008 Revision.

⁹⁶⁵ U.S. State Department, “2008 Human Rights Report: Nigeria” February 25, 2009; <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119018.htm>.

discrimination based on socioeconomic class, since mostly lower and middle class persons lost their homes and property, which was sold to wealthy persons with connections to government officials once vacated.”

- “The EFCC's anticorruption efforts waned, with little progress on prosecutions of federal, state, and local officials accused of corruption.”⁹⁶⁶

The latest Transparency International Corruption Perception Index ranks Nigeria 121 out of 180 countries.⁹⁶⁷

In 2002, then-President Olusegun Obasanjo created the Economic and Financial Crimes Commission (EFCC) to investigate and prosecute corruption.⁹⁶⁸ Nuhu Ribadu was appointed as the first EFCC chair and experienced significant success, including prosecutions of government officials and the recovery of over \$5 billion in stolen assets.⁹⁶⁹ During one investigation of the Governor of the Niger Delta state, Mr. Ribadu was offered a \$15 million dollar bribe, seized the money, and brought criminal charges against the Governor.⁹⁷⁰ Mr. Ribadu was removed from his post soon thereafter, and experienced two attempts on his life. In a recent interview, Mr. Ribadu estimated that more than \$380 billion had been lost to corruption in Nigeria since its independence.⁹⁷¹

Until recently, Nigeria was considered non cooperative in the battle against money laundering. In 2001, the Financial Action Task Force on Money Laundering (FATF) identified Nigeria as non-cooperative in the fight against money laundering.⁹⁷² The next year, in 2002, the U.S. Department of Treasury issued an advisory informing U.S. banks of the “serious deficiencies in the counter-money laundering systems of the Federal Republic of Nigeria” and warning that “banks and other financial institutions operating in the United States should carefully consider, when dealing with transactions (especially those involving large sums of money, whether in cash or by wire transfer), originating in or routed to or through Nigeria, or involving entities organized or domiciled, or persons maintaining accounts, in Nigeria, how the lack of adequate counter-money laundering controls in Nigeria affects the possibility that those transactions are being used for illegal purposes.”⁹⁷³ In 2006, due to Nigeria’s enactment of AML laws, FATF removed Nigeria from its list of non-cooperative countries. In May 2007, Treasury withdrew its advisory to U.S. financial systems.⁹⁷⁴

⁹⁶⁶ Id.

⁹⁶⁷ See Transparency International, 2008 Corruption Perception Index, http://www.transparency.org/policy_research/surveys_indices/cpi/2008.

⁹⁶⁸ See Economic and Financial Crimes Commission (Nigeria) website, <http://www.efccnigeria.org/>.

⁹⁶⁹ Washington Post, “Corruption Cop: A Conversation with Nuhu Ribadu, Anti-Corruption Crusader,” May 24, 2009; see online at <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/22/AR2009052202025.html>.

⁹⁷⁰ Id.

⁹⁷¹ BBC News, “Nigerian Leaders ‘Stole’ \$380bn,” October 20, 2006, <http://news.bbc.co.uk/2/hi/africa/6069230.stm>.

⁹⁷² April 2002, FinCEN Advisory, Transactions Involving the Federal Republic of Nigeria.

⁹⁷³ Id.

⁹⁷⁴ May 2007, FinCEN Advisory Withdrawal re Transactions Involving Nigeria.

Atiku Abubakar. For about twenty years, until 1989, Atiku Abubakar worked in the Nigerian Customs Service, rising to the rank of Deputy Director.⁹⁷⁵ For the next ten years, he worked in the private sector with interests in oil, media, agriculture, pharmaceuticals, and publishing.⁹⁷⁶ Mr. Abubakar has been quoted in the media as stating that he became wealthy “through wise investments, hard work and sheer luck of being at the right place at the right time.”⁹⁷⁷

In the 1980s, Mr. Abubakar entered into a business venture with Gabriele Volpi through a company formed to provide oil and natural gas services at African ports.⁹⁷⁸ According to a biography of Mr. Abubakar, which was written with “his support and encouragement,”⁹⁷⁹ Mr. Abubakar and Mr. Volpi formed this oil logistics company in the early 1980s, as a Nigerian corporation called Nigeria Container Services Inc. (NICOTES).⁹⁸⁰ Mr. Volpi told the Subcommittee that he founded NICOTES in the early 1980s and invited Mr. Abubakar to become a director and shareholder in 1989.⁹⁸¹ Some sources indicate that the company had a third founder as well, the late General Shehu Musa Yar’Adua, a political mentor to Mr. Abubakar and the elder brother of the current President of Nigeria, Umaru Musa Yar’Adua.⁹⁸²

⁹⁷⁵ See, e.g., *Atiku: The Story of Atiku Abubakar*, by Adinoyi Ojo Onukaba (African Legacy Press, 2006), available from the Library of Congress, No. DT 515.844.058 (hereinafter, “Atiku Biography”), at 155, 161-62. See also BBC News, “Profile: Atiku Abubakar,” January 25, 2007, <http://news.bbc.co.uk/2/hi/africa/6292141.stm>.

⁹⁷⁶ See Atiku Biography; BBC News, “Profile: Atiku Abubakar,” January 25, 2007 <http://news.bbc.co.uk/2/hi/africa/6292141.stm>.

⁹⁷⁷ BBC News, “Nigeria VP to run for president” November 25, 2006, <http://news.bbc.co.uk/2/hi/africa/6184156.stm> (quoting an Abubakar autobiography that has yet to be published). See also Atiku Biography at 136; BBC News, “Huge win for Nigeria’s Yar’Adua,” April 23, 2007, <http://news.bbc.co.uk/2/hi/africa/6584393.stm>.

⁹⁷⁸ According to the Atiku Biography, Mr. Abubakar formed this company while he was a Customs official. While a 1991 Nigerian law bans public officers from engaging in private business activities (unless their public service employment is part time or the business relates to farming), that law was not in effect in the 1980s. See Code of Conduct Bureau and Tribunal Act, 2 Laws of the Federation of Nigeria (LexisNexis Butterworths) Cap. C15, § 6(b)(current through Mar. 2006)(official source).

⁹⁷⁹ Atiku Biography, at viii. The author of the biography, Adinoyi Ojo Onukaba, was Mr. Abubakar’s media adviser during his tenure as Vice President of Nigeria. In the book’s acknowledgement, Mr. Onukaba wrote: “I would like to thank Vice President Atiku Abubakar for entrusting me with the story of his life and for his support and encouragement.” He also thanked a number of Abubakar family members, friends, and associates for their assistance with the book. *Id.*

⁹⁸⁰ Atiku Biography, at 136-37, 161, 187-88, 256-57, 302-303 (“Of all the businesses into which Atiku would venture, the most successful and the most lucrative would be a small oil servicing company he set up with an Italian business man in the early 1980s. ... NICOTES would transform Atiku from a struggling civil servant and businessman to a fabulously wealthy man.” Atiku Biography at 136-37).

⁹⁸¹ 1/29/10 letter from Mr. Volpi’s legal counsel to the Subcommittee (hereinafter “1/29/10 Volpi letter”), at 4. According to Mr. Volpi’s legal counsel, the correct name of the company is Nicotes Container Terminal Service Ltd.

⁹⁸² See, e.g., Africa Energy Intelligence, December 21, 2005, “Nigeria: Intels Hit by Political Squabbles” (“Intels was paying the price of being too closely connected to vice president Atiku Abubakar, who had a hand in setting up the group in 1988 with general Shehu Yar’Adua”), and June 27, 2007, “The Yar’Adua Family’s Oil Holdings” (Shehu Yar’Adua ... took part in founding the oil logistics and port concern Intels”); Point Blank News, “President Yar’Adua, Wife, Linked with Oil Smuggling, Bunkering,” December 7, 2009, www.pointblanknews.com/os1057.html. According to the Atiku Biography, however, Shehu Yar’Adua was not a founder of the company, but was invited to become a 20% shareholder of NICOTES about a decade after the company was created. See Atiku Biography at 8, 156, 187-88, 195.

According to the Atiku Biography, in 1996, Sani Abacha, then President of Nigeria, seized control of the NICOTES shares belonging to Mr. Abubakar and Mr. Yar'Adua, and renamed the company Integrated Logistics Services Inc. (Intels).⁹⁸³ After Mr. Abacha's death two years later in 1998, Mr. Volpi returned the shares to Mr. Abubakar.⁹⁸⁴ Mr. Volpi confirmed this description of the company's development, stating through his legal counsel that Mr. Abubakar "was stripped of his financial interests in NICOTES" by General Abacha and that "Mr. Volpi made a moral agreement with Mr. Abubakar to restore Mr. Abubakar's forfeited financial interest as soon as the political circumstances would permit."⁹⁸⁵ According to Mr. Volpi's legal counsel: "In 1999, Mr. Volpi and Mr. Abubakar agreed that Mr. Abubakar could reclaim a 16% holding of the issued share capital of Intel Services (Integrated Logistics Services) Limited, a Nigerian company and the successor NICOTES West Africa Services, Ltd. In 2003, Mr. Volpi and Mr. Abubakar agreed to reinstate Mr. Abubakar's full financial interest."⁹⁸⁶

Mr. Volpi is currently the managing director and chief executive officer of Intels. Gian Angelo Perruci of Italy and Daniel Sigaud of France are also reported to be senior managers of the company.⁹⁸⁷ Intels is now one of the largest Nigerian companies in the African oil industry, operating oil terminals and oil services zones at ports in several countries including Nigeria, Angola, Equatorial Guinea, Gabon, and Sao Tome and Principe.⁹⁸⁸ ExxonMobil told the Subcommittee, for example, that in less than three years, from 2006 to the fall of 2008, it paid more than \$245 million to Intels West Africa Inc. and Intels Nigeria Inc., two Intels affiliates, for providing oil services in Nigeria.⁹⁸⁹

⁹⁸³ Atiku Biography, at 256-57, 302-03. See also, e.g., Africa Energy Intelligence, December 21, 2005, "Nigeria: Intels Hit by Political Squabbles" ("When general Sani Abacha seized power in 1993 he allowed cronies to take control of Intels. The company was returned to its founders on Abacha's death in 1998."); Point Blank News, "President Yar'Adua, Wife, Linked with Oil Smuggling, Bunkering," December 7, 2009, www.pointblanknews.com/os1057.html. According to Mr. Volpi's legal counsel, the company was renamed Intel Services (Integrated Logistic Services) Ltd.

⁹⁸⁴ The biography states that Mr. Volpi secretly agreed to return the seized shares to the true owners "as soon as the situation was right." The biography quotes Mr. Abubakar as follows: "Volpi behaved honorably. ... For the two years that the Abacha and his men held the company and collected dividends worth millions of dollars, Volpi was still making secret payments to us." Atiku Biography at 257.

⁹⁸⁵ 1/29/10 Volpi letter at 4.

⁹⁸⁶ Id., at 4-5.

⁹⁸⁷ See, e.g., Africa Energy Intelligence, "The Yar'Adua Family's Oil Holdings," June 27, 2007, and "Angola: An Old Hand Back in Business," November 7, 2007, <http://www.nigeriavillagesquare.com/articles/dr-gary-k.-busch/linza-mi-da-wu-ta-ma-ganin-mahaukacin-3.html>.

⁹⁸⁸ See, e.g., July 5, 2006 Africa Energy Intelligence "Nigeria: Intels in Charge Again," and "Nigeria: Intels," October 1, 2008 (describing Intels as having a "near monopoly ... in the oil logistics and ports sector in Nigeria"). See also Intels website, <http://www.intelservices.com>.

⁹⁸⁹ 8/6/08 ExxonMobil written responses to Subcommittee questions, PSI-Exxon_Mobil-06-0001. Exxon told the Subcommittee that it made these payments through two Exxon subsidiaries: Mobil Producing Nigeria Unlimited (MPN) and Esso Exploration and Production Nigeria Limited (EEPEN). Exxon-Mobil Attachment 5, (Nigeria) Payments to senior foreign political figures, their relatives, or entity owned or controlled by such persons, PSI-Exxon-0118-19.

After ten years in the private sector, in May 1999, Mr. Abubakar was elected Vice President of Nigeria under President Obasanjo. He held that position for eight years until May 2007. By the time he took office, Nigerian law banned full-time public officials from engaging in private business activities other than farming.⁹⁹⁰ On July 22, 1999, Mr. Abubakar established a “Blind Trust” under Nigerian law.⁹⁹¹ According to the trustees, the Blind Trust was formed to hold and manage his “assets, business[es], and investments.”⁹⁹² The sole asset placed in the trust was Mr. Abubakar’s Intels shares, then representing “a 16% holding in the issued share capital of Intel Services (Integrated Logistic Services) Limited.”⁹⁹³

Normally, blind trusts are managed by a trustee who is independent of both the grantor who places assets into the trust and the trust beneficiaries.⁹⁹⁴ After appointment of the trustee,

Exxon identified these payments to Intels-related companies from 2006 to 2008:

Payee	2006 USD	2007 USD	2008 USD (through September)
Intel West Africa Lts.	\$ 10,170,959.43	\$ 9,460,437.42	\$ 8,013,785.32
Intels Nigeria Ltd.	\$ 98,768.72	\$ 281,406.69	\$ 813,084.78
Intel West Africa Ltd.	\$ 37,429,643.95	\$ 118,776,151.71	\$ 29,862,791.83
Intels Nigeria Lts.	\$ 406,472.15	\$ 22,236,104.99	\$ 7,898,653.11
Total	\$ 48,105,844.25	\$ 150,754,100.81	\$ 46,588,315.04

⁹⁹⁰ Nigerian law states that a public officer is not to “engage or participate in the management or running of any private business, profession or trade.” See Code of Conduct Bureau and Tribunal Act, 2 Laws of the Federation of Nigeria Cap. C15 § 6(b)(current through Mar. 2006)(official source). Business is defined as “any profession, vocation, trade or any adventure or concern in the nature of trade, and excludes farming.” In addition, the Nigerian Constitution states that public officers are “not to put themselves in a position where [their] personal interest[s] conflict with [their] duties and responsibilities.” The Constitution of the Federation of Nigeria, 5th Schedule § 1 (enacted 1999). See also Law Library of Congress, “Nigeria: Restrictions on Business Activities of Public Officers,” No. 2010-003703, January 2010.

⁹⁹¹ See 7/22/99 “Deed of Trust (Blind Trust),” PSI-Volpi-03-00007-16.

⁹⁹² See 11/11/09 letter from Giwa-Osagie & Associates, legal counsel for Guernsey Trust Company, to the Subcommittee, EW000001-03, at 01. The letter stated in part:

“Our client is a Trust Corporation incorporated on the 9th of October 2003 and empowered pursuant to a Deed of Blind Trust dated 22nd July 1999 (‘the Blind Trust’) to hold as trustee and manage the assets, business and investments of Atiku Abubakar, a citizen of the federal Republic of Nigeria, and a former holder of the office of Vice-President of the Federal Republic of Nigeria. At the current time, the principal asset or investment held by our client as trustee for the said Atiku Abubakar is 16% of the shareholding equity in Orlean Invest Holdings Limited, (‘Orlean’) a company registered under the laws of Panama.”

⁹⁹³ Abubakar Blind Trust at 6. See also 11/11/09 letter from Guernsey Trust Company’s legal counsel to the Subcommittee, EW000001-03, at 02; 1/29/10 Volpi letter at 2; 8/6/08 ExxonMobil written responses to Subcommittee questions, PSI-Exxon_Mobil-06-0001. The trust makes no reference to any other Abubakar business interests.

⁹⁹⁴ According to the Congressional Research Service, a blind trust “is a device employed by a federal official to hold, administer and manage the private financial assets, investments and ownerships of the official, and his or her spouse and dependent children, as a method of conflict of interest avoidance. In establishing a qualified blind trust upon the approval of the appropriate supervisory ethics entity, the official transfers, without restriction, control and management of private assets to an independent trustee who may not communicate information about the identity of the holdings in the trust to the official. The trust is considered ‘blind’ because eventually, through the sale of transferred assets and the purchase of new ones, the public officer will be shielded from knowledge of the identity of the specific assets in the trust. Without such knowledge, conflict of interest issues would be avoided because no particular asset in the trust could act as an influence upon the official duties that the officer performs for the Government.” Congressional Research Service, “The Use of Blind Trust by Federal Officials,” September 23, 2005,

the trust grantor and beneficiaries are typically unable to monitor the trust assets – hence the name “blind trust.” In the case of the Abubakar Blind Trust, however, Mr. Abubakar did not appoint an independent trustee from a financial institution, but instead appointed corporations associated with Mr. Volpi, who has been described by Ms. Douglas and Mr. Abubakar’s legal adviser, Edward Weidenfeld, as Mr. Abubakar’s “trusted friend and business partner.”⁹⁹⁵

The initial trustee of the Blind Trust, appointed in 1999, was a Panamanian corporation called Orlean Invest Holdings Ltd. (Orlean).⁹⁹⁶ Orlean is another oil services company with offices in London, Nigeria, and several other west African countries, and closely associated with Intels.⁹⁹⁷ Mr. Volpi has told the Subcommittee that he is the Chairman of Orlean, and that the Volpi Family Trust currently owns 63% of the company through Sima Holdings and a Liechtenstein trust called Adiana Stiftung.⁹⁹⁸ The Subcommittee was told that, from 1999 to 2003, Orlean managed the Abubakar Blind Trust, including the Intels shares and “the profits generated thereby were utilised in developing new business initiatives and investments, particularly in Nigeria, Angola, Congo (Brazzaville) and the Ivory Coast.”⁹⁹⁹

According to the Guernsey Trust Company’s legal counsel, in 2003, Orlean re-organized and “acquired Atiku Abubakar’s beneficial interests in Intels Services Limited, for Orlean’s benefit, and issued in consideration therefore, 16% of the shares in Orlean to the Blind Trust for the benefit of Atiku Abubakar.”¹⁰⁰⁰ In other words, Mr. Abubakar exchanged his 16% ownership interest in Intels for an equivalent ownership interest in Orlean. His acquisition of the Orlean shares meant that he became a part owner of the trustee of his Blind Trust. Orlean also became a major shareholder of Intels.¹⁰⁰¹

No. Cod RS21656, September 23, 2005. See also, Business Dictionary, <http://www.businessdictionary.com/definition/blind-trust.html>, (“Blind trusts are created to avoid any potential conflict of interest between the duties of a public officeholder and his or her choice of investment portfolio. The trust funds are placed at the full discretion of a trustee (such as a trust company) independent of the trustor in name and reality.”).

⁹⁹⁵ 11/13/09 written response from Mr. Weidenfeld’s legal counsel to Subcommittee questions, PSI-

Abubakar_ & _Weidenfeld-01-0031; 11/13/09 written response from Ms. Douglas Abubakar’s legal counsel to Subcommittee questions, PSI-Abubakar_ & _Weidenfeld-01-0020.

⁹⁹⁶ 11/11/09 letter from Guernsey Trust Company’s legal counsel to the Subcommittee, EW000001-03, at 01. Mr. Volpi told the Subcommittee that this company was incorporated in Panama in 1984 under the name Bivo Financial S.A., was renamed Orlean Invest Holding S.A. in 1985, was re-domiciled in 2004 in the British Virgin Islands, and was renamed again in 2004, as Orlean Invest Holdings Ltd.; 12/22/09 letter from Mr. Volpi’s legal counsel, Venable LLP, to the Subcommittee, PSI-Volpi-02-0001-6.

⁹⁹⁷ PSI-Volpi-02-0001-6.; www.orleaninvest.com (viewed 12-8-09); 2005 Business Week Special Advertising Section, “Africa’s Energy Boom,” at 1-2, 4 (“Another major operator in Nigeria is Orlean Invest Services Ltd. which through one of its subsidiaries, Intels (Integrated Logistics Services) plays a major role in an exciting project aimed at stimulating trade and export activities and attracting direct foreign investment. Intels is a worldwide leader in oilfield logistics with operational bases and service centers throughout the West African coast.”).

⁹⁹⁸ PSI-Volpi-02-0001-6.

⁹⁹⁹ 11/11/09 letter from Giwa-Osagie & Associates, legal counsel for Guernsey Trust Company, to the Subcommittee at 2.

¹⁰⁰⁰ Id. See also 8/6/08 ExxonMobil written responses to Subcommittee questions, PSI-Exxon_Mobil-06-0001, describing this exchange of shares.

¹⁰⁰¹ Mr. Volpi told the Subcommittee that Orlean currently owns 70% of Intels Nigeria Ltd. but did not disclose Orlean’s ownership share in the parent company, Integrated Logistics Services Inc. PSI-Volpi-02-0001-6 at 3.

The Subcommittee was told that, after this exchange of shares, Orlean retired as the trustee of the Abubakar Blind Trust and, on October 10, 2003, was replaced by Guernsey Trust Company Nigeria Ltd. (Guernsey Trust Company), a shell company formed one day earlier under the laws of Nigeria.¹⁰⁰² Legal counsel to the Guernsey Trust Company told the Subcommittee that this company has three beneficial owners who provide the trustee services required by the Abubakar Blind Trust: Gabriele Volpi, Uyiekpen Giwa-Osagie, and Fati Akintola Kekere-Ekun.¹⁰⁰³ Mr. Giwa-Osagie is the managing partner in the Nigerian law firm, Giwa-Osagie & Associates, which provides legal advice to the Guernsey Trust Company.¹⁰⁰⁴ Mr. Kekere-Ekun is the chief executive officer and managing director of Habib National Bank Ltd. in Nigeria, a trustee on the AUN board of trustees, and was chosen in part due to “his reliability and relationship with Mr. Abubakar.”¹⁰⁰⁵ The sole trust that is managed by the company is the Abubakar Blind Trust.

The Blind Trust states that it “shall operate for so long as the Beneficiary holds Government office in the Republic of Nigeria,” and that upon his leaving office, “the Trustee shall transfer the ownership of record and management of the investment interest ... to the Beneficiary or as the Beneficiary shall designate at that time.”¹⁰⁰⁶ Despite this provision, the Blind Trust continued in existence after Mr. Abubakar left office in May 2007, continuing to send, for example, wire transfers to banks in the United States.

The Subcommittee has been told that the Abubakar Blind Trust has had a single asset over time – shares of stock. The Subcommittee has also been told that, through dividends, those shares generated millions of dollars in cash revenues that were then used to send a steady stream of wire transfers to bank accounts in the United States.

From 2003 to 2008, for example, the Guernsey Trust Company wire transferred at least \$10 million into the United States, including at least \$7 million to Douglas-related accounts at several U.S. banks, \$2.1 million to the Weidenfeld law office and AUN accounts at Suntrust Bank, and \$900,000 to American University accounts. Ms. Douglas, Mr. Weidenfeld, and American University each told the Subcommittee that they had no information about the Guernsey Trust Company, were unaware of its relation to the Abubakar Blind Trust, and did not deal with the Guernsey Trust Company trustees. Each indicated that they had simply assumed the funds sent by the Guernsey Trust Company belonged to Mr. Abubakar.

¹⁰⁰² 11/11/09 letter from Giwa-Osagie & Associates, legal counsel for Guernsey Trust Company, to the Subcommittee, EW000001-03, at 01. Mr. Volpi told the Subcommittee that the name of the company did not refer to the island of Guernsey but was “merely a name” with “no special significance.” 1/29/10 Volpi letter at 2.

¹⁰⁰³ 11/11/09 letter from Giwa-Osagie & Associates, legal counsel for Guernsey Trust Company, to the Subcommittee, EW000001-03, at 03. Mr. Volpi, however, described these three individuals as the directors of the corporation and the trustees of the Abubakar Blind Trust, and Mr. Abubakar as the sole beneficial owner of the Guernsey Trust Company. PSI-Volpi-02-0001-6 at 2 and 5.

¹⁰⁰⁴ See 11/11/09 letter from Giwa-Osagie & Associates, legal counsel for Guernsey Trust Company, to the Subcommittee, EW000001-03; PSI-Volpi-02-0001-6 at 5.

¹⁰⁰⁵ 1/29/10 Volpi letter at 5. See also PSI-Volpi-02-0001-6 at 5.

¹⁰⁰⁶ Abubakar Blind Trust at 5. See also 11/11/09 letter from Giwa-Osagie & Associates, legal counsel for Guernsey Trust Company, to the Subcommittee, EW000001; 8/6/08 ExxonMobil written responses to Subcommittee questions, PSI-Exxon_Mobil-06-0001 (ExxonMobil states that the Abubakar Blind Trust was designed to end when Mr. Abubakar left office).

Two other companies beneficially owned by Mr. Volpi and his relatives as explained below, LetsGo and Sima Holding, sent nearly \$27 million into the United States, including about \$8 million to Ms. Douglas' accounts, \$5.5 million to AUN accounts, and \$13.1 million to American University accounts. When asked about these wire transfers, Mr. Volpi told the Subcommittee through legal counsel that the funds sent to Ms. Douglas "related to a moral agreement by Mr. Volpi with Mr. Abubakar to acknowledge Mr. Abubakar's financial interests" in Intels after General Abacha had seized Mr. Abubakar's shares.¹⁰⁰⁷ These payments, which are in addition to those generated by the shares held by the Abubakar Blind Trust, provided a separate revenue stream to Ms. Douglas outside of the trust that was supposed to separate Mr. Abubakar from his interests in the oil industry. Mr. Volpi's legal counsel also told the Subcommittee that LetsGo had provided a line of credit to the Abubakar Blind Trust, and that some of the payments made by LetsGo to Ms. Douglas reflected that credit extension.¹⁰⁰⁸ In addition, Mr. Volpi told the Subcommittee that he had made donations and extended a separate line of credit to AUN, and that some of the payments sent by LetsGo to AUN and American University accounts reflected those funding commitments.¹⁰⁰⁹

Mr. Abubakar served as Vice President of Nigeria from 1999 to 2007. In 2006, President Obasanjo attempted to amend the Nigerian Constitution to allow him to run for a third term. Mr. Abubakar opposed that effort, leading to a falling out between the two.¹⁰¹⁰ After President Obasanjo's effort failed, an election for a new President was scheduled, and Mr. Abubakar announced his candidacy. In response, the Nigerian Independent National Electoral Commission ruled that he was disqualified from running for President, because he was under investigation for corruption.¹⁰¹¹ A few months later, on March 12, 2007, the Federal High Court of Nigeria ruled that the Commission had no authority to disqualify candidates.¹⁰¹² Mr. Abubakar's name was added to the ballot at the last minute. The official results showed that he took third place behind two other candidates, with about seven percent of the vote.

During the presidential campaign, the Nigerian Economic Financial Crimes Commission (EFCC), under the leadership of Nuhu Ribadu, initiated a corruption investigation of several Nigerian government officials, including Mr. Abubakar.¹⁰¹³ The EFCC issued a report which found that Mr. Abubakar had used his influence over Nigeria's Petroleum Technology Development Fund (PTDF) to disburse money from the Fund to promote business ventures for

¹⁰⁰⁷ 1/29/10 Volpi letter at 4.

¹⁰⁰⁸ *Id.*, at 4-5. This explanation suggests that Mr. Volpi directed LetsGo to send the borrowed funds directly to Ms. Douglas instead of providing them to the actual borrower, the Abubakar Blind Trust, and allowing the trustees to direct use of the Trust's funds.

¹⁰⁰⁹ *Id.*, at 5-6.

¹⁰¹⁰ See, e.g., Africa Energy Intelligence, "Nigeria: Campaign and Corruption," September 20, 2006 ("incumbent president Olusegun Obasanjo and his vice-president Atiku Abubakar have accused one another of stealing public funds").

¹⁰¹¹ See Action Congress v. Independent National Electoral Commission, Suit No: FHC/ABJ/CS/3/2007 (Federal High Court of Nigeria, Abuja Judicial Division), Judgment issued on March 12, 2007.

¹⁰¹² *Id.*

¹⁰¹³ The EFCC is the leading anti-corruption investigative unit in the Nigerian government. According to its website, the EFCC is designed "to combat financial and economic crimes. The Commission is empowered to prevent, investigate, prosecute and penalize [sic] economic and financial crimes and is charged with the responsibility of enforcing the provisions of other laws and regulations relating to economic and financial crimes." http://www.efccnigeria.org/index.php?option=com_content&task=view&id=12&Itemid=30.

himself and his friends, and that he had engaged in fraudulent conversion of funds, corrupt practices, and money laundering.¹⁰¹⁴ In February 2007, a Nigerian ad hoc Senate Committee was formed to examine the EFCC charges. Mr. Abubakar made a presentation to the Committee, asserting in part that the allegations were a bid to prevent him from running for office.¹⁰¹⁵ The Senate Committee subsequently called for Mr. Abubakar to be “sanctioned,” because he had “abused his office by aiding and abetting the diversion of public funds in the sum of \$145 million” as loans to his friends.¹⁰¹⁶ The Subcommittee found no evidence, however, that the full Senate imposed such a sanction on Mr. Abubakar.

On August 5, 2009, U.S. Congressman William Jefferson was convicted by a Federal jury of soliciting bribes, money laundering, depriving citizens of honest services as a member of Congress, and operating his Congressional office as a racketeering enterprise.¹⁰¹⁷ During his trial, a videotape was shown in which the Congressman made a reference to Mr. Abubakar when the Congressman was seeking money from another person, but no evidence was introduced showing that Mr. Abubakar had actually sought or accepted a bribe from the Congressman. Mr. Abubakar asserted his innocence, and that his name had been invoked in the matter to ruin his reputation and prevent him from winning the Presidency in Nigeria.¹⁰¹⁸

Currently, Mr. Abubakar does not hold political office in Nigeria, but has resumed his business career. The Subcommittee contacted him through his legal counsel, but he declined to participate in an interview.

Jennifer Douglas. Jennifer Elizabeth Douglas, who has also gone by the names Jennifer Iwenjiora, Jamila Abubakar, and Jennifer Douglas-Abubakar, is the fourth wife of Atiku Abubakar. According to the Atiku Biography, Ms. Douglas was born in Nigeria as Jennifer Iwenjiora, worked as a television journalist at the Nigerian Television Authority, and dated Mr. Abubakar in the early 1980s, before leaving for the United States.¹⁰¹⁹ She lost touch with

¹⁰¹⁴ See Mr. Abubakar’s defense of his actions, “PTDF: The Facts, The Fiction: Presentation to Senate Ad-Hoc Committee on Investigations into the Affairs of the Petroleum Technology Development Fund,” (2006), at 3, available at the Library of Congress, HD 9577.N52 A85 (hereinafter “Abubakar PTDF Defense”). See also, e.g., BBC News, “Nigeria Senate urges action on VP,” February 27, 2007, <http://news.bbc.co.uk/2/hi/africa/6402241.stm>.

¹⁰¹⁵ Abubakar PTDF Defense, at 3.

¹⁰¹⁶ Nigerian Senate Committee report as quoted in BBC News, “Nigeria Senate urges action on VP,” February 27, 2007, <http://news.bbc.co.uk/2/hi/africa/6402241.stm>. See also, e.g., BBC News, “Nigeria Senate urges action on VP,” February 27, 2007, <http://news.bbc.co.uk/2/hi/africa/6402241.stm>; BBC, Profile: Atiku Abubakar, January 25, 2007, <http://news.bbc.co.uk/2/hi/africa/6292141.stm> (“In a probe ordered by Mr Obasanjo, the vice-president was accused of diverting \$125m from a public development trust fund into his personal businesses.”); Voice of America, “Nigerian Vice President Charged with Corruption,” October 10, 2006, <http://www1.voanews.com/english/news/a-13-2006-10-10-voa39.html>.

¹⁰¹⁷ See United States v. William J. Jefferson (USDC EDVA, June 4, 2007), Criminal No: 1:07CR209. See also Times Picayune, “William Jefferson’s attorneys ask for 2-week sentencing delay,” October 8, 2009, http://www.nola.com/politics/index.ssf/2009/10/post_37.html.

¹⁰¹⁸ Press reports discussing the Jefferson videotape and the allegations involving Mr. Abubakar were published as early as 2005 and the matter was referenced during the 2007 Nigerian campaign. See, e.g., BBC News, “US probes Nigeria vice-president,” August 29, 2005, <http://news.bbc.co.uk/2/hi/africa/4192186.stm>; Washington Post, “FBI Says Jefferson Was Filmed Taking Cash - Affidavit Details Sting on Lawmaker,” May, 22, 2006. See also internal emails and news stories collected by Chevy Chase Bank, JD_004176-4301.

¹⁰¹⁹ Atiku Biography at 260-61.

Mr. Abubakar while attending Howard University.¹⁰²⁰ She subsequently married in the United States, took the married name of Jennifer Douglas, and later divorced,¹⁰²¹ becoming a naturalized U.S. citizen during this time period.¹⁰²² Ms. Douglas eventually renewed her relationship with Mr. Abubakar who came to visit her in the United States. According to the Atiku Biography, from late 1995 to early 1998, while Sani Abacha was in power in Nigeria, Mr. Abubakar “spent most of his time in Maryland” with Ms. Douglas, making occasional visits to Nigeria.¹⁰²³ In or around 2000, Ms. Douglas became a doctoral student at American University¹⁰²⁴ and, in 2007, received her doctorate degree in international relations. According to the Atiku Biography, Ms. Douglas and Mr. Abubakar “married officially in 2003.”¹⁰²⁵ In July 2003, Ms. Douglas made a \$1 million donation to the American University School of International Service Building Fund.¹⁰²⁶

Since 2000, Ms. Douglas has resided in a luxury home in Potomac, Maryland, a wealthy suburb of Washington, D.C.¹⁰²⁷ In bank account opening documents and tax documents, she has listed her occupation as “student,” “homemaker,” and “unemployed.” She has consistently told the banks where she opened accounts that her husband, Mr. Abubakar, provided the funds for her accounts. For example, in a November 21, 2003 letter provided to Citibank, she stated that she received “a yearly maintenance income from spouse of \$500,000.”¹⁰²⁸ She also said that she received dividends and interest from various accounts and investments totaling about \$1,600 per month. In addition, she had access to \$5 million in assets in a Jennifer Douglas Abubakar (JDA) Family Trust.¹⁰²⁹

The letter also stated that Ms. Douglas received a salary of about \$62,000 per year from the Gede Foundation, which Ms. Douglas had established in 2002, to advance various charitable causes, including health problems in Nigeria. Ms. Douglas told Citibank that she received “a minimal income” of about \$1,000 per month and “an agreed yearly bonus” of \$50,000 “paid in

¹⁰²⁰ See 6/26/00 Citibank account opening application, B00007799-801 (2000 Citibank account opening documentation in which Ms. Douglas indicates she attended Howard University); Atiku Biography at 262.

¹⁰²¹ Atiku Biography at 261.

¹⁰²² See SEC v. Siemens Aktiengesellschaft, (USDC DC), Case No. 1:08-cv-02167-RJL (Dec. 12, 2008), Complaint, at paragraph 50 (describing Ms. Douglas as a dual citizen of Nigeria and the United States).

¹⁰²³ Atiku Biography at 263. Sani Abacha unexpectedly died of a heart attack on June 8, 1998.

¹⁰²⁴ See 6/26/00 Citibank account opening application B00007799-801 (Ms. Douglas indicates she was then a PhD student at American University).

¹⁰²⁵ Atiku Biography at 263. The biography states that prior to the marriage, Ms. Douglas converted to Islam “and took the name, Jamila.” Id.

¹⁰²⁶ 11/21/03 American University Gift Agreement to Jennifer Douglas Abubakar, PAU026519; 8/19/08 internal American University email, PAU0108929.

¹⁰²⁷ Maryland property records indicate that Ms. Douglas purchased the house in December 1999, for \$1.75 million, and the deed was recorded in January 2000. See also 6/26/00 Citibank account opening application, B00007799-801 (Ms. Douglas indicates she has lived at her Maryland residence for 6 months). See also 3/19/09 Citibank’s written responses to Subcommittee questions, PSI-Citi-34-0002; 2004 Residential Appraisal Report, B00007944-7954 (valued property at \$2.7 million); November 2003 letter by Ms. Douglas in Citibank files, B00007910 (valued property at \$3 million). See also Atiku Biography at 263 (indicating that Mr. Abubakar and Ms. Douglas purchased the house together).

¹⁰²⁸ 11/21/03 letter from Ms. Douglas “To Whom It May Concern RE: Explanation of Income,” B00007910-11.

¹⁰²⁹ Ms. Douglas told Chevy Chase Bank that this trust had been funded with a financial gift from her husband. JD_000209.

[a] lump [sum] yearly after every fundraising.”¹⁰³⁰ Ms. Douglas also served as an unpaid trustee on the board of trustees of the American University of Nigeria (AUN), which was founded by Mr. Abubakar in 2003, to provide an American-style university in northern Nigeria where he was born. Documents indicate that Ms. Douglas helped convince American University to assist with the establishment of AUN and used her personal bank accounts to pay some AUN expenses.

Bank documents show that most of the funds in Ms. Douglas’ U.S. bank accounts came from wire transfers provided by offshore corporations. When her banks asked about these corporations, Ms. Douglas consistently told them that she was unfamiliar with the nature of the offshore corporations sending her money. In 2009, when the Subcommittee asked her about the Guernsey Trust Company, LetsGo, Sima Holding, and China Castle Investments, Ms. Douglas responded through her legal counsel that she “has no personal knowledge of these entities. To the extent that any of these entities were the source of deposits into her accounts or the AUN account, she understood that all such deposits came from her husband.”¹⁰³¹

In December 2008, the U.S. Department of Justice and the U.S. Securities and Exchange Commission (SEC) filed criminal and civil pleadings alleging that Siemens AG, a major German company traded on the New York Stock Exchange, violated the U.S. Foreign Corrupt Practices Act (FCPA) by making bribery payments to obtain business in multiple countries, including Nigeria.¹⁰³² Siemens pleaded guilty to violating the books and recordkeeping provisions of the FCPA, and agreed to pay combined criminal and civil fines totaling more than \$1.6 billion.¹⁰³³ One of the allegations in the SEC civil complaint against Siemens was that “approximately \$2.8 million of the bribe payments was routed through a bank account in Potomac, Maryland, in the name of the wife of a former Nigerian Vice President.”¹⁰³⁴ The Subcommittee has obtained wire transfer documentation substantiating this allegation, as explained below. Through her legal counsel, however, Ms. Douglas denies any wrongdoing.¹⁰³⁵

Ms. Douglas currently resides primarily in the United Arab Emirates, employed as a professor of political science at the American University of Sharjah. When contacted by the Subcommittee, Ms. Douglas voluntarily produced documents and answered written Subcommittee questions, but declined to participate in a Subcommittee interview.

¹⁰³⁰ 11/21/03 letter from Ms. Douglas “To Whom It May Concern RE: Explanation of Income,” B00007910-11.

¹⁰³¹ 11/13/09 letter from Ms. Douglas’ legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_ &_Weidenfeld-01-0003.

¹⁰³² See United States v. Siemens Aktiengesellschaft, (USDC DC), Case No. Cr. 08-368 (Dec. 12, 2008); SEC v. Siemens Aktiengesellschaft, (USDC DC), Case No. 1:08-cv-02167-RJL (Dec. 12, 2008), Complaint. German authorities also filed charges.

¹⁰³³ See United States v. Siemens Aktiengesellschaft, (USDC DC), Case No. Cr. 08-368 (Dec. 12, 2008), Information, Plea Offer; SEC v. Siemens Aktiengesellschaft, (USDC DC), Case No. 1:08-cv-02167-RJL (Dec. 12, 2008), Consent of Defendant Siemens Aktiengesellschaft; Department of Justice press release, “Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 in Combined Criminal Fines,” No. 08-1105 (Dec. 15, 2008).

¹⁰³⁴ SEC v. Siemens Aktiengesellschaft, (USDC DC), Case No. 1:08-cv-02167-RJL (Dec. 12, 2008), Complaint, at paragraph 50.

¹⁰³⁵ Subcommittee interview of Ms. Douglas’ legal counsel, April 1, 2009. See also The Times-Picayune, “Conspiracy figure in Rep. William Jefferson case took bribes, SEC says,” January 1, 2009, http://www.nola.com/crime/index.ssf/2009/01/conspiracy_figure_in_rep_willi.html.

Mr. Abubakar, through his legal counsel, declined to answer any questions from the Subcommittee.

American University of Nigeria. In addition to opening U.S. bank accounts for her personal use, Ms. Douglas opened several U.S. bank accounts on behalf of American University of Nigeria (AUN), which was founded by Mr. Abubakar in 2003. Originally called ABTI University, the school changed its name in September 2004, to ABTI American University of Nigeria, and then changed its name again in May 2007, to American University of Nigeria.¹⁰³⁶ The university is located in Yola, which is the capital of Adamawa State in Northern Nigeria, where Mr. Abubakar was born. It opened its doors to at least 110 students in 2005, and saw its first graduates in 2009.¹⁰³⁷

The AUN website describes the school in the following manner:

“American University of Nigeria was created in response to the demand for high-quality, American-style higher education in West Africa. Each year, thousands of West African families send their sons and daughters to universities in the United States. Many of these students would prefer to study here, in Nigeria, if a comparable education were available. Now these students do have a new option: AUN.

The mission of AUN is to offer an education that is in every way the equal of what a student would experience at the best universities in the United States. The majority of the distinguished faculty are American; the campus facilities are world class – superior even to those found at most American campuses. The academic programs are built on the American model and are consistent in every way with US accreditation standards.

The University was created in partnership with the American University in Washington, D.C., an institution with an international reputation for excellence.”¹⁰³⁸

Information reviewed by the Subcommittee indicates that Ms. Douglas played an active role in AUN’s establishment and operation. She approached American University in 2002, where she was a doctoral student, for assistance in establishing the university and acted as a liaison between the university and her husband. Since the university’s inception, she has served as an unpaid trustee on the AUN board of trustees. In addition, Ms. Douglas was tasked by her husband to help pay AUN bills, in particular the salaries of AUN professors who agreed to teach at AUN but requested payment in U.S. dollars.

Bank records obtained by the Subcommittee show that AUN utilized several accounts at U.S. financial institutions, including personal accounts opened by Ms. Douglas at Citibank and Wachovia, and an account opened by Mr. Weidenfeld’s law firm at Suntrust Bank. Funding for those accounts came primarily from three offshore corporations, the Guernsey Trust Company, LetsGo, and Sima Holdings. In 2008, AUN also opened accounts at Standard Chartered Bank in

¹⁰³⁶ 5/28/07 Nigerian Corporate Affairs Commission, Certificate of Incorporation of a Company, JD F 00430; 9/29/04 letter from the Nigerian National Universities Commission to AUN, JD F 00431.

¹⁰³⁷ Subcommittee interview of American University officials, April 14, 2009.

¹⁰³⁸ AUN website, <http://www.aun.edu.ng/about.htm>.

London and apparently is now in the process of closing its remaining U.S. accounts in favor of its London accounts. Bank records show that AUN also has accounts at several banks in Nigeria.

From 2003 to 2007, American University accepted about \$14 million in multiple wire transfers from LetsGo and the Guernsey Trust Company, to pay consulting fees for its work related to AUN. After receiving an inquiry from the Subcommittee about the source of these funds, American University negotiated a new consultancy agreement with AUN in 2008, in which AUN agreed to provide fees to AU directly from AUN's own bank accounts.

Edward Weidenfeld. Edward Weidenfeld is a U.S. lawyer who practices in the Washington, D.C. area, and has provided legal counsel to Ms. Douglas, Mr. Abubakar, and AUN.¹⁰³⁹ Mr. Weidenfeld first met Ms. Douglas in 2002, when he provided her with estate planning services. He then had infrequent contact with her until 2004, when he provided additional legal services.¹⁰⁴⁰ In August 2005, after her residence was searched in connection with the Congressman Jefferson investigation, he recommended a criminal defense attorney and worked as co-counsel in that matter.¹⁰⁴¹ Mr. Weidenfeld also provided legal advice to Mr. Abubakar related to his 2006-2007 presidential campaign in Nigeria.¹⁰⁴² At the request of Mr. Abubakar and Ms. Douglas, he has also provided legal advice related to their interactions with U.S. banks, helped advise AUN, and provided legal advice in connection with the Subcommittee's inquiry.¹⁰⁴³

Documents reviewed by the Subcommittee show that when Citibank closed the Douglas-related accounts in 2007, Mr. Weidenfeld helped her open accounts at Wachovia Bank. Wachovia already provided banking services to American University and knew Mr. Weidenfeld. He provided a letter of recommendation for Ms. Douglas and served as a cosignatory on the AUN account she opened at that bank. When Wachovia indicated it planned to close the accounts, he persuaded the bank to grant Ms. Douglas additional time so that she could look for another bank. In 2008, he helped establish an AUN account at Suntrust Bank, opening it in connection with his law firm which already had accounts at the bank and agreeing to serve as the account signatory. During the first eight months of 2008, Mr. Weidenfeld accepted over \$1.3 million in wire transfers into his law firm account from the Guernsey Trust Company to pay the Abubakars' legal bills, and has on occasion transferred funds to other accounts for them. He accepted another \$2 million in offshore wire transfers into the AUN account for which he was a signatory. He told the Subcommittee that he never dealt directly with the Guernsey Trust Company and had no information about the company that sent him millions of dollars, but simply assumed it was providing funds supplied by Mr. Abubakar.

Mr. Weidenfeld cooperated with the Subcommittee's inquiry by voluntarily producing documents and answering written questions from the Subcommittee.

¹⁰³⁹ 11/13/09 letter from Mr. Weidenfeld's legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0022-32, at 22.

¹⁰⁴⁰ Id. See also 9/11/02 email from Ms. Douglas to Chevy Chase Bank, Chevy Chase 4, JD_004302/004762 (changing her attorney to Mr. Weidenfeld).

¹⁰⁴¹ 11/13/09 letter from Mr. Weidenfeld's legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0022-32, at 22.

¹⁰⁴² Id.

¹⁰⁴³ Id.

Gabriele Volpi. Gabriele Volpi, 63, is a citizen of Italy, a billionaire, and a businessman associated with numerous ventures, including Orlean Invest Holdings Ltd. and Intels, which are active in the oil industry in western Africa. Mr. Volpi told the Subcommittee that he is currently the chairman of Orlean.¹⁰⁴⁴ He is also the managing director and chief executive officer of Intels, which owns oil terminals and oil services zones at multiple ports in Africa.¹⁰⁴⁵ He is known for his ownership of a luxurious 60-meter yacht and an internationally recognized water polo team in Italy.¹⁰⁴⁶

Mr. Volpi is closely associated with the three offshore corporations, the Guernsey Trust Company, LetsGo, and Sima Holding, that collectively sent over \$38 million to the United States in connection with this matter. He is one of the three directors and trustees of the Guernsey Trust Company, which is located in Nigeria.¹⁰⁴⁷ LetsGo is a Panamanian corporation which “receives and disburses funds for personal and business use from companies owned or controlled by Mr. Volpi,” and it is beneficially owned by Mr. Volpi and his wife.¹⁰⁴⁸ Sima Holdings is a British Virgin Islands corporation that is beneficially owned by Mr. Volpi, his wife, and sons through a family trust.¹⁰⁴⁹

Mr. Volpi cooperated with the Subcommittee investigation by voluntarily answering a number of questions through his legal counsel.

B. Using Offshore Corporations To Bring Suspect Funds Into the United States

From 2000 to 2008, Mr. Abubakar and Ms. Douglas used a network of accounts at U.S. financial institutions to bring over \$40 million in suspect funds into the United States through multiple wire transfers supplied by offshore corporations located in Germany, Nigeria, Panama, the British Virgin Islands, and Switzerland. Nearly \$25 million of those funds were wire transferred to more than 30 U.S. bank accounts opened by Ms. Douglas in her own name or in the name of the Jennifer Douglas Abubakar Family Trust, the Gede Foundation, or American University of Nigeria (AUN). She opened 18 of those accounts at Citibank, four at Chevy Chase Bank, six at Wachovia Bank, and three at Eagle Bank in Maryland, among other financial institutions. These four banks opened accounts for Ms. Douglas in most cases without being aware of her PEP status, at times relying on third party vendors using incomplete PEP databases or inadequate due diligence procedures. Over time, as each financial institution began to ask questions about the offshore corporations sending her funds and decided to close her accounts, she opened new accounts at other financial institutions, at times with the assistance of her U.S. lawyer, Edward Weidenfeld. Mr. Weidenfeld also accepted \$3.4 million from offshore entities to pay the Abubakars’ legal bills and to fund an AUN account he opened at Suntrust Bank.

¹⁰⁴⁴ PSI-Volpi-02-0001-6 at 3.

¹⁰⁴⁵ Mr. Volpi’s legal counsel, January 12, 2010.

¹⁰⁴⁶ See, e.g., Visit-Montenegro.com, “The owners of ‘Pro Recco’ in the Bay of Kotor,” June 17, 2009, www.visit-montenegro.com/article-mne-21720.htm.

¹⁰⁴⁷ PSI-Volpi-02-0001-6 at 2.

¹⁰⁴⁸ Id.

¹⁰⁴⁹ Id.

To analyze these accounts and transactions, the Subcommittee subpoenaed documents from a number of U.S. financial institutions. In most cases, the Subcommittee obtained bank documents covering a five-year period, from 2003 to 2008, although it obtained records for some earlier transactions as well. The Subcommittee did not attempt to trace all of the funds that went into or out of the accounts discussed below, nor did the Subcommittee examine every U.S. bank account opened by Ms. Douglas.¹⁰⁵⁰ Instead, the Subcommittee focused its analysis on more than 30 accounts at five U.S. banks, as detailed below. The resulting analysis, while limited, shows how Mr. Abubakar and Ms. Douglas used offshore corporations to bring suspect funds into the United States and provides a conservative estimate of the amount of funds they actually introduced into the U.S. financial system to advance their interests.

(1) Citibank

From 2000 to 2007, Mr. Abubakar and Ms. Douglas opened 18 different accounts at Citibank in Potomac, Maryland, and brought nearly \$20 million in suspect funds into the United States through the bank. These accounts consisted of five personal checking accounts, five savings accounts, two brokerage accounts, a home equity account, three accounts in the name of the Gede Foundation, and two additional personal checking accounts that were later expanded to reference both Ms. Douglas and AUN.¹⁰⁵¹ Ms. Douglas also maintained four Citibank credit card accounts, three of which were for herself or her husband, and one of which was for the Gede Foundation. Over the nearly seven years these accounts were open, Ms. Douglas received multiple wire transfers totaling nearly \$20 million from Siemens AG, LetsGo, Guernsey Trust Company, Sima Holding, China Castle Investments, and a few unidentified “clients.” For most of the seven years, Citibank was unaware of Ms. Douglas’ PEP status. In 2007, Citibank learned of Ms. Douglas’ PEP status, and began closing her accounts. By August 2007, all of her accounts were closed.¹⁰⁵²

Initial Personal Accounts. Ms. Douglas opened her first two accounts with Citigroup on June 28, 2000, Checking Account No. 52096374 and Savings Account No. 52096382.¹⁰⁵³ In the account opening documentation, Ms. Douglas identified herself as a U.S. citizen residing in Maryland, and supplied a Social Security number.¹⁰⁵⁴ Citibank told the Subcommittee: “Nothing in Ms. Douglas’s initial application referenced or suggested that she had any connection to a foreign country or had a relationship with any foreign official. As a result, consistent with applicable law, Ms. Douglas was not considered to be a ‘politically exposed person’ or

¹⁰⁵⁰ For example, Ms. Douglas had two accounts at Riggs Bank from September 1999 through May 2005, Checking Account No. 24-776-946 and Money Market Account No. 64-838-355, which received over \$5.2 million in deposits. When PNC purchased Riggs Bank, it provided Ms. Douglas with a new account, No. 53-0100-7567, from May 2005 to May 2008, which received deposits totaling nearly \$1.1 million, including four \$100,000 wire transfers from the Guernsey Trust Company in Nigeria. See list of Douglas accounts prepared by her legal counsel and related wire transfer documentation, no bates number. The Subcommittee did not attempt to trace these funds or determine how they related to the accounts examined in this Report.

¹⁰⁵¹ See list of accounts, B00008784.

¹⁰⁵² 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0002. The Subcommittee’s subpoena to Citibank concerning the Ms. Douglas accounts was sent on July 5, 2007.

¹⁰⁵³ See list of accounts, B00008784; 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0001.

¹⁰⁵⁴ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0002.

‘PEP.’”¹⁰⁵⁵ During her seven years with Citibank, this initial personal checking account was the one that received the bulk of the wire transfers from offshore corporations.

Credit Card Accounts. Also in 2000, Ms. Douglas opened two personal CitiCard credit card accounts.¹⁰⁵⁶ One credit card account, opened in June 2000, listed both her and Mr. Abubakar as authorized signatories and identified Mr. Abubakar as her husband, but did not identify him as a foreign official.¹⁰⁵⁷ A second credit card account, opened in July 2000, also listed both her and Mr. Abubakar as authorized users, and was linked to a third credit card account held solely in Ms. Douglas’s name and for which Ms. Douglas was financially responsible.¹⁰⁵⁸ The first credit card account was closed in March 2005. The second remained open until all the Douglas-related accounts were closed in 2007. Citibank told the Subcommittee that these credit card accounts were “the only Citigroup accounts indentified to which Ms. Douglas’s husband had a direct connection.”¹⁰⁵⁹

Smith Barney Account. In June 2000 and January 2001, Ms. Douglas opened two brokerage accounts at Citibank’s affiliated broker-dealer, Smith Barney, Account No. 62H-07385 and Account No. 168-24253 (later renumbered 232-75087).¹⁰⁶⁰ The 2000 account was apparently never funded; the 2001 account was initially funded with a \$500,000 cashiers check and engaged in a number of investments, but did not grow substantially larger and essentially went dormant in September 2006.¹⁰⁶¹

Household Account. On August 8, 2001, Ms. Douglas opened a second personal checking account at Citibank, Checking Account No. 1209003581, which she deemed her “household account.”¹⁰⁶² At first, this checking account was linked to a high-yield savings account, IMMA No. 1208951651, which was initially funded with about \$50,000, and a Certificate of Deposit No. 1679323897, which was initially funded with about \$100,000.¹⁰⁶³ By late 2001, however, all the funds in the savings account and certificate of deposit, which then totaled about \$300,000, were withdrawn, and the household checking account continued on its own.¹⁰⁶⁴ Over the six years this account was open, Ms. Douglas wrote numerous checks each month to pay a variety of household expenses, relying primarily on deposits from her other accounts for funds and, beginning in 2004, on loans from a home equity account described below. Altogether in a month, Ms. Douglas wrote checks that totaled anywhere from \$10,000 to

¹⁰⁵⁵ Id. The 2001 Patriot Act, which is the key statute requiring enhanced due diligence of PEP accounts, was enacted a year after the first Douglas account was opened.

¹⁰⁵⁶ See list of accounts prepared by Citibank, B00008785; 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0004.

¹⁰⁵⁷ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0004.

¹⁰⁵⁸ See list of accounts, B00008785; 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0004.

¹⁰⁵⁹ Id.

¹⁰⁶⁰ Id., at PSI-Citi-34-0003. The 2001 account was later renumbered 232-7508715. List of accounts, B00008784.

¹⁰⁶¹ B00001920-21. Citigroup was unable to locate the cashiers check and believes it was kept at the World Trade Center and was destroyed on September 11, 2001. 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0003. Id., at 5.

¹⁰⁶² See list of accounts, B00008784; August 2001 account statement, B00007762-64.

¹⁰⁶³ See August 2001 account statement, B00007762-64.

¹⁰⁶⁴ See October-November 2001 account statement, B00007748.

\$90,000.¹⁰⁶⁵ This account remained open until all the Douglas-related accounts were closed in 2007.¹⁰⁶⁶

Home Equity Account. In April 2004, Ms. Douglas opened a home equity account at Citibank, Equity Source Account No. 7707591587.¹⁰⁶⁷ She used this account to obtain a line of credit from Citibank, secured by her Maryland residence.¹⁰⁶⁸ Her borrowings rose from about \$159,000 in April 2004, to more than \$350,000 during 2006 and 2007. Ms. Douglas told the Subcommittee she used these funds to support her “household and charitable activities.”¹⁰⁶⁹ Ms. Douglas made regular payments on the home equity loan from April 2004 until the account was closed in August 2007,¹⁰⁷⁰ paying a total of about \$975,000.¹⁰⁷¹ Ms. Douglas told the Subcommittee: “All monies used to make the repayments on the line of credit, as well as all monies used to pay her expenses, and to fund her contributions to AUN, GEDE Foundation, and American politicians and political groups, came from her husband.”¹⁰⁷²

Gede Foundation Accounts. In February and March 2002, Ms. Douglas opened three bank accounts in the name of the Gede Foundation Inc., Checking Account No. 17581251, Checking Account No. 17581366, and Savings Account No. 17581278.¹⁰⁷³ Six months later, in September 2002, the Foundation also received a Citicard credit card.¹⁰⁷⁴ The account opening documentation shows that Gede Foundation provided a copy of its certificate of incorporation, a W-8 BEN form, and a copy of Ms. Douglas’ Maryland driver’s license.¹⁰⁷⁵ Ms. Douglas provided “Abubakar” as her married name.¹⁰⁷⁶ Citibank told the Subcommittee that it later revised its policy towards nonprofit organizations to require more enhanced due diligence for organizations providing services outside of the United States.¹⁰⁷⁷

AUN Accounts. On April 4, 2005, Ms. Douglas opened Checking Account No. 1209739556, initially under her own name, but later, on an unspecified date, changed the account

¹⁰⁶⁵ See account statements from 2001 to 2007, B00007468-764.

¹⁰⁶⁶ See list of accounts, B00008784.

¹⁰⁶⁷ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0004.

¹⁰⁶⁸ 6/14/04 Citibank Deed of Trust, B 00007851-7860; see also 2/11/04 Citibank Account Agreement and Disclosure, B00008085-91.

¹⁰⁶⁹ 11/13/09 written response from Mr. Weidenfeld’s legal counsel to Subcommittee questions, PSI-Abubakar & Weidenfeld-01-0030.

¹⁰⁷⁰ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0004.

¹⁰⁷¹ Subcommittee interview of Citibank officials, April 24, 2009. See B00008796-99 for complete list of advances received by Ms. Douglas and payments made by Ms. Douglas.

¹⁰⁷² 11/13/09 written response from Mr. Weidenfeld’s legal counsel to Subcommittee questions, PSI-Abubakar_&_Weidenfeld-01-0019.

¹⁰⁷³ See list of accounts, B00008784.

¹⁰⁷⁴ Id.; B00001440-42.

¹⁰⁷⁵ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0002.

¹⁰⁷⁶ Id.

¹⁰⁷⁷ Id., at PSI-Citi-34-0003 (“If the Gede Foundation accounts had been opened after 2006, they would have been required to provide information relating to its purpose, the exact geographical area it serves, its organizational structure, its funding criteria, its affiliation with other entities, governments or groups, as well as its financial information including internal controls and audits. In addition, the entity and its principals would have been subject to background checks in World Check or a comparable database, which may have revealed further information about Ms. Douglas’s background.”).

name to “Jennifer Douglas/ABTI American University.”¹⁰⁷⁸ “ABTI American University” refers to AUN by an earlier name. Citibank told the Subcommittee that when Ms. Douglas added the university to the account, it should have been re-categorized as a business account, and that its continuing to operate as a personal account was “inconsistent with [Citibank] practice.”¹⁰⁷⁹

Seven months later, on January 13, 2006, Ms. Douglas opened another personal checking account that was also used by AUN, Checking Account No. 1208993341.¹⁰⁸⁰ This account initially referred solely to Ms. Douglas who was the only signatory.¹⁰⁸¹ Later, on an unspecified date, she changed the account name to: “Jennifer Douglas/ABTI-American University,” which again refers to AUN by an earlier name.¹⁰⁸² On February 27, 2006, Buford George Peterson, AUN’s Vice President of Finance and Administration,¹⁰⁸³ was added as a co-signatory on the account.¹⁰⁸⁴ In March 2006, the account name was changed a third time, to “Buford George Peterson/ABTI-American University.”¹⁰⁸⁵ Citibank told the Subcommittee that, like the first AUN account, “this account remained incorrectly categorized as a personal checking account following the title change.”¹⁰⁸⁶

Additional Personal Accounts. In 2005, Ms. Douglas opened five more personal accounts, three of which were opened for only a short period. The short-term accounts were Checking Account No. 1209739572, which Ms. Douglas opened on April 5 and closed six months later on October 31, 2005; and a Checking Account No. 1209763257 and savings account bearing the same identifying number, both of which were opened on May 12 and closed four months later in September 2005.¹⁰⁸⁷ These accounts held minimal funds. The two longer term accounts were Checking Account No. 1208896250 and Savings Account No. 1208896269, both of which were opened on September 22, 2005, and closed in 2007.¹⁰⁸⁸ The checking account held limited funds which were transferred over the course of six months to the Gede Foundation; the account then went dormant until it was closed. The savings account was opened in the name of Ms. Douglas and one of her sons. At times it had minimal funds, but from mid-2006 to mid-2007, a few large transfers went into and out of the account each month, involving \$100,000 to \$200,000 at a time.¹⁰⁸⁹

¹⁰⁷⁸ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0003. AUN opened its doors to students for the first time in September 2005.

¹⁰⁷⁹ *Id.*

¹⁰⁸⁰ See list of accounts prepared by Citibank, B00008784.

¹⁰⁸¹ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0003.

¹⁰⁸² *Id.*

¹⁰⁸³ See 9/21/06 internal American University memorandum, PAU0108924

¹⁰⁸⁴ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0003.

¹⁰⁸⁵ *Id.*

¹⁰⁸⁶ *Id.*

¹⁰⁸⁷ See list of accounts, B00008784. Citibank told the Subcommittee that the signature card for Account No. 1209763257 could not be located. 7/24/08 letter from Citibank to the Subcommittee, PSI-Citi-32-0001.

¹⁰⁸⁸ See list of accounts, B00008784.

¹⁰⁸⁹ See, e.g., May 2006 account statement, B00006085 (\$100,000 deposit); June 2006 account statement, B00006083 (\$100,000 deposit and \$200,000 in withdrawals); October 2006 account statement, B00006077 (\$130,000 in deposits); December 2006 account statement, B00006075 (\$200,000 deposit and \$75,000 in withdrawals).

Safe Deposit Boxes. In addition to her financial accounts at Citibank, in December 2001 and January 2004, Ms. Douglas opened two safe deposit boxes at the bank.¹⁰⁹⁰

Citibank Account Activity. From 2000 to 2007, Ms. Douglas accepted multiple large wire transfers into her accounts, totaling nearly \$20 million, from offshore corporations, including Siemens AG, LetsGo Ltd. Inc., Guernsey Trust Company Nigeria Ltd., Sima Holding Ltd., and China Castle Investments Ltd. Most of the incoming funds were wire transferred into her initial personal checking account. In 2001 and 2002, for example, Ms. Douglas accepted wire transfers totaling nearly \$2 million in suspect payments from Siemens AG. On January 30, 2003, she received a single wire transfer for \$500,000 from China Castle Investments. Citibank told the Subcommittee that it had no further information about this company and deemed the transfer “questionable.”¹⁰⁹¹ From 2003 to 2007, another \$17 million was wire transferred into her account by LetsGo Ltd., the Guernsey Trust Company, and Sima Holdings Ltd. Banking and credit card records show that, over the years, Ms. Douglas spent much of the money she received to support a lavish lifestyle as well as supporting the Gede Foundation and AUN.

Siemens Payments. As explained earlier, in December 2008, the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC) filed criminal and civil pleadings alleging that Siemens AG had violated the U.S. Foreign Corrupt Practices Act (FCPA) and engaged in a wide-ranging pattern of paying bribes to foreign officials to advance its interests in several countries.¹⁰⁹² Siemens pled guilty to violating the books and recordkeeping requirements of the FCPA.¹⁰⁹³ One provision in the SEC complaint alleged as follows:

“[A]pproximately \$2.8 million of the bribe payments was routed through a bank account in Potomac, Maryland, in the name of the wife of a former Nigerian Vice President. The Vice President’s wife, a dual U.S.-Nigerian citizen living in the United States, served as the representative of a business consultant that entered into fictitious business consultant agreements ... but did no actual work for Siemens. The purpose of these payments was to bribe government officials. Other corrupt payments included the purchase of approximately

¹⁰⁹⁰ See list of accounts, B00008784.

¹⁰⁹¹ See B00007059; 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0004. China Castle Investments did not appear again in the Douglas-related banking records.

¹⁰⁹² See United States v. Siemens Aktiengesellschaft, (USDC DC), Case No. Cr. 08-368 (Dec. 12, 2008); SEC v. Siemens Aktiengesellschaft, (USDC DC), Case No. 1:08-cv-02167-RJL (Dec. 12, 2008), Complaint. German authorities also filed charges. See also Department of Justice press release, “Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 in Combined Criminal Fines,” No. 08-1105 (Dec. 15, 2008) (DOJ Acting Assistant Attorney General said: “Today’s filings make clear that for much of its operations across the globe, bribery was nothing less than standard operating procedure for Siemens.” SEC Director of Enforcement said: “This pattern of bribery by Siemens was unprecedented in scale and geographic reach. The corruption involved more than \$1.4 billion in bribes to government officials in Asia, Africa, Europe, the Middle East and the Americas.”).

¹⁰⁹³ See United States v. Siemens Aktiengesellschaft, (USDC DC), Case No. Cr. 08-368 (Dec. 12, 2008), Information, Plea Offer; SEC v. Siemens Aktiengesellschaft, (USDC DC), Case No. 1:08-cv-02167-RJL (Dec. 12, 2008), Consent of Defendant Siemens Aktiengesellschaft; Department of Justice press release, “Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 in Combined Criminal Fines,” No. 08-1105 (Dec. 15, 2008).

\$172,000 in watches for Nigerian officials designated in internal Siemens records as ‘P.’ and ‘V.P.’, likely referring to the President and Vice President of Nigeria.”¹⁰⁹⁴

The Subcommittee contacted Siemens about this allegation and also reviewed the Citibank account records. The Subcommittee identified Citibank records showing three wire transfers from Siemens AG, in 2001 and 2002, that together provided over \$1.7 million to Ms. Douglas’ personal checking account at Citibank. This chart identifies those wire transfers.

Siemens Wire Transfers to Douglas Account at Citibank: 52096374			
Using Citibank Wire Transfer Records			
Wire Transfer Directed To	Date	Amount	Bates
J.E. Douglas	4/12/01	\$450,703.79	B00007975, B00007962-63, B00007972
J.E. Douglas	10/01/01	\$461,440.92	B00007979, B00007965-66
J.E Douglas Steradian Co. UK	1/28/02	\$860,500.00	B00007989, B00007968-69, B00007984
SOURCE: Citibank		\$1,772,644.71 - TOTAL	

Chart prepared by Subcommittee

When contacted by the Subcommittee, Siemens confirmed the information in the SEC complaint and said that the allegations in the complaint referred to payments made by the company to Ms. Douglas and to wire transfers sent to her checking account at Citibank in Potomac, Maryland.¹⁰⁹⁵ Siemens told the Subcommittee that it had asked an outside law firm, Debevoise & Plimpton, to conduct an independent investigation into corruption allegations, which included a review of the payments made by Siemens related to Ms. Douglas. Siemens told the Subcommittee that the law firm confirmed not only that Siemens AG had sent wire transfers to Ms. Douglas’ account at Citibank, but also that it had sent a wire transfer to her at another bank and made nearly \$2 million in additional cash payments to her over a three-year period, from 2000 to 2003. Siemens told the Subcommittee that those wire and cash payments had been made to “J.E. Douglas” or two companies she beneficially owned, “J.E Douglas Steradian Co. UK L,” or “Peniel Inc. UK Ltd.”

The Subcommittee contacted the SEC for additional information related to its complaint, but the SEC declined to elaborate due to an ongoing investigation into individuals involved in the Siemens misconduct.¹⁰⁹⁶ The Subcommittee also showed the Citibank wire transfers to Ms. Douglas’ legal counsel and requested an explanation of the \$1.7 million in wire transfers from Siemens to her account. Her legal counsel did not provide an explanation.

¹⁰⁹⁴ SEC v. Siemens Aktiengesellschaft, (USDC DC), Case No. 1:08-cv-02167-RJL (Dec. 12, 2008), Complaint, at paragraph 50.

¹⁰⁹⁵ Subcommittee interviews of Siemens AG officials, January 14 and 22, 2010.

¹⁰⁹⁶ Subcommittee interview of SEC officials, January 12, 2010.

Siemens Payment and Gede Foundation. According to Citibank records, one of the Siemens wire transfers for \$860,500 was deposited into Ms. Douglas' personal checking account on January 28, 2002. Three days earlier, on January 25, 2002, Ms. Douglas had formed the Gede Foundation Inc. as a nonprofit corporation under the laws of the District of Columbia.¹⁰⁹⁷ The Foundation articles of incorporation provide it with wide authority to pursue charitable causes.¹⁰⁹⁸ The Gede Foundation website states:

“Gede Foundation is a 501c (3) non-profit, non-governmental organization that works for the benefit of the people of Africa to restore to them the right to a sense of self worth, and a life of hope, health and happiness through programs that educate, promote healthy communities and help eliminate the stigma of illness.”¹⁰⁹⁹

Cynthia J. Ticao, a Phillipines national, is the Foundation's executive director and has been listed as an account signatory on the Gede Foundation accounts at Citibank.¹¹⁰⁰

On February 1, 2002, four days after receiving the \$860,500 from Siemens, Ms. Douglas transferred \$250,000 to a newly opened Gede Foundation account at Chevy Chase Bank, as described below. She also opened a Gede Foundation account at Citibank.

LetsGo, Guernsey Trust Company, and Sima Holding Payments. Over a four-year period from 2003 to 2007, Ms. Douglas also accepted nearly \$17 million in wire transfers from LetsGo, Guernsey Trust Company, and Sima Holdings into her Citibank accounts. As explained earlier, the Guernsey Trust Company is a Nigerian shell corporation that manages the Abubakar Blind Trust, while LetsGo and Sima Holdings are offshore corporations beneficially owned by Mr. Volpi and his relatives.

¹⁰⁹⁷ See 1/25/02 D.C. Certificate of Incorporation, B00006886. See also Gede account opening documentation, B00006884, 6904. Ms. Douglas is the Foundation's "founder, CEO, and president." See Gede Foundation website, <http://www.gedefoundation.org/>.

¹⁰⁹⁸ Id., at B00006887-92. Ms. Douglas' legal counsel told the Subcommittee that she founded the Gede Foundation "to provide services to HIV patients in Africa and to implement developmental programs there," and provided information showing that the Foundation had partnered with U.S., Nigerian, and international organizations to provide training, research, and health services in Nigeria. 11/13/09 letter from Ms. Douglas' legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0001-21, at 04-12.

¹⁰⁹⁹ Gede Foundation website, <http://www.gedefoundation.org/>.

¹¹⁰⁰ 2/1/02 Citibank Business & Professional Account Opening Form, B00006893.

Most of these funds, about \$10.4 million, were deposited into Ms. Douglas' initial personal checking account by LetsGo and the Guernsey Trust Company. These wire transfers, which arrived every month or two, provided large sums varying from \$50,000 to \$450,000 per payment. The following chart identifies those wire transfers.¹¹⁰¹

Wire Transfers from Offshore Corporations to Douglas Account at Citibank: 52096374					
From LetsGo Accounts at Wegelin & Co. and Banca Del Gottardo			From Guernsey Trust Company Account at Wegelin & Co.		
Date	Amount	Bates	Date	Amount	Bates
04/09/03	\$ 249,965	B 00007077	06/14/06	\$ 100,000	B 00007283
04/25/03	\$ 299,965	B 00007078	11/03/06	\$ 349,980	B 00000812
07/02/03	\$ 249,965	B 00007094	12/06/06	\$ 349,980	B 00000813
10/14/03	\$ 149,965	B 00007114	12/08/06	\$ 50,000	B 00000814
11/03/03	\$ 249,965	B 00007119	12/29/06	\$ 350,000	B 00000820
02/12/04	\$ 249,965	B 00007133	01/31/07	\$ 350,000	B 00000819
09/08/04	\$ 149,980	B 00007167	03/06/07	\$ 350,000	B 00000818
11/12/04	\$ 249,985	B 00007178	04/02/07	\$ 350,000	B 00000815
12/09/04	\$ 249,965	B 00007183	04/30/07	\$ 449,980	B 00000817
01/06/05	\$ 99,980	B 00007188	05/31/07	\$ 350,000	B 00000816
02/08/05	\$ 199,980	B 00007192	TOTAL: \$3,049,940		
03/10/05	\$ 199,980	B 00007197			
04/11/05	\$ 100,000	B 00007202			
05/09/05	\$ 275,000	B 00007207			
07/07/05	\$ 150,000	B 00007218			
07/12/05	\$ 100,000	B 00007219			
09/07/05	\$ 200,000	B 00007228			
10/11/05	\$ 250,000	B 00000978			
11/14/05	\$ 250,000	B 00007239			
12/05/05	\$ 450,000	B 00007245			
01/11/06	\$ 299,980	B 00007251			
02/21/06	\$ 300,000	B 00000979			
03/06/06	\$ 300,000	B 00000966			
04/03/06	\$ 300,000	B 00000958			
05/04/06	\$ 299,980	B 00007277			
06/01/06	\$ 300,000	B 00000957			
07/10/06	\$ 300,000	B 00000965			
08/04/06	\$ 300,000	B 00000975			
09/05/06	\$ 300,000	B 00000962			
10/05/06	\$ 350,000	B 00000956			
TOTAL: \$7,424,620					

Chart prepared by Subcommittee

¹¹⁰¹ In some cases, the deposited amounts reflect the subtraction of wire transfer or other fees.

Another \$5.5 million in wire transfers from LetsGo were deposited into the first Douglas/AUN checking account at Citibank. AUN first opened its doors to students in September 2005; these wire transfers began in mid-2005 and continued for the next two years, providing the account with a large sum every month or two, beginning with \$100,000 and eventually increasing to \$300,000 per payment. This chart identifies those wire transfers.

Wire Transfers from LetsGo Ltd. to Douglas/AUN Account at Citibank: 1209739556		
From LetsGo Account at Wegelin & Co.		
Date	Amount	Bates
05/09/05	\$100,000	B 00006533
06/07/05	\$100,000	B 00006529
09/07/05	\$150,000	B 00006520
10/06/05	\$150,000	B 00006515
11/14/05	\$150,000	B 00006510
01/11/06	\$150,000	B 00006499
02/21/06	\$150,000	B 00006496
03/07/06	\$200,000	B 00006491
04/03/06	\$200,000	B 00000959
05/04/06	\$300,000	B 00000954
06/01/06	\$300,000	B 00006481
07/10/06	\$300,000	B 00000953
08/08/06	\$300,000	B 00000967
09/05/06	\$300,000	B 00000964
10/05/06	\$300,000	B 00000955
11/03/06	\$300,000	B 00000977
12/06/06	\$300,000	B 00000974
12/29/06	\$300,000	B 00000976
01/31/07	\$300,000	B 00000972
03/05/07	\$300,000	B 00000960
04/03/07	\$300,000	B 00000970
05/03/07	\$300,000	B 00000963
05/31/07	\$300,000	B 00000969
SOURCE: Citibank	TOTAL: \$5,550,000	

Chart prepared by Subcommittee

In addition, from 2004 to 2005, Sima Holdings sent four wire transfers totaling nearly \$700,000 to Ms. Douglas. Most of these funds were deposited into her personal checking account, but also, on one occasion, provided funds to the Douglas/AUN account. This chart identifies those wire transfers.

Wire Transfers from Sima Holding Ltd. to Douglas and Douglas/AUN Accounts at Citibank			
Citibank Account No.	Date	Amount	Bates
52096374 (Douglas)	06/08/04	\$249,965	B 00007152
52096374 (Douglas)	06/08/05	\$100,000	B 00007213
52096374 (Douglas)	08/11/05	\$200,000	B 00007223
1209739556 (Douglas/AUN)	08/11/05	\$150,000	B 00006525
SOURCE: Citibank	TOTAL: \$699,965		

Chart prepared by Subcommittee

In addition to the wire transfers from these five offshore corporations, Ms. Douglas received several large wire transfers in 2003, totaling nearly \$500,000, from unidentified persons. This chart identifies those wire transfers.

Wire Transfers from Unidentified Originators to Douglas Account at Citibank: 52096374			
Originator of Wire	Date	Amount	Bates
"A Client"	02/06/03	\$184,970	B 00007064
"A Client"	02/14/03	\$159,970	B 00007065
"A Client"	02/21/03	\$154,970	B 00007065
SOURCE: Citibank		TOTAL: \$499,610	

Chart prepared by Subcommittee

Ms. Douglas used much of the offshore funds sent to her personal checking account to pay personal bills and expenses, including roughly \$50,000 per month in credit card bills, and \$20,000 to \$30,000 per month to the Weidenfeld law firm and her accountants, Penn, Schoen, Berland Associates. In early 2002, she also transferred funds to the Gede Foundation accounts at Citibank and Chevy Chase Bank. In addition, over five years, from the university's inception to the closing of her Citibank accounts, Ms. Douglas transferred a total of about \$763,000 to various American University and AUN accounts.

The following charts show the \$763,000 that Ms. Douglas transferred on behalf of AUN, including about \$330,000 that Ms. Douglas transferred from her Citibank personal checking account to an American University account at Chevy Chase Bank, and another \$47,000 from her personal checking account to an AUN account at Guaranty Trust Bank in Nigeria. In addition, she transferred about \$384,000 from the second Douglas/AUN account at Citibank to the AUN account at Guaranty Trust Bank in Nigeria.

Transfers from Douglas Personal Checking Account at Citibank: 52096374 to AUN Accounts					
To AU account at Chevy Chase Bank			To AUN account at Guaranty Trust Bank		
Date	Amount	Bates	Date	Amount	Bates
04/21/03	\$ 100,000.00	B 00007078	08/07/06	\$ 12,400.00	B 00007295
04/28/03	\$ 100,000.00	B 00000906	08/07/06	\$ 12,030.00	B 00007295
08/05/03	\$ 100,000.00	B 00000858	08/07/06	\$ 8,730.00	B 00007295
09/13/05	\$ 1,045.00	B 00007229	01/17/07	\$ 1,750.00	B 00007329
02/08/06	\$ 2,000.00	B 00007257	05/03/07	\$ 2,250.00	B 00007357
10/31/06	\$ 221.36	B 00007309	05/03/07	\$ 10,520.00	B 00007357
01/22/07	\$ 2,186.00	B 00007329	Source: Citibank		
05/04/07	\$ 26,000.00	B 00007357	TOTAL: \$47,680.00		
Source: Citibank		TOTAL: \$331,452.36			

Chart prepared by Subcommittee

Wire Transfers from Douglas/AUN account at Citibank: 1208993341 to AUN account at Guaranty Trust Bank		
Date	Amount	Bates
04/03/06	\$ 16,599.24	B 00006612
05/01/06	\$ 6,244.43	B 00006607
06/01/06	\$ 7,196.65	B 00006602
07/31/06	\$ 5,853.62	B 00006598
10/31/06	\$ 21,162.03	B 00006585
12/04/06	\$ 1,000.00	B 00006574
12/28/06	\$ 44,716.77	B 00006576
02/01/07	\$ 45,957.00	B 00006565
03/13/07	\$ 36,100.00	B 00006559
03/29/07	\$ 54,435.64	B 00006561
04/30/07	\$ 50,000.00	B 00000900
06/04/07	\$ 2,030.82	B 00006543
06/04/07	\$ 92,798.70	B 00000898
SOURCE: Citibank	TOTAL: \$384,094.90	

Chart prepared by Subcommittee

Account Concerns. Citigroup told the Subcommittee that it was aware of the offshore wire transfers going into the Douglas accounts and, at various points during the seven years the Douglas-related accounts were open, investigated specific transactions before deciding to close all the accounts in 2007.¹¹⁰²

One such account review took place in 2003, when LetsGo and China Castle Investments sent multiple wire transfers to Ms. Douglas' personal checking account totaling nearly \$1.7 million. Citibank told the Subcommittee that it had deemed these transactions "questionable."¹¹⁰³

At one point, Ms. Douglas provided an explanation of the source of the funds in her accounts in a letter that was retained in her Citibank account files.¹¹⁰⁴ In the letter dated November 21, 2003, addressed "To Whom It May Concern," Ms. Douglas wrote:

"I am stating exactly how I get my income. From Gede, I accept a minimal income of 1076.23, with an agreed yearly bonus of \$50,000.00, [sic] paid in [a] lump [sum] yearly after every fundraising. I receive a yearly maintenance income from spouse of \$500,000.00. Monthly dividends and interest from account excluding the Neuberger Berman account is \$1,657.50. I also have an investment trust fund with Neuberger Berman with a standing balance of 5 million dollars plus."¹¹⁰⁵

¹¹⁰² 3/19/09 Citibank's letter in response to Subcommittee questions, PSI-Citi-34-0004 (Citibank wrote: "Beginning in 2001 through 2007, Citigroup identified and investigated various issues in Ms. Douglas's accounts.").

¹¹⁰³ Id.

¹¹⁰⁴ 11/21/03 letter from Ms. Douglas addressed "To Whom It May Concern," B00007910.

¹¹⁰⁵ Id.

She also wrote that her home was valued at \$3 million, with no outstanding mortgage.¹¹⁰⁶ The Douglas letter did not provide any information, however, about the offshore corporations sending funds to her accounts or explain the source of the funds provided by her husband.

Three years later, in 2006, Citibank raised additional questions about the Douglas/AUN accounts. Citigroup told the Subcommittee that routine account monitoring had detected what appeared to be business activity in what was supposed to be Ms. Douglas' personal checking account, including wire transfers involving LetsGo and the Guernsey Trust Company.¹¹⁰⁷ Citigroup told the Subcommittee: “[B]usiness activity in a personal account raises questions because it is inconsistent with the information the customer provided the bank at the time of account opening.”¹¹⁰⁸

Citibank told the Subcommittee that it spoke with Ms. Douglas concerning the Douglas/AUN accounts and told her that she needed to open business accounts in order to continue conducting transactions involving AUN.¹¹⁰⁹ Citibank said Ms. Douglas “responded that she had tried to open a business account but was unable to do so because she lacked the proper documentation.”¹¹¹⁰

According to Citibank, in early 2007, it learned for the first time that Ms. Douglas was married to a foreign official.¹¹¹¹ Mr. Abubakar was then finishing his second term as Vice President of Nigeria. On April 2, 2007, Ms. Douglas wrote to two AUN and AU officials that “Citibank wrote to me requesting that I close the ABTI [AUN] account because it is a business account being run from an individual account. They requested the account be closed by April 17, but I am trying to get an extension to enable us [to] look elsewhere to open an account.”¹¹¹²

On April 9, 2007, a Citibank compliance officer wrote to the Citibank branch manager about the Douglas/AUN accounts as follows:

“[P]lease find out from customer what type of company/business is ‘Letsgo Limited Inc’ located in Panama and which has accounts with a bank in Switzerland. Also, what type of company is Guernsey Trust Company Nigeria. These two companies sent multiple large (\$300,000-) wire transfers to our customer’s account. We would like to thoroughly understand in what activities the customer is involved before we extend the close out and establish a new business account.”¹¹¹³

¹¹⁰⁶ Id.

¹¹⁰⁷ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0004. Citibank told the Subcommittee that it had not identified any transactions of concern involving Sima Holding Ltd. during investigations of Ms. Douglas’ accounts.

¹¹⁰⁸ Id.

¹¹⁰⁹ Id., at PSI-Citi-34-0005.

¹¹¹⁰ Id.

¹¹¹¹ Subcommittee interview of Citibank officials, April 24, 2009.

¹¹¹² 4/2/07 email from Ms. Douglas to American University, PAU107446.

¹¹¹³ 4/9/07 internal Citibank email, B00008102

The Citibank branch manager replied:

“I have spoken to Ms. Douglas and she has informed me that Letsgo Limited and Guernsey Trust are both oil services companies. Since her husband is the owner of both companies, and is a very public figure, the trust accounts run those businesses for him. In turn, the funds from both companies are used to pay the salaries for the teachers in the ABTI-American University account. Funds from those business[es] also go into her personal accounts as well. She has expressed a desire for her personal account to remain open, and has said she will move the ABTI-American University account elsewhere.”¹¹¹⁴

This Citibank email states that Ms. Douglas told the bank that LetsGo and Guernsey Trust Company were both owned by her husband. But LetsGo is beneficially owned by Mr. Volpi and his relatives, not by Mr. Abubakar. The Guernsey Trust Company manages the Abubakar Blind Trust, and the Subcommittee has been told that Mr. Abubakar was not and is not an owner of the company, although he is a beneficiary of the trust it manages.

In 2007, Citigroup decided to close not only the AUN accounts, but all of the accounts related to Ms. Douglas. It told the Subcommittee:

“Because the business activity in her personal account continued after that discussion [in 2006], and because in early 2007, CB was aware of Ms. Douglas’s status as the wife of the Vice President of Nigeria, as well as certain allegations surrounding Ms. Douglas and her husband, CB Compliance instructed the branch to close Ms. Douglas’s accounts.”¹¹¹⁵

In an undated internal document, Citibank expressed the following concerns with Ms. Douglas’ accounts: “Wires that originate from businesses where relationships with the customer cannot be established, followed by transfers of the funds between accounts that ultimately end in the funds being sent to various individuals and businesses appears suspicious.”¹¹¹⁶ In addition, an internal email dated August 10, 2007, from a Citibank fraud investigator stated:

“Suspicious activity with advances from employer directly to Citibank accounts (to pay out bonus income). Still need to probe into documents received to review the 500k received yearly maintenance income from spouse. At this time have not been able to locate the documentation to verify the spousal maintenance. Highly suspect that someone claiming 30k in income to the IRS could obtain a 2.7 million dollar home with no mortgages. Lifestyle of the borrower is not reflected on the tax returns.”¹¹¹⁷

Edward Weidenfeld, Ms. Douglas’ legal counsel, told the Subcommittee that, in the spring of 2007, he learned that the Citibank AUN accounts would be closed. He told the Subcommittee that he also learned at that time “that salaries of expatriate faculty and staff were

¹¹¹⁴ 4/16/07 internal Citibank email, B00008535-56.

¹¹¹⁵ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0005. On March 30, 2007, a Citibank Compliance Office, expressed concern about the “...sensitive nature of this closeout and the reputational risk it may cause.” See 3/30/07 internal Citibank email, B 00008106.

¹¹¹⁶ Undated internal Citibank document, B 00008425.

¹¹¹⁷ 8/10/07 internal Citibank email, B 00008369.

paid by wire transfer” from the Douglas/AUN Citibank accounts, and “without this or a similar account, the ability of AUN to retain and recruit non-Nigerian staff would be severely limited.”¹¹¹⁸ He said that on behalf of the Abubakars and AUN, he “engaged in intensive discussions urging AU to provide this payment facility for expatriate staff and faculty,” but “American University’s financial office would not open such an account because AU wanted to maintain the separate identities of each institution.”

Citibank told the Subcommittee that it ultimately gave Ms. Douglas additional time before closing the Douglas/AUN accounts, because Ms. Douglas was out of the country, and granting an extension would permit all account closings to occur at the same time.¹¹¹⁹ Citibank closed her checking and savings accounts by the end of June, and closed all remaining accounts by the end of August 2007.¹¹²⁰

(2) Chevy Chase

A year after opening accounts at Citibank, Ms. Douglas also opened one account at Chevy Chase Bank in Potomac, Maryland, and three accounts at Chevy Chase Trust Company, then a subsidiary of Chevy Chase Bank. These accounts were active for about seven years, from 2001 to 2008. Three of the accounts were opened in July 2001, as investment accounts for the Jennifer Douglas Abubakar (JDA) Family Trust. The account at the bank was opened six months later, in February 2002, for the Gede Foundation which had been formed the prior week. Chevy Chase Bank told the Subcommittee that it did not realize for five years that the two sets of accounts were related, since the JDA Family Trust accounts listed “Jennifer Douglas-Abubakar” as the trust beneficiary, while the Gede Foundation listed “Jennifer Douglas” as one of two account signatories. In addition, Chevy Chase Bank opened all of these accounts without being aware of Ms. Douglas’ PEP status.¹¹²¹ In 2004, after Chevy Chase Bank determined that Ms. Douglas qualified as a PEP client, it increased its monitoring of the JDA Family Trust account, but not the Gede Foundation account. It took another three years, until 2007, for the bank to realize that the Gede Foundation account was linked to the same Ms. Douglas.

None of the Chevy Chase accounts associated with Ms. Douglas received large wire transfers from offshore corporations as happened at other banks. The JDA Family Trust Account, for example, did not receive any new funds; it simply invested \$5 million in pre-existing trust proceeds. While the Gede Foundation did receive new funds, they came primarily from the Gede Foundation account at Citibank, and Chevy Chase Bank had no reason to know the Citibank Gede account was receiving funds that came from offshore corporations and the suspect Siemens payments.

¹¹¹⁸ 11/13/09 written response from Mr. Weidenfeld’s legal counsel to Subcommittee questions, PSI-Abubakar_ & Weidenfeld-01-0023.

¹¹¹⁹ 3/19/09 Citibank’s letter in response to Subcommittee questions, PSI-Citi-34-0005.

¹¹²⁰ Id.

¹¹²¹ At the time it opened the accounts in July 2001, Chevy Chase Bank verified that Ms. Douglas-Abubakar was a U.S. citizen and did not appear on the OFAC SDN list. 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0002. At that time, the Patriot Act of 2001 was not yet enacted into law, and its provisions calling for enhanced monitoring of PEP accounts would not become legal requirements until 2002.

In 2006, after hearing Ms. Douglas and her husband Mr. Abubakar mentioned in connection with the investigation of U.S. Congressman Jefferson, Chevy Chase Bank grew concerned about the source of funds in the JDA Family Trust account and decided to resign as trustee. Chevy Chase Trust Company told Ms. Douglas that it intended to close the account, but was persuaded by her and her lawyer to continue to hold the trust funds as a custodian until a new trustee was found – a process that took two years until 2008. In 2007, Chevy Chase Bank learned as a result of a Subcommittee inquiry, that Ms. Douglas also controlled the Gede Foundation account. The bank and the trust company closed all four Douglas-related accounts in 2008.

JDA Family Trust Accounts. According to a copy of the trust instrument in Chevy Chase Bank records, the JDA Family Trust was established in October 2000, by the Merrill Lynch Trust Company which served as the sole trustee and investment manager.¹¹²² The purpose of the trust was “to make gifts to Jennifer Douglas-Abubakar and her family, to promote the well being of those persons, to preserve and enhance their financial assets, and to offer a framework for family governance.”¹¹²³ Chevy Chase described the Trust internally as “designed to permanently move funds to a trust for the benefit of Ms. Douglas-Abubakar and her children” and to provide “a nest egg to protect Jennifer Douglas-Abubakar and her children from negative life events concerning Mr. Abubakar.”¹¹²⁴ According to Ms. Douglas, her husband provided the initial funding for the trust as a gift to her, and she used that money to fund the trust.¹¹²⁵

Ms. Douglas served as the Trust grantor, “protector,” and one of its beneficiaries.¹¹²⁶ The other beneficiaries were her children.¹¹²⁷ In her role as Trust Protector, Ms. Douglas was given authority to remove or replace the trustee. The trustee was given discretion to invest the trust funds and make trust distributions.¹¹²⁸ After Merrill Lynch apparently invested the trust funds aggressively and reduced the trust principal from \$6 million to \$5 million over six months, Ms. Douglas decided to find a new trustee, and to split the trustee and investment management functions.¹¹²⁹ On July 20, 2001, she removed Merrill Lynch and appointed Chevy Chase Trust Company as the replacement trustee.¹¹³⁰ Ms. Douglas had intended to appoint her brother, Francis Iwenjiora as a co-trustee along with Chevy Chase Trust Company, but he was apparently out of town, and was added as a co-trustee a year later on July 31, 2002.¹¹³¹ She also selected the

¹¹²² See 10/10/00 JDA Family Trust instrument, JD_000002-30; 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0002.

¹¹²³ 10/10/00 JDA Family Trust instrument, JD_000003.

¹¹²⁴ 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0007.

¹¹²⁵ 1/30/06 internal Chevy Chase Bank memorandum, JD_004360.

¹¹²⁶ 5/8/07 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-CL000001-5, at 3.

¹¹²⁷ 10/10/00 JDA Family Trust instrument, JD_000003.

¹¹²⁸ *Id.*

¹¹²⁹ See 8/18/04 internal Chevy Chase email discussing account, JD_004176.

¹¹³⁰ See “Revocation of Prior Appointment and New Appointment of Successor Co-Trustees,” JD_000218; “Removal of Trustee and Appointment of Successor Co-Trustees,” JD_000031. 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0002; 8/18/04 internal Merrill Lynch email, JD_004176.

¹¹³¹ 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0002.

Neuberger Berman Trust Company, which is associated with the Lehman Brothers, as the investment manager.¹¹³²

On July 25, 2001, the JDA Family Trust opened three investment accounts at Chevy Chase Trust Company:¹¹³³ Fixed Income Account No. CH200121; Value Equity Account No. CH200122; and Blend Equity Account No. CH200123.¹¹³⁴ During the time the trust accounts were at Chevy Chase, no new funds were added; the bank simply accepted the trust funds transferred from Merrill Lynch and allowed the Neuberger Berman Trust Company to determine the specific investments.

Gede Foundation Account. About six months later, on February 1, 2002, Ms. Douglas opened a commercial checking account at Chevy Chase Bank for the Gede Foundation, Checking Account No. 196430326-5.¹¹³⁵ The Gede Foundation had been formed the prior week under the laws of the District of Columbia. The account opening documentation listed two account signatories: Cynthia Ticao, the Gede Foundation executive director, and “Jennifer Douglas,” the Gede Foundation president.¹¹³⁶ Because Ms. Douglas did not use the name “Abubakar” when opening this account, Chevy Chase Bank apparently did not realize that she was the same person who had opened the JDA Family Trust account.

Ms. Douglas initially funded the Gede Foundation account with a \$250,000 check from her personal checking account at Citibank.¹¹³⁷ As shown in an earlier chart, three days earlier, on January 28, 2002, Ms. Douglas’ checking account had received a wire transfer in excess of \$860,000 from Siemens AG, a payment which was part of a pattern of bribery payments Siemens made to advance its business interests around the globe. The timing of this Siemens payment, followed by the wire transfer to the Gede Foundation account, suggests that the Foundation account was initially funded with suspect funds, but there would be no reason for Chevy Chase Bank to know the transfer was suspicious.

Over the next six years, from 2002 to 2008, Ms. Douglas provided a steady stream of wire transfers from her Gede Foundation account at Citibank, totaling at least \$535,000 altogether, to the Gede Foundation account at Chevy Chase Bank. Chevy Chase told the Subcommittee: “During the course of the [Gede Foundation] relationship, the account has been funded through a regular pattern of incoming wires that have averaged approximately two per month. Wire instruction information indicates that all incoming wires originated from a Gede Foundation account at Citibank.”¹¹³⁸ Because the funds were wire transferred from an account at another U.S. bank, Chevy Chase Bank did not know the true source of the funds, which came

¹¹³² See Chevy Chase memorandum about the JDA Family Trust, JD_000219; 10/26/01 letter from Neuberger Berman Trust Company to Ms. Douglas, JD_000221.

¹¹³³ 7/25/01 Chevy Chase Trust Account Acceptance Form, JD_000108-09.

¹¹³⁴ 5/8/07 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-CL000003. Several Chevy Chase managers then handled these accounts. Chevy Case Box 1, JD_000227-28 and , 241-42. See also 8/18/04 internal Chevy Chase email discussing account, JD_004176.

¹¹³⁵ See Chevy Chase Bank Signature Card, GF_000001.

¹¹³⁶ Id.

¹¹³⁷ Copy of Douglas personal check for \$250,000, GF_000002-03; Chevy Chase account statement, GF_000006.

¹¹³⁸ 5/8/07 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-CL000001-05, at 05.

either from offshore corporations or the suspect Siemens wire transfers. From 2002 to 2008, the account paid out a total of about \$215,000, with the largest single expenditure, about \$75,000, for a fundraising event at a hotel.

This chart identifies seven transactions involving \$50,000 or more involving the Gede Foundation account at Chevy Chase Bank.¹¹³⁹ After 2003, none of the wire transfers into or out of the account exceeded \$50,000.

Gede Foundation Account at Chevy Chase Bank				
Date	Amount	Originator	Beneficiary	Bates
2/1/02	\$250,000	Check from Douglas personal checking account at Citibank	Gede Foundation	GF_000002-03
9/15/03	\$50,000	Wire from Gede Foundation Citibank 17581366	Gede Foundation Chevy Chase	GF_000016-17
9/17/03	\$50,000	Wire from Gede Foundation Citibank 17581366	Gede Foundation Chevy Chase	GF_000018-19
9/18/03	\$60,000	Wire from Gede Foundation Citibank 17581366	Gede Foundation Chevy Chase	GF_000020-21
9/29/03	\$75,000	Check from Gede Foundation Chevy Chase	Marriott Wardman Park Hotel	GF_000026-27
10/08/03	\$50,000	Wire from Gede Foundation Citibank 17581366	Gede Foundation Chevy Chase	GF_000022-23
TOTAL: \$535,000		SOURCE: Chevy Chase Bank		

Chart created by Subcommittee

\$400,000 Loan. In early 2004, Ms. Douglas transferred \$400,000 from the JDA Family Trust account to her personal checking account at Citibank, describing it as a “loan” needed to fund charitable work in Nigeria. Ms. Douglas alerted the bank to her plans for the loan in a December 10, 2003 email sent to the Chevy Chase Trust Company:

“Just want to alert you of a possible withdrawal on the account. I am trying to open a HIV/AIDs center (that would incorporate testing, counseling, and HIV/AIDS awareness education) in Nigeria. ... I have applied to my bank for the loan. They have not turned me down but in the event they do, I will have to withdraw the sum of \$400,000 (four hundred thousand) to buy the equipments needed for the center. The monies will be returned as well.”¹¹⁴⁰

At first, Chevy Chase Trust Company expressed concern that the loan would be contrary to the terms of the JDA Family Trust. In a December 12, 2003 email, Chevy Chase wrote to Ms. Douglas:

“There are some issues I believe we should discuss regarding this matter. As you know, the JDA Family Trust was established to provide benefits for you and your family. The purpose of the withdrawal, as I understand it, is to fund a foundation to help people in need outside of your family. As wonderful a goal as that is, there are legal restrictions on the use of trust

¹¹³⁹ See 4/9/07 Chevy Chase wire transfer receipts, GF_000028-39; GF_000040-209.

¹¹⁴⁰ 12/10/03 email from Ms. Douglas to Chevy Chase Trust, JD_000255.

funds that may prevent us from making such a distribution. I am reviewing the trust language now to see what it says in that regard.”¹¹⁴¹

Ms. Douglas responded: “The money is a loan to me and I have a right to request that. I could have equally said that I need it to make a purchase for something. ... Kindly send the money to the account that I have suggested and consider it a loan to be repaid back.”¹¹⁴² She further stated that the money is for an “HIV/AIDS center (that would incorporate testing, counseling, and HIV/AIDS awareness education) in Nigeria. I need certain equipments for the center. While we have gotten over a million in funding, we need extra money to buy our equipments, until other promised funding comes in”).¹¹⁴³

Chevy Chase ultimately allowed the loan and provided Ms. Douglas with the funds. Chevy Chase noted that “the terms of the JDA Family Trust entitle Ms. Douglas-Abubakar to request the distribution of funds that are in her best interest,” and allow “a distribution ‘to acquire, begin or operate a business or to engage in a profession.’”¹¹⁴⁴ Chevy Chase reported that because Ms. Douglas-Abubakar’s “stated purpose for borrowing from the trust was to support a center she was running ... [a] loan for this purpose met the conditions of the trust.”¹¹⁴⁵

On January 10, 2004, Chevy Chase authorized the \$400,000 loan from the JDA Family Trust to Ms. Douglas.¹¹⁴⁶ On January 12, 2004, Ms. Douglas signed a promissory note promising to repay the loan.¹¹⁴⁷ On January 14, 2004, Chevy Chase sold funds from the trust investments, and then wire transferred \$400,000 from the JDA Family Trust account to Ms. Douglas’ personal checking account at Citibank. The \$400,000 was sent to her Citibank Account No. 52096374 in two installments, one transfer of \$280,000 on January 14, 2004,¹¹⁴⁸ and another for \$120,000 on January 21, 2004.¹¹⁴⁹ Ms. Douglas then transferred the funds from her account to the Gede Foundation account at Citibank, Account No. 17581366, with \$260,000 on January 15,¹¹⁵⁰ and \$120,000 January 21.¹¹⁵¹ It is unclear why she failed to transfer the loan proceeds directly from the JDA Family Trust account to the Gede Foundation account, and instead routed the funds first through her personal account.

Soon after receiving the funds, the Gede Foundation account at Citibank subsequently dispersed them by international wire transfer and check. On January 16, 2004, the Gede Citibank account wired out \$72,223, on January 22nd the account wired \$63,985.85, on January 26th the account wired \$81,208.07 and on January 26th the account wrote a check for \$135,981.¹¹⁵²

¹¹⁴¹ 12/12/03 email from Chevy Chase Trust to Ms. Douglas, JD_000253.

¹¹⁴² 12/12/03 email from Ms. Douglas to Chevy Chase Trust, JD_000257.

¹¹⁴³ 12/10/03 email from Ms. Douglas to Chevy Chase Trust, JD_000256.

¹¹⁴⁴ 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0006.

¹¹⁴⁵ Id.

¹¹⁴⁶ 1/10/04 Citibank loan authorization agreement from the JDA Family Trust, JD_000283.

¹¹⁴⁷ 12/12/04 “Non Negotiable Promissory Note,” JD_0000267-68.

¹¹⁴⁸ January 2004 Citibank account statement, B 00007129.

¹¹⁴⁹ 1/21/04 Citibank transaction record, B00000853.

¹¹⁵⁰ 1/15/04 Citibank transaction record, B00000854.

¹¹⁵¹ 1/21/04 Citibank transaction record, B00000853.

¹¹⁵² January 2004 Citibank Gede Account Statement, B00006040

Ten months later, in October 2004, Chevy Chase asked about the loan which had not been repaid. Ms. Douglas responded that she was “forcing to see about the repayment from the foundation for the loan they were given. Some of their grants didn’t come through yet because the studies will start next year so the grants are still on hold by the funding organization. But, it will be paid back.”¹¹⁵³ As of 2008, the loan had not yet been repaid.¹¹⁵⁴

PEP Status. For the first three years her accounts were open, from 2001 to 2004, Chevy Chase did not know that Ms. Douglas was a PEP client and did not provide enhanced monitoring of her accounts, in part because the Patriot Act’s PEP requirements were not in effect when the account was opened. When they did take effect in 2002, Chevy Chase initially rated the JDA Family Trust account as a “low risk account” that did not warrant enhanced monitoring, because the bank viewed irrevocable trusts as presenting few money laundering risks and no new funds were being added to the trust.¹¹⁵⁵

During the summer of 2004, a Chevy Chase associate general counsel asked several questions about the trust and requested biographical information for Mr. Abubakar.¹¹⁵⁶ Apparently, the bank quickly learned that Mr. Abubakar was then Vice President of Nigeria. In an August 18, 2004 memorandum, a Chevy Chase compliance officer wrote: “The Abubakar’s are PEPs, and with the exception of this account, no other account relationships exist with the Bank. This account is considered high risk.”¹¹⁵⁷ The memorandum did not mention the Gede Foundation account, because the bank had not realized at that point Ms. Douglas’ connection to that account.¹¹⁵⁸ The memorandum called for enhanced monitoring of the JDA Family Trust accounts “to ensure activity is normal and commensurate with the type of activity expected for the Trust. Source of funds should be clearly identified and evaluated for reasonableness.”¹¹⁵⁹ Later that same month, the bank officially designated Ms. Douglas, her children, and the JDA Family Trust as PEP clients due to their “association with a foreign political official,”¹¹⁶⁰ and assigned a “high risk” rating to the trust accounts.¹¹⁶¹

¹¹⁵³ 10/20/04 email from Ms. Douglas to Chevy Chase Bank, JD_000316.

¹¹⁵⁴ Subcommittee interview of Chevy Chase Bank officials, 7/18/08.

¹¹⁵⁵ 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0002. Chevy Chase noted that the Patriot Act regulations on Customer Identification Procedures, including with respect to trusts, did not go into effect until October 2003.

¹¹⁵⁶ *Id.*, at PSI-Chevy_Chase-06-0004.

¹¹⁵⁷ 8/18/04 internal Chevy Chase Bank memorandum, JD_004350.

¹¹⁵⁸ Chevy Chase told the Subcommittee: “The fact that Ms. Douglas-Abubakar used two different names prevented Chevy Chase Bank from tying the Gede Foundation account to the JDA Family Trust Account at Chevy Chase Trust.” 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0004.

¹¹⁵⁹ 8/18/04 internal Chevy Chase Bank memorandum, JD_004350.

¹¹⁶⁰ 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0003; see also PSI-Chevy_Chase-06-0001 (“Jennifer Douglas-Abubakar was identified as a PEP because she is the wife of Alhaji Atiku Abubakar, then Vice President of Nigeria.”).

¹¹⁶¹ 5/8/07 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-CL000004.

According to Chevy Chase, the accounts were then subjected to monthly monitoring to ensure the account activity was “normal and commensurate with that expected for the trust.”¹¹⁶² The first review took place in September 2004, with monthly reviews and reports to the Chevy Chase Trust Committee thereafter.¹¹⁶³

Account Concerns. For the next year, from 2004 to 2005, Chevy Chase Bank conducted enhanced monitoring of the JDA Family Trust account without incident. In late 2005, however, media reports began mentioning Mr. Abubakar in connection with the ongoing criminal investigation of Congressman Jefferson. After learning of these media reports, the trust company decided to resign as trustee from the JDA Family Trust and close the trust accounts.

An internal Chevy Chase Trust Company memorandum dated January 30, 2006, recommended resigning from the JDA Family Trust for the following reasons:

- “ 1) Mr. Abubakar’s source of wealth is impractical to verify. Under the US PATRIOT Act, Chevy Chase Trust is obligated to conduct enhanced due diligence on its high risk accounts. Since Politically Exposed Persons (PEPs) are high risk, Chevy Chase Trust must develop a reasonable belief that the source of funds is not derived from illegal activities. Obtaining sufficient proof in Mr. Abubakar’s situation may not be possible. Failure to adequately document the source of funds for this relationship would increase the regulatory risk to the Trust Company.
- 2) The ongoing criminal investigation of Rep. William Jefferson could spread to Mr. Abubakar and his wife. If she were to be indicted, Chevy Chase Trust would be serving as co-trustee with person involved in suspected bribery of a US public official. Given the high degree of media that these cases are receiving currently, Chevy Chase Trust could be at increased reputation risk.”¹¹⁶⁴

With regard to the source of the trust funds, Chevy Chase noted that it “understood that Abubakar family wealth, principally that of Alhaji Atiku Abubakar, was the source of funds for the JDA Family Trust when it was established at Merrill Lynch.”¹¹⁶⁵ Chevy Chase noted that the trust had been fully funded prior to its coming to the bank, and thus Chevy Chase “did not undertake additional efforts to identify the source of funds in the account.”¹¹⁶⁶ The memorandum also noted:

“Prior to becoming Vice President, Mr. Abubakar was the chairman of seven Nigerian companies involved in oil services, insurance, pharmaceuticals, agriculture and the print media. From 1969 to 1989, he served in the Nigerian Customs and Excise service.

¹¹⁶² Id.

¹¹⁶³ 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0003.

¹¹⁶⁴ 1/30/06 internal Chevy Chase Trust memorandum, JD_004360-61; see also 5/8/07 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-CL000004; 1/30/06 internal Chevy Chase Trust memorandum, JD_000208-10.

¹¹⁶⁵ 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0003.

¹¹⁶⁶ Id.

Given the business practices that existed in Nigeria over this timeframe, the ability of the [Chevy Chase] Trust company to determine that his wealth was achieved through legal means is suspect.”¹¹⁶⁷

On January 20, 2006, Chevy Chase sent a letter to Ms. Douglas’ legal counsel, Edward Weidenfeld, resigning from the trust. The letter stated: “It is with sincere regret that I advise you, as we discussed on the phone this morning, that we must resign as Trustee of the JDA Family Trust. As I discussed the new regulatory obligations imposed on the Bank by the federal government are so onerous that the Bank has chosen not to continue the relationship.” The letter offered “a reasonable time to you to locate a successor and work with the successor to effect a smooth transition”¹¹⁶⁸

Five months later, in May 2006, Chevy Chase Bank also became concerned about the Gede Foundation account. By then, the bank had made the connection between the Foundation and Ms. Douglas.¹¹⁶⁹ Chevy Chase Bank told the Subcommittee that one of the Trust Department’s compliance officers read news accounts of the FBI search of Congressman Jefferson’s home and offices, found a copy of the search warrant, and noticed that it referenced possible use of a charitable foundation in the wrongdoing:

“While Chevy Chase Trust’s monthly monitoring continued to show no unusual activity in the JDA Family Trust accounts, the Trust Compliance Officer, through online searching was able to obtain a redacted copy of the search warrant. According to the search warrant, a confidential witness revealed that Representative Jefferson intended to funnel monetary bribes to the confidential witness, and ultimately to Nigerian officials through a charitable foundation. The Trust Compliance Officer became concerned that that [sic] the charitable foundation in question could have been the Gede Foundation and the JDA Family trust loan to Jennifer Douglas Abubakar could have been connected to the scheme. However, a review of account activity, monthly statements, and checks issued by the Gede Foundation showed no activity that indicated that the Gede Foundation was the recipient of the loan funds issued by the JDA Family Trust or that distributions were made from the Gede Foundation to Representative Jefferson or to other parties listed on the Subpoena. All disbursements and other transactions of \$50,000 or more reflected in the JDA Trust Account records are associated with securities purchases or sales, or are consistent with Chevy Chase Trust’s role under the Trust agreement.”¹¹⁷⁰

Closing the Accounts. Chevy Chase told the Subcommittee that, even though the Gede Foundation account “did not trigger any alerts for unusual activity” and “had no indications of improper activity,” the bank decided to close the account in May 2007.¹¹⁷¹ Mr. Weidenfeld told

¹¹⁶⁷ 1/30/06 internal Chevy Chase Trust memorandum, JD_004359.

¹¹⁶⁸ 1/20/06 letter from Chevy Chase Bank to Mr. Weidenfeld, JD_000205.

¹¹⁶⁹ Chevy Chase Bank told the Subcommittee that it did not make this connection until receiving a Subcommittee inquiry about both the Foundation and Ms. Douglas in 2007, but the 2006 bank documents show that at least some bank officials had made the connection a year earlier.

¹¹⁷⁰ 5/8/07 letter from Chevy Chase’s legal counsel to the Subcommittee, PSI-Chevy_Chase-000003-05.

¹¹⁷¹ 9/5/08 letter from Chevy Chase Bank’s legal counsel, Mayer Brown, to the Subcommittee, PSI-Chevy_Chase-06-0004

the Subcommittee that he surmised the Gede Foundation account was closed due to its association with Ms. Douglas.¹¹⁷²

Chevy Chase told the Subcommittee that it tendered its resignation from the JDA Family Trust in January 2006, and intended to close the account soon after, but Mr. Weidenfeld had informed Chevy Chase that he was having a difficult time finding a replacement trustee.¹¹⁷³ Mr. Weidenfeld told the Subcommittee that he contacted the following institutions which declined to take the trust: PNC Bank, Ashbridge Investments, J.P. Morgan Private Bank, Samson Capital in New York, Neville Rody and Shaw, and Papamarkou Asset Management in New York City, before finding a company that would take the trust.¹¹⁷⁴ An internal Chevy Chase email noted: “At least five foreign financial institutions with no presence in the United States have refused to take this business.”¹¹⁷⁵ Chevy Chase told the Subcommittee: “Under principles of trust law, Chevy Chase Trust had a duty to continue as the corporate trustee until a replacement trustee was found or Jennifer Douglas Abubakar and Francis Iwenjiora exercised their powers under the trust to remove Chevy Chase Trust.”¹¹⁷⁶

\$500,000 Wire Transfer to Faibros Investments. More than a year and a half after Chevy Chase tendered its resignation from the JDA Family Trust and while the search for a new trustee continued, a JDA Family Trust request for a \$500,000 wire transfer raised new concerns at the bank. In September 2007, the JDA Family Trust requested a wire transfer of \$500,000 to Faibros Investments FZ-LLC in Dubai, one of the United Arab Emirates.¹¹⁷⁷ In a September 17, 2007 letter to Ms. Douglas’ legal counsel, the Chevy Chase Trust Company declined to complete the wire transfer. The Trust Company wrote:

“[O]ur primary business is the investment management of individual’s wealth. We do have trust powers and serve as a fiduciary primarily for our clients for whom we manage their investments. In a few limited circumstances we serve as directed trustee where another entity, well known to us, is the investment manager.”¹¹⁷⁸

¹¹⁷² 11/13/09 letter from Mr. Weidenfeld’s legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0030

¹¹⁷³ 9/5/08 letter from Chevy Chase’s legal counsel to the Subcommittee, PSI-Chevy_Chase-06-0001-07, at 05. Mr. Weidenfeld’s legal counsel also told the Subcommittee: “With the Citibank account closing, a replacement facility was urgently required. At approximately the same time, Chevy Chase Bank gave notice it would no longer serve as trustee for the Jennifer Douglas Family Trust (‘the JDA trust’), and the money manager for the JDA trust announced their intention to resign. The Abubakars requested that Mr. Weidenfeld find a new money manager, as well as a new trustee to replace Chevy Chase.” 11/13/09 letter from Mr. Weidenfeld’s legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0023.

¹¹⁷⁴ 11/13/09 letter from Mr. Weidenfeld’s legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0024.

¹¹⁷⁵ 11/29/07 email among Chevy Chase officials, JD_005785-86.

¹¹⁷⁶ 9/5/08 letter from Chevy Chase’s legal counsel to the Subcommittee, PSI-Chevy_Chase-06-0005; see also 5/8/07 letter from Chevy Chase’s legal counsel to the Subcommittee, PSI-Chevy_Chase-CL000004; 10/10/00 JDA Family Trust instrument, JD_000012.

¹¹⁷⁷ See JD_005474-75 for letter from Francis Iwonjora and Jennifer Ms. Douglas Abubakar requesting that \$500,000 be transferred from the trust to Fabros Investments FZ LLC in Dubai UAE. Iwonjora is Douglas’ brother. 11/13/09 letter from Mr. Weidenfeld’s legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld -01-0019.

¹¹⁷⁸ 9/14/07 letter from Chevy Chase Bank to Mr. Weidenfeld, JD_005476-77.

In response, on September 18, 2007, Ms. Douglas and her brother, Mr. Iwenjiora, sent a letter to Chevy Chase removing it as trustee, appointing Mr. Iwenjiora as the sole trustee, and authorizing the \$500,000 transfer to Faibros Investments.¹¹⁷⁹ An internal email shows that Chevy Chase personnel considered the transfer suspicious:

“a) The investment is to an offshore investment with no public information available, and b) The investment appears to be inconsistent with the purpose of the trust. The trust is designed to be a nest-egg to protect an American citizen and her children. To have an illiquid, offshore investment that makes up approximately 7% of the trust would be unusual for a relationship this size and it is not consistent with the prior history of this relationship.”¹¹⁸⁰

Despite these concerns, on September 27, 2007, Chevy Chase wire transferred the \$500,000 to Faibros Investments and continued to maintain the trust account.¹¹⁸¹

When asked about this transfer, Ms. Douglas told the Subcommittee through legal counsel that she was the beneficial owner of Faibros Investments, that the company had been created to invest in property, and the \$500,000 transfer was to fund an investment.¹¹⁸² Mr. Weidenfeld’s legal counsel told the Subcommittee that “he understood that the transfer was for the purpose of funding an investment, and he believes, though he is not certain, that he understood that the investment was in Dubai. In general, he recalls strongly urging Chevy Chase to make the transfer because he believed Mrs. Abubakar was being unfairly treated as a result of the Jefferson investigation.”¹¹⁸³ The Subcommittee understands that Ms. Douglas now resides primarily in Sharjah, a UAE emirate adjoining Dubai, where she works as a professor at American University of Sharjah.

Six months later, in May of 2008, Lynx Investment Services in Washington D.C. apparently agreed to serve as a trustee of the JDA Family Trust.¹¹⁸⁴ In June 2008, the JDA Family Trust was transferred to Fidelity Investments.¹¹⁸⁵ Chevy Chase told the Subcommittee that, at the time of transfer, the \$400,000 loan made four years earlier, in 2004, had still not been repaid.¹¹⁸⁶

(3) Wachovia Bank

After Chevy Chase Bank and Chevy Chase Trust Company indicated, in January 2006 and mid-2007, that they would close the JDA Family Trust and Gede Foundation accounts and, in the summer of 2007, Citibank indicated it would close all of its Douglas-related accounts, Ms. Douglas used the assistance of her legal counsel, Mr. Weidenfeld, to open six new accounts at

¹¹⁷⁹ 9/18/07 letter from Ms. Douglas and Mr. Iwenjiora to Chevy Chase Bank, JD_005483-84.

¹¹⁸⁰ 9/25/07 internal Chevy Chase Bank email, JD_005703-06.

¹¹⁸¹ 9/27/07 email from Chevy Chase Bank to Mr. Weidenfeld, JD_005471, and 9/20/07 email from Chevy Chase Bank to Mr. Weidenfeld, JD_005473.

¹¹⁸² 11/13/09 letter from Mr. Weidenfeld’s legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0019.

¹¹⁸³ *Id.*, at 29.

¹¹⁸⁴ *Id.*, at 23.

¹¹⁸⁵ Subcommittee interview of Chevy Chase Bank officials, July 18, 2008. See also PSI-Chevy_Chase-06-0005.

¹¹⁸⁶ Subcommittee interview of Chevy Chase Bank officials, July 18, 2008.

Wachovia Bank in Potomac, Maryland. She went to Wachovia Bank in part because American University was a longstanding client at the bank, and Mr. Weidenfeld was well known to bank officials and willing to speak on her behalf. In July 2007, Ms. Douglas was able to open two personal checking accounts, two checking accounts for the Gede Foundation, one checking account for AUN, and a personal money market account.

Wachovia opened all of the Douglas-related accounts without designating her as a PEP client, even though Mr. Weidenfeld had described her husband as the recent vice president of Nigeria, and the bank itself had conducted multiple PEP screenings. Over a seven-month period from July 2007 to February 2008, Ms. Douglas used the Wachovia accounts to bring \$4.2 million in suspect funds into the United States from the same offshore corporations that caused her accounts to be closed at Citibank. The Guernsey Trust Company, for example, wire transferred \$2.4 million into Ms. Douglas' personal checking account at Wachovia, while LetsGo wire transferred \$1.8 million into the AUN account at Wachovia. After detecting the wire transfers, raising concerns about the source of the funds, and concluding that the accounts were involved in suspicious transactions, Wachovia closed the accounts seven months after they were opened.

Weidenfeld Assistance. Mr. Weidenfeld, made the initial contact with Wachovia Bank regarding opening accounts for Ms. Douglas. In early May, he telephoned the head of Wachovia DC Wealth Management office and informed him that Ms. Douglas was seeking to open accounts at the bank.¹¹⁸⁷ Notes taken by the DC wealth manager regarding the conversation show that Mr. Weidenfeld explicitly disclosed that Ms. Douglas was married to Atiku Abubakar, who was then in the process of leaving office as Vice President of Nigeria.¹¹⁸⁸ The notes also contain a reference to "money in the freezer." The Wachovia DC wealth manager indicated that he did not recall why he wrote that phrase,¹¹⁸⁹ but it suggests that Mr. Weidenfeld discussed the ongoing criminal investigation of Congressman Jefferson, news reports indicating that cash had been found in his freezer, and news reports linking the Congressman to Mr. Abubakar and his wife. In addition, the notes indicate that Mr. Weidenfeld told the bank that Ms. Douglas would like to open an account for her family trust and move the trust's assets, then about \$7 million, from Chevy Chase Bank to Wachovia.

After the conversation, Mr. Weidenfeld sent a letter to Wachovia on behalf of Ms. Douglas, attesting to her character and recommending that Wachovia open accounts for her.¹¹⁹⁰ Mr. Weidenfeld wrote: "Mrs. Abubakar received her doctorate degree from American University two weeks ago and has received a fellowship at AU for the fall. She is a United States citizen married to a non-resident named Atiku Abubakar. Atiku Abubakar is also a friend. Until last month he was the Vice President of Nigeria."¹¹⁹¹

Account Opening. Soon after speaking with Mr. Weidenfeld, the Wachovia DC wealth manager initiated the process of opening an account for Ms. Douglas. He assigned to an

¹¹⁸⁷ Subcommittee interview of Wachovia officials, September 8, 2008; 6/8/07 email from Mr. Weidenfeld to Wachovia, JD-A-00026.

¹¹⁸⁸ Subcommittee interview of Wachovia officials, September 8, 2008.

¹¹⁸⁹ Id.

¹¹⁹⁰ 6/8/07 letter from Mr. Weidenfeld to Wachovia, JD-A-00026-27.

¹¹⁹¹ Id.

assistant the task of entering her information into the Wachovia record keeping system. He also contacted a Wachovia compliance officer about the account, relayed the fact that Ms. Douglas was married to former Vice-President Abubakar, and asked whether Wachovia would be able to open the account.¹¹⁹² He indicated that the compliance officer said she was unsure and would look into it. The compliance officer confirmed that she spoke with the DC wealth manager regarding whether or not the account should be opened, but undertook no additional due diligence prior to the opening of the account.¹¹⁹³

Although Mr. Weidenfeld told the bank orally and in writing that Ms. Douglas was married to the former vice president of Nigeria, the bank did not classify her as a PEP client in the account opening documentation. According to Wachovia, the DC wealth manager claimed that he had informed his assistant about her marriage to Mr. Abubakar, while the assistant claimed that he did not recall being told of any connection between Ms. Douglas and Mr. Abubakar.¹¹⁹⁴ When completing the account opening documentation, the assistant checked “none of the above” in the PEP profile portion of the form, and checked “Medium Priority” rather than “High Risk” in the Risk Assessment portion of the form.¹¹⁹⁵ Wachovia told the Subcommittee that the assistant should have entered Ms. Douglas into its system as a PEP client.¹¹⁹⁶

Once the account opening forms were completed, the next step in the process was for Wachovia to conduct a due diligence review of Ms. Douglas. According to Wachovia, the Wealth Management Group employed a third party vendor, CDC, to perform due diligence reviews of all its prospective clients. Among other steps, CDC screens potential clients against a Factiva database, which includes a list of political figures, to determine whether or not a potential customer is a PEP or PEP associate. On May 7, 2007, the assistant completed a Request for Enhanced Due Diligence form for Ms. Douglas,¹¹⁹⁷ and CDC crosschecked her name against the Factiva database, but failed to identify her as a PEP.

Wachovia told the Subcommittee that when it later asked CDC why it had failed to identify Ms. Douglas as a PEP, CDC indicated that it had been identifying individuals as PEPs only if an individual was the primary focus of a press article, and Ms. Douglas had not met that criterion.¹¹⁹⁸ As a result of the Douglas incident, Wachovia told the Subcommittee that CDC had changed its policy and is now identifying individuals as PEPs even if an individual is not the primary focus but is mentioned in a press article. In addition, according to Wachovia, CDC did not conduct a search for negative press articles with regard to Ms. Douglas when it performed its due diligence review and so did not find the articles linking her to the investigation of

¹¹⁹² Subcommittee interview Wachovia officials, September 8, 2008.

¹¹⁹³ Undated JDA Family Trust Documentation, JD_000001.

¹¹⁹⁴ Subcommittee interview of Wachovia officials, September 8, 2008.

¹¹⁹⁵ Contacts Rolodex screen, JD-A-00013.

¹¹⁹⁶ Wachovia told the Subcommittee that, as a result of Ms. Douglas not being initially identified as a PEP by the Wachovia Wealth Management Group, the DC wealth manager was held responsible for the actions of the DC Wealth Management office, received a written warning, lost his position as head of the office, and may be penalized monetarily. Wachovia also reported that DC Wealth Management office personnel would be given additional training. Subcommittee interview of Wachovia officials, September 8, 2008.

¹¹⁹⁷ 5/07/07 Wachovia Request for Enhanced Due Diligence, JD-A-00016.

¹¹⁹⁸ Subcommittee interview of Wachovia officials, September 8, 2008.

Congressman Jefferson. Wachovia told the Subcommittee that problem had been corrected, and such a search was now done on a routine basis for all clients undergoing a CDC due diligence review.

Personal Checking Accounts. On May 11, 2007, Ms. Douglas met in person with the DC wealth manager at a Wachovia branch in Potomac, Maryland.¹¹⁹⁹ According to Wachovia, she indicated interest in opening several accounts, including a personal checking account, an account for a family trust with \$3 to \$6 million in assets, and a checking account for the Gede Foundation.

As a first step, in accordance with Ms. Douglas' request, Wachovia opened a personal checking account for her on that day, May 11, 2007, Account No. 1010122288618.¹²⁰⁰ Wachovia opened a second personal checking account for her a few days later on May 14, 2007, Account No. 1010122288621.¹²⁰¹ Both accounts were opened through the General Bank Group (GBG) at Wachovia, which handles checking and savings accounts, rather than the Wealth Management Group which handles trust accounts.

When it opened the two accounts, the General Bank Group conducted an additional due diligence review of Ms. Douglas. It required Ms. Douglas to complete account opening documentation in which she described her employment as "housewife."¹²⁰² The documentation did not identify her as a PEP client. Wachovia told the Subcommittee that the DC wealth manager claimed he had told the Potomac branch regional manager that Ms. Douglas was married to Mr. Abubakar, but the bank was unable to confirm that claim because the manager had left the bank.¹²⁰³ GBG also routinely subjected new accounts to a third party vendor, Bridger Insight, which screened client names against a Bridger Insight database that included FBI, CIA, and Interpol lists of foreign officials, but not lists of foreign officials' family members.¹²⁰⁴ That screening, like the Factiva screening by the DC Wealth Management office, failed to identify Ms. Douglas as a PEP. Her checking accounts were thus not subjected to any enhanced monitoring.

Ms. Douglas funded the first checking account with an initial cash deposit of \$100.¹²⁰⁵ She opened the second with a zero balance and, two weeks later, deposited a Citibank cashiers check with the funds from several of her closed Citibank accounts totaling nearly \$182,000.¹²⁰⁶ Over the next seven months, the Guernsey Trust Company wire transferred about \$1.8 million into the first personal checking account.¹²⁰⁷

¹¹⁹⁹ Id.

¹²⁰⁰ 5/11/07 Wachovia Customer Access Agreement, GF-F-00026.

¹²⁰¹ See 5/14/07-6/07/07 Wachovia Account Statement, JD-D-00022.

¹²⁰² Contacts Rolodex screen, JD-A-00013.

¹²⁰³ Subcommittee interview of Wachovia officials, September 8, 2008.

¹²⁰⁴ Id.

¹²⁰⁵ 5/11/07-6/11/07 Wachovia Account Statement, JD-D-00001.

¹²⁰⁶ See 5/14/07-6/07/07 Wachovia Account Statement, JD-D-00022; copy of Citibank Official Check deposited into Douglas account on June 1, 2007, JD-F-00082.

¹²⁰⁷ See below for a chart that details these wire transfers.

Gede Foundation. A month after opening her personal checking accounts, on June 11, 2007, Ms. Douglas opened two checking accounts in the name of the Gede Foundation with the DC Wachovia Wealth Management office. The first was designated Gede Foundation Expense Account No. 2000024527130, and the second as Gede Foundation Donation Account No. 2000024527143.¹²⁰⁸

On the account opening documentation, Ms. Douglas was listed as the President, Cynthia J. Ticao was listed as the Executive Director, and Yoku Shaw-Taylor was listed as the Director.¹²⁰⁹ These three individuals were also signatories for the account.¹²¹⁰ A 2007 Wachovia know-your-customer form estimated that the Gede Foundation then had total assets of \$5 to \$10 million, which came from “tax deductible contributions from individuals and businesses as well as corporate grants.” It also stated that the account’s initial funding came from a Gede Foundation account at Citibank.¹²¹¹

On June 5, 2007, prior to opening the account, Wachovia’s DC Wealth Management office submitted an Enhanced Due Diligence request to its third party vendor, CDC, for the Gede Foundation.¹²¹² The CDC crosschecked the names of the three signatories against its Factiva database but, once again, did not identify any as a PEP and did not report any negative news with regard to any of the three individuals or the Gede Foundation itself.¹²¹³

Wachovia opened the two checking accounts, and, on June 11, 2007, Ms. Douglas funded both accounts primarily using a Citibank cashiers check for \$66,800.45, which deposited funds from the closed Gede Foundation account at Citibank. She deposited about \$56,000 into the Expense Account and about \$13,000 into the Donation Account.¹²¹⁴

AUN Account. A month after opening the Gede Foundation accounts, on July 23, 2007, Ms. Douglas opened a fifth account at Wachovia, this one in the name of the American University of Nigeria (AUN), Checking Account No. 2000028808282.¹²¹⁵ The account opening documentation listed two signatories: Ms. Douglas Abubakar and Edward Weidenfeld. The account address was that of the Weidenfeld law firm.¹²¹⁶ By this point, Mr. Weidenfeld was providing legal representation to AUN as well as the Abubakars.¹²¹⁷

¹²⁰⁸ See 6/11/07-6/29/07 Gede Foundation Expense Account summary, GF-D-00001; 6/11/07-6/29/07 Gede Foundation Donation Account summary, GF-D-00017.

¹²⁰⁹ 6/1/07 Wachovia Deposit Account Application, GF-F-00054.

¹²¹⁰ 6/1/07 Wachovia Depository Authorization and Agreement Certificate, GF A 00040.

¹²¹¹ Undated Wachovia form entitled, “Contact Source of Wealth,” GF-A-00005.

¹²¹² 6/5/07 Request for Enhanced Due Diligence on Gede Foundation, GF-F-00282-85.

¹²¹³ 6/6/07 Gede Foundation Enhanced Due Diligence results, GF-A-00008 (no negative news reported); 6/6/07 Gede Foundation EDD results for all associated contacts (Jennifer Douglas, Yoku Shaw-Taylor, Cynthia Ticao), GF-A-00042-44, (no PEP identified, no negative news).

¹²¹⁴ See copy of Citibank Original Check, GF-A-00041; 6/11/07-6/29/07 Gede Foundation Expense Account summary, GF-D-00001; 6/11/07-6/29/07 Gede Foundation Donation Account summary, GF-D-00017.

¹²¹⁵ AUN Account Opening Application, JD-F-00426.

¹²¹⁶ 7/25/07 Wachovia Deposit Account Application, JD-F-00426.

¹²¹⁷ See 11/13/09 letter from Weidenfeld legal counsel to Subcommittee; 8/12/08 letter from American University to the Subcommittee, no bates. Mr. Weidenfeld also provided Wachovia with a copy of a June 2007 resolution by the AUN board of directors authorizing AUN to open a U.S. checking account, and authorizing Mr. Weidenfeld to act as a signatory on that account when directed to act by an officer or director of AUN in writing. See also June 2007

Prior to opening the account, Wachovia obtained information on both AUN and how the account would be used. A Wachovia banker, in an internal document, gave the following “business reason” for opening the account:

“AU of Nigeria is affiliated through a management consultancy contract to American University in Washington DC[,] a long time client of Wachovia. AU/US provides curriculum[,] professors and senior management staff to AUN through the contract. The purpose of the account at Wachovia is for payment of salaries for AU professors who are US citizens, teaching at AUN. AUN is represented in the US by Ed Weidenfeld, a respected DC attorney, and a person well known to the bank.”¹²¹⁸

On July 5, 2007, the DC wealth manager wrote to Mr. Weidenfeld requesting documentation to support the new AUN account: “Our compliance department is requesting a copy of the management consultancy agreement between American University, US, and ABTI American University of Nigeria.”¹²¹⁹ Mr. Weidenfeld provided the agreement which showed that, as of December 2003, AUN had entered into a five-year licensing agreement with American University, under which AU agreed to provide professionals to AUN and advise AUN on establishing AUN’s academic and administrative infrastructure.¹²²⁰ On July 10, 2007, American University sent a letter to the Director of the Wachovia GBG International & High Risk Customer Governance, stating: “You asked how much funding is likely to pass through the AUN account. At the current moment, the amount is roughly \$200,000 per month, largely for the salaries of expatriates who are teaching or working at AUN, or \$2.4 million per year, but I can anticipate that it might rise to \$250,000 per month or roughly \$3 million per year.”¹²²¹ On July 11, 2007, the Wachovia Director responded: “Wachovia will move forward with underwriting for ABTI-American University of Nigeria’s requested deposit account. Please note that because of Bank Secrecy Act and USA Patriot Act obligations for which the bank is subject, account[s] owned by offshore entities must be underwritten prior to establishment. However, that process has now commenced.”¹²²²

Wachovia told the Subcommittee that, generally, it does not open accounts for foreign charitable organizations or foreign governmental entities, but has a process whereby an exception can be made if approved by the Wachovia exception committee.¹²²³ Wachovia told the Subcommittee that, in this case, its exception committee granted an exception for AUN, in part due to Wachovia’s banking relationship with American University.

The Wachovia Deposit Account Underwriting International (DAU) group actually opened and handled the AUN account. Prior to opening the account, DAU asked CDC to perform a due diligence review of AUN, Ms. Douglas, and Mr. Weidenfeld. As in previous

Consent of the Board of Directors of the American University of Nigeria, JD-F-00433; Authority to be Signatory between AUN and Mr. Weidenfeld, JD-F-00434.

¹²¹⁸ 6/26/07 internal Wachovia document, JD-F-00439.

¹²¹⁹ 7/5/07 email from Wachovia to Mr. Weidenfeld, PAU024525.

¹²²⁰ 3/31/03 Management Consultancy Agreement between AUN and American University. Washington D.C., PAU030660-72.

¹²²¹ 7/10/07 email from American University to Wachovia, PAU024453.

¹²²² 7/11/07 email from Wachovia to American University, PAU024470.

¹²²³ Subcommittee interview of Wachovia officials, September 8, 2008.

screenings, CDC's August 21, 2007 screening did not identify Ms. Douglas or Mr. Weidenfeld as a PEP client. Wachovia told the Subcommittee that it also spoke with CDC about this incident, and CDC has taken steps to strengthen its PEP screenings.

The AUN account was opened on July 23, 2007, and immediately began receiving and disbursing funds. Over the next few months, the Guernsey Trust Company wire transferred a total of about \$1.8 million into the AUN account.¹²²⁴

Money Market Account. A month after opening the AUN account, on August 21, 2007, Ms. Douglas opened a sixth and final account at Wachovia, this time a Personal High Performance Money Market Account No. 1010185917340.¹²²⁵ She initially funded the account by transferring \$20,000 from her second personal checking account at Wachovia.¹²²⁶ This account saw little activity before all six Douglas-related accounts were closed.

Account Activity. Soon after opening the Wachovia accounts, Ms. Douglas began receiving substantial wire transfers from two offshore corporations, LetsGo and the Guernsey Trust Company, sent primarily through accounts at a small private bank in Switzerland called Wegelin & Co. Over a six-month period, the Guernsey Trust Company wire transfers sent \$2.45 million to her personal checking account, while the LetsGo wire transfers sent \$1.8 million to the AUN account.

The following chart lists the Guernsey Trust Company wire transfers to Ms. Douglas' first personal checking account at Wachovia, Account No. 1010122288618, totaling \$2.45 million.

Wire Transfers from Guernsey Trust Company to Douglas Personal Checking Account at Wachovia: 1010122288618			
Date	Amount	Originator	Bates
7/5/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00004
7/10/07	\$350,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00004
7/26/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00008
9/4/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00013
9/27/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00017
10/29/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00059
12/3/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00074
12/21/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00074
TOTAL: \$2,450,000		SOURCE: UBS	

Chart prepared by Subcommittee

Over the same six-month period, LetsGo Ltd. wire transferred \$300,000 every few months into the AUN account at Wachovia for a total of \$2 million. These wire transfers also came from a Swiss bank account. This chart shows the key wire transfers.

¹²²⁴ See below for a chart detailing these wire transfers.

¹²²⁵ Undated internal Wachovia document "Jennifer Douglas Abubakar: Summary of Account Relationships," PSI-Wachovia-08-0001.

¹²²⁶ Id.

Wire Transfers from LetsGo Ltd. to AUN Account at Wachovia: 2000028808282			
Date	Amount	Originator	Bates
7/26/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00040
9/4/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00051
9/27/07	\$200,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00051
10/29/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00059
12/3/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00074
12/21/07	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00074
1/22/08	\$300,000	Wegelin & Co., Private Bankers, Switzerland	JD-D-00081
TOTAL: \$2,000,000		SOURCE: Wachovia	

Chart prepared by Subcommittee

During the six months the Wachovia accounts were open, Ms. Douglas used the \$2.45 million sent to her personal checking account to pay for living expenses, including large credit card bills. In addition, she transferred about \$73,000 to AUN accounts at other banks. This chart lists the transfers she made to AUN accounts.

Wire transfers from Wachovia Douglas Account No. 1010122288618 to AUN Accounts		
Date	Amount	Bates
7/30/07	\$13,029.50 sent to AUN account at Platinum Habib Bank Ltd.	JD-D-00010
8/7/07	\$26,244.20 sent to AUN account at Platinum Habib Bank Ltd.	JD-D-00010
8/29/07	\$26,244.20 sent to AUN account at Zenith International Bank Ltd.	JD-D-00014; JD-F-00076-77
10/31/07	\$8,185.50 sent to AUN account at Guaranty Trust Bank	JD-F-00256-257
TOTAL: \$73,713.40		SOURCE: Wachovia

Chart prepared by Subcommittee

Account Concerns. By September of 2007, Wachovia began to have concerns about the Douglas-related accounts. On September 5, 2007, a Wachovia banker filed a “suspicious internal referral” report concerning a \$9,500 check drawn on Ms. Douglas’ personal checking account which was presented for payment by an individual without signatory authority on the account.¹²²⁷ The banker wrote: “A non customer [redacted by the Subcommittee] presented a check to negotiate at the Pine Crest financial CTR. I reviewed our customer’s account and [there are] frequent transfers between her three accounts that [were] opened four months ago. Also large auto debits to Neiman Marcus and American Express along with wires in and out. Most recent for 300K from Nigeria.”¹²²⁸

In response to the suspicious internal referral report, a senior anti-money laundering (AML) investigator at Wachovia was assigned to examine the Douglas accounts. The AML investigator examined account activity involving Ms. Douglas’ personal checking accounts and

¹²²⁷ 9/5/07 check for \$9,500 made out to individual by Ms. Douglas, JD-F-00053.

¹²²⁸ 9/5/07 Suspicious Internal Referral filed by Coralett James, JD-F-00005.

the AUN account, but not the Gede accounts. He determined that some of the account activity appeared suspicious. With regard to Ms. Douglas' first personal checking account, he wrote:

“[A] review of DDA#1010122288618 between dates of 07/01/07-10/11/07 revealed this account was opened on 05112007. The account is funded by wire transfers and account transfers. There were seven account transfers observed between August and September that ranged in amounts from \$19,000 to \$50,000. Four of those transfers were during the month of August (DDA#8621-totaling \$190,000)[.] During this review period there were seven wire transfers credited to this account ranging in amounts from \$13,029.50 to \$300,000. It was also observed that five of seven wires were sent from Guernsey Trust Company out of Nigeria (High Risk Country).”¹²²⁹

On October 11, 2007, the AML investigator contacted Ms. Douglas to obtain more information about the source of the funds in her accounts, and wrote the following:

“I spoke with Jennifer E Douglas who advised she receives monthly wires in the amounts of \$300,000 from her husband. She said those funds were generated from his business, Oil Logistics, in Nigeria [Guernsey Trust Company Nigeria] Jennifer said during the month of July her husband was in the process of opening a new account for the American University of Nigeria. She said there were two \$300,000 wires posted to her account to hold until the University establishes a Wachovia account. She referred [me to] the attorney over the University's account for further information [Edward Weidenfeld]. All outgoing funds were used to pay professors/instructors, school tuitions, and other living expenses. Jennifer also stated that wired funds in the amount of \$26,224.20 and \$100,000¹²³⁰ that were sent to Dubai Islamic Bank Limited were used for the purchase of a home in Dubai.”¹²³¹

The AML investigator conducted additional research into the Guernsey Trust Company, LetsGo, and Oil Logistics. He described LetsGo as located in a “high risk country-Panama,”¹²³² but said he was unable to find additional information about any of the three companies. He wrote: “The profile of the customer in question does not appear to substantiate the aggregated fund transfers wired in and out of the account.”¹²³³

In addition, on November, 6, 2007, a Wealth Management Group compliance officer wrote to the Group's regional supervisor as follows:

“Hi, need your assistance. Please order the last 3 months of banks statements for the DDAs (5 total) in the names of Jennifer E. Douglas RRN 069695366 and Gede Foundation RRN 054721695. Send those to me along with a copy of the KYC file for

¹²²⁹Wachovia internal review document, JD-F-00006.

¹²³⁰ See transfer summary of Douglas checking account #1010122288618, JD-F-00034, showing two wire transfers sent to Dubai Islamic Bank Limited for the purchase of a home in Dubai; 10/09/07 wire transfer form, JD-F-00066-67.

¹²³¹ 9/5/07 Suspicious Internal Referral filed by Coralett James, JD-F-00007.

¹²³² Id.

¹²³³ Id.

Gede. This request comes from the Corporate AML office so I would appreciate your immediate attention.”¹²³⁴

In November 2007, Wachovia received an inquiry from the Subcommittee regarding Ms. Douglas, Mr. Abubakar, and related entities. In response, on November 14, 2007, a Wachovia AML investigator began examining the Douglas-related accounts. He examined all six accounts, and reviewed the materials from the earlier AML investigator. This AML investigator quickly identified Ms. Douglas as a PEP and found several negative news articles about her. On November 19, 2007, six months after her first Wachovia account was opened, Ms. Douglas was officially added to the Wachovia PEP list. Mr. Weidenfeld was classified as a PEP Associate, and AUN was classified as a PEP Entity.¹²³⁵

The AML investigator again looked at the offshore corporations sending funds to the Douglas-related accounts. He found that the LetsGo website was “under construction.”¹²³⁶ He also compared AUN wire transfers naming specific AUN faculty members to an AUN payroll ledger, and found that the two contained corresponding amounts, but was unable to confirm that the payments were actually salary-related.¹²³⁷

In December 2007, the AML investigator recommended closing the Douglas-related accounts due to the large volume of offshore transactions, discovery of negative news regarding Ms. Douglas, the Subcommittee’s investigation, and Ms. Douglas’ identification as a PEP. Wachovia told the Subcommittee there were no objections to that recommendation, and Wachovia decided to close all six Douglas-related accounts, even though it did not identify account activity that showed a definite Bank Secrecy Act violation.

Closing the Accounts. On December 14, 2007, Wachovia notified Mr. Weidenfeld that the Douglas-related accounts would be closed.¹²³⁸ On January 3, 2008, Mr. Weidenfeld telephoned the bank and asked whether the accounts were being closed based upon Ms. Douglas’ husband or due to money laundering activities. Wachovia informed him that the bank had “made a business decision” to exit the relationship and that all accounts would be closed by January 28th.¹²³⁹ Wachovia notes indicate that Mr. Weidenfeld stated that, with respect to the AUN account, Ms. Douglas “was willing to remove her name from this account if there was the possibility of it being left open.”¹²⁴⁰ The bank indicated that the account would not be kept open even without her name.

¹²³⁴ 11/06/07 internal Wachovia email, GF-A-00078-79.

¹²³⁵ 11/19/07 internal Wachovia document, JD-F-00543-44.

¹²³⁶ Email screenshot of AML investigator’s 12/10/07 internet search results for LetsGo Limited, Inc., JD-F-00468-69.

¹²³⁷ See undated Wachovia transaction record, JD-F-00440-43; 9/28/07 Wachovia Wire Detail Page, JD-F-00128.

¹²³⁸ See also December 14, 2007 letter from Wachovia to AUN advising that account 2000028808282 will be closed, JD-F-00452.

¹²³⁹ 11/19/07 internal Wachovia report, JD-F-00543-44. The Stassi investigation report cites explanation of account closure as well as screening results.

¹²⁴⁰ Id. See also 11/13/09 letter from Mr. Weidenfeld’s legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0024 (Mr. Weidenfeld told the Subcommittee that he “does not have a specific recollection of suggesting that Mrs. Abubakar could be removed as a signatory on this account. If he made that suggestion, he believes that he would have done so because he thought that her signatory authority created an issue for the bank as a result of her unfair association with the Congressman Jefferson investigation. It would have been

Mr. Weidenfeld told the Subcommittee that he believed the Wachovia accounts were closed, “because of their association with the Abubakars, and because the AUN accounts were transferring money abroad to accounts in the names of foreigners. . . . The unfair allegations against the Abubakars from the Congressman Jefferson investigation, coupled with Mr. Abubakar's status as a Nigerian politician, caused the banks to close the accounts.”¹²⁴¹

On January 31, 2008, the AUN and Gede Foundation accounts were closed. Wachovia provided AUN with a check for the remaining balance, and that check was later deposited into the Weidenfeld law firm account at Suntrust Bank.¹²⁴² Wachovia provided a second check with the balance from the two Gede Foundation accounts, and that check was later deposited into a new Gede account at Eagle Bank.¹²⁴³ On February 7, 2008, Ms. Douglas’ second personal checking account was closed with no balance owing. On February 11, 2008, her initial personal checking account was closed, and Wachovia provided a check with the remaining balance, which was mailed to Mr. Weidenfeld and later deposited into an account at PNC Bank.¹²⁴⁴ On February 20, 2008, Ms. Douglas’ money market account was closed with a zero balance.

(4) Eagle Bank

Ms. Douglas did not wait for her accounts at Chevy Chase and Wachovia to close before opening another account at another U.S. bank. In July 2008, she opened a personal checking account at Eagle Bank; in 2009, she opened two more accounts: a money market account and a home equity line.¹²⁴⁵ Eagle Bank is a small state-chartered bank in Maryland with 14 offices in the Washington area. It caters to embassy accounts and promotes its international banking capability.

Soon after opening the initial account, as at prior banks, Ms. Douglas began to receive large wire transfers from offshore accounts belonging to the Guernsey Trust Company. Most of these wire transfers were for \$100,000. Within one year, from October 2008 to September 2009, Ms. Douglas brought over \$1 million in suspect funds into the United States from the Guernsey Trust Company. She also received about \$189,000 in wire transfers from her brother, Francis Iwenjiora.

logical for Mr. Weidenfeld to believe that because the account was maintained for the benefit of AUN, Jennifer did not have to be a signatory on the account, and that if her name was removed, the bank might retain the account.)

¹²⁴¹ 11/13/09 letter from Mr. Weidenfeld’s legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0025.

¹²⁴² Copy of the official check issued to American University of Nigeria in the amount of \$33,570.90, dated 2/1/08, JD-A-00275.

¹²⁴³ Copy of the official check issued to Gede Foundation in the amount of \$3616.07, dated 1/11/08, GF-A-00085.

¹²⁴⁴ Copy of the official check issued to Jennifer Douglas in the amount of \$4036.78, dated 2/1/08, JD-A-00033.

¹²⁴⁵ Information provided by Ms. Douglas’ legal counsel, January 18, 2010.

This chart lists the key wire transfers into Ms. Douglas' account at Eagle Bank over the past year, which together exceed \$1.2 million.

Select Wire Transfers into Douglas Account at Eagle Bank			
Date	Amount	Sender	Bates
10/10/2008	\$ 99,950.00	Guernsey Trust Company, Nigeria	PSI-JDA-000009
11/03/2008	\$ 99,950.00	Guernsey Trust Company, Nigeria	PSI-JDA-000012
12/1/2008	\$ 100,000.00	Guernsey Trust Company, Nigeria	PSI-JDA-000014
12/19/2008	\$ 100,000.00	Guernsey Trust Company, Nigeria	PSI-JDA-000017
1/30/2009	\$ 100,000.00	Guernsey Trust Company, Nigeria	PSI-JDA-000020
3/3/2009	\$ 99,950.00	Guernsey Trust Company, Nigeria	PSI-JDA-000024
4/1/2009	\$ 99,950.00	Guernsey Trust Company, Nigeria	PSI-JDA-000027
5/1/2009	\$ 99,950.00	Guernsey Trust Company, Nigeria	PSI-JDA-000029
5/22/2009	\$ 161,000.00	Francis Iwenjiora Trustee	PSI-JDA-000032
5/28/2009	\$ 28,000.00	Francis Iwenjiora Trustee	PSI-JDA-000033
8/4/2009	\$ 99,950.00	Guernsey Trust Company, Nigeria	PSI-JDA-000039
8/28/2009	\$ 90,000.00	Guernsey Trust Company, Nigeria	PSI-JDA-000041
9/29/2009	\$ 100,000.00	Guernsey Trust Company, Nigeria	PSI-JDA-000044
TOTAL: \$1,278,700.00		SOURCE: Weidenfeld	

Chart prepared by Subcommittee

(5) Suntrust Bank

In 2008, AUN received assistance from Mr. Weidenfeld to open an additional U.S. bank account. On January 28, 2008, a new AUN account was opened at a Washington, D.C. branch of Suntrust Bank, a large U.S. bank with over 1,700 branches.¹²⁴⁶ Mr. Weidenfeld's legal counsel told the Subcommittee that he facilitated the opening of this account.¹²⁴⁷ The Subcommittee was told that Mr. Weidenfeld's law firm was a longstanding customer of Suntrust Bank, and he decided to use that bank after his law firm was hired by AUN in January 2008, to act as an escrow agent for its U.S. funds. His legal counsel told the Subcommittee that Mr. Weidenfeld spoke with the Suntrust branch manager where his law firm did its banking, told her AUN wished to open a checking account to pay its bills, and was able to open an account affiliated with his law firm, entitled AUN Special Account No. [xxxxxx]28.

Bank records indicate that Mr. Weidenfeld initially funded the AUN account by transferring funds from his law firm account at Suntrust. His legal counsel said the funds he used had come from the AUN account at Wachovia which, when it closed, had transferred its funds to his law firm account at Suntrust. Over the next eight months, bank records show that the Guernsey Trust Company made multiple large wire transfers from its Swiss account at

¹²⁴⁶ 8/28/08 internal Weidenfeld office email, PAU100307.

¹²⁴⁷ See 11/13/09 letter from Weidenfeld's legal counsel to the Subcommittee, PSI-Abubakar & Weidenfeld-01-0024. That letter stated: "In January 2008, the Weidenfeld law firm and AUN entered into an escrow agreement, appointing the Weidenfeld law firm as escrow agent for the American University of Nigeria. To fulfill his role as escrow agent, Mr. Weidenfeld used a Weidenfeld law firm account with Sun Trust Bank. The account was named AUN Special Account, No. [xxxxxx]28. He believes that he informed ... the branch manager of SunTrust at 17th & Eye Streets, N.W., that the purpose of the account was to pay obligations of the American University of Nigeria. On January 28, 2008, the funds remaining in the Wachovia American University of Nigeria account were transferred to the Weidenfeld law firm American University of Nigeria account at SunTrust. As escrow agent, Mr. Weidenfeld directed the payment of expatriate salaries and expenses out of the account at the direction of AUN."

Wegelin & Co. into both the AUN and Weidenfeld law firm accounts at Suntrust. From January to July 2008, the Weidenfeld law firm received about \$1.3 million from the Guernsey Trust Company, while the AUN account received about \$800,000. Another \$1.2 million in wire transfers were sent to the AUN account with wire transfers that did not identify the originator, but likely came from the Guernsey Trust Company as well.

This chart shows the \$3.4 million in offshore wire transfers sent to the AUN and Weidenfeld law firm accounts at Suntrust Bank. The chart includes four wire transfers totaling \$1.2 million which were sent to the AUN account in documents that did not identify the originator, but were likely also sent by the Guernsey Trust Company.

Offshore Wire Transfers to Weidenfeld Law Firm and AUN Accounts at Suntrust Bank				
Date	Recipient Account	Amount	Originator	Bates
2/5/08	Weidenfeld Law Firm Account	\$ 150,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
2/29/08	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
3/31/08	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
4/30/08	Weidenfeld Law Firm Account	\$ 100,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
6/26/08	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
7/25/08	Weidenfeld Law Firm Account	\$ 49,980	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
8/25/08	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
9/29/08	Weidenfeld Law Firm Account	\$ 100,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
10/31/08	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
11/28/08	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
12/22/08	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
1/27/09	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
2/26/09	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
3/23/09	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
4/27/09	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
5/27/09	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
6/19/09	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
7/31/09	Weidenfeld Law Firm Account	\$ 100,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013

8/28/09	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
9/28/09	Weidenfeld Law Firm Account	\$ 50,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
10/30/09	Weidenfeld Law Firm Account	\$ 100,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0013
WEIDENFELD LAW FIRM TOTAL		\$1,349,980		
2/28/08	Weidenfeld Law Firm Account -AUN Special Account	\$ 300,000	Unknown	PSI-Abubakar& Weidenfeld-03-0010
3/31/08	Weidenfeld Law Firm Account -AUN Special Account	\$ 275,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0010
4/30/08	Weidenfeld Law Firm Account -AUN Special Account	\$ 300,000	Unknown	PSI-Abubakar& Weidenfeld-03-0010
5/28/08	Weidenfeld Law Firm Account -AUN Special Account	\$ 300,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0010
6/26/08	Weidenfeld Law Firm Account -AUN Special Account	\$ 300,000	Unknown	PSI-Abubakar& Weidenfeld-03-0010
7/25/08	Weidenfeld Law Firm Account -AUN Special Account	\$ 300,000	Unknown	PSI-Abubakar& Weidenfeld-03-0010
8/25/08	Weidenfeld Law Firm Account -AUN Special Account	\$ 300,000	Guernsey Trust Co.	PSI-Abubakar& Weidenfeld-03-0010
AUN ACCOUNT TOTAL		\$2,075,000		
TOTAL		\$3,424,980	SOURCE: Weidenfeld	

Chart created by Subcommittee

When asked about these wire transfers, Mr. Weidenfeld's legal counsel told the Subcommittee that the offshore funds were being used to pay the legal and consulting fees incurred by the Abubakars personally as well as AUN salaries and other expenses:

“Mr. Weidenfeld maintained a separate AUN account for the purpose of disbursing money to pay AUN expatriate salaries and expenses. He continued to accept deposits into his law firm accounts after the AUN account was created to pay his fees and the fees of other counsel and consultants acting at Mr. Weidenfeld's direction or on behalf of the Abubakars. In sum, the purpose of accepting funds into the AUN account was to pay AUN expenses; the purpose of accepting funds into Weidenfeld law firm accounts was to pay Mr. Weidenfeld's fees and the fees of others. Mr. Weidenfeld understood that Jennifer and Atiku Abubakar were the source of all these funds, and that Atiku Abubakar was the source of Jennifer Abubakar's funds.”¹²⁴⁸

When asked what due diligence Mr. Weidenfeld or his law firm performed prior to accepting multiple large wire transfers from the Guernsey Trust Company, Mr. Weidenfeld's legal counsel responded as follows:

“As a small firm lawyer, Mr. Weidenfeld did not perform formal due diligence, but he got to know his clients, there was public information in the press indicating a legitimate

¹²⁴⁸ 11/13/09 letter from Mr. Weidenfeld's legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0028.

source of income, he understood that Atiku Abubakar had directed the payments, and it was not a surprise or a concern to him that Mr. Abubakar would have business relationships with various corporations. . . . Mr. Weidenfeld does not believe that he paid any attention to the names of the corporate entities that transferred money to the accounts, because he understood that Mr. Abubakar was the ultimate source of the funds.”¹²⁴⁹

Mr. Weidenfeld’s legal counsel continued:

“As a result of his work related to Nigerian politics and Mr. Abubakar’s candidacy for the Presidency, he became aware of press articles and other information indicating that it was known in Nigeria that Mr. Abubakar had an ownership interest in the Intels family of operating companies that performed oil logistics services in West Africa, and that Intels was a substantial company. He was also aware that the Abubakars were contributing millions of dollars to fund AUN. As a matter of common sense, it seems absurd to Mr. Weidenfeld that Mr. Abubakar would run proceeds of illegal activity through American banks in order to fund a charitable enterprise, though he does not recall even considering that possibility at the time. . . .

Mr. Weidenfeld became personally convinced that Congressman Jefferson’s statements about the Abubakars and the Gede Foundation were lies designed to get more money out of Lori Mody. Mr. Weidenfeld also knew the Abubakars personally. He liked and respected them. They did not conceal their involvement in AUN’s affairs.

Mr. Weidenfeld did not hide their involvement from AU or any banks. It never occurred to Mr. Weidenfeld that he should have any concern about accepting Atiku Abubakar’s money to fund a U.S.-style university in the predominantly Muslim Northern region of Nigeria. Mr. Weidenfeld is the unpaid co-Chair of the Board of Visitors of the National Defense University. He considered AUN to be an institution that furthered the national interests of the United States, as well as the interests of Nigeria. . . .

As a result of this investigation, Mr. Weidenfeld has come to understand the Subcommittee’s ongoing concern with the use of shell corporations to conceal the ownership and source of funds in certain foreign transactions. That concern is entirely understandable and legitimate. Mr. Weidenfeld understands that legislation may be appropriate to address this issue. However, in these unique circumstances, Mr. Weidenfeld did not believe that Atiku Abubakar was concealing his role by using these corporations.”¹²⁵⁰

Mr. Weidenfeld told the Subcommittee that, on September 3, 2008, AUN opened additional accounts at Standard Chartered Bank in London.¹²⁵¹ The Subcommittee was told that the Standard Chartered accounts would be used “to cover the expenses of ex Pat salary payments.”¹²⁵² Mr. Weidenfeld’s legal counsel told the Subcommittee:

¹²⁴⁹ Id.

¹²⁵⁰ Id.

¹²⁵¹ 9/3/08 email from Mr. Weidenfeld to Standard Chartered Bank, PAU100348.

¹²⁵² 9/3/08 email from Mr. Weidenfeld, PAU100348.

“In April 2008, AUN applied for an account with Standard Chartered Bank in the UK. Standard Chartered opened the account on August 23, 2008. ... AUN now pays all expatriate staff and faculty from this account. Mr. Weidenfeld remains a signatory, but an orderly transition to the AUN financial office in Yola is underway.”¹²⁵³

Still another AUN account appears to have been opened at Oceanic Bank in Yola, Nigeria where AUN is located; this account appears to have paid the AUN July 2008 payroll.¹²⁵⁴

(6) Overview of Offshore Funds

During the eight-year period, 2000 to 2008, Ms. Douglas brought nearly \$25 million in suspect funds into the United States through accounts she opened at Citibank, Chevy Chase Bank, Wachovia Bank, and Eagle Bank. In addition, during the first six months of 2008, another \$3.4 million was deposited into AUN and Weidenfeld law firm accounts at Suntrust Bank. These funds, which exceed \$27 million, were supplied primarily by five offshore corporations: Siemens AG, a major German firm which sent funds from a bank account in London; Guernsey Trust Company Nigeria Ltd., which is incorporated and has bank accounts in Nigeria; LetsGo Ltd. Inc., a Panamanian firm which sent funds from bank accounts in Switzerland; Sima Holding Ltd. which is incorporated in the British Virgin Islands and sent funds from a bank account in Switzerland; and China Castle Investments, Inc. which sent funds from a bank account in Switzerland, but whose base of incorporation is unknown.

To trace the flow of funds into and out of these accounts, the Subcommittee requested copies of monthly bank statements, generally going back five years for each account.¹²⁵⁵ In a few cases, the Subcommittee obtained records of earlier transactions and, in a few cases, the records did not stretch back five years. The bank records reviewed by the Subcommittee show that, for the period 2003 to 2008, LetsGo provided the most offshore funds, wire transferring a total of nearly \$17 million to Douglas-related accounts from 2003 to 2008. The Guernsey Trust Company provided the next highest amount, \$10 million, which includes nearly \$7 million to Douglas-related accounts from 2006 to 2009. Siemens AG provided four wire transfers in 2001 and 2002, before the five-year time period generally examined by the Subcommittee, for a total of \$1.7 million sent to the Douglas account at Citibank. Sima Holding sent four wire transfers in 2004 and 2005, for a total of nearly \$700,000. Finally, China Castle Investments sent a single wire transfer in 2003, for a total of \$500,000.

¹²⁵³ 11/13/09 letter from Mr. Weidenfeld’s legal counsel to PSI, PSI-Abubakar_&_Weidenfeld-01-0024.

¹²⁵⁴ 9/6/08 email from Mr. Weidenfeld’s counsel and himself, PAU100417.

¹²⁵⁵ The Subcommittee also obtained accounting opening and closing documentation for all of the accounts.

This chart summarizes the total amounts of offshore wire transfers sent to the relevant accounts at Citibank, Wachovia, Eagle, and Suntrust banks.¹²⁵⁶

Total Wire Transfers Sent By Offshore Corporations To U.S. Bank Accounts			
Originator	Dates Sent	Total Received	Recipient Account
Siemens AG	4//01-1/02	\$ 1,772,644	Douglas personal account at Citi: 52096374
China Castle Investments	1/30/03	\$ 500,000	Douglas personal account at Citi: 52096374
LetsGo Ltd. Inc.	4/03 - 10/06	\$ 7,424,620	Douglas personal account at Citi: 52096374
LetsGo Ltd. Inc.	5/05 - 5/07	\$ 5,550,000	Douglas/AUN account at Citi: 1209739556
Guernsey Trust Co.	6/06 - 5/07	\$ 3,049,940	Douglas personal account at Citi: 52096374
Guernsey Trust Co.	7/07 - 12/07	\$ 2,450,000	Douglas personal account at Wachovia: 1010122288618
Guernsey Trust Co.	10/08 - 9/09	\$ 1,089,700	Douglas personal account at Eagle Bank
Sima Holding Ltd.	7/07- 12/07	\$ 699,965	Douglas personal account and Douglas/AUN account at Citi: 52096374 and 1209739556
LetsGo Ltd. Inc.	7/07-1/08	\$ 1,800,000	Douglas/AUN account at Wachovia: 2000028808282
Guernsey Trust Co.	1/08-7/08	\$ 800,000 ¹²⁵⁷	AUN account at Suntrust
Guernsey Trust Co.	1/08-7/08	\$ 1,300,000	Weidenfeld law firm account at Suntrust
TOTAL: \$26,436,869		SOURCE: Multiple	

Chart prepared by Subcommittee

Ms. Douglas told bank officials that all of the funds sent to her accounts were supplied by her husband, Mr. Abubakar, and that she was unfamiliar with the particular offshore corporations that sent her wire transfers. She told one bank that she believed the funds were from “her husband’s oil company, Oil Logistics.”¹²⁵⁸ When the Subcommittee asked her about LetsGo, Guernsey Trust Company, Sima Holding, and China Castle Investments, Ms. Douglas responded through her legal counsel that she “has no personal knowledge of these entities. To the extent that any of these entities were the source of deposits into her accounts or the AUN account, she understood that all such deposits came from her husband.”¹²⁵⁹

Mr. Weidenfeld provided a similar response, through legal counsel, when asked about the funds sent to his law firm account and the AUN account he opened at Suntrust Bank – that he believed all the funds came from Mr. Abubakar and that he paid no attention to and performed no due diligence regarding the specific offshore corporations that actually sent the funds.

Information reviewed by the Subcommittee raise a number of questions about the source of the offshore funds. The \$1.7 million in wire transfers supplied by Siemens AG is the most troubling, in light of the SEC’s description of those transfers as “bribe payments” routed through

¹²⁵⁶ No wire transfers are shown for Chevy Chase Bank accounts, because no wire transfers added new funds to the \$5 million transferred from Merrill Lynch for the JDA Family Trust accounts, and all of the funds sent to the Gede Foundation account came from the Douglas or Gede Foundation accounts already identified in the chart.

¹²⁵⁷ The AUN account at Suntrust received four additional wire transfers totaling \$900,000 with documentation that did not identify the originator, but which may be the Guernsey Trust Company.

¹²⁵⁸ 10/11/07 report from Wachovia investigator, JD-F-00006-8.

¹²⁵⁹ 11/13/09 letter from Ms. Douglas’ legal counsel, London & Mead, to the Subcommittee, PSI Abubakar_&_Weidenfeld-01-0003.

Ms. Douglas' personal checking account for "[t]he purpose of ... brib[ing] government officials" in Nigeria.¹²⁶⁰ The \$500,000 from China Castle Investments is also troubling since the Subcommittee was unable to find out anything about this company, and Ms. Douglas says she has no personal knowledge about why it sent her half a million dollars.

The \$10 million sent into the United States by the Guernsey Trust Company, including \$7 million to Douglas-related accounts at Citibank, Wachovia and Eagle Bank; \$900,000 to American University accounts; and \$2.1 million to AUN and Weidenfeld accounts at Suntrust Bank, also raises questions. Concerns include why this company, formed in Nigeria, uses "Guernsey" in its name when it has no connection to that jurisdiction; why it did not inform Ms. Douglas in 2003, that it was the trustee of the Abubakar Blind Trust so that she could communicate that information to her U.S. banks; why the trustees of the Abubakar Blind Trust were not independent financial institutions but corporations beneficially owned in part by Mr. Abubakar's trusted friend and business partner, Gabriele Volpi; and why the trustees had no direct interactions with the recipients of its funds. Still another question is how the trust's sole asset – Intels shares from 1999 to 2003, and then Orlean shares from 2003 to the present – translated into the millions of dollars sent from the account to the United States.

In addition, Mr. Abubakar has been active in business ventures other than the oil industry, but it is not clear whether or to what extent revenues from those other business ventures were included within the Blind Trust. Moreover, as Chevy Chase Bank noted internally: "Mr. Abubakar's source of wealth is impractical to verify." That bank noted further:

"Prior to becoming Vice President, Mr. Abubakar was the chairman of seven Nigerian companies involved in oil services, insurance, pharmaceuticals, agriculture and the print media. From 1969 to 1989, he served in the Nigerian Customs and Excise service. Given the business practices that existed in Nigeria over this timeframe, the ability of the [Chevy Chase] Trust company to determine that his wealth was achieved through legal means is suspect."¹²⁶¹

Still another set of questions involves LetsGo and Sima Holdings, which together sent more than \$27 million in offshore funds into the United States, including \$8 million to the Douglas-related accounts, \$5.5 million to AUN accounts, and another \$13.1 million to American University accounts, as discussed below. Ms. Douglas told the Subcommittee that she was not familiar with either corporation, but simply assumed they were sending funds supplied by her husband. She also told at least one bank that LetsGo was owned by her husband.¹²⁶² Mr. Abubakar does not, however, have any ownership interest in either company, both of which are beneficially owned by members of the Volpi family. Mr. Volpi has told the Subcommittee that he sent funds to Ms. Douglas as part of a "moral agreement" acknowledging Mr. Abubakar's financial interest in Intels, after his shares were seized by General Abacha, and pursuant to lines of credit LetsGo had extended to the Abubakar Blind Trust. These revenues, however, provided

¹²⁶⁰ SEC v. Siemens Aktiengesellschaft, (USDC DC), Case No. 1:08-cv-02167-RJL (December 12, 2008), Complaint, at paragraph 50.

¹²⁶¹ 1/30/06 internal Chevy Chase Bank memorandum, JD_004359-61, at 60.

¹²⁶² See 4/16/07 internal Citibank email from Citibank compliance officer regarding "Account Close-out Extension-Jennifer Douglas," B00008535.

her with funds outside of the very Blind Trust that was established by Mr. Abubakar to isolate his interests in the oil industry while he was in public office. How these payments were calculated and how they relate to the revenues generated by the shares held by the Blind Trust remain unclear.

The five U.S. banks that accepted substantial wire transfers from LetsGo or Sima Holdings for deposit into the Douglas-related accounts were unable to provide any information about either company to the Subcommittee. A bank that processed many of the wire transfers sent by those companies through its correspondent accounts, however, did have some information. The wire transfer documentation showed that both LetsGo and Sima Holdings sent funds to the United States from accounts at a small, private Swiss bank, Wegelin & Co., which routed the payments through its correspondent account at UBS. LetsGo also used an account at another Swiss bank, Banca Del Gottardo, which routed its wire transfers to the United States through its correspondent account at UBS. When the Subcommittee subpoenaed records from UBS regarding these wire transfers, it learned that on several occasions from 2005 to 2008, UBS had pressed Wegelin & Co. for more information about both companies.

UBS began asking questions about LetsGo when, on June 2, 2005, Sonangol, the state-owned oil company in Angola, wire transferred \$30 million from an account at Banco Africano Investimentos to the LetsGo account at Wegelin & Co., through Wegelin's UBS correspondent account.¹²⁶³ The LetsGo account had received funds from Sonangol on other occasions as well, as shown by this chart.

UBS Wire Transfers from Sonangol to LetsGo Ltd.			
10/8/04 - 6/2/05			
Date	Amount	Ordering Bank	Beneficiary
10/08/04	\$377,515.65	Barclays Bank PLC	LetsGo Ltd. Inc. account at Bipielle Bank-Suisse, Chile
03/14/05	\$189,453.05	Barclays Bank PLC	LetsGo Ltd. Inc. account at Wegelin & Co., Switzerland
06/02/05	\$30,000,000.00	Banco Africano Investimentos, in Angola	LetsGo Ltd. Inc. account at Wegelin & Co., Switzerland
TOTAL: \$30,566,968.70			SOURCE: UBS¹²⁶⁴

Chart prepared by Subcommittee

UBS also asked Wegelin & Co. questions about a number of 2005 wire transfers totaling \$1.8 million that had been sent from a Sima Holding account at Wegelin & Co. through UBS to various other accounts, including \$1.3 million in wire transfers later identified as paying for expenses related to AUN, as shown in the chart below.¹²⁶⁵

On October 5, 2005, a UBS banker sent an email to Urs Buff at Wegelin & Co. requesting information about LetsGo, specifically "the nature of this company's business, the length of time which you have maintained a relationship with this company, that the transactions

¹²⁶³ UBS wire transfer records, UBS: LETSGO 00005.

¹²⁶⁴ UBS Spreadsheet, Guernsey Trust and Letsgo LTD.xls.

¹²⁶⁵ 11/17/05 email from UBS to Wegelin & Co., UBS: LETSGO 00003-04; 11/10/08 Subcommittee interview of UBS officials.

fit within your customer's profile, etc."¹²⁶⁶ The email requested "the same information" for Sima Holdings.

More than a month later, on November 17, 2005, Debora Sager from Wegelin & Co. replied: "The transfer of USD 30 mil in favor of Letsgo Limited Inc. Panama is due to the selling of a 20% participation in an oil services company."¹²⁶⁷ With regard to Sima, Ms. Sager wrote: "The father of the beneficial owners of Sima is the sponsor of an university in Africa. They got the aim and objective of being one of the finest universities in Africa. He became Member of the Board of Trustees to run the affairs of the university."¹²⁶⁸ Ms. Sager stated that the June 2005 transfers were related to the university project "either for material supply or consultancy fees." She identified other wire transfers from Sima Holding as \$335,000 in payments related to the father's yacht, \$65,000 for watches, and \$100,000 for other personal expenses.¹²⁶⁹

This chart identifies the \$1.8 million in wire transfers from Sima Holdings to LetsGo as discussed in the Wegelin email, showing the Wegelin banker's explanation for each such transfer.

UBS Wire Transfers from Sima Holdings			
Date	Amount	Description	Bates
12/23/04	\$ 80,000	Yacht Expenses	UBS: LETSGO 00003-04
1/25/05	\$ 5,000	Yacht Expenses	UBS: LETSGO 00003-04
1/25/05	\$ 100,000	Yacht Expenses	UBS: LETSGO 00003-04
1/25/05	\$ 50,000	Yacht Expenses	UBS: LETSGO 00003-04
3/23/05	\$ 65,000	Watch purchases	UBS: LETSGO 00003-04
5/11/05	\$ 100,000	Yacht Expenses	UBS: LETSGO 00003-04
5/15/05	\$ 100,000	Personal Expenses	UBS: LETSGO 00003-04
6/7/05	\$ 500,000	AUN Expenses	UBS: LETSGO 00003-04
6/7/05	\$ 200,000	AUN Expenses	UBS: LETSGO 00003-04
6/8/05	\$ 100,000	AUN Expenses	UBS: LETSGO 00003-04
6/8/05	\$ 250,000	AUN Expenses	UBS: LETSGO 00003-04
6/8/05	\$ 250,000	AUN Expenses	UBS: LETSGO 00003-04
TOTAL: \$1,800,000;		SOURCE: UBS	
AUN SUBTOTAL: \$1,300,000			

Chart prepared by Subcommittee¹²⁷⁰

Upon receiving the November 2005 email from the Wegelin banker, the UBS banker replied the same day, identifying additional LetsGo wire transfers that had raised questions and requesting additional information about the company.¹²⁷¹ Ms. Sager at Wegelin & Co. responded, again more than one month later on January 3, 2006: "The concerned payments are

¹²⁶⁶ 10/5/05 email from UBS to Wegelin & Co., UBS: LETSGO 00004.

¹²⁶⁷ 11/17/05 email from Wegelin & Co. to UBS, UBS: LETSGO 00003.

¹²⁶⁸ Id.

¹²⁶⁹ Id.

¹²⁷⁰ One of the listed wire transfers, sending \$100,000 for AUN expenses on June 8, 2005, corresponds to a wire transfer sent by Sima Holdings to Ms. Douglas' personal checking account at Citibank. The remaining wire transfers, totaling \$1.2 million, were apparently sent to other AUN accounts for which the Subcommittee does not have records.

¹²⁷¹ 11/17/05 email from UBS to Wegelin & Co., UBS: LETSGO 00003.

in favor of an other company, which is in charge of all personal expenses of the beneficial owner of Letsgo Ltd.,” including salaries, administrative costs, insurance and travel expenses.¹²⁷² She also wrote: “Beneficiaries of the transferred money are in particular people working for the beneficial owner of Letsgo Ltd. and their names and bank details are known by the General Partner of Wegelin & Co. which is managing this relationship.” The UBS banker forwarded the Wegelin response to her superiors the same day.¹²⁷³

Two days later, on January 5, 2006, UBS assigned a compliance officer to review the LetsGo and Sima Holdings transactions.¹²⁷⁴ The UBS compliance officer noted in an email to the UBS banker that, “although you asked twice, Wegelin has never answered the following questions: ‘the nature of this company’s business, the length of time which you have maintained a relationship with this company, that the transactions fit within your customer’s profile, etc.’”¹²⁷⁵

UBS continued to press Wegelin for information. As a result, on February 10, 2006, the UBS banker reported to the UBS compliance officer the following:

“One of the partners of Wegelin called me yesterday to discuss this case. Apparently, both Letsgo and Sima are owned by a wealthy Italian family which is active in the oil business. In other words, the beneficial owners of Letsgo and Sima are the same family. The profits of their business activities go either into Letsgo which is owned by the parents or into Sima which is owned by the two sons. They then distribute their earnings as already explained in previous emails. Two partners of Wegelin personally know the beneficial owners for many years and have a complete understanding of their activities.”¹²⁷⁶

On February 14, 2006, the UBS compliance officer prepared an “AML Investigation Report” which included the information from the email exchanges and provided additional analysis.¹²⁷⁷ The AML Investigation Report stated:

“The father of one of the beneficial owners of SIMA is on the Board of Trustees of a university in Africa and from the transactions I determined the name of the university is ABTI-American University. It is a joint venture with American University in DC The name of the father of the SIMA BO [Beneficial Owner] is not provided but I ran all trustees, as listed on the site for ABTI, and there were no significant hits on World-Check. ... What is the business of SIMA Holdings that they are transferring this amount of money to ABTI? Is it the father’s money held in an account at SIMA? If so, shouldn’t he be listed as the Order Party? Otherwise, the actual party to the transfer is disguised and we do not really know the parties with whom we are dealing in such a transaction.

¹²⁷² 1/3/06 email from Wegelin & Co. to UBS, UBS: LETSGO 00002-03.

¹²⁷³ Id.

¹²⁷⁴ 1/5/06 internal UBS email, UBS: LETSGO 00002.

¹²⁷⁵ 1/5/06 internal UBS email, UBS: LETSGO 00001-02.

¹²⁷⁶ 2/10/06 internal UBS email, UBS: LETGO 00001-02.

¹²⁷⁷ 2/13/06 AML Investigation Report, UBS: LETSGO 00041-44.

... I think we are concerned that we are guessing they [Sima Holdings] manage the father's money. I am not sure anyone from Wegelin ever say[s] it.”¹²⁷⁸

Despite these concerns, the UBS AML Investigation Report concluded that its questions about LetsGo and Sima Holdings were satisfied, because: “Two partners of Wegelin personally know the beneficial owners for many years and have a complete understanding of their activities. All transactions are in line with their profiles.”¹²⁷⁹ The AML Investigative Report concluded that no Suspicious Activity Report would be filed with respect to either company or any of the wire transfers.¹²⁸⁰

The information in the UBS email exchanges with Wegelin & Co. and in the AML Investigation Report indicate that the key person associated with both LetsGo and Sima Holdings is the father of a family from Italy; has two sons; is involved with ABTI-American University, now known as American University of Nigeria (AUN); and sits on the AUN Board of Trustees. Together, that information confirms the information provided to the Subcommittee in a letter from Mr. Volpi's legal counsel, that Gabriele Volpi is the key beneficial owner of both LetsGo and Sima Holdings.¹²⁸¹ Mr. Volpi is also a beneficial owner of Orlean Invest Holding Ltd.¹²⁸² which served as the initial trustee of the Abubakar Blind Trust from 1999 to 2003, as well as one of the three beneficial owners of the Guernsey Trust Company which replaced Orlean as the trustee of the Abubakar Blind Trust from 2003 to the present. The documentation indicates that through his associations with LetsGo, Sima Holdings, Guernsey Trust Company, Orlean, Intels, and the Abubakar Blind Trust, Mr. Volpi was involved, directly or indirectly, with many, if not most, of the wire transfers of offshore funds into the Douglas-related accounts. Ms. Douglas and Mr. Abubakar's legal counsel, Edward Weidenfeld, have described Mr. Volpi as Mr. Abubakar's “trusted friend and business partner.”¹²⁸³

In 2008, UBS again contacted Wegelin & Co. for more information about LetsGo, Sima Holdings, and other entities associated with wire transfers sent to the Douglas accounts in the United States.¹²⁸⁴ Based upon its 2008 investigation, UBS told the Subcommittee that, in the fall of 2008, it determined that the reviewed wire transfers involved suspicious transactions, and that it would no longer facilitate wire transfers sent by LetsGo, the Guernsey Trust Company, or Mr. Abubakar, but would block their passage through the bank's wire transfer system.¹²⁸⁵

¹²⁷⁸ Id. at UBS: LETSGO 00043.

¹²⁷⁹ Id.

¹²⁸⁰ Id.

¹²⁸¹ The letter from Mr. Volpi's legal counsel indicates that LetsGo Ltd. Inc. is beneficially owned by Mr. Volpi and his wife, while Sima Holdings is beneficially owned by the Volpi Family Trust, and accordingly by Mr. Volpi, his wife, and their sons. PSI-Volpi-02-0001-6, at 2 and 5.

¹²⁸² 12/22/09 Volpi letter at 3. As explained earlier, Orlean Invest Holding Ltd. is headquartered in London, is a shareholder of Intels, and provides oil services at ports in Nigeria, Angola, Ivory Coast, and the Congo. See Orlean Invest Holding Co. website, www.orlean-invest.com.

¹²⁸³ 11/13/09 letter from Ms. Douglas' legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0031; 11/13/09 letter from Ms. Douglas' legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0020.

¹²⁸⁴ Subcommittee interview of UBS officials, 4/22/09.

¹²⁸⁵ Id. UBS representatives noted that it did not officially block wire transfers from Sima Holding, because there had been so few wires coming from that company.

C. American University and AUN

This case history has discussed the nearly \$25 million in offshore funds sent to the Douglas-related accounts at Citibank, Wachovia, and Eagle Bank, and the \$2.1 million sent to the AUN and Weidenfeld law firm accounts at Suntrust Bank. This section of the Report discusses the \$14 million in offshore funds wire transferred to U.S. bank accounts belonging to American University to pay consulting fees related to American University of Nigeria (AUN).

When asked about these funds, American University told the Subcommittee that, over five years, wire transfers sent by LetsGo Ltd. Inc. totaled about \$13.1 million, while wire transfers sent by the Guernsey Trust Company totaled about \$900,000. American University told the Subcommittee that it “had no dealings with these companies” other than receipt of the funds and had no further information about them.¹²⁸⁶ AU indicated that it had understood Mr. Abubakar had supplied the funds and, prior to the Subcommittee’s inquiry, saw no reason to question why the funds had been sent by particular offshore corporations.¹²⁸⁷ Under current law, American University has no legal obligation to examine the source of funds provided to the university and does not do so.

As mentioned earlier, AUN was founded by Mr. Abubakar in 2003, to bring a United States-style university to northern Nigeria where he was born. At the request of Mr. Abubakar and Ms. Douglas, American University became a partner in the AUN project, providing logistics and educational advice, and even linking its name and reputation to the new school. Originally called ABTI University, the school changed its name in September of 2004, to ABTI American University of Nigeria, and again in May 2007, to American University of Nigeria.¹²⁸⁸ The university is located in Yola, which is the capital of Adamawa State in Northern Nigeria. It opened its doors to 110 students in September 2005, and saw its first graduates in 2009.¹²⁸⁹

Documents show that Ms. Douglas played an active role in encouraging American University to assist in the building, staffing, and operation of AUN. According to her legal counsel, Ms. Douglas was tasked by her husband to work with AU to provide management services for AUN.¹²⁹⁰ As part of that effort, she provided information to American University about AUN, and relayed messages from AU officials to her husband. Ms. Douglas’ legal counsel told the Subcommittee that “Mr. Abubakar also tasked his wife with maintaining a U.S. bank account for convenience in paying certain expenses associated with AUN, including paying some employees of AUN who preferred to be paid in dollars,” and that her husband “arranged to

¹²⁸⁶ 7/22/08 letter from American University’s legal counsel to the Subcommittee, PSI-American_University-01-0005.

¹²⁸⁷ *Id.*

¹²⁸⁸ 5/28/07 Nigerian Corporate Affairs Commission, Certificate of Incorporation of a Company, JD-F-00430; 9/29/04 letter from the Nigerian National Universities Commission to AUN, JD-F-00431. Mr. Abubakar had earlier established other schools in Nigeria under the name ABTI, including ABTI Nursery and Primary School and ABTI Academy in Yola, Nigeria. Atiku Biography, at 131. “ABTI” apparently referred to two of his children, Abba and Atiku Junior. *Id.*

¹²⁸⁹ 8/27/05 email from American University to AUN, PAU101922; Subcommittee interview of American University officials, July 13, 2009.

¹²⁹⁰ 11/13/09 letter from Ms. Douglas’ legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar_&_Weidenfeld-01-0001.

have money deposited into the account, and Mrs. Abubakar made payments out of the account to cover AUN expenses.”¹²⁹¹

When the Subcommittee asked AU why Ms. Douglas was paying the salaries of AUN professors working at AUN out of her checking account at Citibank, AU officials expressed surprise and concern about an AUN trustee paying university salaries and expenses from her own bank account.¹²⁹² Beginning in 2009, AU has instructed AUN that it will no longer accept funds from third parties, but only from AUN accounts.

American University cooperated with the Subcommittee’s investigation by producing documents and participating in interviews.

Creation of AUN. Ms. Douglas was a doctoral student at American University from about 2000 to 2007. In 2002, she approached the AU Dean of the School of International Service about founding a private university in Nigeria, in part because American University had experience with opening a school in another country, the American University of Sharjah in the United Arab Emirates. According to AU, “Mr. Abubakar informed American that he was investing his personal funds into the creation of a private autonomous university in Yola, Nigeria. Given American’s international expertise, Mr. Abubakar sought our advice on establishing a university.”¹²⁹³

The Dean brought the idea to the AU president, Benjamin Ladner. Robert Pastor, AU Vice President of International Affairs, agreed to spearhead the project and later, in 2007, served one term on the AUN Board of Trustees.¹²⁹⁴

American University told the Subcommittee that it performed several site visits to Nigeria in 2002 and 2003, to determine the feasibility of the project. One of the team members then outlined a series of “positives” and “negatives” with regard to moving forward with the project.¹²⁹⁵ The “Positives” included: “Proprietor has deep pockets, is committed to the project, and appears willing to agree to AU stipulations.”¹²⁹⁶ When asked what those stipulations were, Mr. Pastor stated that “the budget process must be completely transparent.”¹²⁹⁷ In terms of “Negatives,” the team member listed the following: “Political factor. Project is completely dependent on power, authority, commitment, financial support of one person with current political clout. What of the future? ... Khashoggi factor. Is there a risk to AU[’]s reputation? Role of rampant corruption and graft in Nigeria is unclear.”¹²⁹⁸

¹²⁹¹ Id. at PSI-Abubakar_&_Weidenfeld-01-0002.

¹²⁹² Subcommittee interview of American University officials, August 7, 2008.

¹²⁹³ 7/22/08 letter from American University’s legal counsel to the Subcommittee, PSI-American_University-01-0001.

¹²⁹⁴ Mr. Pastor told the Subcommittee that he left the board of trustees in October 2008 after one term. He noted that the AU president thought he might have a conflict of interest in serving on the board, but when asked to describe that conflict, Mr. Pastor said that he didn’t know. Subcommittee interview of Robert Pastor, April 14, 2009.

¹²⁹⁵ 6/11/03 internal American University report “ABTI University Project – Nigeria,” PAU000839.

¹²⁹⁶ Id.

¹²⁹⁷ Subcommittee interview of Robert Pastor, April 14, 2009.

¹²⁹⁸ 6/11/03 internal American University report “ABTI University Project – Nigeria,” PAU000839.

Mr. Pastor told the Subcommittee that he was very sensitive to Nigeria's reputation for corruption and explicitly addressed that issue before AU agreed to partner with AUN. Before entering into the project, he said AU personnel consulted with a number of organizations and persons including the EFCC in Nigeria, and were encouraged to move forward. In an email dated June 11, 2007, Mr. Pastor wrote:

“On the alleged corruption of Atiku. We were certainly aware of the different reports about Atiku when he first approached us about helping build the university. [We] sought out all sources, including the US Ambassador and the intelligence community. The US Ambassador said he had never seen anything beyond a rumor, and that was confirmed by other sources. Recently, there are two charges that have been made about his corruption – on Jefferson and by Obasanjo and the EFCC.”¹²⁹⁹

In 2003, Mr. Pastor presented the project to the American University “cabinet,” which consists of AU's various vice presidents, and recommended partnering with AUN to establish the new university in Yola, Nigeria. The AU cabinet approved the proposal, and the AU president made the final decision to support the project.¹³⁰⁰ AUN was established on May 21, 2003.¹³⁰¹ In July 2003, Ms. Douglas-Abubakar gave \$1 million to the American University School of International Service Building fund.¹³⁰²

Consultancy Agreement. In December 2003, AU entered into a consultancy agreement with AUN to develop the new school. AU told the Subcommittee:

“On December 31, 2003, American entered into a five year management consultancy agreement (‘2003 Agreement’) to provide assistance in recruiting AUN's management team and faculty, developing the curriculum, and advising on architectural drawings and design of the campus master plan.”¹³⁰³

The consultancy agreement included a fee schedule. The AU General Counsel told the Subcommittee that AU was concerned as to whether AUN could afford, not only the consulting

¹²⁹⁹ Atiku Abubakar profile, PAU024731. See also AU newspaper describing the AUN project: “In May, a committee comprised of top University administrators and faculty members traveled to Nigeria, skeptical that establishing a university would be in AU's best interest. Among their concerns was the country's history of instability and corruption as well as ethnic and religious violence, Pastor said. Upon their return to the United States, however, they unanimously recommended that AU proceed.” The Eagle “AU May Establish in Nigeria,” November 11, 2003. <http://media.www.theeagleonline.com/media/storage/paper666/news/2003/11/10/News/Au.May.Establish.In.Nigeria-553139.shtml>.

¹³⁰⁰ Subcommittee interview of American University officials, August 7, 2008.

¹³⁰¹ 6/15/05 internal American University email, PAU027604.

¹³⁰² See 11/21/03 American University Gift Agreement, PAU02615-19 (gift was given on July 9, 2003, but the Gift Agreement to apply the funds to a new School of International Service was signed on November 21, 2003; the Agreement provided Ms. Abubakar with “a naming opportunity within the new School of International Service facility”) American University told the Subcommittee that, from 1999 to 2004, the Abubakars donated \$1,026,110 to American's School of International Service. See 10/10/08 American University's written responses to Subcommittee questions, PSI American University 05-0008.

¹³⁰³ 7/22/08 letter from American University's legal counsel to the Subcommittee, PSI-American University 01-0001-02.

fees, but also the costs of establishing a new university.¹³⁰⁴ According to AU, the capital costs over ten years to build AUN were estimated to be approximately \$400 million.¹³⁰⁵ AU told the Subcommittee that, from the inception of the AUN project, it was understood that Mr. Abubakar would provide the needed funding for the school. Mr. Pastor told the Subcommittee that he personally asked Mr. Abubakar whether he had the approximately \$75 - \$400 million necessary to fund the school properly, and Mr. Abubakar responded that he could fund it.¹³⁰⁶ According to Mr. Abubakar's attorney, Mr. Abubakar has spent about \$150 million in personal funds to establish and operate AUN from 2003 to the present.¹³⁰⁷

Under current law, universities have no legal obligation to examine or inquire into the source of funds provided by a donor.¹³⁰⁸ AU told the Subcommittee that it did not know the source of Mr. Abubakar's personal funds and did not inquire. One university official told the Subcommittee that he knew Mr. Abubakar was a businessman with multiple businesses, including Intels Nigeria, a profitable oil services firm. Another told the Subcommittee that both the current and past presidents of AU also met with Mr. Abubakar to discuss the AUN project.¹³⁰⁹ Mr. Pastor told the Subcommittee that he felt the AUN undertaking was a bigger financial risk to Mr. Abubakar than to AU, due to the amount of funding required.¹³¹⁰

AU Services. Once the consultancy agreement was signed in December 2003, American University told the Subcommittee that AU's "involvement was continuous" with regard to AUN's development, and that AU advised AUN on "everything."¹³¹¹ American University provided the following examples of work it performed to assist AUN:

- AU helped AUN advertise for and hire university officials.
- AU helped AUN establish a governance structure and provided trustee recommendations.
- AU helped AUN create a budget and worked with AUN to show it what an appropriate budget should look like.
- AU helped AUN with IT issues like selecting software.
- AU helped AUN set up major academic units, student programs, and residence halls.
- AU helped AUN set up a human resources department and recruit staff.
- AU helped AUN hire faculty and provide them with on-site training.
- AU helped develop student marketing plans.
- AU helped AUN set up classrooms, buy textbooks, and purchase laboratory equipment.
- AU helped AUN set up its library.

¹³⁰⁴ Subcommittee interview of American University officials, August 7, 2008.

¹³⁰⁵ In addition, AUN has had the following benefactors: the International Food Policy Research Institute, the MacArthur Foundation, Mr. Kekere-Akum, and the Oracle Corporation. See 10/10/08 American University's written responses to Subcommittee questions, PSI American University 05-0007.

¹³⁰⁶ Subcommittee interview of Mr. Pastor, April 14, 2009.

¹³⁰⁷ Subcommittee interview of Mr. Abubakar's legal counsel, April 1, 2009.

¹³⁰⁸ The American Council of Education told the Subcommittee that it was unaware of any law, regulation, or guidance regarding a university's responsibility to conduct due diligence of gifts or transfers of funds to the university. Subcommittee interview of American Council of Education officials, January 11, 2010.

¹³⁰⁹ Subcommittee interview of American University officials, August 7, 2008.

¹³¹⁰ Subcommittee interview of Mr. Pastor, April 14, 2009.

¹³¹¹ Id.

- AU helped AUN monitor its academic collections to make sure AUN is accredited.
- AU helped AUN set up cultural programs.¹³¹²

American University told the Subcommittee that AU's role was to help AUN become a fully operating, accredited educational institution. More than one year after the consultancy agreement was signed, AUN opened its doors in September 2005, with 110 students.¹³¹³

Abubakar Control of AUN Funding. Documents reviewed by the Subcommittee indicate that, from the inception of the university, it has experienced problems establishing reliable funding and a transparent, accurate budget structure due to the level of control exercised by Mr. Abubakar over the university's funding, construction, and expenses. A 2006 audit commissioned by Mr. Abubakar found, for example, that AUN had "no good accounting and Internal Control Systems that would allow complete and accurate reporting of the financial transactions of the University."¹³¹⁴

One key issue was that Mr. Abubakar apparently insisted on providing funding to AUN on a month-to-month basis and did not deposit funds into AUN bank accounts under the control of university officials.¹³¹⁵ Minutes from an October 2006 AUN board meeting described the situation as follows:

"Up until this Board meeting, the Chief Financial Officer (CFO) of the University would seek funding from the Founder [Mr. Abubakar] on a month-by-month basis and also on special cases. At the same time, the Project Manager would work directly with the Founder on the major capital projects. Lately, this relationship had become dysfunctional both because of the strains that occurred because of a specific affair and because of the diminished capacity of the Founder to fund the institution at the same level as before."¹³¹⁶

A 2005 email from the AUN president also expressed concerns about diminishing funding for the university from Mr. Abubakar:

"[T]here is a feeling among some that the flow of revenue to the University will slow dramatically if Atiku's political fortunes continue to wane. The concerns were not eased by the recent effort to reduce the November transfer from the needed N28 million to N20 million, even though we are well under budget even with the larger figure. Construction deferrals/delays have also raised fears that the prospects for the University are inexorably linked to Atiku's political success."¹³¹⁷

¹³¹² Subcommittee interview of American University officials, August 7, 2008.

¹³¹³ 8/27/05 email from American University to AUN, PAU101922.

¹³¹⁴ 9/14/06 Special Audit Report on Investigation of Financial Impropropriety in the Accounts of the University, PAU017743. This audit was commissioned by Atiku Abubkar and performed by Tom Satimehin and Co., Mr. Pastor told the Subcommittee that the AUN President and Vice-President disputed this audit. Subcommittee interview of Robert Pastor, April 14, 2009.

¹³¹⁵ Id.

¹³¹⁶ 10/23/06 Robert Pastor's Memorandum "Results of the Board of Trustees Meeting, October 19-20, 2006 and Follow Up," PAU102137.

¹³¹⁷ 11/11/06 internal American University email, PAU010272.

Still another concern was that AUN funding for expenses often came from third party accounts unrelated to the university and outside of its control, making it difficult for AUN to track or control expenses. A February 2007 email from the AUN president to AU, when asked about its funding and expenses over the prior two years, is instructive:

“Most of the operating expense and almost all of the building capital expense did not pass through AAUN accounts. Management had no role in the tender process, the process of negotiation with contractors, or the approval of contracts. This was done by the Founder directly – or by Phil Osadtsuk, who reports directly to the Founder. Through a process he characterizes as ‘forensic accounting,’ George has done the best he can to reconstruct the spending so that the Board will have as complete a picture as we can present. As you know, we have had the discussion in the past with both the Board and the Founder about the advantages of having funds designated for AAUN pass through AAUN accounts. However, this is ultimately the Founder’s decision. My understanding is that most of the construction funds did not come from Atiku himself, but from other donors. I have heard informally where some of the funds have originated, but I do not have full information regarding who contributed what. If the Board feels that it needs that information, I think that Chairman Joda should approach the Founder directly on that question.”¹³¹⁸

Mr. Abubakar seems to have exercised the same level of control over the Douglas accounts used to pay AUN expenses, sending funds on a monthly basis to enable Ms. Douglas to pay a variety of AUN bills, including the latest payroll expenses for AU professors teaching on the AUN campus. In a December 15, 2006 email, for example, Ms. Douglas wrote to AU officials that her account:

“functions as a ‘pay as you go account’ in that monies are sent in as it is requested for paying either salaries or purchases the founder approved and asked me to pay. When he was putting together the budget last year, I gave him all the information for all expenditures that I handled up to the end of last year. The only outstanding information is this year’s transactions which he at least has the salary information since he provided those. I paid the vendors, but that information too he should have since he negotiates the contracts.”¹³¹⁹

Documents reviewed by the Subcommittee indicate that Mr. Abubakar was actively involved in funding and expenditure decisions involving AUN, including determining what expenses would be paid from Douglas and AUN accounts in the United States. The documents reviewed by the Subcommittee do not show any involvement by the trustees of the Abubakar Blind Trust in the decisionmaking process, even though they were nominally in control of disbursements from the Abubakar Blind Trust and the Guernsey Trust Company provided millions of dollars to pay AUN expenses. LetsGo provided additional millions of dollars, which Mr. Volpi told the Subcommittee reflected his personal donations and extensions of credit to

¹³¹⁸ 2/13/07 email from AUN to American University, PAU033157. “George” refers to George Peterson was the Vice President of Finance and Administration for AUN. 9/21/06 internal American University memorandum, PAU0108924.

¹³¹⁹ 12/15/06 email from Ms. Douglas to American University, PAU015995.

AUN. Neither Ms. Douglas nor American University were aware of Mr. Volpi's role, however, instead insisting that all of the funds sent to AU and AUN had come from Mr. Abubakar.

AUN Accounts in the United States. For a four-year period, from 2003 to 2007, Ms. Douglas used her personal checking accounts at Citibank to pay AUN expenses, including, beginning in 2005, paying the salaries of AUN professors who were teaching at AUN in Nigeria but seeking to be paid in U.S. dollars. When the Subcommittee asked AU why Ms. Douglas was paying AUN expenses from her personal accounts, AU expressed concern about this arrangement, in particular because Ms. Douglas was also an AUN trustee. The AU General Counsel told the Subcommittee that "a trustee shouldn't have a role in the finances at all."¹³²⁰ AU summarized the issue as follows:

"In 2005, AUN made American aware that Mrs. Abubakar, on behalf of AUN, paid the salaries of AUN faculty from her U.S. bank account. American was aware that this continued for a two-year period ending in 2007. The reason explained to American as to why Mrs. Abubakar paid AUN faculty and staff from her personal bank account was that AUN was not at that time able to open its own account, yet expatriate staff and faculty still needed to have their salaries wired to their own foreign accounts outside Nigeria."¹³²¹

As early as 2005, AU knew AUN was unable to open accounts in its own name at U.S. banks due to questions about the source of its funding. On August 22, 2005, for example, an outside attorney from Gurne Porter & Baulig, which had been hired by AU, wrote to AU officials and the AUN president that she was unable to open an AUN account at Bank of America or Citibank, because:

"They wanted to know where [AUN] was getting the money. My response that the money would likely come from student tuition and other traditional university funding sources did not satisfy them. They indicated that they would need to be able to prove that the money came from tuition or other legitimate sources."¹³²²

Ms. Douglas also alerted AU officials in 2007, when Citibank informed her that it intended to close her accounts at the bank, including two accounts used to pay AUN expenses. On June 3, 2007, for example, Ms. Douglas sent AU officials an email stating: "Just a reminder again that Citibank AAUN salary account will be closed on June 23."¹³²³ Mr. Weidenfeld also told the Subcommittee that after learning that the Citibank AUN accounts would be closed and "without this or a similar account, the ability of AUN to retain and recruit non-Nigerian staff would be severely limited," he "engaged in intensive discussions urging AU to provide [a] payment facility for expatriate staff and faculty," but "American University's financial office

¹³²⁰ Subcommittee interview of AU General Counsel, August 7, 2008. Ms. Douglas was a trustee of AUN. 3/1/04 memorandum from AUN to American University, PAU033007. Other trustees of AUN as of 2004 were: Ambassador Andrew Young, Alhaji Ahmed Joda, Gabriele Volpi, Mike Adenuga, Manuel Vicente, Peter Okocha, Jackie Chanrai, Adamu Abubakar, Benjamin Lardner, Robert Pastor, and William Jacobs.

¹³²¹ 10/10/08 American University's written responses to Subcommittee questions, PSI-American_University-05-0008.

¹³²² 8/22/05 email from Gurne Porter & Baulig to American University, PAU0109008.

¹³²³ 6/3/07 email from Ms. Douglas to American University, PAU026491.

would not open such an account because AU wanted to maintain the separate identities of each institution.”¹³²⁴

After the Citibank accounts closed, Ms. Douglas and Mr. Weidenfeld opened an AUN account at Wachovia Bank, where AU banked, but Wachovia closed that account after seven months due in part to incoming large wire transfers from unfamiliar offshore corporations. Mr. Weidenfeld then used his law firm to open an AUN account at Suntrust Bank. Despite the closure of the Citibank and Wachovia accounts, AU apparently did not have any concerns about the source of funding of the AUN accounts or how their accounts were functioning.

AU Receipt of Offshore Funds. Over the same time period from 2003 to 2007, AU itself was receiving wire transfers from two offshore corporations, LetsGo and Guernsey Trust Company, to pay for consulting fees incurred in connection with AUN. According to a July 22, 2008 letter from AU to the Subcommittee:

“Mr. Abubakar made payments, through Letsgo Ltd and Guernsey Trust Company, on behalf of AUN for the services American rendered pursuant to the 2003 Agreement. American received payments from Letsgo totaling \$13,149,758 and the Guernsey Trust Company amounting to \$900,000. American [University] has had no [other] dealings with these companies.”¹³²⁵

AU documents show that when some of these wire transfers arrived, the AU treasury operations office noted their unusual origin and had to research their purpose. In September 2004, for example, a member of the treasury operations office sent an internal email stating: “Received a wire today for \$100K from Northern Int’l Bank [in] Lugano, Chile Originator is SIMA Holding Company LTD. Expecting a gift?” Two weeks later, his colleague asked: “did we ever find out what this was for ...?” Two weeks after that he was told: “The wire ... was sent by ABTI.”¹³²⁶ In 2007, a treasury operations officer noted: “we recvd \$499,980 incoming wire from Letsgo Ltd FBO ABTI.” Her colleague asked: “where do these wires originatewhat country?” She responded: “This wire originated from Panama.”¹³²⁷

When asked if AU was concerned about receiving \$14 million from unfamiliar offshore corporations, the AU General Counsel stated that we “weren’t concerned until we got the letter from you and now we’ve put everything on hold.”¹³²⁸ AU officials told the Subcommittee that the university knew LetsGo was a Panamanian company, but had no further details about the corporation, including why it was wire transferring the funds for the AUN consulting work to AU.¹³²⁹ AU officials also said they had no information about the Guernsey Trust Company. The documents also show no evidence that the trustees of the Blind Trust had any formal or informal involvement in releasing Abubakar trust funds to pay AU fees.

¹³²⁴ 11/13/09 letter from Ms. Douglas’ legal counsel, London & Mead, to the Subcommittee, PSI-Abubakar & Weidenfeld-01-0023; Subcommittee interview of American University officials, August 7, 2008.

¹³²⁵ 7/22/08 letter from American University’s legal counsel to the Subcommittee, PSI-American University 01-0005.

¹³²⁶ September and October 2004 internal AU emails, PAU020271-72.

¹³²⁷ July 2007 internal AU emails, PAU019408-09.

¹³²⁸ Subcommittee interview of American University officials, August 7, 2008.

¹³²⁹ Id., April 14, 2009.

AU told the Subcommittee that the University had asked Mr. Abubakar or his assistant about the source of the payments for the consulting fees, and were informed that all of the funds provided to AU in connection with the AUN came from Mr. Abubakar.¹³³⁰ AU officials indicated that they were comfortable with that information and had no legal obligation to inquire into the source of Mr. Abubakar's wealth or the source of the specific funds sent to the university. American University indicated that it did not believe it was the recipient of suspect funds in the AUN matter. American University also expressed pride in having assisted in the creation of American University of Nigeria.

To prevent future concerns about receiving payments from unfamiliar third parties, American University told the Subcommittee that, in December 2008, it had entered into a new one year consultancy agreement with AUN and, as part of that agreement, required all future payments to AU to be made exclusively from AUN bank accounts.¹³³¹

Disclosure Reports. Although universities have no legal obligation to inquire into the source of funds provided through a gift or transfer, current law does require universities to publicly disclose gifts and contracts from a foreign source if the value is in excess of \$250,000, by filing online disclosures with the U.S. Secretary of Education.¹³³² American University told the Subcommittee that, although it had filed these disclosures in the past, and several had been filed with respect to its consulting work for AUN, it had not filed all of the required reports.¹³³³ When the Subcommittee requested copies of the public disclosures related to AU's consulting work for AUN, American University discovered that it had inadvertently failed to file the required disclosures since 2006. On January 25, 2010, American University filed the missing public disclosures required by law, reporting more than \$11 million in additional foreign payments related to its consulting work for AUN.¹³³⁴ The public disclosures do not require American University to identify the source of the foreign payments, so the reports make no reference to Mr. Abubakar, Ms. Douglas, LetsGo, or the Guernsey Trust Company.

D. Conclusion

This case history demonstrates how, over an eight-year period from 2000 to 2008, Ms. Douglas and Mr. Abubakar were able to bring over \$40 million in suspect funds into the United States, primarily through wire transfers sent by offshore corporations. Over this time period, Ms. Douglas opened over 30 accounts at U.S. banks, most of which were unaware of her PEP status

¹³³⁰ Id., July 13, 2009.

¹³³¹ Id. See also AU/AUN consultancy agreement, PSI-American_University-12-0007.

¹³³² See Section 1209 of the Higher Education Act of 1965, codified at 20 U.S.C. §1011f. This disclosure requirement was first enacted in 1986, as part of a reauthorization of the Higher Education Act. The House Committee report on the legislation explains that the law was "intended to promote clarity of academic purpose by avoiding the distortion that may occur in an academic program when large gifts are given to the institution from a foreign entity without public knowledge of that gift." House Committee on Education and Labor Report on H.R. 3700, Higher Education Amendments of 1985, Rep. 99-383 (November 20, 1985), at 87.

¹³³³ American University had filed disclosures related to its consulting work for AUN from 2002 to 2005, disclosing a total of about \$6.3 million in foreign payments related to Nigeria.

¹³³⁴ The AU disclosures now on file with the Department of Education cover all payments related to its consulting work for AUN from 2002 to 2009, totaling in excess of \$17.5 million. This total is higher than the \$14 million discussed in this Report, because it includes payments of more than \$3.6 million made during 2008 and 2009, which occurred outside the scope of the information requests made by the Subcommittee.

due to incomplete PEP lists maintained by third party vendors and inadequate due diligence procedures. In one case, a bank failed to document her PEP status even after being told of her marriage to the former Vice President of Nigeria. In two instances, Ms. Douglas used her U.S. legal counsel, Mr. Weidenfeld, to help convince a bank to open an account. At each bank where she opened an account, she described herself as unemployed or a student, soon began receiving large wire transfers from offshore corporations, and explained when asked that she had little or no information about the companies sending her money, but believed the funds were being sent by her husband. At first, U.S. banks accepted this explanation and allowed Ms. Douglas to bring nearly \$25 million over eight years into the United States. Over the last year, Mr. Weidenfeld accepted at least another \$2.1 million in wire transfers from an unfamiliar offshore corporation, with no questions asked. Over five years, American University accepted \$14 million.

In each case, the bank, law firm, or university was told it was receiving funds from Mr. Abubakar. Mr. Abubakar is a complex figure in Nigerian politics. His 20-year career in the Nigerian Customs Service, 10-year stint as a private businessman, and 8-year tenure as Vice President of Nigeria, are difficult to evaluate, especially in a country plagued by corruption. His founding of Intels while a Customs official, the company's association with powerful government officials, and its increasing economic profile, raise questions about the basis for the company's success. Mr. Abubakar's quiet exchange of Intels shares for Orlean shares in 2003; his use of Orlean and then a shell company associated with Mr. Volpi to run his allegedly Blind Trust; and the millions of dollars sent by corporations associated with Mr. Volpi to Douglas-related accounts in the United States, raise a host of questions about the nature and source of Mr. Abubakar's wealth. An allegation by the SEC that Ms. Douglas received over \$2 million in bribe payments from Siemens AG, intended in part for her husband, also cannot be dismissed.

Mr. Abubakar and Ms. Douglas convinced U.S. banks, a U.S. law firm, and even a university to accept millions of dollars from unfamiliar offshore corporations to advance their interests. U.S. AML and PEP safeguards require further strengthening to prevent offshore corporations from sending millions of dollars of suspect funds into the U.S. financial system.

VI. ANGOLA CASE STUDY: EXPLOITING POOR PEP CONTROLS

Angola, an oil producing country on the coast of western Africa, is known for an ongoing corruption problem, weak anti-money laundering (AML) controls, and a cash-intensive banking system. This case history examines three Angolan PEP accounts, involving an Angolan arms dealer, an Angolan government official, and an Angolan private bank that caters to PEP clients, in which the accountholder gained access to the U.S. financial system and exploited poor U.S. AML and PEP controls.

Pierre Falcone is a notorious arms dealer, known for selling weapons to Angola during its civil war and for his close association with Angolan President Jose Eduardo dos Santos. He has long been the subject of criminal investigations in France, was imprisoned for one year beginning in 2000, was a fugitive from a 2004 French global arrest warrant, was convicted in France in 2007 and again in 2009 on charges of illegal arms dealing, tax fraud, and money laundering, and is now serving a six-year prison sentence. Yet for 18 years, from 1989 to 2007, he and his relatives were able to make use of nearly 30 accounts at Bank of America in Scottsdale, Arizona. Mr. Falcone used personal, family, and U.S. shell company accounts at the bank to bring millions of dollars in suspect funds into the United States and move those funds among a worldwide network of accounts. Although aware of his status as an arms dealer, Bank of America did not treat Mr. Falcone as a PEP, did not designate his accounts as high risk, and maintained the Falcone accounts with few questions asked. In 2007, after receiving a Subcommittee inquiry about the Falcone accounts, the bank conducted a new due diligence review, closed the accounts, and expressed regret at providing Mr. Falcone with banking services for years.

Dr. Aginaldo Jaime, a senior Angolan government official, was head of Banco Nacional de Angola (BNA), the Angolan Central Bank, when he attempted, on two occasions in 2002, to transfer \$50 million in state funds to a private account in the United States, only to have the transfers reversed by the U.S. financial institutions involved. Dr. Jaime invoked his authority as BNA Governor to wire transfer the funds to a private bank account during the first attempt and, during the second attempt, to purchase \$50 million in U.S. Treasury bills for transfer to a private securities account. Both transfers were initially allowed, then reversed by bank or securities firm personnel who became suspicious of the transactions despite the reputation of the foreign official involved. Partly as a result of those transfers and the corruption concerns they raised, in 2003, Citibank closed not only the accounts it had maintained for BNA, but all other Citibank accounts for Angolan entities.

Banco Africano de Investimentos (BAI) is a \$7 billion private bank whose largest shareholder is Sonangol, the Angolan state-owned oil company, and which caters to Angolans in the oil and diamond industries and government. Over the last ten years, BAI gained entry to the U.S. financial system through accounts at HSBC in New York, using HSBC wire transfer services, foreign currency exchange, and U.S. dollar credit cards for BAI clients, despite refusing to fully disclose its owners or provide a copy of its AML procedures. BAI's resistance to HSBC oversight, weak AML controls, vulnerability to corruption, and PEP clientele, indicate that BAI

ought to be subject to tough U.S. AML and PEP controls, but HSBC has failed even to designate BAI as a high risk client warranting enhanced monitoring.

Together, these accounts demonstrate, again, the need for U.S. financial institutions to strengthen their AML and PEP controls to keep foreign corruption out of the United States.

A. Background

Angola. Angola is located on the west coast of Africa, with a landmass slightly less than twice the size of Texas.¹³³⁵ Its official language is Portuguese, and it has a population of roughly 13 million.

Angola gained its independence from Portugal on November 11, 1975.¹³³⁶ From its inception, the country was engulfed in a civil war, initially among three factions, the Popular Movement for the Liberation of Angola (MPLA), the National Front for the Liberation of Angola (FNLA), and the National Union for Total Independence of Angola (UNITA). Under the 1991 Bicesse Accord, the MPLA and UNITA agreed to a ceasefire and to hold elections. When the MPLA won a plurality of the vote, UNITA rejected the results, and the country returned to war. The 1994 Lusaka Protocol brought about another ceasefire, but localized fighting spread, and war continued until 2002. The civil war resulted in the death of as many as 1.5 million Angolans and the displacement of 4 million.¹³³⁷

Angola held its first presidential election in 1992, during the first ceasefire. Jose Eduardo dos Santos of the MPLA won a plurality of the vote and assumed the office of President of Angola. UNITA rejected the results and returned to war, while MPLA, by default, became the recognized government. UNITA's insurgency effort was condemned by the United Nations and United States. In 1993, President Clinton issued Executive Order 12865 which declared a national emergency related to Angola and stated that UNITA constituted a "threat to international peace and security."¹³³⁸ The Executive Order prohibited the sale or supply from the United States of any arms, related material, petroleum, and petroleum products to Angola. The order also specifically prohibited the sale or supply of such commodities to UNITA.

Additional sanctions followed, further tightening United States-Angola trade and targeting UNITA. Executive Order 13069, issued December 12, 1997, closed all UNITA offices in the United States and restricted the sale or supply of aircraft or aircraft parts and related services. Executive Order 13098, issued August 18, 1998, prohibited the supply of equipment used in mining, motorized vehicles, watercraft, spare parts for motorized vehicles or watercraft, mining services, and ground or waterborne transportation services. Each Executive Order was issued in conjunction with U.N. resolutions.¹³³⁹

¹³³⁵ CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/ao.html>.

¹³³⁶ Id.

¹³³⁷ Id.

¹³³⁸ Executive Order 12865 of September 26, 1993: "Prohibiting Certain Transactions Involving UNITA," Federal Register Vol. 58, No. 18.

¹³³⁹ See, e.g., UN Security Council Resolutions 864 (September 15, 1993), 976 (February 8, 1995), 1064 (July 11, 1996), 1127 (August 28, 1997), 1130 (September 29, 1997), 1173 (June 12, 1998), and 1176 (June 24, 1998), <http://www.un.org>.

In 1998, the United Nations took action to block trade in Angolan diamonds.¹³⁴⁰ These trade sanctions again targeted UNITA which controlled diamond producing territory and was using the proceeds from diamond sales to purchase arms and continue the armed conflict in Angola. The sanctions made it more difficult to trade in Angolan “conflict diamonds,”¹³⁴¹ but smuggling schemes ensued, followed by high-profile scandals involving arms-for-diamonds trades.¹³⁴²

In 2002, UNITA leader Joseph Savimbi was killed in action, effectively ending UNITA’s insurgency and the civil war. On May 6, 2003, President George W. Bush issued Executive Order 13298 lifting the prior sanctions. President dos Santos was still in office then and remains in office today, nearly 18 years after his initial election. During those 18 years, he has not allowed any new election for the presidency, although a presidential election has tentatively been scheduled for 2012.

Angola’s economy today is largely reliant on two extractive industries, oil and diamonds. Angola is currently one of Africa’s largest oil producers,¹³⁴³ and oil accounts for over 90% of Angola’s exports.¹³⁴⁴ Sonangol is the state-owned company that helps to produce and sell Angolan oil. Since 2004, China, through Sinopec and other companies, has become a key developer and purchaser of Angolan oil.¹³⁴⁵ Angola is now believed to be China’s main supplier of oil.¹³⁴⁶ In addition to oil, Angola has major diamond reserves, located in its northeastern region, and is among the world’s leading diamond producers.¹³⁴⁷ Diamonds are Angola’s second largest export. Endiama is the state-owned company that helps produce and sell Angolan diamonds.

¹³⁴⁰ See UN Security Council Resolution 1173 (June 12, 1998), <http://www.un.org>; UN Security Council Press Resolution, “Council Decides Previously Specified Measures Against UNITA Shall Come Into Force on 1 July, Instead of 25 June,” June 24, 1998, <http://www.un.org/News/Press/docs/1998/19980624.sc6534.html>.

¹³⁴¹ “Conflict diamonds are diamonds that originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in opposition to those governments, or in contravention of the decisions of the Security Council.” United Nations website, <http://www.un.org/peace/africa/Diamond.html>.

¹³⁴² See, e.g., The Independent, “UN sanctions ineffective against UNITA rebels,” April 19, 2001, <http://www.independent.co.uk/news/world/africa/un-sanctions-ineffective-against-unita-rebels-753578.html>; The Independent, “Angola Calls for UN Sanctions Over Arms Violation Nations,” February 23, 2001, <http://www.independent.co.uk/news/world/africa/angola-calls-for-un-sanctions-over-arms-violation-nations-692922.html>.

¹³⁴³ See Embassy of Angola website, <http://www.angola.org/economy.html> (“As independence was proclaimed in 1975, Angola ranked third on the list of Africa’s most important oil producing countries after Nigeria and Gabon. Angola is currently the second oil producer with 1 million b/d output, and it is expected that by next year it will overtake Nigeria, with a current output of 2.3 million b/d.”).

¹³⁴⁴ Embassy of Angola: Economy; <http://www.angola.org/economy.html> (“Oil is the backbone of the Angola’s economy. This sector makes up over 90% of the Country’s exports.”).

¹³⁴⁵ CNNMoney.com, “China’s appetite for African oil grows,” February 15, 2006, http://money.cnn.com/2006/02/08/news/international/africa_fortune/index.htm.

¹³⁴⁶ The Heritage Foundation, “Into Africa: China’s Grab for Influence and Oil,” February 9, 2007, <http://www.heritage.org/research/africa/HL1006.CFM>.

¹³⁴⁷ Embassy of Angola: Economy, <http://www.angola.org/economy.html>.

Despite its oil and diamond reserves, Angola ranks among the world's worst performing countries in life expectancy and infant mortality rates.¹³⁴⁸ The average Angola citizen can expect to live to only 41.7 years, one of the lowest rates in the world. Almost half of Angolans do not have access to safe drinking water.¹³⁴⁹ The country is also known for human rights abuses. The U.S. Department of State's 2008 Human Rights Report stated: "[T]he government's human rights record remained poor, and there were numerous, serious problems."¹³⁵⁰ The report cited the following problems:

- "Government security forces tortured, beat, and otherwise abused persons."
- "Police often extorted bribes."
- "The constitution provides for an independent judiciary; however, the judiciary remained understaffed, inefficient, corrupt, and subject to executive and political influence."
- "Authorities arrested, harassed, and intimidated journalists."

Corruption. Angola has long had a problem with corruption. In 2002, an International Monetary Fund (IMF) report found that nearly \$1 billion had disappeared from the Angolan treasury in 2001, and over the prior five years, more than \$4 billion remained unaccounted for.¹³⁵¹ On November 9, 2006, Angolan police arrested over 100 protestors who marched in the capital city of Luanda to protest corruption in government.¹³⁵² The protestors handed out flyers accusing Angolan officials of siphoning funds from the Angola people to accounts in France. Shortly afterwards, on November 15, 2006, the IMF urged Angola "to tackle deep-rooted governance and corruption issues in the extractive sectors and expressed serious concern that progress on these issues is stalled."¹³⁵³

In 2008, Transparency International ranked Angola 158th out of 180 countries on its annual Corruption Perceptions Index.¹³⁵⁴ The U.S. State Department's 2008 Human Rights Report characterized corruption in Angola as "widespread" yet noted "there were no public investigations or prosecutions of government officials during the year."¹³⁵⁵ The State Department also noted serious transparency concerns related to Angola's two major state entities, Sonangol and Endiama.¹³⁵⁶

¹³⁴⁸ CIA World Fact Book, Country Comparisons – GDP Per Capita; <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>; The United Nations World Population Prospects: The 2008 Revision.

¹³⁴⁹ UNDP Human Development Index Statistics, http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_AGO.html.

¹³⁵⁰ U.S. Department of State, "2008 Human Rights Report: Angola," February 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118985.htm>.

¹³⁵¹ International Monetary Fund, "IMF Report: Angola Staff Report for the 2002 Article IV Consultation," March 18, 2002, at 9.

¹³⁵² Human Rights Watch, "Angola: New OPEC Member Should Tackle Corruption Not Critics," December 14, 2006, <http://www.hrw.org/en/news/2006/12/14/angola-new-opec-member-should-tackle-corruption-not-critics>.

¹³⁵³ IMF press release, "IMF Executive Board Concludes 2006 Article IV Consultation with Angola," Public Information Notice No. 06/133, November 15, 2006, <http://www.imf.org/external/np/sec/pn/2006/pn06133.htm>.

¹³⁵⁴ Transparency International, 2008 Corruption Perception Index, http://www.transparency.org/policy_research/surveys_indices/cpi/2008.

¹³⁵⁵ U.S. Department of State, "2008 Human Rights Report: Angola," February 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118985.htm>.

¹³⁵⁶ Id.

In addition, Angola has long been known for weak anti-money laundering and anti-corruption controls. In 2008, the U.S. State Department's International Narcotics Control Strategy Report described the country as follows:

“Angola currently has no comprehensive laws, regulations, or other procedures to detect money laundering and financial crimes. Other provisions of the criminal code do address some related crimes. The various ministries with responsibility for detection and enforcement are revising a draft anti-money laundering law drawn up with help from the World Bank. ... The Central Bank has the authority to freeze assets, but Angola does not presently have an effective system for identifying, tracing, or seizing assets. ... Angola's high rate of cash flow makes its financial system an attractive site for money laundering. ... These massive cash flows occur in a banking system ill-equipped to detect and report suspicious activity. The Central Bank has no workable data management system and only rudimentary analytic capability. Corruption pervades Angolan society and commerce and extends across all levels of government.”¹³⁵⁷

Given Angola's turbulent history, corruption problem, and weak AML and anti-corruption controls, some U.S. financial institutions have decided to subject Angolan accounts to enhanced due diligence and monitoring; some have decided not to open such accounts at all.

B. An Angolan PEP: Moving Millions of Dollars For An Arms Dealer

Pierre Joseph Falcone is a notorious arms dealer, known for selling weapons to Angola during its civil war and for his close association with Angolan President Jose Eduardo dos Santos. He has long been the subject of criminal investigations in France, was imprisoned for one year beginning in 2000, became a fugitive from a 2004 French global arrest warrant, was convicted in France in 2007 and in 2009, on charges of illegal arms dealing, tax fraud, and other financial crimes, and is now serving a six-year prison sentence. Yet for 18 years, from 1989 to 2007, Mr. Falcone and his relatives used 29 accounts at Bank of America in Scottsdale, Arizona, to bring millions of dollars in suspect funds into the United States to advance their business interests. In the last eight years the Falcone accounts were open, from 1999 to 2007, the Subcommittee was able to trace over \$60 million in suspect account activity that either passed through U.S. correspondent accounts or ended up in U.S. bank accounts.

When the accounts were initially opened in 1989, U.S. anti-money laundering laws were limited, and the Falcones had to provide only minimal information to gain entry to a U.S. bank. In 2001, enactment of the Patriot Act tightened AML requirements for accounts held by foreign senior political figures, their relatives, and close associates, a group of persons now known as Politically Exposed Persons (PEPs), and made handling foreign corruption proceeds a U.S. money laundering offense. Despite those new legal requirements, and a burst of publicity about Mr. Falcone after his imprisonment in France, Bank of America failed to identify him as a PEP due either to his close association with President dos Santos or his own 2003 appointment as an Ambassador of Angola to UNESCO. In 2005, when routine monitoring did flag certain

¹³⁵⁷ U.S. Department of State, “2008 International Narcotics Control Strategy Report, Volume II, Money Laundering and Financial Crimes,” March 2008, at 83-84.

transactions, Bank of America conducted a special review of the accounts and identified Mr. Falcone as an arms dealer, but failed to identify him as a PEP, determined that his account activity was “normal” despite multiple high-dollar international wire transfers, and failed even to designate the accounts as high risk.

Bank records reviewed by the Subcommittee showed that the Falcone accounts at Bank of America engaged in numerous suspicious transactions over the last eight years they were open. For example, from 1999 to 2003, the accounts received multiple wire transfers totaling in excess of \$6 million from unidentified “clients” in known secrecy jurisdictions such as the Cayman Islands, Luxembourg, Singapore, and Switzerland. From 2001 to 2003, an account opened by Mr. Falcone’s wife in the name of Monthigne Corp., an apparent shell company formed under the laws of Arizona, received numerous large wire transfers from obscure offshore corporations, including \$2.46 million sent by AALL Trust and Banking Corp. Ltd., a bank in the Cayman Islands; nearly \$855,000 from Culmen Investments using accounts in Israel; nearly \$200,000 from Rego Holdings Ltd. using accounts in Israel; and nearly \$250,000 from Valley Marketing Ltd. using Cayman accounts. After receipt of the funds, Ms. Falcone transferred large amounts to other Falcone-related accounts.

The Falcone accounts also showed frequent large-dollar transfers from one Falcone-related account to another, at times across international lines. For example, from 2004 to 2007, Mr. Falcone sent wire transfers from bank accounts in South Africa, Angola, Portugal, and China, in amounts ranging from \$100,000 to \$550,000, to Falcone accounts at Bank of America in Arizona. From 2000 to 2002, Bank of America accounts belonging to Mr. Falcone’s wife, his mother, another apparent relative, Iris Montero Mendez, and Monthigne sent multiple wire transfers totaling nearly \$1.2 million to a Utah bank account belonging to Essante Inc., a health and beauty business associated with Ms. Falcone. In addition, from 2001 to 2002, Ms. Mendez made multiple high-dollar transfers from her account to Ms. Falcone’s account at Bank of America, sending \$100,000 to \$175,000 at a time for a total of about \$950,000. These frequent, high-dollar, offshore transactions failed to trigger any review.

Another set of questionable transactions involves large wire transfers from Companhia Angolana de Distribuicao Alimentar Inc. or CADA, an Angolan company controlled in part by Mr. Falcone. From 2000 to 2001, CADA wire transferred a total of \$1.4 million to a joint Falcone account at Bank of America, as well as \$9 million to a Swiss account in the name of Brenco International, another company beneficially owned by Mr. Falcone and involved in his illegal arms trade. Bank records from HSBC also show that, in July 2001, the CADA account at HSBC Equator Bank received over \$20 million from the Angolan state oil company, Sonangol. HSBC records also show that, from 1997 to 2004, HSBC itself conducted a joint business venture in Angola with Mr. Falcone through joint ownership of Triang Ltd., a trucking operation that transported fuel for the Angolan diamond industry.

Still another set of transactions raising red flags are numerous high-dollar transfers, involving from \$50,000 to \$549,000 at a time, between the Falcone accounts at Bank of America and the Beverly Loan Company, an upscale pawn shop in Beverly Hills, California. The Subcommittee learned that the Beverly Loan Company issues loans secured by fine jewelry, and since 2001, Ms. Falcone had obtained over \$7.3 million in loans in her own name and the name

of her assistant. These loans were a frequent source of funds for the Falcone accounts from 2001 to 2007.

Many of these transactions occurred prior to the special review of the Falcone accounts conducted by Bank of America in June 2005, yet the bank deemed the account activity as “normal,” and failed to designate the Falcone accounts as high risk or to require enhanced monitoring, even after learning he was an international arms dealer. The documents indicate that the bank also failed even to consider designating Mr. Falcone a PEP client. When asked about specific transactions, Bank of America told the Subcommittee that its 2005 review had looked at only 19 months of account activity and did not examine the wire transfers sent by unidentified clients. The bank also said that it did not collect specific information about the AALL Trust and Banking Corp., Cullen Investments, Rego Holdings, Valley Marketing, CADA, or Beverly Loan Company, and had not viewed the high-dollar transfers among Falcone accounts to be of concern. The bank also told the Subcommittee that it did not know Ms. Mendez’s relationship to the Falcones, despite her years as a banking customer and the high volume of transfers between the accounts belonging to her and the Falcones. In an interview with the Subcommittee, Bank of America expressed regret for providing years of banking services to a notorious arms dealer. In 2007, Bank of America closed the Falcone accounts.

(1) Background

For many years, Pierre Falcone has been publicly associated with illegal arms trafficking, tax evasion, bribery, and other misconduct. He is most frequently associated with a massive scandal that broke in France in 2000, dubbed “Angolagate” by the media, involving illegal arms sales in Angola at exorbitant prices facilitated by millions of dollars in bribes paid to government officials.¹³⁵⁸

During the 1990s, Mr. Falcone worked as a consultant to the French government agency, SOFREMI, which handles foreign arms sales. He helped arrange numerous arms sales to foreign countries, including Angola which was then in the midst of its civil war and subject to a UN arms embargo. Over the years, allegations mounted about his role in conducting illegal arms sales in Angola in violation of the embargo, as well as his alleged involvement with bribes paid to French and Angolan officials. He became the subject of multiple criminal investigations.

In December 2000, Mr. Falcone was detained in a French jail pending an investigation into allegations of his involvement with tax fraud, influence peddling, and corruption of public officials associated with arms sales in Angola.¹³⁵⁹ One year later, in December 2001, he was released from prison, after posting more than 100 million French francs (about \$14 million) in

¹³⁵⁸ See, e.g., The Telegraph, “Angolagate ‘Arms for Oil’ Trial Pens in Paris,” October 6, 2008, <http://www.telegraph.co.uk/news/worldnews/europe/france/3146113/Angolagate-arms-for-oil--trial-opens-in-Paris.html>; Third World Traveler, “The Influence Peddlers,” 2002, http://www.thirdworldtraveler.com/Weapons/Influence_Peddlers_MAK.html.

¹³⁵⁹ See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 4. See also In These Times, “The Arms Dealer Next Door,” December 22, 2001, <http://www.inthesetimes.com/issue/26/04/feature4.shtml>.

bail, surrendering his passport, and agreeing to other travel restrictions.¹³⁶⁰ In 2002, French authorities initiated a new round of investigations into allegations of wrongdoing involving Mr. Falcone.¹³⁶¹ In June 2003, the Angolan government, under President dos Santos, appointed Mr. Falcone as the Angolan ambassador to UNESCO, and Mr. Falcone asserted diplomatic immunity from criminal prosecution.¹³⁶² He then left the country in September 2003, in violation of his bail restrictions.¹³⁶³ French authorities eventually denied his claim on the ground that his arms trafficking activities were not a function of his diplomatic status.¹³⁶⁴ In the meantime, a French magistrate issued two summons for Mr. Falcone to appear in October and November 2003.¹³⁶⁵ When Mr. Falcone did not appear in response to either summons, on January 14, 2004, the magistrate issued a global warrant for his arrest.¹³⁶⁶ That arrest warrant remained outstanding for several years.

In addition to the French proceedings, in 2002, Swiss authorities also initiated an investigation into Mr. Falcone and the Angolagate scandal.¹³⁶⁷ That investigation was suspended in 2004, however, by the Public Prosecutor of Geneva, Daniel Zappelli.¹³⁶⁸

About three years after he left, Mr. Falcone returned to France to face multiple charges related to his work for SOFREMI. In March 2007, he was one of 42 people indicted on charges related to illegal arms trafficking in Angola, including Jean-Christophe Mitterrand, son of the

¹³⁶⁰See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 4. See also In These Times, “The Arms Dealer Next Door,” December 22, 2001, <http://www.inthesetimes.com/issue/26/04/feature4.shtml>; see also, Le Monde, “Pierre-Joseph Falcone a été remis en liberté après un an de détention,” December 4, 2001; Third World Traveler, “The Influence Peddlers,” 2002, http://www.thirdworldtraveler.com/Weapons/Influence_Peddlers_MAK.html.

¹³⁶¹ See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 4. See also Amnesty International, “Undermining Global Security: the European Union’s arms exports,” International Action Network on Small Arms website, http://www.iansa.org/regions/europe/documents/undermining_security/brokering_transport.htm.

¹³⁶² See, e.g., Le Monde, “Un mandat d’arrêt international a été délivré contre Pierre Falcone,” January 17, 2004; Amnesty International, “Undermining Global Security: the European Union’s arms exports,” International Action Network on Small Arms website,

http://www.iansa.org/regions/europe/documents/undermining_security/brokering_transport.htm.

¹³⁶³ See, e.g., Le Monde, “Un mandat d’arrêt international a été délivré contre Pierre Falcone,” January 17, 2004; Le Monde, “Pierre Falcone a quitté la France grâce à son passeport diplomatique angolais, September 23, 2003.

¹³⁶⁴ See Ordonnance De Soit Communiqué, Tribunal de Grande Instance de Paris, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (11/18/2003). See also, Amnesty International, “Undermining Global Security: the European Union’s arms exports,” International Action Network on Small Arms website, http://www.iansa.org/regions/europe/documents/undermining_security/brokering_transport.htm.

¹³⁶⁵ See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 7. See also Le Monde, “Un mandat d’arrêt international a été délivré contre Pierre Falcone,” January 17, 2004.

¹³⁶⁶ See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 6. See also Le Monde, “Un mandat d’arrêt international a été délivré contre Pierre Falcone,” January 17, 2004.

¹³⁶⁷ See, e.g., Le Monde, “Le volet suisse de l’enquête sur l’affaire Falcone pourrait être menace,” November 21, 2002; Global Witness, “Time for Transparency: Coming clean on oil, mining and gas revenues”, March 2004, at 42-45 (citing a February 2002 “Geneva-based investigation into the possible involvement of Pierre Falcone in ‘money laundering, support for a criminal organisation’ and ‘corruption of foreign public officials’”).

¹³⁶⁸ See, e.g., Aktion Finanzplatz Schweiz, the Berne Declaration, and Global Witness, press release, “Geneva Prosecutor must revive Angola Oil Corruption Probe,” February 15, 2008.

former French President, and Charles Pasqua, former French interior minister.¹³⁶⁹ Among other charges, Mr. Falcone and his business partner, Arkadi Gaydamak, were alleged to have sold 170,000 land mines, 420 tanks, 12 helicopters, six warships, and other weapons to the dos Santos Administration during the Angolan civil war in violation of the UN arms embargo.¹³⁷⁰ Brenco International, a company beneficially owned by Mr. Falcone and Mr. Gaydamak, allegedly brokered the arms sales, which were valued at \$790 million.¹³⁷¹ In addition, Mr. Falcone was alleged to have ordered bank transfers in favor of Angolan officials that, between 1993 and 2000, totaled at least \$54 million.¹³⁷² In October 2009, Mr. Falcone was convicted of illegal arms sales, tax fraud, money laundering, and embezzlement, and sentenced to six years in prison.¹³⁷³ Earlier, he had been convicted in two other cases on charges of tax fraud and misappropriation of public funds, and received prison terms of one and four years.¹³⁷⁴ He is currently incarcerated in France.

Despite Mr. Falcone's notorious reputation and involvement in ongoing criminal investigations, he and his family were able to maintain a lavish lifestyle in Arizona since the 1980s.¹³⁷⁵ In 2000, Mr. Falcone purchased a mansion in Paradise Valley, Arizona, for a reputed \$9.6 million, then the highest-value residential purchase in Arizona history.¹³⁷⁶ The house is currently on sale for \$14.5 million, and is described in a Southeby's advertisement as having over 16,000 square feet of space, seven bedrooms, ten bathrooms, a pool, tennis court, and five-car garage.

Mr. Falcone is married to Sonia Montero Falcone, a former Miss Bolivia International and president of Essante Inc., a Utah company specializing in health and beauty products.¹³⁷⁷ On

¹³⁶⁹ See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007). See also "Undue Diligence," Global Witness, March 2009, at 94, citing Angolagate indictment, 5 April 2007.

¹³⁷⁰ See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 49-50. See also IPS News, "No Angolans at 'Angolagate' Trial," October 15, 2009, <http://ipsnews.net/news.asp?idnews=44276>.

¹³⁷¹ See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 29, 80. See also Wall Street Journal, "French Businessmen Are Sentenced for Arms Trade," October 28, 2009; The Guardian, "French elite on trial in \$791m Angola arms case," October 7, 2007.

¹³⁷² See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 58-59.

¹³⁷³ See New York Times, "French Power Elite Face a Fall From Grace," October 27, 2009, <http://www.nytimes.com/2009/10/28/world/europe/28iht-paris.html>; see also Wall Street Journal, "French Businessmen Are Sentenced for Arms Trade," October 28, 2009.

¹³⁷⁴ See, e.g., "Pierre Falcone condamne a quatre ans de prison ferme pour fraude fiscale," Le Monde, January 18, 2008; Le Monde, "Pierre Falcone: quatre ans ferme pour fraude fiscale," January 20, 2008; AFP, "Prison ferme pour le fils Pasqua et Pierre Falcone dans le dossier Sofremi," December 11, 2007.

¹³⁷⁵ See The Arizona Republic, "Jet-Setter's Life Marked by Intrigue Arms-Deal Allegations Don't Fit, Many Say," January 12, 2001 ("Friends say Falcone, who has lived in the Valley for about 15 years, is the consummate internationalist. He is described as multilingual, constantly on his cell phone, circling the globe, hobnobbing with corporate kings and heads of state.").

¹³⁷⁶ See undated BOA Global AML Operations report on Falcone accounts, BOA-PSI-04698-700; Arizona Republic, "Valley Socialite Jailed in African Weapons Case," October 27, 2009, and "Jet-Setter's Life Larked by Intrigue," January 12, 2001; "Angolan Can of Worms," February 22, 2002.

¹³⁷⁷ See, e.g., Business Wire HealthWire, "From Beauty Queen to Beauty Empire: Former Miss Bolivia Launches International Health and Beauty..." September 28, 2000.

March 15, 2000, Ms. Falcone formed an Arizona company, Monthigne, Corp., and opened an account in the company's name at Bank of America.¹³⁷⁸ Publicly available information from the Arizona Corporation Commission describes the company as a "legal services" business.¹³⁷⁹ Arizona State corporation documents also indicate that it was dissolved in 2005.¹³⁸⁰ Bank of America was unable to tell the Subcommittee anything about this company which appears to have functioned as a shell corporation.

In January 2006, U.S. prosecutors indicted Ms. Falcone for immigration fraud, which was uncovered when she applied to become a U.S. citizen.¹³⁸¹ In March 2007, in an arrangement reached with prosecutors, she pled guilty to illegally hiring foreign workers at her Arizona residence and agreed to leave the country. In August 2007, the U.S. Government deported Ms. Falcone from the United States, and she reportedly left for China.¹³⁸² In March 2009, the Subcommittee attempted to contact Mr. Falcone, but received no response.

(2) Falcone Accounts at Bank of America

Mr. Falcone first opened an account at Bank of America in Scottsdale, Arizona in 1989. At the time, U.S. anti-money laundering laws were limited, and the bank opened the accounts with virtually no personal information about the Falcones other than their U.S. address.

Falcone Accounts. From 1989 to 2005, Bank of America opened 29 accounts for the Falcones at its Scottsdale branch, including four for Mr. Falcone;¹³⁸³ seven for Ms. Falcone;¹³⁸⁴ ten for Mr. Falcone's mother, Vincente Falcone, who lives in Canada;¹³⁸⁵ one for Mr. Falcone's

¹³⁷⁸ Arizona Corporation Commission State of Arizona Public Access System, annual reports for Monthigne, Corp. See also 8/15/02 BOA Corporate Signature Card and Certified Copy of Corporate Resolutions, BOA-PSI-03422-24 (identifying Ms. Falcone as the president of Monthigne Corp.).

¹³⁷⁹ Arizona Corporation Commission State of Arizona Public Access System, annual reports for Monthigne, Corp.

¹³⁸⁰ 1/5/05 Arizona Corporation Commission Corporations Division, Certificate of Dissolution for Monthigne, Corp.

¹³⁸¹ United States v. Falcone, Case No. CR06-0015 PHX (USDC AZ), Indictment, January 10, 2006. See also Arizona Daily Sun, "Wife of Ambassador to UNESCO Arrested on Fraud Charges," February 17, 2006.

¹³⁸² See East Valley Tribune, "East Valley Philanthropist Deported in Plea Deal," August 29, 2007, <http://www.eastvalleytribune.com/story/96157>.

¹³⁸³ Account Nos. 7676-1391 (opened 3/89 and closed 7/07); 2-3951-3328 (opened 1/98 and closed 7/07); 2-7220-7365 (opened 2/98 and closed 7/07); and 2-7220-7883 (opened 3/98 and closed 4/01). The final two accounts were joint accounts between Mr. Falcone and his business associate, Gasper Devita. Ms. Falcone was also a signatory on the 2-7220-7365 account. See account signature forms, BOA-PSI-00010, 12, 18-29. Mr. Devita had four other accounts at Bank of America as well. Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505.

¹³⁸⁴ Account Nos. 8-4603-5538 (opened 9/94 and closed 7/07); 2-7245-0445 (opened 6/98 and closed 2/01); 2-5492-3451 (opened 12/98 and closed 7/07); 2-5492-3478 (opened 12/98 and closed 4/00); 2-5492-3397 (opened 12/98 and closed 7/07); 2-7392-8383 (opened 1/99 and closed 1/03); and 2-5773-3203 (opened 7/99 and closed 7/07). Two of the accounts were joint accounts, one with Ms. Falcone and Perrine Falcone, and the other with Ms. Falcone and Eugenia Falcone. Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505.

¹³⁸⁵ Account Nos. 7676-1391 (opened 3/89 and closed 7/07); 2-7477-6027 (opened 3/99 and closed 5/04); 2-7477-6027 (opened 3/99 and closed 5/04); 46-7427-0385 (opened 1/01 and closed 10/03); 46-7076-9382 (opened 4/01 and closed 5/04); 4024-2120-1476-7987 (opened 4/01 and closed 8/07); 46-7748-2837 (opened 2/02 and closed 4/02); 46-5167-0047 (opened 8/02 and closed 3/07); 4356-8800-1453-2789 (opened 5/04 and closed 7/07); and 46-5902-3450 (opened 5/05 and closed 7/07). Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505.

father, Pierre Falcone Sr;¹³⁸⁶ six for Iris Mendez de Montero, a relative of Ms. Falcone;¹³⁸⁷ and one for Monthigne Corp., the Arizona corporation formed by Ms. Falcone.¹³⁸⁸ The Falcones also maintained four safe deposit boxes at the bank¹³⁸⁹ and several credit card accounts.¹³⁹⁰ The first two Falcone accounts were opened in March 1989; the last was opened in May 2005.¹³⁹¹

Eight of these accounts saw much of the activity reviewed below. They include a joint account for Mr. and Ms. Falcone, Checking Account No. 2-7220-7365, sometimes referred to as the “household account” and used to pay expenses related to the Arizona residence;¹³⁹² two accounts used by Mr. Falcone, Checking Account No. 2-7220-6530 and Savings Account No. 76761391;¹³⁹³ an account used by Ms. Falcone, Checking Account No. 8-4603-5538;¹³⁹⁴ a corporate checking account used by Monthigne Corp., Account No. 4671882187;¹³⁹⁵ two accounts used by Mr. Falcone’s mother, Vincente Falcone, Account No. 2-7477-6027 and Account No. 46-5902-3450;¹³⁹⁶ and the account primarily used by Ms. Mendez, Account No. 46-7426-9956.

2005 Account Review. For the first fifteen years they were open, the Falcone accounts were subjected solely to routine account monitoring and did not attract any detailed examination by Bank of America, even after enactment of the 2001 Patriot Act which tightened AML controls.

¹³⁸⁶ Account No. 2-7220-7883 (opened 3/98 and closed 4/01). Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505. See also 3/31/98 BOA account opening form, BOA-PSI-00022-23.

¹³⁸⁷ Account Nos. 2-7245-0445 (opened 6/98 and closed 2/01); 65-2002-6080-0065 (opened 8/98 and closed 11/02); 46-7426-9956 (opened 12/00 and closed 4/09); 46-7509-4560 (opened 12/00 and closed 1/01); 91-0000-3332-1545 (opened 1/01 and closed 2/01) and 46-7077-1642 (opened 2/01 and closed 3/01). Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505. Bank of America told the Subcommittee that it did not know the precise familial relationship between Iris Montero and Ms. Falcone.

¹³⁸⁸ Account No. 46-7188-2187 (opened 4/00 and closed 6/06). Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505.

¹³⁸⁹ Mr. and Ms. Falcone had one joint safe deposit box, 82-5643-2084. Safe Deposit Box Lease Agreement, BOA-PSI-00038-39; AML Case No. 2007014988 report, BAC-PSI 07620-21. Ms. Falcone had two additional safe deposit boxes, Box Nos. 82-5602-8151 and 82-5643-2084. Vincente Falcone also had a safe deposit box, Box No. 83-3701-3122. It is unclear whether she shared this box with Mr. Falcone or his father. Compare Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505, with AML Case No. 2007014988 report, BAC-PSI 07620-21.

¹³⁹⁰ See undated BOA AML Case No. 2007025689, BAC-PSI 07624 (identifying two credit card accounts for Ms. Falcone).

¹³⁹¹ See Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505. One of the Falcone accounts for Iris Mendez was closed in April 2009. *Id.*

¹³⁹² See 1998 BOA account opening form, BOA-PSI-00020-21; 1998 BOA Master Agreement and IRS Certification Statement, BOA-PSI-00010-13. Mr. Falcone and his business associate, Gasper Devita, appear to have been added as signatories to this account about a month after it was opened. BOA Master Agreement and IRS Certification Statement, BOA-PSI-00018-19.

¹³⁹³ See 1997 BOA Master Agreement and IRS Certification Statement, BOA-PSI-00004-05.

¹³⁹⁴ See 1994 BOA account opening form, BOA-PSI-00028-29.

¹³⁹⁵ See 2002 BOA account opening form, BOA-PSI-03422-23.

¹³⁹⁶ See 4/27/01 BOA account opening form, BOA-PSI-05705-06; 6/17/04 Bank of New York Details of Payment, BNY 009108.

In October 2004, a Bank of America branch banking center noticed that a Falcone family member went to two different branches and made four cash withdrawals on the same day that together totaled \$10,800, and expressed concern about an attempt to avoid a Currency Transaction Report that must be filed when cash withdrawals reach \$10,000.¹³⁹⁷ As a result, Bank of America decided to conduct a review of the Falcone accounts.

The review was not initiated until November 2004, a month after the initial allegations.¹³⁹⁸ The review was conducted by a Bank of America AML investigator who summarized her findings in an internal memorandum.¹³⁹⁹ The memorandum appears to have been completed in August 2005, ten months after the October 2004 incident that triggered the review.

The memorandum began by noting that an Internet search located many listings for Mr. and Ms. Falcone. With respect to Mr. Falcone, the memorandum stated:

“Mr. Falone [is] a recognized billionaire arms dealer with strong French connections. Falcone served as a consultant to the French agency SOFREMI that is in charge of exporting military equipment under ... the French Interior Ministry. ... Falcone reportedly brokered numerous deals with Africa and South America through a company named Gaydamark, a company owned by a wealthy Russian billionaire and Falcone’s business partner. ... Falcone developed a very close and tight relationship with the government of Angola, so much, that he was even granted citizenship. ... Falcone was brought before a French court on charges of corruption for which he was indicted and sentenced to one year in jail. Additional charges were brought against Falcone but none could be substantiated or proven. Falcone was released and now lives with his wife in the most expensive home ever sold in the state of Arizona.”¹⁴⁰⁰

The memorandum implied that Mr. Falcone’s criminal proceedings were over, but at the time it was written, the 2004 French arrest warrant for Mr. Falcone remained outstanding. With respect to Ms. Falcone, the memorandum described her as a “former beauty queen” and “one of the most sought out socialites in Arizona.”¹⁴⁰¹

The memorandum said that the accounts for Mr. and Ms. Falcone and Monthigne Corp. had been reviewed for a 19-month period from December 17, 2003 to July 13, 2005, and the Falcone account activity during that period, including credits and debits, totaled about \$17 million.¹⁴⁰² The memorandum also noted numerous, large, incoming and outgoing wire transfers affecting the accounts:

¹³⁹⁷ See undated BOA Global AML Operations report on Falcone accounts, BOA-PSI-04698-701; Subcommittee interview of Bank of America officials, March 25, 2009. Bank of America officials did not recall which Falcone family member made the cash withdrawals.

¹³⁹⁸ Id.

¹³⁹⁹ Id.

¹⁴⁰⁰ Id.

¹⁴⁰¹ Id.

¹⁴⁰² Id. According to Bank of America, the bank’s review process at the time was to look at only 13 months of past account activity, even though this memorandum reviewed 19 months. The bank reported that it had since changed its policy to require reviews to look at account records for the past 4-5 years. Bank of America officials also noted

“The account reflects numerous incoming wires originated in France from entities that are directly related to the Falcone’s. Incoming wires are also evident in what appears to be proceeds of real estate sales and from loans obtained through other financial institutions. Debits to the account also show outgoing wires, they were conducted to benefit the Beverly Loan Company, as well as individuals sharing the same last name as the Falcone’s. Checks from the account show numerous inter-account transfers that reference ‘house account’ or ‘expenses’.”

The memorandum concluded:

“The activity for the accounts of the Falcone’s is not unusual. Although Mr. Falcone appears to have been involved in the dealing and sale of Arms, the activity for the accounts at Bank of America shows activity that is normal for this type of high profile customer. The transaction reported by the branch banking center appears to have been a one-time event.”¹⁴⁰³

The memorandum did not express any concern about the large-dollar transfers into the Falcone accounts from offshore jurisdictions or from unfamiliar entities such as AALL Trust and Banking Corp. in the Cayman Islands. It did not view \$17 million in account activity within a year and a half as unusual. It characterized the accounts’ movement of hundreds of thousands of dollars at a time among a network of Falcone related accounts as “normal,” “not unusual,” and related to house expenses. The memorandum did not express any concerns about Mr. Falcone’s conviction on corruption charges, imprisonment, illegal arms dealing, or the sources of his wealth.

The AML investigator forwarded her report to her supervisor. Together, the two determined that none of the transactions was suspicious.¹⁴⁰⁴ In addition, despite Mr. Falcone’s involvement in arms trafficking, the large volume of account activity, and numerous foreign wire transfers, the two Bank of America officials did not designate the account as high risk or call for enhanced monitoring. They apparently never considered whether Mr. Falcone should be designated as a PEP client due to his close association with the French Interior Ministry, close association with Angolan President dos Santos, or his 2003 appointment as an Angolan Ambassador to UNESCO.

When asked about the 2005 special review, Bank of America told the Subcommittee that the decision not to treat any of the transactions as suspicious was likely due to a number of factors, including that the Falcones were longstanding customers and a prominent family; the accounts did not involve extensive cash transactions; and large account transactions were not unusual for that type of client.¹⁴⁰⁵ Bank of America also said that the memorandum “probably should have been escalated” to more senior personnel, but bringing in more senior personnel was

that the \$17 million figure in the memorandum was approximately double the amount moving through the Falcone accounts because it took into consideration both credits and debits to the accounts. Subcommittee interview of Bank of America officials, March 25, 2009.

¹⁴⁰³ Undated BOA Global AML Operations report on Falcone accounts, BOA-PSI-04699.

¹⁴⁰⁴ Id.; Subcommittee interview of Bank of America officials, March 25, 2009.

¹⁴⁰⁵ Subcommittee interview of Bank of America officials, March 25, 2009.

a “judgment call.”¹⁴⁰⁶ The internal investigation was closed on August 9, 2005, with no recommendation for any action to be taken with respect to the Falcone accounts.¹⁴⁰⁷

Two years later, in 2007, after the Subcommittee inquired about the Falcone accounts, Bank of America initiated another review of the accounts.¹⁴⁰⁸ The resulting AML Case report described the Falcone accounts as held by persons “that have been named in various news articles as being involved in: arms sales; diamond smuggling and other illegal activities.” It discussed Mr. Falcone’s involvement in the Angolagate scandal. The report also analyzed specific Falcone account transactions stretching over a number of years, such as: “from 03/13/2003 to 04/04/2007 Sonia Falcone has received 22 wires that totaled \$4,950,794.67”; “Monthigne Corporation ... a dissolved corporation ... [received] 20 incoming wires that totaled \$4,424,750.00 from 03/04/2003 to 02/10/2005”; and “63 wire transfers that totaled \$10,040,463.01 from 03/03/2003 to 04/04/2007 [went] to account owned and/or controlled by members of the Falcone family.”

In July 2007, Bank of America decided to close the Falcone accounts.¹⁴⁰⁹ Bank of America expressed regret to the Subcommittee at having maintained accounts for a known arms dealer who, by July 2007, was under multiple criminal indictments in France.¹⁴¹⁰

Suspicious Transactions. To conduct its own review of the Falcone accounts, the Subcommittee subpoenaed Bank of America records for the accounts covering an eight-year period, 1999 to 2007. These records disclosed a high level of account activity, including a number of suspicious transactions involving high dollar amounts, transfers to or from offshore secrecy jurisdictions, or the quick movement of funds through multiple accounts in a classic money laundering tactic designed to make it difficult for investigators to follow a money trail. Because a number of the transactions referenced wire transfers at other banks, the Subcommittee also initiated a limited review of some of those wire transfers, in particular at HSBC Equator Bank. A number of the transactions reviewed by the Subcommittee, detailed in a chart below, raised concerns.

One of Our Clients. One striking set of transactions involves wire transfers from foreign bank accounts sending large sums of money into the Falcone accounts in which the party who sent the funds is identified in the wire transfer documentation solely as “one of our clients” or “un client.” Federal law requires U.S. financial institutions to identify the name and address of the originator of each wire transfer, in part as an AML safeguard.¹⁴¹¹ Yet from 1999 to 2003, Bank of America allowed accounts for Pierre, Sonia, and Vincente Falcone to receive over \$3.6

¹⁴⁰⁶ Id.

¹⁴⁰⁷ BOA Master Case Information, BOA-PSI-07697.

¹⁴⁰⁸ Undated BOA AML Case No. 2007014988 report and undated BOA AML Case No. 2007025689, BAC-PSI 07620-26.

¹⁴⁰⁹ See Chart of Falcone-related accounts prepared by Bank of America for the Subcommittee investigation, BAC-PSI 07505.

¹⁴¹⁰ Subcommittee interview of Bank of America officials, March 25, 2009.

¹⁴¹¹ See funds transfer rule and travel rule at 31 CFR 103.33. See also 1/17/07 FinCEN Report to Congress, “Feasibility of a Cross-Border Electronic Funds Transfer Reporting System,” at 8 (“these rules require U.S. financial institutions to obtain and maintain information about certain funds transfers that identifies, at a minimum: the name and address of the originator ...”).

million in wire transfers from unnamed clients using accounts in such known secrecy jurisdictions as the Cayman Islands, Luxembourg, and Switzerland.¹⁴¹² From September 2001 to December 2003, the Monthigne account also received a series of payments from hidden “clients,” ranging from \$100,000 to \$400,000 at a time, most often from “one of our clients” using a UBS account in Singapore. In just over two years, the payments to Monthigne added up to nearly \$2.5 million.¹⁴¹³

After Monthigne received one of the UBS Singapore payments, Ms. Falcone, who opened the Monthigne account and was its sole signatory, typically transferred the funds within a day or two to another Falcone account which, at times, transferred it within Bank of America to still another Falcone account, in what appears to be a classic money laundering pattern designed to make it difficult to trace a money trail. For example, as shown on the chart below, on February 15, 2002, the hidden client at UBS in Singapore sent \$299,985 to the Monthigne account, which on the same day transferred the same amount to an Iris Mendez account within the branch, and that account, in turn, transferred \$211,000 to a Sonia Falcone account within the branch.¹⁴¹⁴ This pattern of internal bank transfers could have been used to conceal from persons outside of the bank which Falcone account ultimately received the incoming wire transfer.

Altogether, from 1999 to 2003, the Falcone accounts received about \$6.1 million in foreign wire transfers from unidentified “clients.” When asked about these transactions, Bank of America told the Subcommittee that transactions involving unidentified “clients” could be seen as a “red flag,” but that each transaction would have to be examined in detail to determine whether it should be deemed suspicious.¹⁴¹⁵

Offshore Wire Transfers. A second set of troubling transactions involves high-dollar wire transfers from unfamiliar offshore entities into the Monthigne account. These transfers were made by the AALL Trust and Banking Corp. Ltd. which sent funds from the Cayman Islands; Culmen Investments which sent funds from Israel; Rego Holdings Inc. which sent funds from Israel; and Valley Marketing Ltd. which sent funds from the Cayman Islands.¹⁴¹⁶ Moreover, the AALL Trust and Banking Corp. Ltd., which is a Cayman Island bank, was sending money to the Monthigne account on behalf of still other entities, which usually were not named but on two occasions were referred to as Apollo LLC, the Valley Trust, and the Alley Trust.¹⁴¹⁷ In most cases, the funds deposited into the Monthigne account remained there for only a day or two, and were then transferred by Ms. Falcone into another Falcone related account. For example, on October 8, 2004, as shown in the chart below, the AALL Trust and Banking Corp. wire transferred \$315,000 to the Monthigne account; and later on the same day, Ms.

¹⁴¹² See Subcommittee chart below, Select Transactions Involving the Falcone Accounts At Bank of America, 1999 to 2007.

¹⁴¹³ Id.

¹⁴¹⁴ Id.

¹⁴¹⁵ Subcommittee interview of Bank of America officials, March 25, 2009.

¹⁴¹⁶ See Subcommittee chart below, Select Transactions Involving the Falcone Accounts At Bank of America, 1999 to 2007.

¹⁴¹⁷ See, e.g., 10/4/08 wire transfer for \$315,000 from AALL Trust and Banking Corp. through correspondent accounts at Bank of Butterfield in the Caymans and Bank of New York, to the Monthigne account at Bank of America, with references to “Apollo, LLC” and “Valley Trust,” BOA-PSI-04054-56.

Falcone wrote a \$275,000 check sending the funds to her Checking Account No. 2-7220-7365. The check contained a notation that the funds were for “household expenses.”¹⁴¹⁸

Altogether, from 2002 to 2005, the Monthigne account received over \$2.46 million in wire transfers from the AALL Trust and Banking Corp.; nearly \$950,000 from Culmen Investment; nearly \$200,000 from Rego Holdings; and nearly \$250,000 from Valley Marketing, for a grand total of nearly \$3.77 million.¹⁴¹⁹ When asked, Bank of America told the Subcommittee that it did not have any additional information about these entities or the specific wire transfers they sent to the Falcone accounts.

Falcone Transfers. A third set of transactions that raised concerns involves large transfers of funds from one Falcone-related account to another, often across international lines. For example, as shown in the chart below, from 2004 to 2007, Mr. Falcone, at times sending wire transfers using his initials PJF, sent funds ranging from \$100,000 to \$550,000 from accounts he held at banks in South Africa, Portugal, and China, to Falcone accounts at Bank of America in Arizona.¹⁴²⁰ On July 8, 2004, for instance, he sent \$255,000 from a Falcone account at Coutts & Co. in the United Kingdom to one of his accounts at Bank of America in Arizona. On November 17, 2005, he sent \$300,000 from an account he held at Banco Sol in Angola to an account held by Ms. Falcone at Bank of America. On November 10, 2006, he sent \$550,000 from his account at Banco BPI in Lisbon to that same account at Bank of America. On August 20, 2007, Mr. Falcone sent \$250,000 from his account at Citic ka wah Bank Ltd. in Hong Kong to an Iris Mendez account at Bank of America. The reasons for these transfers are unclear.

Similar questions apply to a series of wire transfers from the Falcone accounts in Arizona to a U.S. bank account in Utah opened in the name of Essante Inc., the health and beauty business associated with Ms. Falcone. From 2000 to 2002, Bank of America accounts belonging to Ms. Falcone, Vincente Falcone, Iris Mendez, and Monthigne sent multiple wire transfers to an Essante account at Zion’s First National Bank in Salt Lake City, Utah, together providing nearly \$1.2 million to that account.¹⁴²¹ Bank of America was unable to explain why the Falcones sent those funds to the Utah company.

Also raising questions are multiple high-dollar funding transfers between the Iris Mendez and Sonia Falcone accounts at Bank of America. As shown in the chart below, from January 2001 to February 2002, Ms. Mendez made multiple high-dollar transfers from her account to Ms. Falcone’s account, in amounts ranging from \$50,000 to \$211,000.¹⁴²² For example, on January 24, 2001, the Mendez account sent \$100,000 to the account belonging to Ms. Falcone. On May 25, 2001, the Mendez account sent her another \$175,000. On February 15, 2002, she sent \$211,000. Then these transfers stopped. Altogether, Ms. Mendez transferred about \$950,000 to Ms. Falcone in just over a year. Bank of America told the Subcommittee that it could not explain why these transfers took place.

¹⁴¹⁸ 10/8/04 Monthigne check for \$275,000, BOA-PSI-03828.

¹⁴¹⁹ Undated BOA AML Case No. 2007014988 report, BAC-PSI 07621; Subcommittee chart below, Select Transactions Involving the Falcone Accounts At Bank of America, 1999 to 2007.

¹⁴²⁰ See Subcommittee chart below, Select Transactions Involving the Falcone Accounts At Bank of America, 1999 to 2007.

¹⁴²¹ Id.

¹⁴²² Id.

These transactions make it clear that the Falcones have an extensive network of bank accounts in the United States and around the world. Their Bank of America records show that they actively moved money throughout this network. The reasons for the high volume of funding transfers are unclear, and Bank of America did not ask or acquire an understanding of them.

CADA Wire Transfers. A fourth set of troubling transactions involves large wire transfers to and from Companhia Angolana de Distribuicao Alimentar Inc., or CADA, an Angolan corporation which, according to the 2007 French Angolagate indictment, was an affiliate of the Brenco Group controlled by Mr. Falcone and Mr. Gaydamak and was involved in their wrongdoing.¹⁴²³

CADA had an account at HSBC Equator Bank until 2001.¹⁴²⁴ HSBC told the Subcommittee that the CADA account signatories were Mr. Falcone, Mr. Gaydamak, and Andre de Fiori, one of their business associates.¹⁴²⁵ Bank of America records show that, in 2000, CADA wire transferred a total of \$1,410,000 from its HSBC Equator Bank account to a Falcone account at Bank of America.¹⁴²⁶ In addition, in November 2000, CADA wire transferred \$9,030,000, in two installments, from its HSBC Equator Bank account to a Brenco account at Discount Bank and Trust account in Geneva, Switzerland.¹⁴²⁷ In July 2001, the CADA account at HSBC Equator Bank received a wire transfer for more than \$20.8 million from Sonangol, the Angolan state oil company, using an account at Lloyds Bank in London.¹⁴²⁸

Given CADA's role in the Angolagate criminal prosecution, its transfers to the Falcones at Bank of America and the Falcone-related company Brenco raise concerns. So does the transfer of over \$20 million from Sonangol, the Angolan state oil company, into CADA's account.

Beverly Loan Company. A fifth set of notable transactions involves the Beverly Loan Company. The Beverly Loan Company is an upscale pawn shop specializing in providing large loans secured by fine jewelry and watches.¹⁴²⁹ It has been in business in Beverly Hills,

¹⁴²³ See Ordonnance De Renvor Devant le Tribunal Correctionnel Non-Lieu Partiel et Requalification, No. du Parquet: 0019292016, No. Instruction: 2076/00/40 (2007), at 101. HSBC told the Subcommittee that Brenco International was owned by the Atlantic Transangolan Corporation which, in turn, was owned by Pierre Falcone and Arcadi Gaydamak. Subcommittee interview of HSBC officials, June 13, 2007.

¹⁴²⁴ Subcommittee interview of HSBC officials, May 7, 2008. HSBC purchased Equator Bank plc in London and for many years provided it with a correspondent account in New York. The Subcommittee subpoenaed Falcone-related wire transfer records associated with the Equator Bank account at HSBC.

¹⁴²⁵ Subcommittee interview of HSBC officials, May 7, 2008. The Global Witness report states: "Companies House documents show that CADA Ltd. in London is located at 40 Queen Anne Street, London W1. CADA Ltd was established in 1996 and Andre de Fiori is listed as Director. The Company is listed as a subsidiary of a company called Copper Financial Inc. located in Tortola, British Virgin Islands, the latter having been established by Henry Guderley, who is also listed as Company Secretary of London-based CADA Ltd." All The Presidents' Men, Global Witness, at 20.

¹⁴²⁶ See HSBC Excel spreadsheet, Box 13, CADA, no bates number.

¹⁴²⁷ Id.

¹⁴²⁸ Id.

¹⁴²⁹ See www.beverlyloan.com. Loans from Beverly Loan Company work generally as follows. Customers bring to the Beverly Loan Company collateral to be pawned, at which time it is assessed by resident gemologists. Beverly Loan Company makes a determination of the maximum loan amount, based upon valuation of the product and

California since 1938. Bank documents reviewed by the Subcommittee, summarized in the chart below, show numerous transfers between the Beverly Loan Company and the Falcone accounts. For example, from May 2001 to June 2007, Beverly Loan Company made multiple wire transfers to Ms. Falcone, ranging in amounts from \$50,000 to \$550,000.¹⁴³⁰ In the month of February 2007, it sent her three wire transfers totaling \$257,000. It also sent one wire transfer on May 25, 2001, to Iris Mendez for \$360,000, and one on July 19, 2001, to Mr. Falcone for \$259,700. Ms. Falcone also sent numerous large wire transfers to the Beverly Loan Company in amounts ranging from \$55,000 to \$300,000.

When asked about these transactions, the Beverly Loan Company informed the Subcommittee that Ms. Falcone had been a regular customer since at least 2001, and as of April 2008, had ten outstanding loans in her name or that of her assistant, Elizabeth Kordek.¹⁴³¹ According to the Beverly Loan Company, altogether since 2001, Ms. Falcone had borrowed over \$3.2 million in her own name, and an additional \$4.1 million in the name of her assistant, for a grand total of over \$7.3 million, while paying interest charges on those loans in excess of \$777,000.¹⁴³² The Subcommittee was told that, although one Beverly Loan Company check was made out to Mr. Falcone, no loans had been issued to him. The Beverly loans were a regular source of funds for the Falcone accounts from 2001 to 2007.

Triang Business Venture. Finally, while examining the Falcone accounts and looking in particular at transactions involving Angola, the Subcommittee interviewed HSBC about a number of wire transfers involving HSBC Equator Bank and Falcone-related entities. As part of that process, the Subcommittee learned that for a seven-year period, from 1997 to 2004, an HSBC affiliate had participated in a joint business venture in Angola with Mr. Falcone through a company called Triang Ltd. According to HSBC, Triang Ltd. was incorporated in May 1997, in the Bahamas, and for the next seven years ran a trucking operation that transported fuel for the diamond industry in Angola.¹⁴³³ HSBC told the Subcommittee that ownership of Triang was as follows: Brenco held a 30% ownership interest; Jose Recio, an Angolan businessman, held a 35% ownership interest; and the final 35% ownership interest was held by Equator Bank Ltd., a Bahamas bank affiliated with HSBC Equator Bank plc in London.¹⁴³⁴ HSBC told the Subcommittee that Brenco was owned by the Atlantic Transangolan Corporation which, in turn,

potential for liquidity in case the collateral is not redeemed and foreclosure is authorized. A police report is filed and the goods are checked to make sure they are not stolen. Customers are given a loan for a requested amount up to the maximum loan amount. The loan is typically disbursed by wire, cashiers check, or bank check.

The initial loan contract is four months in length or roughly 120 days. For loans valued at less than \$2,500, the interest rate is capped at 4% per month (48% APR) under California law. The interest rate on larger loans is discretionary. If the property is not redeemed within four months, Beverly Loan Company may foreclose on it, issue another four-month contract, write-off the loan amount, or roll a portion of the residual loan amount into a new loan on different collateral. Collateral may be redeemed by the customer when the loan is paid in full. Subcommittee interview of Beverly Loan Company officials, March 24, 2008; www.beverlyloan.com.

¹⁴³⁰ See Subcommittee chart below, Select Transactions Involving the Falcone Accounts At Bank of America, 1999 to 2007.

¹⁴³¹ Subcommittee interview of Beverly Loan Company officials, March 24, 2008.

¹⁴³² Note: the chart lists numerous payments to and from Beverly Loan Company but does not contain transactional information, because the Subcommittee does not possess all transactional data.

¹⁴³³ Subcommittee interview of HSBC officials, June 13, 2007.

¹⁴³⁴ Id.

was owned by Pierre Falcone and Arcadi Gaydamak.¹⁴³⁵ HSBC indicated that Equator Bank Ltd. maintained its ownership interest in Triang until 2004, when it sold its interest to Jose Recio. HSBC told the Subcommittee that, during Equator Bank's ownership of Triang, it also contributed \$4 million to its operations, \$3.9 million of which was in the form of a loan in 1997.¹⁴³⁶

HSBC told the Subcommittee that it had conducted an investigation of Pierre Falcone during the period 2000 to 2001, and closed his accounts, but did not exit its business relationship with him until 2004.¹⁴³⁷ As noted previously, Pierre Falcone was in jail in France from December 2000 to December 2001, under investigation for illegal arms trafficking, tax evasion, and other misconduct.

(3) Analysis

Each category of transactions just described raises questions about the purpose and source of funds that went through the Falcone accounts at Bank of America. These transactions included wire transfers from known secrecy jurisdictions, the quick movement of funds from one Falcone account to another, and transfers to and from obscure offshore corporations and unnamed clients. Yet none of these transactions, separately or collectively, triggered an account review by Bank of America officials. Even when some of the transactions were examined as part of a 2005 special review initiated for another reason, they were not viewed as raising sufficient red flags to have the account designated as high risk or warrant enhanced monitoring. Nor did they cause Bank of America to treat Mr. Falcone as a PEP client subject to enhanced monitoring.

The following chart presents a selection of troubling transactions involving the Falcone accounts at Bank of America and a few Falcone-related wire transfers which, over an eight-year period, moved over \$60 million in suspect funds into or through U.S. banks. These transactions provide concrete evidence that U.S. financial institutions need to establish better account monitoring tools to identify high-risk accounts and high-risk wire transfers. These transactions also demonstrate that U.S. financial institutions need to be on the lookout for PEP clients using retail accounts, in addition to accounts in the Private Bank established for wealthy clients.

Select Transactions Involving the Falcone Accounts At Bank of America, 1999 to 2007				
Date	Originator	Beneficiary	Amount	Bates
11/16/99	"un Client" at Banque Intl. A Luxembourg S.A	Vincente Falcone Account	\$ 200,000.00	BNY 009108
11/24/99	"un client" at Banque Internationale	Falcone Household Account 272207365	\$ 200,000.00	BOA-PSI-02426
2/11/00	Vincente Falcone Account 274776027	Essante Account at Zions First National Bank	\$ 70,000.00	BOA-PSI-06125

¹⁴³⁵ Id.

¹⁴³⁶ Subcommittee interview of HSBC officials, May 2, 2008.

¹⁴³⁷ Id., May 7, 2008. HSBC reported that the reason for the three-year delay in exiting the business venture was because it had difficulty selling its shares in Triang.

2/28/00	Vincente Falcone Account 274776027	Essante Account at Zions First National Bank	\$ 300,000.00	BOA-PSI-06125
2/28/00	"one customer" at Discount Bank and Trust in Geneva, Switzerland	Sonia Falcone Account 846035538	\$ 79,975.00	BOA-PSI-02918
4/24/00	Pierre Falcone Account 7676139 writes check	Caesar's Palace	\$ 50,000.00	BOA-PSI-03746
6/02/00	Discount Bank and Trust at Israel Discount Bank	Falcone Household Account 272207365	\$ 179,985.00	BOA-PSI-02451
6/29/00	Companhia Angolana at HSBC Equator Bank	Falcone Household Account 272207365	\$ 160,000.00	BOA-PSI-02458
7/14/00	Pierre Falcone Account 7676139	Steinway Hall	\$ 50,000.00	BOA-PSI-03748
8/10/00	"one customer" at Discount Bank Grand Cayman Ltd thru Discount Bank and Trust Company Luxembourg thru Chase Manhattan bank	Sonia Falcone Account 846035538	\$ 119,982.00	BOA-PSI-07650
8/10/00	"one customer" at Chase Manhattan Bank.	Falcone Household Account 272207365	\$ 169,982.00	BOA-PSI-02466
8/16/00	Pierre Falcone Account 7676139 writes check	Bellagio	\$ 70,500.00	BOA-PSI-03747
9/28/00	CADA at HSBC Equator	Argo Participacoes Ltd. at Bank Safra Brasil	\$ 80,000.00	Final_Version.xls, CADA tab (HSBC)
10/11/00	CADA at HSBC	Andre de Fiori at Banque Safra	\$ 100,000.00	Final_Version.xls, CADA tab (HSBC)
10/12/00	"one customer" at Chase Manhattan Bank	Falcone Household Account 272207365	\$ 189,982.50	BOA-PSI-02481
11/07/00	Companhia Angolana at HSBC Equator wire reference to "CADA pymt"	Falcone Household Account 272207365	\$ 340,000.00	BOA-PSI-02489
11/7/00	CADA at HSBC Equator	Pierre Falcone Account	\$ 170,000.00	Final_Version.xls, CADA tab (HSBC)
11/7/00	CADA at HSBC Equator Bank	Sonia Falcone Account 846035538	\$ 250,000.00	BOA-PSI-07566, Final_Version.xls, CADA tab (HSBC)
11/7/00	CADA at HSBC Equator Bank	Brenco Group at Discount Bank and Trust Co. Geneva	\$ 6,730,000.00	Final_Version.xls, CADA tab (HSBC)
11/16/00	CADA at HSBC Equator Bank	Brenco Group at Discount Bank and Trust Geneva	\$ 2,300,000.00	Final_Version.xls, CADA tab (HSBC)
12/04/00	"one customer" at Discount Bank (CI) Limited Grand Cayman thru Discount Bank and Trust Co Luxembourg (thru Chase Manhattan)	Sonia Falcone Account 846035538	\$ 1,299,982.50	BOA-PSI-07572
12/4/00	"one customer" at Chase Manhattan	Falcone Household Account 272207365	\$ 249,982.50	BOA-PSI-02497
12/14/00	CADA at HSBC Equator	Pierre Joseph Falcone at Banco Safra, Brazil	\$ 490,000.00	Final_Version.xls, CADA tab (HSBC)
12/28/00	Sonia Falcone Account 846035538	Used to purchase cashiers check	\$ 404,920.00	BOA-PSI-04065
1/24/01	Iris Mendez Account 4674269956	Sonia Falcone Account 846035538	\$ 100,000.00	BOA-PSI-07540- 07555
1/24/01	Sonia Falcone Account 846035538	Essante Account at Zion's First National Bank	\$ 100,000.00	BOA-PSI-07578
2/22/01	"by Order of Client" at Bank Luxembourg.	Iris Mendez Account 4674269956	\$ 500,000.00	BOA-PSI-07664

2/23/01	Iris Mendez Account 4674269956	Sonia Falcone Account 846035538	\$ 66,813.00	BOA-PSI-07540-07555
2/23/01	Iris Mendez Account 4674269956	Pierre J. Falcone Account 272206530	\$ 50,000.00	BOA-PSI-07540-07555
2/26/01	Iris Mendez Account 4674269956	Sonia Falcone Account 846035538	\$ 50,000.00	BOA-PSI-07540-07555
2/27/01	Sonia Falcone Account 846035538	Essante Account at Zions First National Bank	\$ 50,000.00	BOA-PSI-07595
2/28/01	Iris Mendez Account 4674269956	Sonia Falcone Account 846035538	\$ 100,000.00	BOA-PSI-07540-07555
3/20/01	"Order of Client" at Bank Leumi	Iris Mendez Account 4674269956	\$ 200,000.00	BOA-PSI-07671
3/21/01	Iris Mendez Account 4674269956	Sonia Falcone Account 846035538	\$ 100,000.00	BOA-PSI-07540-07555
5/25/01	Beverly Loan Co.	Iris Mendez Account 4674269956	\$ 360,000.00	BOA-PSI-07678
5/25/01	Iris Mendez Account 4674269956	Sonia Falcone Account 846035538	\$ 175,000.00	BOA-PSI-07540
5/29/01	Sonia Falcone Account 846035538	Essante Account at Zions First National Bank	\$ 175,000.00	BOA-PSI-07603
7/13/01	Iris Mendez Account 4674269956	Essante Account at Zions First National Bank	\$ 100,000.00	BOA-PSI-07680
7/19/01	Iris Mendez Account 4674269956	Essante Account at Zions First National Bank	\$ 60,000.00	BOA-PSI-07682
7/19/01	Bank of America cashiers check from Beverly Loan Co. written to Pierre Joseph Falcone	Pierre Joseph Falcone	\$ 259,700.00	BOA-PSI-04075, 07529-07531
7/20/01	Sonia Falcone Account 846035538	American Express Service Europe Ltd London at Lloyds Bank London "for further credit-Pierre Falcone	\$ 70,000.00	BOA-PSI-07611
7/20/01	Sonangol Account at Lloyds Bank London	CADA Account at HSBC Equator Bank	\$20,834,269.00	Final_Version.xls, CADA tab (HSBC)
9/5/01	"one of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 99,985.00	BOA-PSI-03984
9/28/01	"one of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 199,985.00	BOA-PSI-03986
9/29/01	Iris Mendez Account 4674269956	Essante Account at Zions First National Bank	\$ 30,000.00	BOA-PSI-07190
10/1/01	Iris Mendez Account 4674269956	American Express at Lloyds Bank for Pierre Falcone	\$ 15,000.00	BOA-PSI-06209/07633
10/1/02	"one of our clients" UBS Singapore	Vincente Falcone Account 274776027	\$ 99,985.00	BOA-PSI-06209/07633
10/17/01	Sonia Falcone Account 846035538	Essante Account at Zions First National Bank	\$ 60,000.00	BOA-PSI-07616
10/21/01	"one of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 99,985.00	BOA-PSI-03986
11/6/01	Monthigne Account 4671882187	Iris Mendez Account 4674269956	\$ 82,485.00	BOA-PSI-07540-07555
11/7/01	Iris Mendez Account 4674269956	Falcone Household Account 272207365	\$ 60,500.00	BOA-PSI-07540-07555
11/16/01	Essante Account at Zions First National Bank	Iris Mendez Account 4674269956	\$ 100,000.00	BOA-PSI-07684
11/23/01	"one of our clients" UBS Singapore	Monthigne Account 4671882187	\$ 118,202.00	BOA-PSI-03992
11/27/01	Iris Mendez Account 4674269956	Falcone Household Account 272207365	\$ 101,000.00	BOA-PSI-07540-07555

11/27/01	"one of our clients" UBS Singapore	Monthigne Account 4671882187	\$ 99,985.00	BOA-PSI-03990
12/4/01	Monthigne Account 4671882187	Iris Mendez Account 4674269956	\$ 93,985.00	BOA-PSI-07540-07555
12/26/01	Monthigne Account 4671882187	Iris Mendez Account 4674269956	\$ 99,985.00	BOA-PSI-07540-07555
1/18/02	Essante Account at Zions First National Banks	Iris Mendez Account 4674269956	\$ 50,000.00	BOA-PSI-07686
2/6/02	Gota at Bank Hapoalim in Tel Aviv	Sonia Falcone Account 846035538	\$ 199,975.00	BOA-PSI-07623
2/15/02	"one of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 299,985.00	BOA-PSI-03994
2/15/02	Monthigne Account 4671882187	Iris Mendez Account 4674269956	\$ 299,985.00	BOA-PSI-0740-7555
2/15/02	Iris Mendez Account 4674269956	Falcone Household Account 272207365	\$ 211,000.00	BOA-PSI-07450-07555
2/15/02	Iris Mendez Account 4674269956	Essante Account at Zions First National Bank	\$ 50,000.00	BOA-PSI-07688
3/1/02	"One of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 99,985.00	BOA-PSI-03996
4/18/02	"One of our clients" at UBS Singapore	Vincente Falcone Account 274776027	\$ 99,985.00	BOA-PSI-07635
5/6/02	"One of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 99,850.00	BOA-PSI-03998
5/21/02	"One of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 109,985.00	BOA-PSI-0400
6/4/02	"One of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 99,985.00	BOA-PSI-04002
6/7/02	Monthigne Account 4671882187	Sonia Falcone Account 272206530; check payable to: Sonia M. Falcone/Gasper DeVita	\$ 80,000.00	BOA-PSI-03772
7/2/02	"One of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 99,985.00	BOA-PSI-04004
7/8/02	Monthigne Account 4671882187	Essante Account at Zions First National Bank	\$ 115,000.00	BOA-PSI-04006
7/8/02	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 76,000.00	BOA-PSI-03774
7/30/02	"One of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 99,985.00	BOA-PSI-04009
9/4/02	"One of our clients" at UBS Singapore	Monthigne Account 004671882187	\$ 99,985.00	BOA-PSI-04011
9/4/02	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 92,488.31	BOA-PSI-03776
10/2/02	"One of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 99,985.00	BOA-PSI-04013
10/2/02	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 70,000.00	BOA-PSI-03778
11/20/02	Cashiers check from Beverly Hills Loan Co.	Sonia Falcone Account 846035538	\$ 100,000.00	BOA-PSI-04084
12/10/02	Carlton at Israel Discount Bank	Sonia Falcone Account 846035538	\$ 199,980.00	BOA-PSI-07536-7
12/10/02	Sonia Falcone Account 846035538 writes check	Falcone Household Account 272207365	\$ 100,000.00	BOA-PSI-03779-80
12/11/02	"One of our clients" at UBS AG	Vincente Falcone Account 274776027	\$ 99,985.00	BOA-PSI-07637

12/11/02	"One of our clients" at UBS Singapore	Monthigne Account 4671882187	\$ 210,985.00	BOA-PSI-04015
12/12/02	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 85,000.00	BOA-PSI-03782
12/13/02	Monthigne Account 4671882187 writes check	Sonia Falcone Account 846035538	\$ 100,000.00	BOA-PSI-04086
1/31/03	Beverly Hills Loan Co. writes check	Sonia Falcone Account 846035538	\$ 149,000.00	BOA-PSI-04088-9
2/6/03	Sonia Falcone Account 846035538 writes check	Falcone Household Account 272207365	\$ 170,000.00	BOA-PSI-03786
2/25/03	Culmen Investment at Bank Hapoalim in Tel Aviv	Monthigne Account 4671882187	\$ 229,975.00	BOA-PSI-04017
2/27/03	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 132,120.91	BOA-PSI-03788
2/28/03	Monthigne Account 4671882187 writes check	Sonia Falcone Account 846035538	\$ 82,000.00	BOA-PSI-04091
2/6/03	Gota at Bank Hapoalim	Sonia Falcone Account 846035538	\$ 199,975.00	BOA-PSI-04070
2/14/03	Carlton Orig. Bank at Israel Discount Bank Ltd.	Vincente Falcone Account 274776027	\$ 99,980.00	BOA-PSI-07639
3/4/03	Culmen Investment at Hapoalim Bank Israel	Monthigne Account 4671882187	\$ 209,975.00	BOA-PSI-04019
4/10/03	Culmen Investment at Bank Hapoalim Israel	Monthigne Account 4671882187	\$ 74,975.00	BOA-PSI-04021
4/10/03	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 52,400.00	BOA-PSI-03762
5/13/03	Culmen Investment at Bank Hapoalim Israel	Monthigne Account 4671882187	\$ 129,975.00	BOA-PSI-04023
5/13/03	Monthigne Account 4671882187 writes check	Sonia Falcone Account 272207365	\$ 85,000.00	BOA-PSI-03784
6/2/03	Pierre Falcone Account 272206530	Beverly Loan Co.	\$ 75,925.00	BOA-PSI-03871
6/5/03	Unidentified account at Bank Hapoalim in Israel	Monthigne Account 4671882187	\$ 159,975.00	BOA-PSI-04025
6/5/03	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 112,000.00	BOA-PSI-03796
7/11/03	Beverly Hills Loan Co. writes check to	Sonia Falcone Account 846035538	\$ 60,000.00	BOA-PSI-04094-6
8/4/03	Culmen Investments at Bank Hapoalim Israael	Monthigne Account 4671882187	\$ 299,975.00	BOA-PSI-04027
8/4/03	Monthigne Account 4671882187	Sonia Falcone Account 84603558	\$ 200,000.00	BOA-PSI-04097
8/4/03	Monthigne Account 4671882187	Falcone Household Account 272207365	\$ 74,500.00	BOA-PSI-03798
8/6/03	Sonia Falcone Account 846035538 writes cashiers check	To Beverly Loan Company	\$ 119,000.00	BOA-PSI-04071
9/16/03	Culmen Investment at Bank Hapoalim Israel	Monthigne Account 4671882187	\$ 99,975.00	BOA-PSI-04029
9/16/03	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 75,000.00	BOA-PSI-03691
9/22/03	Rego Holding Inc. at Bank Hapoalim	Monthigne Account 4671882187	\$ 199,975.00	BOA-PSI-03962
9/22/03	Monthigne Account 4671882187 writes check	Sonia Falcone Account 846035538	\$ 67,000.00	BOA-PSI-03693
10/24/03	Culmen Investment at Bank Hapoalim	Monthigne Account 4671882187	\$ 109,975.00	BOA-PSI-04033

10/24/03	Monthigne Account 4671882187	Falcone Household Account 27207365	\$ 50,000.00	BOA-PSI-03804
12/23/03	"One of our clients" at Discount Bank Ltd in the Cayman Islands	Monthigne Account 4671882187	\$ 399,975.00	BOA-PSI-04035
1/9/04	Culmen Investment at Bank Hapolaim	Vincente Falcone 274776027	\$ 100,000.00	BOA-PSI-07641
1/26/04	Valley Marketing Ltd. at Discount Bank Ltd Cayman	Monthigne Account 4671882187	\$ 249,975.00	BOA-PSI-04037
1/26/04	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 158,000.00	BOA-PSI-04799
2/10/04	AALL Trust and Banking at Bank Butterfield in Cayman Islands	Monthigne Account 4671882187	\$ 500,000.00	BNY 004685
2/11/04	Monthigne Account 4671882187	Falcone Household Account 272207365	\$ 204,000.00	BOA-PSI-03810
4/13/04	AALL Trust and Banking Co. at Bank of Butterfield International Cayman Islands thru Bank of NY	Vincente Falcone Account 274776027	\$ 200,000.00	BOA-PSI-06752
4/19/04	Beverly Hills Loan Co. writes check to	Sonia Falcone Account 846035538	\$ 60,000.00	BOA-PSI-04101-2
4/21/04	AALL Trust and Banking	Monthigne Account 4671882187	\$ 150,000.00	BOA-PSI-04039
4/21/04	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 80,367.64	BOA-PSI-03816
5/28/04	AALL Trust and Banking Corp. at Bank of Butterfield International Cayman Islands	Monthigne Account 4671882187	\$ 350,000.00	BOA-PSI-04042
6/1/04	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 305,000.00	BOA-PSI-03818
6/4/04	Falcone Household Account 272207365	Beverly Loan Co.	\$ 113,410.00	BOA-PSI-03875
6/17/04	AALL Trust and Banking Corp. Ltd.	Vincente Falcone Account 4659023450	\$ 200,000.00	BOA-PSI-07645
7/8/04	Pierre J. Falcone Esquire/Sonia Falcone account at Coutts & Company in England through Bank of New York	Vincente and Pierre Falcone Account Number 76761391	\$ 255,158.34	BOA-PSI-03866
7/16/04	AALL Trust and Banking Corp.	Monthigne Account 4671882187	\$ 100,000.00	BOA-PSI-04045
7/16/04	Beverly Loan cashiers check	Sonia Falcone Account 846035538	\$ 60,000.00	BOA-PSI-04102-4
7/19/04	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 77,797.16	BOA-PSI-03820
7/28/04	AALL Trust and Banking Corp.	Monthigne Account 4671882187	\$ 350,000.00	BOA-PSI-04048
8/2/04	Monthigne Account 4671882187	Falcone Household Account 272207365	\$ 300,000.00	BOA-PSI-03822
8/2/04	Falcone Household Account 272207365 writes check	Beverly Loan Co.	\$ 62,509.00	BOA-PSI-035757-8
8/16/04	AALL Trust	Monthigne Account 4671882187	\$ 200,000.00	BOA-PSI-04051
10/8/04	AALL Trust by order Apollo LLC, Valley Trust	Monthigne Account 4671882187	\$ 315,000.00	BOA-PSI-04054
10/8/04	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365 Check memo says "household expenses"	\$ 275,000.00	BOA-PSI-04781
11/18/04	AALL Trust and Banking Corp. By order Apollo LLC and ref: alley trust	Monthigne Account 4671882187	\$ 250,000.00	BOA-PSI-04057

11/18/04	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 225,000.00	BOA-PSI-03829-30
12/20/04	Pierre Falcone Account 76761391 writes check	Sonia Falcone	\$ 100,000.00	BOA-PSI-04834
12/22/04	Pierre Falcone Account 76761391 writes check	Sonia Falcone	\$ 100,000.00	BOA-PSI-04834
1/18/05	Pierre Falcone Account 76761391 writes check	Sonia Falcone	\$ 45,000.00	BOA-PSI-04836
2/10/05	AALL Trust & Banking Corp.	Monthigne Account 4671882187	\$ 250,000.00	BOA-PSI-04060
2/10/05	Monthigne Account 4671882187 writes check	Falcone Household Account 272207365	\$ 250,000.00	BOA-PSI-04780, 03974
4/4/05	Beverly Loan Co. writes check	Sonia Falcone	\$ 189,000.00	BOA-PSI-03838
4/12/05	Equity Title Agency Inc. at National Bank of AZ	Falcone Household Account 272207365	\$ 500,000.00	BOA-PSI-03878
4/12/05	Abecassis Jacques at Banco Nacional de Costa Rica	Falcone Household Account 272207365	\$ 280,000.00	BOA-PSI-03881
4/15/05	Falcone Household Account 272207365	Beverly Loan Co.	\$ 205,000.00	BOA-PSI-03884
8/4/05	American Express Ltd. at Banco Portugues de Negocios	Sonia Falcone Account 272207365	\$ 349,960.00	BOA-PSI-03887
8/16/05	Falcone Household Account 272207365 writes check	Beverly Loan Co.	\$ 55,000.00	BOA-PSI-03761
9/16/05	Beverly Loan Co.	Sonia Falcone Account 8460355538	\$ 51,319.00	BOA-PSI-04188
9/21/05	Unidentified account at Firstrand Bank Ltd. at Banco Sol in Johannesburg. Wire info notes "by order PJF Luanda ACC 2811262151."	Falcone Household Account 272207365	\$ 199,980.00	BOA-PSI-03890
9/23/05	Falcone Household Account 272207365	Beverly Loan Co.	\$ 82,480.00	BOA-PSI-03893
11/17/05	Banco Sol Sarl in Angola "By order PJF"	Falcone Household Account 272207365	\$ 299,970.00	BOA-PSI-03896
11/18/05	Falcone Household Account 272207365	Beverly Loan Co.	\$ 99,120.00	BOA-PSI-03899
12/14/06	Levin and Schreder at JPM Chase	Falcone Household Account 272207365	\$ 1,050,000.00	BOA-PSI-03902
12/15/05	Gitana Finance/American Express Bank Ltd. at Banco Sol Sarl in Luanda	Sonia Falcone Account 272207365	\$ 199,905.00	BOA-PSI-03905
12/20/05	Charleston Hotels Group at Banco de Bogota in Bogota Colombia	Falcone Household Account 272207365	\$ 200,000.00	BOA-PSI-03908
1/19/06	Charleston Hotels Group Inc.	Falcone Household Account 272207365	\$ 100,000.00	BOA-PSI-03911
1/26/06	Levin & Schreder at JPM	Falcone Household Account 272207365	\$ 220,000.00	BOA-PSI-03912
3/3/06	Pierre Joseph Falcone at Citic Ka Wah Bank Ltd. in Beijing	JK Gruner and Associates Ltd. at Suntrust Bank, VA. Instructions note: "for business intelligence services."	\$ 8,000.00	Pierre Falcone.xls (Deutsche Bank)
4/12/06	PJF Luanda at Banco BPI SA, Lisbon	Falcone Household Account 27220-365	\$ 349,932.00	BOA-PSI-03915
4/13/06	Falcone Household Account 272207365	Beverly Loan Company	\$ 210,000.00	BOA-PSI-03918
5/25/06	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 120,000.00	BOA-PSI-90210

6/6/06	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 80,000.00	BOA-PSI-03841-2
7/6/06	Pierre Joseph Falcone at Citic Ka Wah Bank Limited in Beijing thru Bank of America NY	Beneficiary not named. Receiving institution is "Asia Return Item."	\$ 228,203.00	Pierre Falcone.xls (Deutsche Bank)
7/6/06	Pierre Joseph Falcone at Citic Ka Wah Bank Limited in Beijing	JK Gruner and Associates at Sun Trust Bank in VA	\$ 24,000.00	Pierre Falcone.xls (Deutsche Bank)
7/11/06	Pierre Joseph Falcone at Citic Ka Wah Bank in Beijing	Williams and Connolly at Bank of America, NY	\$ 228,203.00	Pierre Falcone.xls (Deutsche Bank)
8/21/06	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 119,600.00	BOA-PSI-03843-4
8/29/06	Pierre J. Falcone at Banco Sol Banco at Firstrand Limited in Johannesburg	Falcone Household Account 272207365	\$ 149,975.00	BOA-PSI-03921
10/6/06	Charleston Hotels Group	Falcone Household Account 272207365	\$ 200,000.00	BOA-PSI-03927
10/6/06	Falcone Household Account 272207365	Beverly Loan Company	\$ 100,000.00	BOA-PSI-03930
11/10/06	PJF Luanda Angola at American Express Bank Ltd in Lisbon	Falcone Household Account 272207365	\$ 549,960.00	BOA-PSI-03933
11/10/06	Falcone Household Account 272207365	Beverly Loan Company	\$ 300,000.00	BOA-PSI-03936
11/22/06	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 125,000.00	BOA-PSI-03845-6
12/1/06	Falcone Household Account 272207365 writes check For "lawyers fees"	Perkins Cole Brown & Bain of Phoenix	\$ 120,000.00	BOA-PSI-03765
12/14/06	Levin & Schreder	Falcone Household Account 272207365	\$ 1,050,000.00	BOA-PSI-03939
12/15/06	Falcone Household Account 272207365	Beverly Loan Co.	\$ 183,646.00	BOA-PSI-03942
12/18/06	Falcone Household Account 272207365 writes check for "lawyers fees"	Grant Woods	\$ 210,000.00	BOA-PSI-03764
2/14/07	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 67,000.00	BOA-PSI-03847-8
2/21/07	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 100,000.00	BOA-PSI-03849-50
2/22/07	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 90,000.00	BOA-PSI-03851-2
3/22/07	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 61,000.00	BOA-PSI-03853-4
4/12/07	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 549,700.00	BOA-PSI-03855-6
4/13/07	Falcone Household Account 272207365 writes check for "lawyers fees"	Perkins Cole	\$ 142,411.45	BOA-PSI-03766
5/21/07	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 149,700.00	BOA-PSI-03857-8
6/4/07	Beverly Loan Co. writes check	Falcone Household Account 272207365	\$ 50,000.00	BOA-PSI-03859-60
6/29/07	Craig Jackson at Wells Fargo writes check	Falcone Household Account 272207365	\$ 255,156.00	BAC-PSI 07625
8/20/07	Pierre Joseph Falcone at Citic ka wah Bank Ltd. in Hong Kong	Iris Mendez Account 4674269956	\$ 250,000.00	BOA-PSI-07694
SOURCES – Multiple			TOTAL- \$62,075,357.31	

Chart Prepared by Subcommittee

C. An Angolan Government Official: Moving \$50 Million at the Request of the Governor of the Angolan Central Bank

Documents uncovered during the Subcommittee's investigation show that, in 2002, Dr. Aguinaldo Jaime, then head of the Central Bank of Angola, Banco Nacional de Angola (BNA), attempted to transfer \$50 million in government funds from the central bank to a private bank account in the United States, only to have the transfer blocked and the funds returned on two occasions by the U.S. financial institutions involved. The transfer of the Angolan funds was characterized at the time as an investment to produce humanitarian aid for the people of Angola, but other documents indicate the transfer was part of a fraudulent "prime bank" investment scheme that likely would have resulted in the funds being lost or stolen.

The participants in the 2002 \$50 million transfer include BNA Governor Jaime; Mehenou Satou Amouzou, a Togo citizen living in the United States and owner of MSA, Inc., a Florida company that played a role in the first attempted transfer; Charles Shelton, a London-based broker with alleged access to a secretive Swiss trading group; Stanley Wayland, a purported principal in that Swiss trading group; and Jan Morton Heger, a California attorney and owner of Euro-American Investments, LLC, a Nevada company that played a role in the second attempted transfer.

In the first transfer attempt, in June 2002, BNA Governor Jaime ordered \$50 million in Angolan funds wire transferred from a BNA account at Citibank London to a Bank of America account in California which had been opened in the name of MSA, Inc. and whose signatories were Mr. Amouzou and Dr. Jaime. Bank of America initially allowed the transfer, but became suspicious and ultimately returned the funds to Citibank and closed the MSA account.

The second attempt took place two months later, in August 2002, when BNA Governor Jaime instructed Citibank London to wire transfer \$50 million to HSBC Equator Bank in London, and then opened a BNA account, with himself as the sole signatory, at HSBC USA in New York. At his request, HSBC used the funds to purchase \$50 million in U.S. Treasury Bills (T-Bills) for the New York account. Dr. Jaime then instructed HSBC to transfer the T-Bills from New York to a personal securities account in the name of Mr. Heger at Wells Fargo Investment Services in California. Wells Fargo initially allowed the transfer, became suspicious, returned the T-Bills to HSBC, and closed the Heger account. Undeterred, Dr. Jaime instructed HSBC to transfer the T-Bills to a Heger law office account at Comerica Bank in California. HSBC attempted but was unable to complete the transfer due to incorrect account information. Dr. Jaime then offered to allow HSBC to retain the Treasury bills in New York, on the condition that it provide him with a negotiable "safekeeping receipt" that could be used as a transferable financial instrument. HSBC initially agreed, but apparently never actually provided the receipt. In December 2002, Dr. Jaime took a new government post outside of BNA, and BNA ordered the T-Bills to be liquidated and the \$50 million returned to its account at Citibank London.

This case study has a satisfactory conclusion, since the \$50 million was returned to the Angolan central bank, but illustrates how even central bank transactions require careful scrutiny by U.S. financial institutions. As a result of the \$50 million transfers that went through its accounts and ongoing concerns about corruption in BNA and Angola generally, in 2003,

Citibank closed not only the accounts it had maintained for BNA, but all other Citibank accounts for Angolan entities, and shut down its branch in Angola.

In connection with its investigation of this matter, the Subcommittee obtained extensive documents from and conducted interviews with Mr. Amouzou and Mr. Heger. It also obtained documents from and conducted interviews with many of the financial institutions involved. The Subcommittee also met with a representative of Angola's Embassy, explained its investigation and showed key documents it had obtained, and asked to speak with Dr. Jaime or another appropriate Angolan official to obtain their views of the \$50 million transfer. After waiting several months, the Subcommittee sent a letter renewing its request, but the Embassy chose not to provide an official for a Subcommittee interview on this matter.

(1) Background

Banco Nacional de Angola. Banco Nacional de Angola, first established after Angola gained its independence in 1975, is wholly owned by the Government of Angola and functions as the country's central bank. BNA is a member of the Association of African Central Banks and the Southern African Development Community.¹⁴³⁸ It serves as Angola's monetary and foreign exchange authority, but is also licensed to do business directly with individual Angolan and foreign clients. BNA has its headquarters in Luanda, Angola's capital city and, in 2002, operated nine branches throughout the country with a total of about 2,000 employees.¹⁴³⁹ In December 2004, BNA held about \$1.257 billion in total assets and managed more than \$25 million in client funds.¹⁴⁴⁰

Governor Jaime. Dr. Aguiinaldo Jaime served as the Governor of Banco Nacional de Angola from May 1999 until December 2002.¹⁴⁴¹ During his tenure, his responsibilities included chairing the BNA Board of Directors, directing BNA's day-to-day management, certifying BNA's financial books, representing BNA before national, foreign, and international institutions, and signing all Angolan banknotes issued by BNA.¹⁴⁴²

On or around December 5, 2002, Dr. Jaime left Banco Nacional de Angola to become an Assistant to the Prime Minister of Angola under President Jose Eduardo dos Santos. Later in 2003, he became Deputy Prime Minister of Angola. After serving in that post for six years, in 2009, he was appointed Chairman of an Angolan commission that promotes private investment in the country, Agência Nacional para o Investimento Privado (ANIP).¹⁴⁴³

Prime Bank Schemes. "Prime bank" schemes are a type of fraudulent investment scheme that gained popularity during the 1990s. As of 2002, there were over 100 pending

¹⁴³⁸ 11/13/06 2006 HSBC KYC profile of BNA, HSBC-PSI 032834.

¹⁴³⁹ 12/18/02 HSBC KYC profile of BNA, HSBC-PSI 037384-89.

¹⁴⁴⁰ 12/21/06 HSBC internal email, HSBC-PSI 032837 (stating that, as of December 2004, BNA's total assets were about \$1.9 billion, its net income was about \$63 million, and it held over \$127 million in capital and reserves).

¹⁴⁴¹ 12/13/01 email from HSBC Equator, HSBC-PSI 037185. Dr. Jaime was replaced by Amadeu de Jesus Castelhamo Maurício who remains the BNA Governor today. African Development Information Services, "Angola Who's Who," <http://www.afdevinfo.com/htmlreports/ao92.html#M>.

¹⁴⁴² See Angola National Assembly Law No. 6/97, Chapter IV, Section II, Article 58, enacted July 11, 1997.

¹⁴⁴³ See ANIP website, <http://www.iie-angola-us.org/home.htm>.

federal criminal investigations in the United States related to prime bank schemes.¹⁴⁴⁴ According to the U.S. Securities and Exchange Commission (SEC), the fraud revolved around financial instruments referred to as “prime bank instruments” or “prime bank notes,” that were often characterized as guarantees of certain funds held by major, well known banks.¹⁴⁴⁵ Promoters claimed that these instruments, when resold several times, produced substantial returns on the initial investment.¹⁴⁴⁶ Promoters also typically told investors that they had special access to secretive trading programs between banks that bought and sold these financial instruments, although, in reality, no such trading programs existed. Some promoters also told investors they were one of a small number of traders licensed by the Federal Reserve to trade in such instruments, when in fact, no such licenses are issued by the Federal Reserve.¹⁴⁴⁷ Investors were often told that their funds would be used to secure and trade in prime bank instruments on international markets, and promised profits of 100% or more with no risk.¹⁴⁴⁸ The U.S. Federal Bureau of Investigations (FBI) has cautioned that, typically, the real objective of the fraud was to convince investors to transfer money to a foreign bank account under control of the fraudster who would then transfer some or all of the funds to still another, undisclosed offshore account.¹⁴⁴⁹

Mehenou Amouzou. Mehenou Satou Amouzou is a native and citizen of Togo and lives in the United States. In response to a Subcommittee subpoena, he agreed to produce documents and participate in an interview. Earlier, Mr. Amouzou’s office was the subject of a search warrant by the Internal Revenue Service (IRS) which removed a significant number of documents. Mr. Amouzou gave the Subcommittee permission to obtain those documents from the IRS.

During his interview, Mr. Amouzou told the Subcommittee that he held several advanced degrees¹⁴⁵⁰ and came to the United States in 1991, in pursuit of a doctorate in finance from La

¹⁴⁴⁴ Joel E. Leising and Michael McGarry, “Prime Bank / High Yield Investment Schemes,” United States Attorneys’ Bulletin, March 2002, Vol. 50, Number 2.

¹⁴⁴⁵ According to the SEC, prime bank schemes “involve the purported issuance, trading, or use of so-called ‘prime’ bank, ‘prime’ European bank or ‘prime’ world bank financial instruments, or other ‘high yield investment programs’ (‘HYIPs’). The fraud artists who promote these schemes often use the word ‘prime’ – or a synonymous phrase, such as ‘top fifty world banks’ – to cloak their programs with an air of legitimacy. They seek to mislead investors by suggesting that well regarded and financially sound institutions participate in these bogus programs. But prime bank and other related schemes have no connection whatsoever to the world’s leading financial institutions or to banks with the word ‘prime’ in their names.” <http://www.sec.gov/divisions/enforce/primebank.shtml>.

¹⁴⁴⁶ See Federal Bureau of Investigation – Common Fraud Schemes, <http://www.fbi.gov/majcases/fraud/fraudschemes.htm>.

¹⁴⁴⁷ See Federal Reserve Bank of New York, Circular 10858, June 19, 1996.

¹⁴⁴⁸ See SEC, Prime Bank Fraud Information Center, <http://www.sec.gov/divisions/enforce/primebank/howtheywork.shtml>.

¹⁴⁴⁹ See FBI – Common Fraud Schemes, <http://www.fbi.gov/majcases/fraud/fraudschemes.htm>.

¹⁴⁵⁰ He told the Subcommittee that he attended high school in France; obtained undergraduate and Masters degrees from the European Institute of Management; obtained a certificate in finance and investment from the American University in Paris in 1987; and another Masters degree in political science and international relations from the University of Paris’ Ecole Hautes Etudes Internacionale in 1989. Subcommittee interview of Mr. Amouzou, May 13, 2008. See also the credentials listed in a 2002 development proposal, BOA-PSI-05629.

Jolla University in San Diego.¹⁴⁵¹ Mr. Amouzou told the Subcommittee that he works with African countries to diversify their resources and has worked on business ventures in a number of African countries. Documents reviewed by the Subcommittee disclosed a long history of involvement with failed investments, including investments that referred to prime bank instruments.¹⁴⁵²

MSA, Inc. Mr. Amouzou told the Subcommittee that he formed Mehenou Satou Amouzou, Inc. (MSA, Inc.) as a U.S. corporation to provide consulting and investment management services.¹⁴⁵³ Mr. Amouzou serves as MSA, Inc.'s president, chief executive officer, and chairman of the board of directors.¹⁴⁵⁴ He provided the Subcommittee with two documents identifying the corporate organization and officers of MSA, Inc.¹⁴⁵⁵ The documents are identical except that each identifies a different subsidiary: one lists Phoenix Holding International, Inc.,¹⁴⁵⁶ while the other lists Delta Holdings International, Inc., formerly known as FranTech Angola Inc.¹⁴⁵⁷ FranTech Angola was incorporated by Mr. Amouzou on January 14, 2002, in connection with his efforts related to Angola.¹⁴⁵⁸ Mr. Amouzou estimated that MSA, Inc. currently earns revenues of approximately \$120,000 per year.¹⁴⁵⁹

(2) First Attempt To Transfer the \$50 Million

In June 2002, Banco Nacional de Angola instructed Citibank to transfer \$50 million of Angolan state funds from its account at Citibank London to an account in the name of MSA, Inc., at Bank of America in San Diego. Dr. Jaime and Mr. Amouzou were the signatories for the MSA account. Citibank approved the transfer, and Bank of America initially allowed it, but later

¹⁴⁵¹ The Subcommittee was unable to confirm the existence of a university with that name in San Diego. One document produced by Mr. Amouzou showed that, in 1992, he received a professional guard license, apparently in connection to his employment by a private security company. BOA-PSI-05529.

¹⁴⁵² See, e.g., "Trade Programs" which appears to be a 41-page instruction manual for a prime bank trading program, PSI-Amouzou-09-0149-90; documents related to Kramer International, Inc., a corporation formed by Mr. Amouzou, which is listed in the Los Angeles County Fictitious Business Name Index (No. 00-267100), filed February 23, 2000, http://www.lavote.net/Clerk/Business_Name.cfm, and which was involved with prime bank funding for housing construction in Gambia in 1999, PSI-Amouzou-09-1366; PSI-Amouzou-09-0947; PSI-Amouzou-09-0981; and prime bank funding for housing construction in Angola in 2000, PSI-Amouzou-10-1390-92; together with other documents that appear related to prime bank schemes, PSI-Amouzou-10-1403-06; PSI-Amouzou-07-0747; PSI-Amouzou-10-0672-73; PSI-Amouzou-09-1269; PSI-Amouzou-09-1242; PSI-Amouzou-08-0013; PSI-Amouzou-10-1078; PSI-Amouzou-08-0015.

¹⁴⁵³ The Subcommittee was unable to locate incorporation documents for MSA, Inc.

¹⁴⁵⁴ MSA, Inc. flowchart, PSI-Amouzou-07-1251.

¹⁴⁵⁵ Id. MSA, Inc. flowchart, PSI-Amouzou-08-0834. Both flowcharts show that MSA, Inc. had three Vice Presidents: David Naranjo, who was also the Director of Operations and Treasurer of the Board of Directors; Albert Lee, who was also Director of Resources and Secretary of the Board of Directors; and Kwesi B. Annan, who was also the Director of Programs. Both charts also list an affiliated trust, the MSA Trust, and name R. Eason and Adrienne Lewis as "Humanitarian" trustees.

¹⁴⁵⁶ MSA, Inc. flowchart, PSI-Amouzou-07-1251.

¹⁴⁵⁷ MSA, Inc. flowchart, PSI-Amouzou-08-0834. The officers and structure of Delta Holdings are identical to the officers and structure of Phoenix Holding. Both list Joseph Ntamushuboro as president, and Matteuw Lee, Bernard Aziabile, Lòuremco Landorte, and K. Beshun as directors. See also Articles of Amendment to Articles of Incorporation of FranTech Angola, Inc, PSI-Amouzou-11-0374.

¹⁴⁵⁸ See Florida Secretary of State Letter No. 802A00001990, attesting to the filing of Articles of Incorporation for FRANTECH – ANGOLA, INC., filed on January 14, 2002; Subcommittee interview of Mr. Amouzou, 5/13/08.

¹⁴⁵⁹ Subcommittee interview of Mr. Amouzou, May 13, 2008.

became suspicious that the \$50 million transfer was part of a fraudulent prime bank scheme. Bank of America froze the funds while working with Citibank to examine the transfer. After three weeks, Dr. Jaime asked for the funds to be returned to the BNA account at Citibank London. Bank of America returned the funds and closed the MSA account. A few months later, in January 2003, Citibank personnel recommended closing, not only the Citibank account provided to BNA, but also all Citibank accounts provided to Angolan entities. Citibank actually closed the BNA account five months later and, during 2003, closed all other accounts held by Angolan government agencies and Sonangol. Citibank also closed its branch office in Angola.

Amouzou Investment Proposal. Mr. Amouzou told the Subcommittee that, in 1999, he developed a business relationship with the Angolan Minister of Oil, João Landoite, who introduced him to Dr. Jaime, then head of the Angolan Central Bank. Mr. Amouzou told the Subcommittee that he presented them with an investment plan for Angola in which, if he were given a large sum of money such as \$10 billion, he would generate a monthly return of 5 to 10% by depositing the principal with a major bank, obtaining a “bank guarantee” of the principal, and then using that bank guarantee to generate additional sums that could be placed in high-yield investments.¹⁴⁶⁰

Mr. Amouzou told the Subcommittee that BNA Governor Jaime expressed interest in the proposal which Mr. Amouzou then developed throughout 2001 and 2002. Mr. Amouzou provided copies of several “Funding Agreements” which purported to lay out the investment plan. For example, a February 2001 agreement signed by Dr. Jaime, representing BNA, and Mr. Amouzou, representing MSA, Inc.¹⁴⁶¹ stated that Mr. Amouzou agreed to arrange and make available \$3 billion, with scheduled payments of \$500 million per year over 6 years, to finance development of a number of socio-economic infrastructure projects in Angola. The agreement stated that, to carry out this investment plan, Mr. Amouzou was to be issued a “Bank Guarantee” for \$150 million upon execution of the agreement, and would keep that Bank Guarantee for 18 months in a safe deposit account at a bank. Eventually the funding would reach “the total amount requested, which is Three Billion Us Dollars.”¹⁴⁶² Meanwhile, BNA was to open up a new bank account to receive the profits from the investment plan, and Mr. Amouzou would disburse the funds from an account at Bank of America.

Mr. Amouzou told the Subcommittee that the Angolan legislative assembly issued a resolution approving the concept and authorizing an MSA, Inc. subsidiary, FranTech Angola, to develop the investment proposal further. Mr. Amouzou provided the Subcommittee with additional documents related to the investment project including the following:

- a March 23, 2001 letter from Dr. Jaime presenting a list of projects, including health, infrastructure, and education projects, for which the Government of Angola was seeking financing, a Bank Guarantee, Power of Attorney, and a copy of Dr. Jaime’s passport and business cards;¹⁴⁶³

¹⁴⁶⁰ Id.

¹⁴⁶¹ 2/15/01 “Funding Agreement” between BNA and MSA, Inc., PSI-Amouzou-08-0143-46.

¹⁴⁶² Id. at 0144.

¹⁴⁶³ Letter from BNA Governor Jaime to Mr. Amouzou, 3/23/01, PSI-Amouzou-08-0147-48.

- an August 2001 letter, signed by Angolan President dos Santos, authorizing the FranTech Research Group to represent the Government of Angola in “the world market with a view to negotiate social and economic development projects and secure capital investments necessary for their financing,” and declaring that all dividends from the investments would go directly to development projects in Angola;¹⁴⁶⁴
- an August 2001 letter signed by Dr. Jaime which enclosed the dos Santos letter and indicated that Dr. Jaime would establish a Technical Committee to assess any projects to be financed under the agreement;¹⁴⁶⁵
- a January 2002 letter from Dr. Jaime which confirmed Mr. Amouzou’s “mandate as Advisor to the Government of Angola,” and stated that Mr. Amouzou was entitled “to deal with public or private entities in order to achieve the agreed and stated objectives;”¹⁴⁶⁶
- a February 2002 declaration from President dos Santos stating that funds used in the development projects “shall be under no circumstances diverted or used for other than the stated and agreed purposes”;¹⁴⁶⁷ and
- a July 2002 MSA, Inc. Proposed Development Project, 62 pages in length, outlining his proposed investment plan and identifying \$7.7 billion in possible health, infrastructure, and education projects that could be financed with the projected investment returns.¹⁴⁶⁸

London Broker. In early January 2002, Mr. Amouzou began to involve a self-employed, London-based stockbroker named Charles Shelton in the proposed Angolan investment project. In a January 2002 email, Mr. Shelton requested a new version of a “Bank Guarantee” from the “National Bank of Angola,” because “there were several spelling mistakes and the g[e]neral format was not what we would have expected.”¹⁴⁶⁹ Two weeks later, an email from Mr. Shelton stated: “The documents submitted are not absolutely clear as to whether the BG issued for this will be backed by cash, or by a government guarantee. Can you please discuss this with Dr. Amouzou and obtain a letter from the Central Bank of Angola signed by the Governor confirming whichever is the case.”¹⁴⁷⁰

¹⁴⁶⁴ Letter from President dos Santos to FranTech Research Group, 8/29/01, PSI-Amouzou-11-0035-36.

¹⁴⁶⁵ Letter from BNA Governor Jaime to Mr. Amouzou, president of MSA, Inc., 9/04/01, PSI-Amouzou-11-0037.

¹⁴⁶⁶ Id., 1/31/02, PSI-Amouzou-11-0039 and BOA-PSI-05635.

¹⁴⁶⁷ Declaration by José Eduardo dos Santos to “All Stakeholders, Vendors and Participants of the Development Project Under the Humanitarian Funding,” 2/01/02, PSI-Amouzou-11-0038 and BOA-PSI-05633.

¹⁴⁶⁸ See MSA, Inc. Proposed Development Projects for Republic of Angola, BOA-PSI-05622-84. When asked about the funding for the investment plan, Mr. Amouzou told the Subcommittee that it depended upon BNA’s issuing a \$50 million “bank guarantee.” Subcommittee interview of Mr. Amouzou, May 13, 2008. Most of the proposal consisted of a list of proposed projects and a feasibility study of them, including projects involving road construction and airports infrastructure (\$1.5 billion); hospitals, clinics, and supplies (\$750 million); education, buildings, and supplies (\$700 million); housing (\$3.1 billion); a power plant (\$650 million); waste treatment (\$300 million); water treatment (\$300 million); AIDS patients (\$100 million); and land mine removal (\$300 million). The proposal also included two letters, ostensibly from U.S. Congressman Randy “Duke” Cunningham and California State Senator Diane Watson, each of which commended Mr. Amouzou for his efforts to expand trade between the United States and Togo, Id., at BOA-PSI-05631-32. Bank of America told the Subcommittee that these two letters may have been fakes. Subcommittee interview of Bank of America officials, May 8, 2008.

¹⁴⁶⁹ 1/25/02 email from Mr. Shelton to Donald Bowers of Continental Capital Funding re “Angola BG [Bank Guarantee] \$150M,” PSI-Amouzou-09-1070.

¹⁴⁷⁰ 2/19/02 email from Mr. Shelton to Donald Bowers of Continental Capital Funding, PSI-Amouzou-08-0174.

Four months later, on June 12, 2002, Mr. Shelton sent an email to Mr. Amouzou regarding the “Angola BG [bank guarantee] PProject.”¹⁴⁷¹ The email stated: “I like you was concerned that the people proposed by Lovell would want to ‘charge’ an upfront fee of USD2.0M as a security deposit for work to be done by the lawyers in preparing the documentation for which there was no guarantee of funding.” Mr. Shelton continued:

“If you have access to any one or a company with USD100M cash then we can get you into a program within 5 banking days from final approval following due diligence of the client/funds. ... [Y]ou would expect to achieve approximately 25% per week as a minimum amount based on USD100M At present it would pay out every two weeks and last for 40 weeks.”¹⁴⁷²

One week later, Mr. Shelton projected “a minimum of 50% per week” if \$50 million was invested.¹⁴⁷³ He encouraged Mr. Amouzou to travel to Switzerland to meet with the investment “Group” which would generate the return on the Bank Guarantee.

On July 10, 2002, a conference call was held at MSA, Inc. offices in California for MSA board members to discuss the anticipated \$50 million investment from the Angolan central bank.¹⁴⁷⁴ According to the minutes of the board meeting, those in attendance were Mr. Amouzou, MSA president; Albert Lee, MSA vice president and secretary; and David Naranjo, MSA vice president and director of operations. According to the minutes, a July 10, 2002 letter from Dr. Jaime was read aloud discussing the \$50 million deposit for the “Angola project.” The board then adopted the following resolution:

“The Board has agreed that Dr. Aguinaldo Jaime be appointed the Acting Special CFO as an overseer of the Fifty Million Dollars to be deposited in an International Prime Bank. This is a requirement by the funding party of the Seven Billion Dollar project for Angola. This position shall be enforced for the approximately three years during which the Fifty Million Dollars remains blocked in the designated International Prime Bank.”

In addition, the board resolved that the \$50 million would be deposited into an “international prime bank,” and that Mr. Amouzou and Dr. Jaime would have joint signing authority over the withdrawal of the funds.¹⁴⁷⁵

When asked about the resolution making BNA Governor Jaime an Acting Special Chief Financial Officer of MSA, Inc., Mr. Amouzou told the Subcommittee that he had suggested that Governor Jaime be given this unpaid position so that he could monitor Angolan funds placed with MSA, Inc. for investment.¹⁴⁷⁶ He said the position did not require Dr. Jaime to oversee the day-to-day functioning of the business.

¹⁴⁷¹ 6/12/02 email from Mr. Shelton to Mr. Amouzou, PSI-Amouzou-11-0059.

¹⁴⁷² Id.

¹⁴⁷³ 6/19/02 email from Mr. Shelton to Mr. Amouzou, PSI-Amouzou-09-1415.

¹⁴⁷⁴ 7/10/02 Minutes of the Special Meeting Board of Directors MSA, Inc., PSI-Amouzou-11-0538.

¹⁴⁷⁵ Id.

¹⁴⁷⁶ Subcommittee interview of Mehenou Satou Amouzou, May 13, 2008.

MSA Account at Bank of America. On May 15, 2002, Mr. Amouzou opened a savings account at a Bank of America branch in San Diego, Account No. 08500-05836, in the name of MSA, Inc.¹⁴⁷⁷ The account was opened by the branch manager. Both Mr. Amouzou and Dr. Jaime were listed as authorized signatories on the account.¹⁴⁷⁸

None of the account opening documentation identified Dr. Jaime as an official with the Angolan central bank. In late 2001, the Patriot Act was enacted into law and included a provision, to take effect in July 2002, requiring enhanced monitoring of private bank accounts opened by senior foreign political figures. While that requirement did not apply to a corporate account, the statute sent a clear signal to banks to tighten their scrutiny of accounts opened by senior foreign government officials. At the time of the account opening, however, Bank of America was unaware of Dr. Jaime's PEP status.

June 2002 Transfer of \$50 Million. On June 11, 2002, BNA instructed Citibank to transfer \$50 million of Angolan government funds from its account in London to the MSA account opened two weeks earlier at Bank of America.

The wire transfer documentation identified the originator of the \$50 million transfer as "BNA Oil Taxes y Royalties." It described the funds as a "Deposit To Secure Fnd'ing Fro [sic] Humanitarian Projects in Angola."¹⁴⁷⁹ The funds were sent from the BNA account at Citibank in London, through a Citibank correspondent account in New York, to the Bank of America branch in San Diego. Bank of America documentation shows that the \$50 million was deposited into the MSA, Inc. account on the same day it was sent.¹⁴⁸⁰

On June 12, 2002, Citibank London asked BNA to clarify the identity of the recipient of the \$50 million, to ensure compliance with U.S. regulations then restricting U.S. trade with Angola.¹⁴⁸¹ Dr. Jaime sent the following Swift message:

"MSA stands for Mehenou Satou Amousou Inc., which is an American company specialized in management and investment, headquartered in California, San Diego. Its president is Dr. Mehenou Satou Amouzou. The 50 million deposit is a colateral [sic] to guarantee a humanitarian funding for development projects for the Republic of Angola. Kind regards, Aguinaldo Jaime – Governor."¹⁴⁸²

Citibank cleared the wire transfer since it was not subject to U.S. Angolan sanction regulations.

¹⁴⁷⁷ Bank of America signature card for account, BOA-PSI-05144; 6/20/02 internal Bank of America email discussing account, BOA-PSI-05439-40. See also 3/6/02 MSA corporate resolution authorizing Mr. Amouzou to open such an account, PSI-Heger-01-00185.

¹⁴⁷⁸ Bank of America signature card for account, BOA-PSI-05144.

¹⁴⁷⁹ Wire transfer documentation, BOA-PSI-05080-85.

¹⁴⁸⁰ Bank of America Customer Relationship Inquiry showing \$50 million deposit, BOA-PSI-05086; Bank of America record of MSA, Inc. account activity, BOA-PSI-05080.

¹⁴⁸¹ 6/12/02 SWIFT message from Citibank to BNA, BOA-PSI-05140. Based upon U.S. Office of Foreign Asset Control (OFAC) regulations applicable at that time, certain wire transfers from Angola were prohibited without prior U.S. Government approval. See Angola Sanctions Regulations, 31 U.S.C. Part 590 (2002).

¹⁴⁸² 6/13/02 SWIFT message from Dr. Jaime at BNA, BOA-PSI-05141 (changed case of capitalized letters).

For the next eight days, the full \$50 million was available in the MSA account and could have been withdrawn or transferred in whole or in part, but was not. On June 19, 2002, Mr. Amouzou and David Naranjo met with a private banker in the Bank of America Private Bank to discuss investment options for the \$50 million.¹⁴⁸³ Mr. Amouzou had been referred to the Private Bank by a Bank of America employee who told his colleagues that Mr. Amouzou had “other investments and would like to trans[fer them] to B of A.”¹⁴⁸⁴ During that meeting, Mr. Amouzou asked the private banker about placing the \$50 million in a one-year, international certificate of deposit.¹⁴⁸⁵

At one point, the private banker asked Mr. Amouzou about the source of the funds that comprised the \$50 million. According to a statement subsequently prepared by the private banker, Mr. Amouzou “got very upset and said the funds were good, clean funds and why was I so suspicious.”¹⁴⁸⁶ She reported that Mr. Amouzou stated further that the “money was from the government of Angola.”¹⁴⁸⁷ The meeting ended without an agreement on investment of the funds.

Shortly after the meeting, the Bank of America private banker discussed the \$50 million transfer with a bank corporate security officer and the San Diego branch manager.¹⁴⁸⁸ The corporate security officer advised the branch manager to place a restriction on the MSA, Inc. account so that no funds would be released from the account without first notifying corporate security.¹⁴⁸⁹ This notice essentially froze the funds for the first time since they had been deposited eight days earlier. While the corporate security officer was instructing the branch manager to restrict the account, “Mr. Amouzou and another gentleman entered the bank, wishing to take action on the account.”¹⁴⁹⁰ The branch manager informed them that “the 50m was on hold and frozen until security could clear said 50m.”¹⁴⁹¹

The next day, June 20, 2002, the Bank of America corporate security officer sent an email alerting her colleague in Corporate Security – International Services to the \$50 million transfer and requesting her assistance in contacting Citibank about the matter.¹⁴⁹² The email noted that Mr. Amouzou had claimed to be the principal owner of the funds which he indicated had come from the sale of gold and oil in Angola.¹⁴⁹³ It said he had inquired about purchasing a one year certificate of deposit that would allow for the withdrawal of funds. The email

¹⁴⁸³ Subcommittee interview of Bank of America officials, May 8, 2008. Mr. Naranjo was then the Director of Operations at MSA, Inc. See also 6/21/02 statement of Bank of America private banker, BOA-PSI-05414-16; document entitled, “Sequence of Events,” likely prepared by Mr. Amouzou, PSI-Amouzou-03-0005-06.

¹⁴⁸⁴ Bank of America Private Bank Relationship Referral Form, 5-15-02, BOA-PSI-05584. See also 6/21/02 statement of Bank of America private banker, BOA-PSI-05414-16.

¹⁴⁸⁵ 6/21/02 statement of Bank of America private banker, BOA-PSI-05414-16.

¹⁴⁸⁶ *Id.*, at 15.

¹⁴⁸⁷ *Id.*

¹⁴⁸⁸ BOA-PSI-04987; BOA-PSI-05447; Subcommittee interview of Bank of America officials, May 8, 2008.

¹⁴⁸⁹ Bank of America Corporate Security Investigator Diary, BOA-PSI-04987; Account restriction notice, BOA-PSI-05078. See also Subcommittee interview of Bank of America officials, May 8, 2008.

¹⁴⁹⁰ Bank of America Corporate Security Investigator Diary, BOA-PSI-04987. See also document entitled, “Sequence of Events,” likely prepared by Mr. Amouzou, PSI-Amouzou-03-0005.

¹⁴⁹¹ Document entitled, “Sequence of Events,” likely prepared by Mr. Amouzou, PSI-Amouzou-03-0006.

¹⁴⁹² 6/20/02 internal Bank of America email, BOA-PSI-05440.

¹⁴⁹³ *Id.*

speculated that “we may have a Prime Bank scam or just funds which were removed from Angola illegally.” The email also noted that Dr. Jaime was both the signer of the Citibank London swift message on the origin of the funds and a signatory on the Bank of America savings account that received the funds.

The international corporate security officer responded the same day and requested that the San Diego corporate security officer “ensure that the money stays frozen, deeply frozen!”¹⁴⁹⁴ She indicated that she had communicated with Citibank about the matter, and Citibank “now consider[s] it to be either a Prime Bank scam or an internal problem within BNA – and extremely unlikely to be genuine.” She noted that the individual who provided verification of the funds on behalf of BNA, Dr. Jaime, was the co-signer on the MSA account. She wrote: “The other significant issue is that Mr. Amouzou is on the ‘known’ list with the International Chamber of Commerce – I couldn’t get any further details on this but something somewhere is not right with him.”

Earlier that day, Citibank had contacted the Commercial Crime Services of the International Chamber of Commerce (ICC).¹⁴⁹⁵ ICC had reported to Citibank, which then shared the information with Bank of America, that the ICC had been contacted in May 2001, by a German-based bank concerned about an alleged guarantee from Banco Nacional de Angola to MSA, Inc., the beneficiary.¹⁴⁹⁶ The guarantee to be issued by BNA was to be “unconditional and freely transferable,” and authorize the beneficiary to receive payment of an unspecified sum “free and clear of any deduction or charges.” The guarantee was to become effective on February 26, 2001 and expire July 27, 2002.

While these email exchanges were taking place on June 20, 2002, Mr. Amouzou sent Bank of America a letter asking it to supply him with a letter stating: “We hereby irrevocably confirm that MSA, Inc. ... has the amount of USD \$50,000,000, freely available to MSA, Inc. The funds are transferable, screenable, clear and unencumbered of any liens or rights of any third party.”¹⁴⁹⁷ An attorney for MSA, Inc., Brian Gard, also sent notice to the bank that he had been asked to facilitate release of the funds.¹⁴⁹⁸

The next day, June 21, 2002, Mr. Gard sent a letter demanding immediate release of the \$50 million and a “good faith discussion relative to the amount of damages to be paid to my client for such outrageous and unwarranted delay.”¹⁴⁹⁹ Mr. Gard asserted:

“The funds therein have already been cleared as being in compliance with U.S. Federal banking regulations. Thus, it is not the funds which have been frozen, but the account itself. Further, I understand that you have been endeavoring to learn information

¹⁴⁹⁴ 6/20/02 internal Bank of America email, BOA-PSI-05439.

¹⁴⁹⁵ The ICC’s “Commercial Crime Services (CCS) is the anti-crime arm of the International Chamber of Commerce. Based in London, CCS is a membership organisation tasked with combating all forms of commercial crime ... [including] fraud in international trade, insurance fraud, financial instrument fraud, money laundering, shipping fraud and product counterfeiting.” ICC website, <http://www.icc-ccs.org>.

¹⁴⁹⁶ 6/20/02 email exchange, BOA-PSI-05346 (quoting from alleged guarantee document).

¹⁴⁹⁷ 6/20/02 letter from MSA, Inc. to Bank of America, BOA-PSI-05150.

¹⁴⁹⁸ 6/20/02 email and letter from Law office of Brian D. Gard to Bank of America, BOA-PSI-05340-41.

¹⁴⁹⁹ 6/21/02 email and letter from Law office of Brian D. Gard to Bank of America, BOA-PSI-05335-36.

concerning the principals of MSA, Inc., and the particulars of the transaction with which it is involved. I consider such activities to be far afield of any legitimate concern of Bank of America and potentially destructive of the business concerns of my client.”¹⁵⁰⁰

Bank of America told the Subcommittee that its corporate security officer had several conversations with Mr. Amouzou and Mr. Gard who both shouted at her and threatened her.¹⁵⁰¹

Funds Returned by Bank of America. One week later, on June 26, 2002, Dr. Jaime faxed a letter to Bank of America asking that the \$50 million be returned to BNA with interest.¹⁵⁰² The letter, which he signed, stated: “After extensive consultations with CITIBANK and a reassessment of the underlining transactions, Banco Nacional de Angola has decided that its funds should be sent back to the account with CITIBANK until further notice.”

The next day, June 27, 2002, Dr. Jaime faxed a letter on BNA stationery to the president of an American company discussing the hold on the \$50 million which he characterized as an action “by the American Authorities ... aimed at protecting the people and country of Angola.”¹⁵⁰³ Dr. Jaime wrote:

“Our mutual friend Dr. Amouzou was kind enough to make me aware of the contents of the letter, dated June 26, on the \$50 M USD problem, that you addressed to him. ... Please be hereby informed that the Central Bank of Angola has been advised to recall the funds, as an interim measure, pending the clarification of this affair. It is nevertheless, our firm intention to pursue the humanitarian funding program with Dr. Amouzou and MSA and bring it to a successful end once the situation is clarified to the satisfaction of the American Authorities. ... [T]his affair has embarrassed all of us.”

Dr. Jaime continued that he had built “a reputation of a man of integrity and honor,” and his “sole purpose in entering into the Agreement with MSA was to alleviate poverty and the suffering of the Angolan people.”

The next day, June 28, 2002, Bank of America received a request from Citibank London to cancel the \$50 million wire transfer. The cancellation request stated: “Please contact your customer for written debit authorization: per remitter[']s request as funds sent in error.”¹⁵⁰⁴ The remitter making the request was BNA. The Citibank request included a signature line for a representative of MSA, Inc. to authorize cancellation of the wire transfer. Bank of America told the Subcommittee that it was also contacted by the U.S. State Department which encouraged the bank to send the funds back to the Angolan central bank.¹⁵⁰⁵ The State Department told the

¹⁵⁰⁰ Id. at 05336.

¹⁵⁰¹ Subcommittee interview of Bank of America officials, May 8, 2008.

¹⁵⁰² 6/25/02 letter from Dr. Jaime to Bank of America, faxed on 6/26/02, BOA-PSI-05424. See also Bank of America Corporate Security Investigator Diary, BOA-PSI-04988.

¹⁵⁰³ 6/27/02 letter from BNA Governor Jaime to Adobe Wells, PSI-Amouzou-07-0517-19.

¹⁵⁰⁴ Bank of America “Cancellation Request,” BOA-PSI-05592. See also Bank of America Corporate Security Investigator Diary, BOA-PSI-04988.

¹⁵⁰⁵ Subcommittee interview of Bank of America officials, May 8, 2008.

Subcommittee that it had been contacted by the IRS Criminal Investigation Division which was investigating the transaction and that it alerted BNA and Dr. Jaime to the possibility of fraud.¹⁵⁰⁶

Shortly thereafter, Mr. Amouzou signed the cancellation request, authorizing Bank of America to debit the \$50 million from the MSA account and return it to BNA.¹⁵⁰⁷ On July 1, 2002, three weeks after the initial transfer, Bank of America did just that, wire transferring the \$50 million back to the BNA account at Citibank in London, together with interest of \$43,750, accrued at a rate of 1.75%.¹⁵⁰⁸

Correspondence obtained by the Subcommittee suggests that even after the \$50 million was returned to BNA, MSA attempted to use the Bank of America account statement showing the \$50 million in its account to convince a potential investor to invest with MSA.¹⁵⁰⁹ In a July 13, 2002 letter, David Naranjo of MSA, Inc. enclosed a copy of the bank statement and characterized the \$50 million wire transfer as a movement of the funds to a European bank, because “the trading would be much less complicated if it is done in Europe.” The letter also referenced an additional \$21 million investment.¹⁵¹⁰

Documents also show that Mr. Amouzou began to shift his strategy to obtain access to the \$50 million. On July 19, 2002, when Charles Shelton, the London broker, wrote to Mr. Amouzou that a bank in Germany and another in Switzerland had accepted the Angolan investment project,¹⁵¹¹ Mr. Amouzou responded with a demand that Mr. Shelton cease all action regarding the Angolan transaction. Two days later, on July 21, 2002, Mr. Amouzou wrote to Dr. Jaime as follows:

“I was very disappointed in our activities with the broker in London (Charles Shelton), I only waited for him because he presented a higher return and a simpler and faster transfer. ... However, he is only a broker agent and not the trading group principal and that is the reason for the time delay he was unable to communicate with the principal of his trading group over the last several days. We are [now] dealing directly with the Principal, which will avoid delays. Mr. Stanley Wayland is the principal.”¹⁵¹²

¹⁵⁰⁶ See 1/6/09 letter from the State Department to the Subcommittee, PSI-State_Dep't-04-0001-02.

¹⁵⁰⁷ Bank of America “Cancellation Request,” BOA-PSI-05592; Subcommittee interview of Bank of America officials, May 8, 2008.

¹⁵⁰⁸ Subcommittee interview of Bank of America officials, May 8, 2008. The next day, July 2, 2002, MSA’s attorney, Mr. Gard, attempted to secure a higher rate of interest compensation for the funds, requesting 6% instead of the 1.75% provided. In a letter to the bank, he wrote: “It seems to me that my client should have started earning interest on the deposit at the most favorable rate offerable to Bank of America from June 19, 2002 to July 1, 2002. ... [W]e believe that interest at the rate of six percent (6%) represents a reasonable rate of return under the circumstances.” 7/2/02 letter from Brian Gard law office to Bank of America, BOA-PSI-05507-09. On July 5, at the end of a personal meeting with the Bank of America corporate security officer, Mr. Gard and Mr. Amouzou asked the bank to release the interest payment to them, but were informed that the interest payment had already been included in the wire transfer sent to BNA. Bank of America Corporate Security Investigator Diary, BOA-PSI-04988. See also additional correspondence regarding the interest payment, BOA-PSI-05318-19 and 05325-71.

¹⁵⁰⁹ See 7/13/02 letter from MSA to a potential client, PSI-Amouzou-09-0218.

¹⁵¹⁰ Id.

¹⁵¹¹ PSI-Amouzou-08-0253.

¹⁵¹² 7/21/02 letter from Mr. Amouzou to Dr. Jaime, PSI-Amouzou-08-0309-10.

Mr. Amouzou and Dr. Jaime would look to Mr. Wayland in their second attempt to wire transfer the \$50 million in Angola state funds to a private account in the United States.

Account Closures. Two months after the return of the \$50 million, on September 3, 2002, the Bank of America corporate security officer recommended closure of the MSA, Inc. account as well as two other accounts associated with Mr. Amouzou.¹⁵¹³ Handwritten comments indicate that the reason for recommended closure was “money laundering” and “Prime Bank Fraud w/Central Bank of Angola.” Bank of America actually closed the MSA account later that same month.¹⁵¹⁴

Four months after that, in January 2003, Citibank decided to close the BNA account at Citibank in London, despite potentially severe economic consequences. A January 2003 memorandum explaining the decision and its likely ramifications was sent by Citi’s Non-Presence Country Head for Sub-Saharan Africa to the Citi Country Officer for South Africa.¹⁵¹⁵ It stated:

“I am writing to advise that after considered deliberations between Business, Product, Compliance and Legal, we recommend closure of the accounts of the Central Bank of Angola (know[n] as Banc National de Angola, BNA) with Citigroup. Our recommended decision may potentially result in our being forced to exit the country. This has been taken into account. ...

-In June of last year, BNA instructed us to pay USD 50,000,000 to a dubious account with Bank of America in San Diego. Although this payment was ultimately reversed a few weeks later, we were never provided a satisfactory explanation of the underlying transaction by the BNA. ...

-We put all accounts of the BNA with Citigroup on an individual transaction-monitoring basis since July. However we have learnt in this process that a number of payments that have left our counters did not have adequate disclosure of beneficiary details, which may result in our being a conduit in their questionable financial dealings.

-We were advised in November of last year that the outgoing BNA Governor [Dr. Aguinaldo Jaime] that the BNA had gone ahead with the USD 50,000,000 transaction with another bank using a ‘fiscal paradise.’ The Governor advised us that this payment was of ‘national interest’ but did not provide us with a tangible explanation of the underlying mechanics of this repeat transaction. ... [T]his payment was also reversed and the new Governor was uncomfortable with the original transaction. The new Governor also advised our team on the ground that he had ‘inherited’ several problems from his predecessor, which he was trying to resolve on a ‘case by case’ basis. This does not add to our comfort on the inner workings of the BNA.

¹⁵¹³ Bank of America Corporate Security Account Closure Referral, BOA-PSI-05059.

¹⁵¹⁴ Id.

¹⁵¹⁵ 8/16/07 letter from Citi to the Subcommittee with January 2003 memorandum recommending closure of BNA account, PSI-Citi-21-01-02.

-Unfortunately the players in the Government of Angola are the same with a few key players in positions of power and closely managed under the leadership of the current President Jose Eduardo dos Santos. At the end of the day, we are uncomfortable with the character of the senior officials in the Angola Government and any amount of policing may not deter financial impropriety.”

The memorandum continued:

“The above action plan can be franchise threatening. ... Planned 2003 revenues are USD 5.5MM. ... In all likelihood, the reaction of the BNA to our decision would be far reaching and may result in our being asked to leave the country. We should expect a backlash from all the Government owned and private sector banks based on the strong control of the Government in the bank and other priority sectors like oil and gas. I believe that we must work with this contingency in mind and plan to exit the country.”

Five months later, on May 21, 2003, Citibank closed the BNA account used in the \$50 million transfer.¹⁵¹⁶ Throughout the course of 2003, it closed all remaining BNA accounts at the bank.¹⁵¹⁷ In addition, throughout 2003, Citibank closed all other accounts it had maintained for Angolan government entities, including Sonongol, the Angolan oil company.¹⁵¹⁸ Citibank also shut down its office in Angola. Today, Citibank still does not maintain any accounts for BNA or Angolan governmental entities.

(3) Second Attempt To Transfer the \$50 Million

The second attempt by Dr. Jaime to wire transfer the \$50 million in Angolan state funds to the United States used different banks, HSBC and Wells Fargo; different investment advisers, Stanley Wayland and Jan Heger; and a different company, Euro-American Investments, LLC (EAI). In addition, instead of attempting to wire the funds directly, the \$50 million was used to purchase U.S. Treasury bills which then became the object of the transfer attempt.

BNA Accounts at HSBC. During the 1970s, Banco Nacional de Angola opened accounts at Republic National Bank in New York. On November 1, 1999, after Republic National Bank merged with HSBC USA, BNA’s accounts became HSBC USA accounts.¹⁵¹⁹ BNA still banks with HSBC USA today and has correspondent accounts in New York.

In addition, since 1982, BNA has maintained a banking relationship with Equator Bank plc, which was also purchased by HSBC around that time, and became known as HSBC Equator Bank (HEQB).¹⁵²⁰ During the events examined here, BNA maintained accounts with HEQB in London, and at an HEQB branch in Angola. In 2003, HSBC Equator Bank ceased operations under its own name, although it continues to exist as a legal entity.¹⁵²¹

¹⁵¹⁶ See list of account closings prepared by Citibank, PSI-Citigroup-02-0001.

¹⁵¹⁷ Id.

¹⁵¹⁸ Id.

¹⁵¹⁹ See Republic National Bank and HSBC bank statements, HSBC-PSI 033149-50.

¹⁵²⁰ See 2001 HSBC Equator Bank KYC profile of BNA, HSBC-PSI 037275-80; 10/2/00 email from HSBC Equator Bank to HSBC, HSBC-PSI 034050-51; information provided by HSBC’s legal counsel, January 20, 2010.

¹⁵²¹ Information provided by HSBC’s legal counsel, January 20, 2010.

In a development unusual for a Central Bank, BNA also maintained an offshore account at a “sister bank” of HEQB called Equator Bank Ltd. (EBL) in the Bahamas.¹⁵²² According to an internal HSBC email, BNA first opened this offshore account in the 1980s.¹⁵²³ In addition, in 2000, BNA sought to open a second offshore account at HSBC’s branch in the Bahamas, often referred to as HSBC Bahamas or HSBC Nassau. BNA asked to open that account after EBL had accepted the maximum amount of deposits it could from BNA, as explained in this October 2, 2000 email from HEQB to HSBC London:

“Equator Bank Limited, Nassau (EBL), a 100% subsidiary of Equator Holdings and a sister bank of HSBC Equator Bank plc, London (HEQB) has had an excellent relationship with Banco Nacional de Angola, the central bank of Angola for the past twenty years.

During this time EBL has earned in excess of USD80 million from revolving short term trade finance lines which are serviced by an assignment of oil proceeds. ...

Over the past several weeks EBL has received USD103.6 million on deposit from BNA. On 29th September we received a further USD24 million which BNA has requested us to place with EBL. Unfortunately we cannot accept these funds in Nassau as they would cause us to contravene our trigger ratios.

We are currently holding the funds at HEQB but know that BNA prefers to keep their deposits in an offshore account to avoid possible Mareva injunctions. It is for this reason that we approached HSBC Nassau, with whom EBL shares an office.”¹⁵²⁴

HSBC responded that it would accept the deposit and open an account for BNA in its Nassau branch, if “appropriate account opening document is obtained and that no regulatory notifications are required.”¹⁵²⁵

¹⁵²² See 10/2/00 email from HSBC Equator Bank to HSBC, HSBC-PSI 034050-51 (“Equator Bank Limited, Nassau (EBL), a 100% subsidiary of Equator Holdings and a sister bank of HSBC Equator Bank plc, London (HEQB) has had an excellent relationship with Banco Nacional de Angola”); 7/24/02 and 7/26/02 Swift messages, PSI-Heger-01-00281-82 (demonstrating existence of BNA account at Equator Bank Ltd. in Nassau). See also 5/4/98 Federal Reserve press release approving a U.S. representative office for Equator Bank plc, <http://www.federalreserve.gov/boarddocs/press/bhc/1998/19980504/> (Federal Reserve states that Equator Bank plc “began its operations in 1996, as part of a reorganization of the holdings of its parent, Equator Holdings Limited (EHL). In the reorganization, Bank acquired the majority of the business and staff of its sister affiliate, Equator Bank Limited (EBL), a commercial bank incorporated in Nassau, the Bahamas, and formerly EHL’s principal operating subsidiary. HSBC Holdings plc (HSBC), London, England, indirectly owns 60 percent of EHL’s shares. NedEurope S.A., a Luxembourg subsidiary of a South African financial services group, and Equator Management Services, a Connecticut partnership consisting of members of the management of Bank’s affiliates, each own 20 percent of EHL’s shares.”). 7/23/02 Swift message, PSI-Heger-01-00282 (wire transfer document sending funds to a BNA account at Equator Bank Ltd. in Nassau).

¹⁵²³ See 10/2/00 email from HSBC Equator Bank to HSBC, HSBC-PSI 034050-51 (EBL has had “an excellent relationship” with BNA “for twenty years”).

¹⁵²⁴ 10/2/00 email from HSBC Equator Bank to HSBC, HSBC-PSI 034050-51.

¹⁵²⁵ 10/2/00 email from HSBC to HSBC Equator Bank, HSBC-PSI 034050.

HSBC's 2002 email expressed no concern about the statement that "BNA prefers to keep their deposits in an offshore account to avoid possible Mareva injunctions," meaning legally enforceable court orders to freeze funds.¹⁵²⁶ When asked about this statement, HSBC told the Subcommittee that it is a "legitimate choice" for a client to choose to be in a jurisdiction where they won't be subject to certain attachments, and there was "nothing unusual" about wanting to avoid Mareva injunctions.¹⁵²⁷ When the Subcommittee asked HSBC USA whether HSBC maintained offshore accounts for BNA in the Bahamas, HSBC USA said that it was unable to answer questions about a client's non-U.S. banking activities and that it was constrained further by secrecy laws in the Bahamas.¹⁵²⁸

In 2001, HSBC Equator Bank completed a Know-Your-Customer profile of BNA.¹⁵²⁹ The profile noted that BNA had not published financial statements since 1997, so HEQB could not report on its assets, loans, deposits, shareholders equity, or net income. The profile continued: "We mitigate the lack of financial information through tightly structured, transactional oriented, financing arrangements. Equally importantly, the HEQB team works very closely with the counterparties including BNA officials. In this way, HEQB has been able to accurately assess the financial strengths and weakness[es] over an extended time period (20 years, approximately)." The profile recommended maintaining the BNA accounts at HEQB in London, noting:

"BNA is the Central Bank of Angola and is 100% owned by the Angolan Government. BNA maintains active deposit relationships with other first class financial institutions around the world including Citibank, Barclays Bank plc and Standard Chartered Bank. BNA is responsibly managed and is well regarded by its international correspondent banks."¹⁵³⁰

Wayland and Heger. After the first attempt to transfer the \$50 million failed, within days, Mr. Amouzou began working on a second transfer attempt, communicating with Stanley Wayland and Jan Morton Heger to arrange a new transaction. Mr. Amouzou told Dr. Jaime that Mr. Wayland was the "trading group principal" in the Swiss investment group associated with Charles Shelton.¹⁵³¹ Mr. Wayland apparently brought in Jan Morton Heger, an attorney in Laguna Niguel, California, who performed legal work for international clients. Mr. Heger, who is a U.S. citizen, produced documents in response to a Subcommittee subpoena and participated in an interview.

¹⁵²⁶ A Mareva injunction is a court order in Commonwealth jurisdictions that freezes a defendant's assets so they cannot be dissipated beyond the court's jurisdiction and frustrate a judgment. See, e.g., Mareva Compania Naviera SA v. International Bulkcarriers SA, 2 Lloyd's Rep 509, (1975).

¹⁵²⁷ Subcommittee interview of HSBC officials, May 7, 2008.

¹⁵²⁸ According to an August 5, 2002 email, sent by MSA, Inc. officer, David Naranjo, HSBC had advised BNA to "protect their asset[s] by opening an Offshore account on behalf of Banco Nacional De Angola in [the] Bahamas. 8/5/01 email from Mr. Naranjo to Stanley Wayland, PSI-Heger-01-00279. See also 8/4/02 letter from MSA to Stanley Wayland, PSI-Heger-01-00283 ("I am faxing you the confirmation from swift that Banco Nacional De Angola has \$62,425,751.10 deposited into HSBC.").

¹⁵²⁹ 2001 HSBC Equator KYC profile of BNA, HSBC-PSI 037275-80.

¹⁵³⁰ *Id.*, at 037280.

¹⁵³¹ 7/21/02 letter from Mr. Amouzou to Dr. Jaime, PSI-Amouzou-08-0309-10.

Mr. Heger told the Subcommittee that he first began dealing with Mr. Amouzou in late 2001, after receiving a telephone call from Mr. Wayland, who was then in Singapore, about a man in San Diego associated with the Central Bank of Angola who needed Mr. Heger's help.¹⁵³² Mr. Heger told the Subcommittee that he had never dealt with Mr. Wayland prior to that telephone call, but that he frequently received calls seeking legal assistance as a result of his international legal practice.¹⁵³³

Mr. Heger told the Subcommittee that he was told that Angola was reaching out to the United States after the Angolan civil war, and wanted to rebuild its roads, hospitals, schools, and infrastructure. He said that he was asked if he'd be willing to assist Angola achieve its goals, and that he agreed to do so. Mr. Heger told the Subcommittee that during his work with Mr. Wayland over the next year, he never met him in person, but communicated with him via telephone and email.¹⁵³⁴ Mr. Wayland, who provided a South African passport in some documents, also used an address in Singapore.¹⁵³⁵

On December 2, 2001, Mr. Heger and Mr. Wayland signed a two-page agreement in which they agreed to work together and to maintain the confidentiality of their clients and their transactions.¹⁵³⁶ The next day, December 3, 2001, Mr. Heger formed Euro-American Investments, LLC (EAI) under the laws of Nevada to facilitate the Angola project.¹⁵³⁷ Mr. Heger is identified as the company's "Owner/Managing Member/Beneficiary" as well as its "Director and CEO."¹⁵³⁸ Two additional "Directors" and "Member/Beneficiaries" were Mr. Wayland and Charles William Webster.¹⁵³⁹ A "Description of Business Activities" stated that EAI's primary purpose was:

"Legal consulting, world wide investments, including but not limited to, Real Estate, Precious Metals, Debt Instruments, Oil and Gas Reserves & Property, Marketing Products (such as Heavy Machinery) and/or other various opportunities that have been

¹⁵³² Subcommittee interview of Jan Morton Heger, 7/22/08.

¹⁵³³ Id.

¹⁵³⁴ Subcommittee interview of Jan Morton Heger, 7/22/08.

¹⁵³⁵ See Asset Funding, Private Placement Participation & Management Agreement, PSI-Heger-01-00105-23 (agreement provides Mr. Wayland's South African passport number); 8/11/02 Euro-American Investments, LLC Information Summary, PSI-Heger-01-00105 (provides Singapore address for Mr. Wayland). Mr. Wayland also used an email address ending in "@harvestdm.com" which matches a company based in Singapore called "Harvest Technology Pte Ltd." That company's address is the same as the one used by Mr. Wayland. See Harvest Technology Pte Ltd. entry at <http://worlddirectory.indiaetrade.com/Miscellaneous/h/H52.html> (viewed 05/05/2009).

¹⁵³⁶ 12/2/02 Non-Circumvention, Non-Disclosure, and Confidentiality Agreement, PSI-Heger-01-03.

¹⁵³⁷ See 8/11/02 Euro-American Investments, LLC Information Summary, PSI-Heger-0059-65.

¹⁵³⁸ Id., at 0060 and 0062.

¹⁵³⁹ Id., at 0062. Mr. Heger brought Mr. Webster into the project over the objection of Mr. Wayland. In an August 17, 2002 email to Mr. Heger, Mr. Wayland stated: "I told you I do not want to have anything to do with Charles Webster as I just have bad gut feeling, which says, 'stay away'." PSI-Heger-01-00252. Mr. Wayland continued: "I told you I would like to work with you and when it was decided to use [EAI] for the Angolan money, which is the customer I have brought to the table, it would be on a basis that I would deal with Jan Heger [T]he deal I have put together with the Angolans is that they get 75% profits and EAI gets 25%. I also stated that if you want to leave it with EAI, this means 50% to Stanley Wayland and 50% to Jan Heger. ... I stated that if you wanted to include Charles Webster, it would be from your side, i.e. out of your 50% of the profits."

presented such as these very funds as have been received from the **Angolan Government, Central Bank of Angola.**¹⁵⁴⁰ [Emphasis in original.]

On July 23, 2002, MSA, Inc. and EAI entered into a 19-page “Asset Funding, Private Placement Participation & Management Agreement” regarding investment of the \$50 million in Angolan state funds.¹⁵⁴¹ MSA, Inc. was represented by Mr. Amouzou, while EAI was represented by Mr. Wayland. The following chart summarizes key aspects of the agreement.

Key Elements of 2002 MSA-EAI Agreement	
FINANCIAL PROGRAM	<ul style="list-style-type: none"> • “[A]ny financial investment, which shall return above average returns and shall consist of, but not be limited to, the buying and selling of Bonds or Bank Instruments.”
PARTIES	<ul style="list-style-type: none"> • “Project Participant”: Euro-American Investments LLC represented by Stanley Wayland • “Financial Participant”: MSA, Inc. represented by Mehenou S. Amouzou
TERM	One Year
GENERAL REPRESENTATIONS	<ul style="list-style-type: none"> • MSA, Inc. is the beneficial owner of \$50 million and this is “...GOOD CLEAN AND CLEARED BANK FUNDS.” • Wayland will open a bank account in the name of EAI, Inc. at Merrill Lynch – London to purchase a T-Bill in the name of MSA, Inc. • Wayland will instruct Merrill Lynch to issue a “S.W.I.F.T. from M.L. [Merril Lynch] that their client [Wayland]...will immediately purchase a T-Bill for a value USD 50.0 million” • Amouzou will then use the T-Bill as collateral for a “margin credit facility” • “The full value of the margin credit amount...will be used for and on behalf of the Financial Participant [Amouzou]” • “The T-Bill ... will be blocked as the collateral for the margin credit advance”
REPRESENTATIONS AND WARRANTIES	<ul style="list-style-type: none"> • “Has the relationships with one or more financial institutions that are capable of providing a Financial Program for Project Financing in the amount of USD 50.0 million” • “has the knowledge, relationships, ability to acquire the necessary Bank Instruments, and the financial strengths to operate and manage Financial Program(s)” • Will use the “collateral” (\$50 million) to obtain a “Instrument Contract or Contracts” to purchase “Bonds or Bank Instruments” and “re-purchase” these “bonds or Bank Instruments”
STRUCTURE OF PROFITS	<ul style="list-style-type: none"> • 75% of profits due to Amouzou / MSA, Inc. will be invested in “humanitarian projects” • Profits “shall amount to a minimum of 100% of the face value of the principal, which is USD 50.0 Million will accrue on a monthly basis” • Profits shall be placed in “an offshore margin account in a securities firm for the use of the above mentioned parties [Amouzou and Wayland]”
OTHER PROVISIONS	<ul style="list-style-type: none"> • Wayland will open a bank account in the name of MSA, Inc. to receive 99% of Financial Participant’s (MSA, Inc.) share of profits and a separate bank account in the name of Dr. Mehenou S Amouzou to receive 1% of Financial Participant’s share of profits. “Both of the above banking accounts will be opened at Bank Crozier in Granada.” • Upon opening the aforementioned accounts, Wayland / EAI, Inc. will “...commence tranching of the Financial Program” and “all profits from all Financial Programs shall be deposited” in Amouzou’s Bank Crozier accounts. • <u>Confidentiality Clause</u>: “the bank information and the commerce contemplated herein are of [a] highly confidential nature.” • <u>Non-Circumvention</u>: Ensures confidential and proprietary nature of all relevant contacts, banks, individuals, and groups involved.

Chart prepared by Subcommittee

¹⁵⁴⁰ 8/11/02 Euro-American Investments, LLC Information Summary, PSI-Heger-0063.

¹⁵⁴¹ Asset Funding, Private Placement Participation [&] Management Agreement, PSI-Heger-01-00105-123.

After the Asset Funding, Private Placement Participation & Management Agreement was signed, Mr. Heger, representing EAI, signed a one-page “Private and Confidential Agreement” with Diane Conners of VH3 Holdings, LLC, to invest the \$50 million.¹⁵⁴² This July 29, 2002 agreement promised that the \$50 million investment would reap a highly unlikely monthly return of 300%, for which a 7% fee would be paid to VH3Holdings:

“It has been represented by Dianne Conners, both individually and as part of VH3 Holdings LLC that the returns of Fifty Million USDollars (\$50,000,000.00) to be invested by Euro-American Investments LLC is and shall be a[t] Three Hundred Percent (300%) per month. Based on this representation Euro-American Investments has agreed to pay Seven Percent (7%) of the profits to any and all intermediaries to VH3 Holdings LLC, as paymaster for any and all intermediaries as evidenced by that certain Payment Instruction dated July 18th, 2002.”

The agreement also stated that if the investment return were 150% “or less,” EAI would nevertheless pay VH3 Holdings 3% of the profits.

Treasury Bill Transfer Proposed. Beginning in mid-July 2002, Mr. Amouzou began advocating use of the \$50 million to purchase U.S. Treasury bills and employing Mr. Wayland and his company, EAI, to handle the related investment project. On July 15, 2002, for example, Mr. Amouzou sent Mr. Jaime an “investigative report” on Mr. Wayland prepared by MSA, Inc.’s attorney, Brian Gard, that apparently strongly supported using his services.¹⁵⁴³ On July 17, 2002, Mr. Amouzou sent a letter to Dr. Jaime recommending two solutions to the “time element associated with the transfer of 50 million dollars into MSA, Inc. bank account for the funding process.”¹⁵⁴⁴ The letter said the first solution was to purchase a one-year U.S. Treasury bill to be allocated to MSA, Inc., deposited in a brokerage account, and returned to BNA after the investment project was completed. The second solution was to send the \$50 million to a trading “Group based in London that works with two prime Banks, one in Zurich and the other in Germany.”¹⁵⁴⁵

On July 21, Mr. Amouzou sent Dr. Jaime a letter stating that Mr. Wayland held “one of only ten trading license[s] issued by the Federal Reserve Bank in the world,” that he “controls all the Asian Market including Japan,” and that he is “able to coordinate the purchase and transfer of the 50M in a T-Bill for us on an immediate basis (approximately 2 days).”¹⁵⁴⁶ On July 22, 2002, Mr. Amouzou sent a letter to Dr. Jaime stating that Mr. Wayland “is the most qualified trader I have talked to since being involved in these types of matters.”¹⁵⁴⁷ On July 24, 2002,

¹⁵⁴² 7/29/02 email from Mr. Heger to Mr. Wayland re “50m ANGOLA” and Private and Confidential Agreement, PSI-Heger-01-00303-04.

¹⁵⁴³ PSI-Amouzou-08-0310. Mr. Amouzou did not provide a copy of this report to the Subcommittee.

¹⁵⁴⁴ 7/17/02 letter from Mr. Amouzou to Dr. Jaime, PSI-Amouzou-11-0896. The letter’s reference to a “time element associated with the transfer” is unclear.

¹⁵⁴⁵ Id.

¹⁵⁴⁶ 7/21/02 letter from Mr. Amouzou to Dr. Jaime, PSI-Amouzou-08-0309-10. According to the Federal Reserve, “the Federal Reserve does not license or register traders, does not have agents who process or oversee investments, and does not sanction, authorize, license, or otherwise administer any type of investment program or plan for the public in the United States or abroad.” Federal Reserve Bank of New York, Circular 10858, July 19, 1996.

¹⁵⁴⁷ 7/22/02 letter from Mr. Amouzou to Dr. Jaime, PSI-Amouzou-11-0895.

Mr. Amouzou wrote Dr. Jaime that Mr. Wayland approved of the proposed Angolan “humanitarian project”: “In all the years he has been trading and observing the Monetary Funds and World Bank, he [Mr. Wayland] has never seen such a logical and well structure[d] plan as our Humanitarian project.”¹⁵⁴⁸

At some point, Mr. Wayland prepared a document entitled, “Instructions to Angola Government” with step-by-step instructions on using the \$50 million to purchase Treasury bills.¹⁵⁴⁹ At the time the instructions were written, Mr. Wayland was expecting to use Merrill Lynch in the transaction rather than Wells Fargo, and for the Treasury bills to be held in the name of MSA, Inc. rather than BNA, as actually happened. At the end of the document, Mr. Wayland cautioned against disclosing too much information:

“There is no need to notify HSBC London of any other aspects of the Agreement or the terms of the agreement between MSA, Inc., EAI or the Angolan Government, of why the Angola Government is purchasing a T-Bill under the name of MSA Inc and there is no need to notify HSBC London other than the fact that the T-Bill will be held at Merrill Lynch for a period of 13 months and will be returned to the Angolan Government bank account at HSBC London, for safekeeping within 13 months.

Please make sure that the Angola Government authorizes these instructions and notifies HSBC London of these requirements.

There is no reason whatsoever for HSBC to know anything more than the fact that the US\$50 million has been used for the purchase of T-Bill.”¹⁵⁵⁰

On August 2, 2002, Dr. Jaime, in his capacity as “The Governor of BNA,” signed a “Letter of Authority” on BNA stationery informing HSBC that BNA “will supply, on behalf of the Angolan Government, a Fifty Million American Dollar Treasury Bill to be used as collateral by MSA, Inc.” to raise funds for Angolan development projects.¹⁵⁵¹

On August 6, 2002, Mr. Heger, representing EAI, sent a letter to the U.S. Treasury and State Departments stating that Angola planned to “place at minimum Fifty Million USDollars into a private corporation here in the United States of America” to support development projects in Angola. The letter stated that EAI had been selected to receive the funds, and asked if the United States or Treasury Department had “any objection and/or restrictions” regarding EAI’s use of the funds and whether EAI needed any “special authorization or clearances” to proceed.¹⁵⁵² On August 23, 2002, the Treasury Department’s Office of Foreign Assets Control (OFAC), responsible for administering U.S. trade restrictions related to Angola, responded:

¹⁵⁴⁸ PSI-Amouzou-11-0173. Mr. Amouzou even claimed in an undated email to Dr. Jaime: “Please be advised that the US Treasury has advised the Stanley Wayland (Group) that they would like to appoint MSA, Inc. as the Liaison between Africa and the US Treasury.” PSI-Amouzou-08-0260. See also 9/2/02 letter from Mr. Amouzou to Dr. Jaime re Mr. Wayland’s alleged influence with U.S. government officials, PSI-Amouzou-08-0259.

¹⁵⁴⁹ Undated “Instructions to Angola Government,” prepared by Mr. Wayland as Director of EAI, PSI-Heger-01-00265-66.

¹⁵⁵⁰ *Id.*, at 00266.

¹⁵⁵¹ 8/2/02 Letter of Authority signed by Dr. Jaime, PSI-Heger-01-00278.

¹⁵⁵² 8/6/02 letter from EAI to U.S. Treasury and State Departments, PSI-Heger-01-0025-26.

“The acceptance of investment funds from the Central Bank of Angola and the performance of humanitarian services in Angola are not prohibited by the Regulations provided that these activities do not involve the proscribed activities listed above. ... Absent a complete list of all Angola related transactions you ... expect to undertake, we are unable to confirm that all of your transactions do not require an OFAC license.”¹⁵⁵³

\$50 Million Transfer to HSBC. The following week, Dr. Jaime initiated the process that led to the actual purchase of the U.S. Treasury bills. First, on August 13, 2002, acting in his capacity as BNA Governor, he alerted HSBC Equator Bank in London (HEQB) that he would be sending the bank \$50 million to be used to purchase T-Bills for BNA:

“You will receive in our current account from Citibank/London USD 30,000,000.00 for value date 13 Aug 02 and USD 20,000,000.00 for value date 14 Aug 02. Both amounts are to apply for the execution of the above instructions. Please purchase in our name and on our behalf United States Treasury Bills or the equivalent in US Government debt obligations with a maturity of August 2003 in an aggregate amount of fifty million United States Dollars (U.S. 50,000,000.00) to be held in our name of the books of your affiliated bank HSBC Bank USA Issuer Services. We agree to pay your standard commission rate and custodial fees. Best regards, Aguinaldo Jaime - Governor”¹⁵⁵⁴

The same day, August 13, 2002, Citibank wire transferred \$30 million from BNA’s Citibank London account to BNA’s London account at HEQB.¹⁵⁵⁵ The next day, August 14, 2002, Citibank wire transferred another \$20 million to the same account.¹⁵⁵⁶

Next, Dr. Jaime opened Institutional Collateral Account No. [xx-xxxxxx]35 (hereafter “collateral account”), a new securities account held in the name of BNA at HSBC USA in New York.¹⁵⁵⁷ Dr. Jaime was the sole signatory on the account.¹⁵⁵⁸ He also signed an “Institutional Collateral Account Agreement” which set out the investment parameters for the account and which stated that Dr. Jaime, “on behalf of the Customer [BNA], will direct all trading in the Account.”¹⁵⁵⁹ A trust officer from the HSBC USA Corporate Trust Department was assigned to handle transactions related to the new account.¹⁵⁶⁰

HSBC Purchase of Treasury Bills. On August 14, 2002, HEQB transferred the \$50 million to the new HSBC USA collateral account, and the HSBC USA trust officer used the

¹⁵⁵³ 8/23/02 letter from OFAC to EAI, PSI-Heger-01-0022.

¹⁵⁵⁴ 8/13/02 Swift message, PSI-Amouzou-07-0514.

¹⁵⁵⁵ 8/13/02 HEQB account statement, HSBC-PSI 002286.

¹⁵⁵⁶ 8/14/02 HEQB account statement, HSBC-PSI 002302.

¹⁵⁵⁷ HSBC Money Transfer Detail, HSBC-PSI 037258. See “Institutional Collateral Account Agreement,” HSBC-PSI 037196-202. The agreement is signed by Dr. Jaime and dated August 14, 2002, Id. at 037202, but it may have been actually signed more than a week later on August 26, 2002. See 8/26/02 email, HSBC-PSI 037249 (“the Governor executed two originals of the Institutional Collateral Account Agreement today”).

¹⁵⁵⁸ See, e.g., 12/13/02 internal HSBC email, HSBC-PSI 037185-86 (“there is only the one signatory with authority over the account”).

¹⁵⁵⁹ HSBC-PSI 037202.

¹⁵⁶⁰ 8/13/02 HSBC email assigning the account to a trust officer, HSBC-PSI 037261.

funds to purchase several one-year U.S. Treasury bills with a total value of \$49,994,363.37.¹⁵⁶¹ The T-bills were held in the name of BNA.

The same day, August 14, 2002, Mr. Wayland sent Mr. Amouzou a list of requests and instructions regarding transferring the T-Bills from the BNA account at HSBC in New York to the Heger account at Wells Fargo Investment Services LLC in California.¹⁵⁶² Mr. Wayland requested copies of the T-Bills actually purchased, the Swift message instructing HSBC to buy the T-Bills, and a ledger printout showing the account name, number, and balance; as well as a letter from HSBC stating that they had purchased the T-bills on behalf of the Government of Angola. Mr. Wayland stated: “We can only complete the assignment once the above documentation is supplied.”

Mr. Wayland also instructed Mr. Amouzou about what to say to HSBC USA to ensure that it transferred the T-Bills to the Heger account at Wells Fargo Investment Services in California, and cautioned against answering any questions about the transaction:

“The Central Bank of Angola is the client and owner of the funds and therefore, [does] not need to answer HSBC’s questions about why they must transfer the T-Bill to Wells Fargo.

The simplest and best reply is that you, as client want to deposit and hold this T-Bill in the Securities account with Wells Fargo Investment (Member of the New York Stock Exchange) and that we do not want this to be left in London. No other explanation is required to HSBC London.

As Central Bank of Angola is the client, HSBC must and are required to follow the client’s instructions, i.e. this is what we request and instruct you (HSBC) to carry out.

We await your soonest response as we are under pressure as we will be able to begin private placement investment on Monday next week, if the T-Bill and the above documentation is supplied, latest tomorrow.”¹⁵⁶³

On August 17, 2002, Mr. Heger sent a memorandum to Mr. Wayland and Mr. Webster regarding the transaction:

“[T]here is absolutely no doubt that EAI will be receiving the sum of 50Million USDollars and hopefully an additional Fifty Four Million USDollars soon for a total of One Hundred Four Million USDollars or more in the form of USTreasury Bills. ... To

¹⁵⁶¹ See HSBC USA affidavit by HSBC USA trust officer, HSBC-PSI 037271-72. This affidavit indicates the Treasury bills were purchased on August 14, 2002. But see 8/15/02 Cash receipt, HSBC-PSI 037255; 8/15/02 Security Master Detail, HSBC-PSI 037259. Specifically, BNA purchased a U.S. Treasury NT Stripped Principal note scheduled to mature on August 15, 2003, one year and one day after the purchase. The value at maturity would be \$50,749,000, for a profit of \$754,636.63. Stripped notes, or “STRIPS,” enable investors to hold separate the interest and principal of certain Treasury notes as separate securities. Investors receive payment at maturity instead of periodic interest payments.

¹⁵⁶² 8/14/02 email from Mr. Wayland to Mr. Amouzou, forwarded to Mr. Heger, PSI-Heger-01-00267-68.

¹⁵⁶³ PSI-Heger-01-00268.

the best of my knowledge EAI will have these T-Bills in the Wells Fargo Securities Account.”¹⁵⁶⁴

Mr. Wayland responded a few days later by reminding Mr. Heger that they had “agreed on the telephone that we first finished the US\$50 million and once this is in the Wells Fargo Security account, we will then proceed with the other transactions, i.e. not to rock the boat at the current time.”¹⁵⁶⁵ He also sent Mr. Heger an agreement that he characterized as memorializing their understanding that “the transaction with Angola would be channeled through Euro-American Investments, LLC (EAI),” the “profits would be shared between Jan M Heger (50%) and Stanley Wayland (50%),” and “we have to pay some of our income (1%) before we split 50/50, to the parties who brought us this transaction.”

T-Bill Transfer to Heger Account. On August 20, 2002, on BNA stationery, Dr. Jaime signed a one-page “Deed of Assignment” which assigned the \$50 million in Treasury Bills from BNA to EAI for unspecified “valuable consideration”:

“I Dr. Aguinaldo of sound mind and body hereby certify under penalty that I am the authorized signatory and have the legal right as Governor of the Central Bank of Angola to state that the Central Bank of Angola is the sole unencumbered owner of the Forty Nine Million, Nine Hundred and Ninety Four Thousand, Three Hundred and Sixty Three United States Dollars of U.S. Treasury Bill

FOR VALUABLE CONSIDERATION ... I Dr. Aguinaldo Jaime ... do hereby freely, irrevocably, and unconditionally assign, convey, and transfer any and all right, title, and interest to **Euro-American Investments LLC** of this instrument or certificate described as United States Treasury Bill.

This assignment shall be for the period of one (1) year and five (5) Banking Days from the date of this Deed of Assignment in order to satisfy the terms of the agreement between MSA, Inc. and Euro-American Investments, LLC dated 18th July, 2002. Specifically is the fact that the Treasury Bill, including any and all right, title and interest earned, will be returned to the Central Bank of Angola unencumbered at the end of the term of this assignment, free of any and all liens Any and all original certificates shall forthwith be forwarded directly to Euro-American Investment LLC via bonded courier addressed as follows: Wells Fargo Investments ... Account name: Mr. Jan M. Heger, Laguna Niguel, California 92677, Securities Account No W41477598, for the benefit of Jan M. Heger, CEO, Euro-American Investments, LLC”¹⁵⁶⁶ [Emphasis in original.]

On August 22, 2002, Mr. Heger sent a letter to Wells Fargo Investment Services stating that the securities account “of Jan Morton Heger for and on behalf of Euro-American Investments LLC which is my LLC,” Account No. 41477598, would soon receive a “United

¹⁵⁶⁴ 8/17/02 email and memorandum from Mr. Heger, PSI-Heger-01-00255-57.

¹⁵⁶⁵ 8/19/02 email and agreement from Mr. Wayland, PSI-Heger-01-00252-54.

¹⁵⁶⁶ 8/20/02 Deed of Assignment, HSBC-PSI 037243.

States Treasury Strip Obligation.”¹⁵⁶⁷ Mr. Heger had opened this account more than a year earlier, on April 26, 2001.¹⁵⁶⁸ In fact, it would be nearly a month before the transfer took place.

On or about September 5, 2002, Mr. Heger telephoned HSBC to request that the T-Bills held in trust for BNA be transferred to his account at Wells Fargo Investment Services in Laguna Beach, California.¹⁵⁶⁹ His call triggered an inquiry within HSBC.¹⁵⁷⁰ On September 9, 2002, an HSBC USA official wrote in an internal email that HSBC is “not familiar with an intent by BNA to have these securities held by Wells Fargo Bank. Mr. Heger is unknown to us. In the event that BNA wishes to transfer these securities to Wells Fargo, our recommendation would be that they provide you with the required AUTHORIZED instructions e.g. by SWIFT.”¹⁵⁷¹

The same day, September 9, 2002, Mr. Amouzou sent a letter to Dr. Jaime asking him to issue written instructions to HSBC to deliver the T-Bills to Wells Fargo by September 11.¹⁵⁷² Mr. Amouzou also asked Dr. Jaime to provide Mr. Heger with the documentation related to the T-Bills, so that Mr. Heger could determine why they had not yet been delivered.

On September 10, 2002, Mr. Heger spoke with the HSBC USA trust officer for the BNA collateral account and then sent an email to Dr. Jaime requesting that Dr. Jaime send a Swift message to the trust officer to authorize transfer of the T-Bills from HSBC to Wells Fargo.¹⁵⁷³ Mr. Heger provided specific language for Dr. Jaime to use in the Swift message.¹⁵⁷⁴ That language not only requested the transfer, but also requested closure of the BNA account at HSBC USA.¹⁵⁷⁵

The next day, September 11, 2002, Dr. Jaime sent the Swift message to the HSBC trust officer, using Mr. Heger’s suggested language.¹⁵⁷⁶ Shortly thereafter, the trust officer forwarded

¹⁵⁶⁷ 8/22/02 letter from Mr. Heger to Wells Fargo Investments, PSI-Heger-01-0045. The Treasury Bills were actually being sent from HSBC USA rather than HSBC London.

¹⁵⁶⁸ 9/18/02 internal Wells Fargo email discussing Heger accounts, WF0098. This account was one of two that Mr. Heger opened at Wells Fargo, the other being a personal checking account, Account No. 2018432765, opened on April 26, 2001. *Id.* According to the signature card for the second account, Mr. Heger told the bank that he was expecting a \$300 million wire transfer. Mr. Heger apparently also told the Wells Fargo broker assigned to his brokerage account that, in 2001, the account would receive a \$350 million wire transfer. Neither account ever received that wire transfer in 2001.

¹⁵⁶⁹ 9/5/02 HSBC internal email, PSI-Heger-01-00141.

¹⁵⁷⁰ See HSBC internal emails, PSI-Heger-01-00140-42.

¹⁵⁷¹ 9/9/02 HSBC internal email, PSI-Heger-01-00140. [Emphasis in original.]

¹⁵⁷² 9/9/02 letter from Mr. Amouzou to Dr. Jaime, PSI-Amouzou-03-0008.

¹⁵⁷³ 9/10/02 email from Mr. Heger to Dr. Jaime, PSI-Heger-01-00241. The HSBC trust officer told the Subcommittee that he recalled speaking with Mr. Heger at some point, but did not recall the conversation. Subcommittee interview of HSBC officials, May 7, 2008.

¹⁵⁷⁴ 9/10/02 email from Mr. Heger to Dr. Jaime, PSI-Heger-01-00241.

¹⁵⁷⁵ That same day, September 10, 2002, Mr. Heger sent a second letter to Dr. Jaime seeking to take a more prominent role in BNA’s dealings. PSI-Amouzou-11-0140-41. In the letter, Mr. Heger wrote: “After some serious thoughts with regard to what has happened at HSBC I have a suggestion for you that may smooth out all your USDollar Accounts where ever they may be located. My suggestion is ... that you consider putting me with you and the Central Bank of Angola on any and all USDollar Accounts wherever they may be located.” Mr. Heger claimed he was able to communicate directly with the U.S. Treasury Department and could assist with any problems.

¹⁵⁷⁶ 9/11/02 Swift message from Dr. Jaime to HSBC USA, HSBC-PSI 037315. See also 9/11/02 fax from Dr. Jaime to Mr. Amouzou, PSI-Amouzou-08-0317.

the message to a colleague at HEQB in London, but also indicated that he would have preferred a signed letter from Dr. Jaime.¹⁵⁷⁷

The next day, September 12, 2002, the head of the HEQB office in Angola told her colleagues that she personally spoke with Dr. Jaime, and he confirmed the transfer of the T-Bills to Wells Fargo. She wrote: “As you know, the Governor would like very much to have the securities with HSBC USA, however, the entities who will provide the financing want it with Wells Fargo. We should not be disappointed as more business is to come.”¹⁵⁷⁸ The same day, the HSBC USA trust officer told his colleague at HEQB London: “I will be delivering the securities to the account of Jan Morton Heger at Wells Fargo Bank, and in turn will close the Collateral Account I appreciate your help in confirming the delivery instructions, but as I mentioned, it is unusual to deliver corporate customer assets to a personal account.”¹⁵⁷⁹ His HEQB colleague in London responded: “We discussed this matter directly with the Governor of BNA on 3 separate occasions on Tuesday and Wednesday of this week. The Governor having reviewed the matter in detail, reiterated the instructions.”¹⁵⁸⁰

On September 13, 2002, a senior HSBC official told the trust officer to proceed with the transfer:

“[T]he Governor of the Bank of Angola was advised of our concerns about sending the T-Bills to an account in the name of an individual, but that is how we are to proceed with the transaction.”¹⁵⁸¹

That same day, September 13, 2002, HSBC USA transferred the T-Bills to Mr. Heger’s personal brokerage account No. 41477598 at Wells Fargo Investment Services in California.¹⁵⁸² A Wells Fargo account summary shows that, on that date, Mr. Heger’s account was credited with securities valued at \$49,927,128.75.¹⁵⁸³

Wells Fargo Returns T-Bills. In the meantime, Wells Fargo Investment Services had become increasingly concerned about the \$50 million transfer. On September 9, 2002, a Wells Fargo Investment financial advisor sent an email to his colleagues that Mr. Heger was showing Wells Fargo personnel “weird papers” regarding a \$50 million transaction involving the Central Bank of Angola.¹⁵⁸⁴ He closed the email by asking “how soon can this account be closed?”

A Wells Fargo branch employee requested additional information about Mr. Heger from a private due diligence company. In a Friday, September 13, 2002 email, the Wells Fargo employee relayed that firm’s warning about the transaction:

¹⁵⁷⁷ 9/11/02 HSBC internal fax, HSBC-PSI 037330.

¹⁵⁷⁸ 9/12/02 HSBC internal email, HSBC-PSI 037306-07.

¹⁵⁷⁹ 9/12/02 HSBC internal email chain, HSBC-PSI 037220.

¹⁵⁸⁰ Id.

¹⁵⁸¹ 9/13/02 HSBC internal email, HSBC-PSI 037219.

¹⁵⁸² Wells Fargo Online Brokerage account statement as of 9/13/02, PSI-Heger-01-0012. The transfer was completed even though Dr. Jaime had used an incorrect account number in his SWIFT message.

¹⁵⁸³ Id.

¹⁵⁸⁴ 9/9/02 Wells Fargo internal emails, WF0106.

“[H]e says the 49 million in T-Strips for the account is most likely fraudulent. There is a positive MIS hit on Jan Morton Heger where he was involved with another letter of credit scam with another broker dealer. (Bank of Philippines) ... Also, he believes the T-Strip delivery is a ‘FAKE, (someone was probably bribed to send it). ... [MIS] says the next step for this client is to use the brokerage account to print statements, correspondence, online stmts, proving that they have over 50 million with Wells Fargo Investments and use it to perpetrate other scams. All it takes is an unsuspecting employee or branch.”¹⁵⁸⁵

In response, the Wells Fargo Vice President of Investigative Services sent an email to his colleagues notifying them that Wells Fargo had returned the T-bills to HSBC, due to “unanswered questions” regarding the transaction.¹⁵⁸⁶ Wells Fargo told the Subcommittee that it returned the T-bills despite having been contacted by Mr. Heger requesting their release.¹⁵⁸⁷

On Monday, September 16, 2002, Wells Fargo closed the Heger account.¹⁵⁸⁸ Mr. Heger was notified by a fax sent to his office the same day and by an overnight letter that arrived September 17, 2002.¹⁵⁸⁹ Mr. Heger told the Subcommittee that he was upset by Wells Fargo’s actions.¹⁵⁹⁰ Following unsuccessful attempts to reach Wells Fargo officials by telephone, Mr. Heger sent a fax to Wells Fargo threatening to involve “Treasury Compliance.”¹⁵⁹¹

According to handwritten notes dated September 16, 2002 from a Wells Fargo compliance officer, Mr. Heger called Wells Fargo throughout the day, and she concluded that it was “not a good idea to let this guy have our direct number because he will pass it on and try to do more fraud.”¹⁵⁹² A September 17, 2002 email from another Wells Fargo employee echoed the same concern: “I opted not to show [my phone number to Mr. Heger] because he will pass on my phone number and say, ‘call [me] at WFI and he will verify that 49 mil came in.”¹⁵⁹³

On Tuesday, September 17, 2002, HSBC USA Trust Operations accepted the T-Bills from Wells Fargo and returned them to the BNA collateral account that was supposed to have been closed earlier, but was not.¹⁵⁹⁴

¹⁵⁸⁵ 9/13/02 Wells Fargo internal email, PSI-Wells_Fargo-04-0026-27.

¹⁵⁸⁶ 9/13/02 Wells Fargo internal email, PSI-Wells_Fargo-0026.

¹⁵⁸⁷ Subcommittee interview of Wells Fargo officials, September 16, 2008.

¹⁵⁸⁸ PSI-Wells_Fargo-04-0026, 28.

¹⁵⁸⁹ 9/16/02 letter from Wells Fargo Investments to Mr. Heger, PSI-Wells_Fargo-03-000.

¹⁵⁹⁰ Subcommittee interview of Jan Morton Heger, July 22, 2008.

¹⁵⁹¹ 9/16/02 fax from Mr. Heger to Wells Fargo, PSI-Wells_Fargo-03-001. See also 8/22/02 letter from Mr. Heger to Wells Fargo Investments, PSI-Heger-01-00248 (date may be mistaken and should have been 9/22/02). In addition, on or about September 23, 2002, Mr. Heger retained the services of Howard K Schwartz, Attorney at Law, to represent his interests regarding the closure of his Wells Fargo Securities account and reversal of the Treasuries transfer, WF0097.

¹⁵⁹² 9/16/02 Wells Fargo compliance officer’s handwritten notes, PSI-Wells_Fargo-04-0032. See also 9/16/02 fax from Mr. Heger to Wells Fargo, PSI-Wells_Fargo-03-001.

¹⁵⁹³ PSI-Wells_Fargo-0091. On or about September 23, 2002, Heger retained the services of Howard K Schwartz, Attorney at Law, to represent his interests regarding the closure of his Wells Fargo Securities account and reversal of the Treasuries transfer, WF0097

¹⁵⁹⁴ 9/17/02 HSBC internal emails, HSBC-PSI 037218.

Attempted Transfer to Comerica Bank. Three days later, on Friday of the same week, September 20, 2002, Dr. Jaime sent another Swift message to the HSBC USA trust officer instructing the bank to immediately transfer the T-Bills from the BNA account in New York to the “Jan M. Heger Esq. Attorney-Client Trust Account” at Comerica Bank in Costa Mesa, California.¹⁵⁹⁵ He gave an incorrect account number. HSBC attempted the transfer twice that day, but it failed both times due to the incorrect account number.¹⁵⁹⁶ The HSBC USA trust officer sent an email indicating HSBC was in communication with Comerica Bank to get the correct information,¹⁵⁹⁷ but the transfer was never actually completed.

On Sunday, September 22, 2002, Mr. Heger sent a letter to Dr. Jaime asking him to transfer to his attorney-client trust account at Comerica Bank, not the \$50 million in Treasury bills, but \$200 million in cash from the BNA account.¹⁵⁹⁸ He wrote: “I can upon receipt either keep it in cash or purchase a Treasury Bill[,] however it is preferable that this remain in cash.” He stated that his account would remain “blocked” and “unencumbered” for a period of one year and five days, and that “the transfer of the above mentioned funds ... would allow profits to begin to be received and thus start providing for the people of the Nation State of Angola.” The Subcommittee found no evidence that this requested transfer to the Heger account took place.¹⁵⁹⁹

On Monday, September 23, 2002, Mr. Wayland sent an email to Dr. Jaime and Mr. Amouzou discussing the failure of the transfer of the T-Bills to the Heger account on the prior Friday.¹⁶⁰⁰ Mr. Wayland wrote: “The first and most important aspect for all of us is to ‘Keep our Cool’ There is absolutely no doubt that someone is trying to sabotage any and all effort[ts] of the Angolan Government from placing cash funds ... into investment programs.” Mr. Wayland wrote that “whoever is involved” would:

“stop at nothing, will attempt to divide us, use every effort at their disposal to stop this transaction from proceeding. We must ascertain, for what reason HSBC are in position to frighten, Wells Fargo or for that matter any other bank WE ... [WILL] RECTIFY THE PROBLEM WITH THE ASSISTANCE OF THE SECRETARY OF THE TREASURY, NAMELY, MR. PAUL O’NEILL PLEASE BELIEVE WE HAVE POWERFUL FRIENDS.” [Emphasis in original.]

At some point, Dr. Jaime apparently ceased trying to transfer the T-Bills to Comerica Bank, and discussions turned to bank accounts in Switzerland. On September 28, 2002, Mr. Wayland sent an email to Mr. Amouzou regarding opening bank accounts for BNA in Basel, Switzerland. Mr. Wayland wrote:

¹⁵⁹⁵ See Swift message, HSBC-PSI 037216. See also HSBC internal emails, HSBC-PSI 037231.

¹⁵⁹⁶ See 9/23/02 HSBC internal email, HSBC-PSI 037232.

¹⁵⁹⁷ Id.

¹⁵⁹⁸ 9/22/02 letter from Mr. Heger to Dr. Jaime, PSI-Heger-01-00232.

¹⁵⁹⁹ On September 25, 2002, Mr. Heger also sent Dr. Jaime an invoice for \$100,000 for “Services rendered on behalf of” BNA. 9/25/02 invoice, PSI-Heger-01-00227. A typewritten “Note” at the bottom of the invoice stated: “We need to get at least 100Million transferred to our account located in Switzerland at your earliest convenience” and that “profits will be received within a short period of time thereafter.”

¹⁶⁰⁰ 9/23/02 email from Mr. Wayland to Dr. Jaime and Dr. Sato, PSI-Heger-01-00125.

“[A]ll of us must meet in Basel, to open the bank accounts for BNA and [I] will get the two US Authorities to come to Basel after the funds reach Basel. If Jaime wishes to first open an account this is also OK, but then Jaime must meet me any day next week in Switzerland. ... This will therefore be two or 3 days after the first Meeting between Jaime and me.”¹⁶⁰¹

Mr. Wayland also told Mr. Amouzou that he would receive payments confidentially: “I have set this up this way so absolutely no One has knowledge of payments to you. This can be to your account in France and or other accounts.”

Sometime during the next two weeks, Mr. Amouzou and Dr. Jaime met with Mr. Wayland in Switzerland. On October 14, 2002, Mr. Wayland sent a fax to Mr. Amouzou stating: “I would like to thank you for traveling to Switzerland as I really enjoyed meeting both Dr. Jaime and you. I believe as friends, we can establish a long term relationship.”¹⁶⁰² The fax also contained instructions related to retaining the T-Bills at HSBC USA on the condition that HSBC supplied BNA with a “safekeeping receipt” that is “negotiable against the T-Bill.”

Safekeeping Receipt. Two days later, on October 16, 2002, Dr. Jaime sent a letter on BNA stationery to HSBC USA asking it to “cancel all previous and pending trade requests” regarding the \$50 million in T-Bills.¹⁶⁰³ The letter then stated that the T-Bills “should remain on deposit in the account until maturity ... conditional a new Safekeeping Receipt is issued, with the wording ‘Safekeeping Receipt is negotiable against ...’” the T-Bills.¹⁶⁰⁴ At the bottom, the letter contained a signature line for HSBC to indicate that it agreed to that condition. A week later, on October 25, 2002, HSBC faxed the letter back to Dr. Jaime with a signature from the HSBC trust officer acknowledging receipt of the October 16 letter and agreeing to its terms.¹⁶⁰⁵

Two weeks later, on November 1, 2002, HSBC sent Dr. Jaime a fax attaching a letter which had been signed by the HSBC trust officer for the BNA collateral account and which stated in part: “This Safekeeping Receipt is negotiable against US Treasury Strip, CUSIP #912820BG1.”¹⁶⁰⁶ The trust officer told the Subcommittee that he was in a hurry to go on vacation and did sign the safekeeping receipt, but should not have.¹⁶⁰⁷ He told the Subcommittee that such a receipt can be used like a bearer share financial instrument and, among other uses, can be used to transfer ownership of the referenced Treasury bills to a third party. HSBC told

¹⁶⁰¹ 9/28/02 email from Mr. Wayland to Mr. Amouzou, PSI-Amouzou-08-0194.

¹⁶⁰² 10/14/02 fax from Mr. Wayland at “Virtual Architecture Ltd.,” to Mr. Amouzou, PSI-Amouzou-08-0358.

¹⁶⁰³ 10/16/02 letter from Dr. Jaime to HSBC USA, HSBC-PSI 037228-29.

¹⁶⁰⁴ Id. HSBC USA had sent an earlier version of this letter as a proposed draft to Dr. Jaime. The draft stated that all previous trade requests related to the Treasury bills should be canceled and that the Treasury bills should remain on deposit “until further instruction from an authorized signatory.” 10/16/02 email from the HSBC USA trust officer and draft letter, HSBC-PSI 037226-27. Dr. Jaime apparently used this draft as the starting point for his letter which made HSBC’s retaining the Treasury bills “conditional” on its providing the specified “Safekeeping Receipt.”

¹⁶⁰⁵ 10/16/02 letter from Dr. Jaime to HSBC USA, HSBC-PSI 037228-29. See also 10/25/02 cover letter from HSBC to Dr. Jaime, HSBC-PSI 037211.

¹⁶⁰⁶ 11/1/02 internal HSBC fax transmitting a copy of an unsigned version of the safekeeping receipt “that was signed” by the HSBC USA trust officer, HSBC-PSI 037211. HSBC was unable to locate a signed copy of the safekeeping receipt. See related correspondence, HSBC-PSI 037209-10.

¹⁶⁰⁷ Subcommittee interview of HSBC officials, May 7, 2008.

the Subcommittee that, even though the receipt was signed and faxed to Dr. Jaime, the original of the receipt never actually left the bank.¹⁶⁰⁸

On November 4, 2002, Dr. Jaime apparently pressed HSBC to release the safekeeping receipt with the trust officer's original signature and bank seal. In a November 5, 2002 email, however, an HSBC compliance officer who had been asked for advice about how to handle the matter warned that the request might be "part of some elaborate scam to defraud the Central Bank of its securities."¹⁶⁰⁹ The compliance officer wrote:

"This concerns your request to have HSBC Bank USA issue a 'safekeeping receipt' with respect to the Central Bank of Angola's custody account holdings with wording indicating that the receipt is 'a negotiable instrument' You have advised that this request is being made in connection with a confidential lending arrangement If the securities are to be utilized to secure a lending facility why not enter into a standby letter of credit arrangement or have the account blocked via some type of pledge arrangement. This would be the way a custody account would typically be used as collateral and not via some type of negotiable receipt. ... HSBC Issuer Services does not issue 'negotiable safekeeping receipts' ... of the kind that you have asked for which are essentially bearer instruments. Were we to issue such a document we would be exposed as the Central Bank could at any time request us to transfer the Treasury Bills ... to a third party and we would have no way to prevent the transfer. ... These bearer instruments have been used in scams and have a negative connotation associated with them. A request to have us issue something like this to support what sounds like a secured credit facility is very unusual. Furthermore, your indicating that the transaction details are confidential and that there is tremendous pressure to have the receipt issued today makes the entire transaction look suspect to us."

The compliance officer continued:

"This request coupled with the unusual request we received last month to transfer these same securities to an account maintained at another bank that was not in the name of the Central Bank concerns us. ... We are concerned that these unusual requests continue to come to us and that we are placed under tremendous pressure to agree to them. Based on what I see here it appears to me that this is part of some elaborate scam to defraud the Central Bank of its securities."¹⁶¹⁰

The head of the HEQB office in Angola responded:

"Thank you very much for all your assistance in this matter which is most sensitive.

I met with the Governor this morning to let him know that HSBC Bank USA is not comfortable about the issue of the document as requested by BNA. The Governor showed great concern as he was confident this time things would move and, according to

¹⁶⁰⁸ Id.

¹⁶⁰⁹ 11/5/02 internal HSBC email chain, HSBC-PSI 037400-02.

¹⁶¹⁰ Id.

him, a first disbursement of \$50mm is pending until this document is in place or another solution is found.

Meanwhile I think it appropriate to clarify that the pressure to have the receipt issued yesterday, happened because BNA has been waiting for this receipt for 20 days, since October 16th, date when HSBC USA acknowledged and agreed with the issue of the Safekeeping Receipt in accordance with BNA's request. Assuming the non issue of the document is the cause of the delay for a first disbursement under the arrangements between the Government and the other entity involved, BNA's pressure is understandable. ...

Mr. Heger, is the CEO & Managing Director of Euro-Investments LLC. ... Maybe you could investigate about the above company (in such a way that neither BNA or them know we are doing so), and hopefully the information obtained would give us all the peace of mind that we can continue to assist BNA in the implementation of, what they firmly believe, an important accomplishment for Angola. In case the information obtained would be negative, we would have to advise BNA not to proceed with the negotiations."¹⁶¹¹

The documents reviewed by the Subcommittee do not show that the suggested investigation took place. The documents also do not show that the original HSBC safekeeping receipt was provided to Dr. Jaime or that the T-Bills were transferred to any third party during November 2002.

\$50 Million Returned to BNA. One month later, on December 5, 2002, Dr. Jaime was appointed an Assistant to the Prime Minister of Angola. On December 12, 2002, he issued instructions to liquidate the Treasury bills at HSBC USA and return the \$50 million to the BNA account at HEQB in London.¹⁶¹² The head of the HEQB office in Angola wrote: "Please note that this is really urgent. BNA needs to sell the dollars to the commercial banks to pay the [public workers'] salaries."¹⁶¹³ Later that day, she sent another email noting that "Aguinaldo Jaime is no longer the Governor," and that someone else at BNA would have to authorize the transaction.¹⁶¹⁴ On December 16, 2002, a new BNA official, the director of the Department of Foreign Reserves, was given authority over the HSBC USA collateral account.¹⁶¹⁵

The new BNA official ordered the Treasury Bills to be sold and the sale proceeds to be transferred to the BNA account at HEQB in London.¹⁶¹⁶ On January 2, 2003, HSBC USA

¹⁶¹¹ Id.

¹⁶¹² 12/12/02 - 12/13/02 internal HSBC email chain, HSBC-PSI 037185-87.

¹⁶¹³ Id. at 037186.

¹⁶¹⁴ Id. at 037185.

¹⁶¹⁵ See 12/16/02 letters from the BNA Director of the Department of Foreign Reserves to HSBC USA, HSBC-PSI 037181 and HSBC-PSI 037178. See also 12/13/02 internal HSBC email chain, HSBC-PSI 037182-84 and HSBC-PSI 037177.

¹⁶¹⁶ 1/2/03 Swift message from BNA to HSBC, HSBC-PSI 037165.

complied,¹⁶¹⁷ and the next day, \$50,288,889.76 in sale proceeds were wire transferred from the collateral account at HSBC USA to the BNA account at HSBC Equator Bank in London.¹⁶¹⁸

(4) Analysis

In the end, the \$50 million was returned to the Angolan Central Bank, despite efforts extending over six months, from June to December 2002, by Dr. Jaime, Mr. Amouzou, Mr. Wayland, and Mr. Heger, to transfer the funds to a private account in the United States. Bank of America and Wells Fargo personnel reacted quickly to possible signs of a suspicious transaction and reversed the \$50 million transfer; Citibank reacted less quickly but eventually responded by ending its banking relationship, not only with BNA, but with all Angolan government entities, including Sonangol.

In contrast, HSBC personnel facilitated multiple wire transfers of the \$50 million and the related Treasury bills in response to the instructions of a single BNA official, despite concerns about sending government assets to a private individual's account, until a compliance officer warned about a possible scam. HSBC has not only continued to provide banking services to BNA in Angola and London, but may also be providing the Angolan Central Bank with offshore accounts in the Bahamas.

D. An Angolan Financial Institution: Moving Hundreds of Millions of Dollars For Banco Africano de Investimentos

A final set of Angolan accounts involves Banco Africano de Investimentos (BAI), a \$7 billion private bank in Angola whose largest shareholder is Sonangol, the Angolan state-owned oil company. BAI offers banking services to Sonangol, Angolans in the oil and diamond industries, and Angolan government officials, and its clientele is replete with Angolan PEPs. Over the last ten years, BAI gained entry to the U.S. financial system through accounts at HSBC in New York, using HSBC wire transfer services, foreign currency exchange, and U.S. dollar credit cards for BAI clients, despite troubling answers about its ownership and its failure to provide a copy of its AML procedures to HSBC. HSBC has designated Angola a "high risk country" and conducted annual reviews of the BAI account, but explicitly decided not to treat BAI as a PEP client, despite PEPs in BAI's management and clientele and Angola's ongoing corruption problem.

(1) Background

Banco Africano de Investimentos. Banco Africano de Investimentos (BAI) was established on November 13, 1996, and commenced commercial operations on November 14, 1997, as the first fully privately owned bank in Angola.¹⁶¹⁹ It is now one of the largest private banks in the country. It is subject to regulation by Angola's central bank, Banco Nacional de

¹⁶¹⁷ 1/2/03 internal HSBC email, HSBC-PSI 037157.

¹⁶¹⁸ 1/3/03 HSBC USA Priority Payment – Confirmation, HSBC-PSI 037158; 1/3/03 HSBC cash disbursement order, HSBC-PSI 037159.

¹⁶¹⁹ 2007 HSBC Know Your Customer Profile of BAI, HSBC-PSI 036736-52, at 37 (citing "Clients Annual Report 2005"); HSBC PSI 036668.

Angola (BNA).¹⁶²⁰ BAI handles transactions in Angola using the Angolan currency, the kwanza.¹⁶²¹

The founders of the bank include Mario Palhares, then a senior Angolan official at BNA; Jose Carlos Paiva, managing director of the key Sonangol subsidiary, Sonangol Ltd.; Joe Manuel Serrao, managing director of a Portuguese car company, Service Group Ltd.; and Theodore Jameson Gilletti, a British banker at Standard Chartered Bank.¹⁶²² BAI's initial president was Aguinaldo Jaime, who left the bank to become head of BNA;¹⁶²³ and two initial senior administrators were Joaquim Costa David, Angolan Minister of Finance and former head of Sonangol; and Ana Paula Gray, a banker with the South African Investec Bank, both of whom were made members of the board of directors.¹⁶²⁴ In 1998, according to HSBC records, BAI had three branches, about 50 employees, and about \$44 million in assets, including about \$10 million in deposits.¹⁶²⁵

According to the latest Bankers Almanac, BAI now has 50 branches and about 900 employees.¹⁶²⁶ Its headquarters are in Luanda, the capitol of Angola. BAI's chairman of the board is now Mr. Paiva, who is also chairman of the board of Sonangol; the vice chairman is Ms. Gray; and Mr. Gilletti remains a director and key bank official.¹⁶²⁷ BAI's chief executive officer is Jose de Lima Massano, a former Sonangol executive, accountant, and banker.¹⁶²⁸ Another BAI director is Manuel Domingos Vicente, who is also the chief executive officer of Sonangol.¹⁶²⁹ The latest Bankers Almanac indicates that, as of December 31, 2008, BAI had assets with a total value of \$7.6 billion.¹⁶³⁰

Sonangol, the Angolan state-owned oil company, has been BAI's largest shareholder since the bank's inception, and BAI is sometimes described as a Sonangol subsidiary.¹⁶³¹ BAI handles many of Sonangol's banking services, and BAI's senior officials have often simultaneously held senior positions at the oil company. BAI's other owners include major financial institutions, former or current bank officials, and a handful of private corporations, some of whose owners have been concealed by BAI over the years, creating a source of friction between BAI and HSBC.

¹⁶²⁰ HSBC PSI 036668.

¹⁶²¹ 2007 HSBC Know Your Customer Profile of BAI, HSBC-PSI 036740.

¹⁶²² 1998 HSBC KYC profile for BAI, HSBC-PSI 036767-73, at 68; HSBC-PSI 036779; 10/25/06 internal HSBC email, HSBC-PSI 036625. Mr. Palhares, who later became BAI's president and chairman of the board, left the bank in 2006.

¹⁶²³ 1998 HSBC KYC profile for BAI, HSBC-PSI 036767-73, at 68; HSBC-PSI 036779.

¹⁶²⁴ 1998 HSBC KYC profile for BAI, HSBC-PSI 036767-73, at 68.

¹⁶²⁵ 1998 HSBC KYC profile for BAI, HSBC-PSI 036767-73, at 68, 72.

¹⁶²⁶ Bankersalmanac.com entry for BAI, viewed 1/8/10; June 2008 Bankers Almanac entry for BAI. The 2007 HSBC KYC profile of BAI, HSBC-PSI 036739, citing the Bankers Almanac and the "client's 2005 Annual Report," indicates that BAI then had 29 branches and 550 employees). See also BAI's website, www.bancobai.co.ao.

¹⁶²⁷ 2007 HSBC KYC profile of BAI, HSBC-PSI 036739.

¹⁶²⁸ Id.; June 2008 Bankers Almanac; 10/25/06 internal HSBC email, HSBC-PSI 036625.

¹⁶²⁹ June 2008 Bankers Almanac; HSBC-PSI 036667.

¹⁶³⁰ Bankersalmanac.com entry for BAI. Two years earlier, in 2007, BAI told HSBC that it had assets with a total value of about \$1.2 billion. 2007 HSBC Know Your Customer Profile of BAI, HSBC-PSI 036740. But see June 2008 Bankers Almanac in which BAI reports total assets as of December 31, 2006 of \$2.3 billion.

¹⁶³¹ See, e.g., Wikipedia entry for BAI.

According to the Bankers Almanac, BAI's current auditor is PricewaterhouseCoopers. As recently as 2005, its auditor was Ernst & Young.¹⁶³²

U.S. Legal Requirements. When BAI opened its first U.S. account in 1998, U.S. money laundering laws were limited, and did not contain explicit requirements related to accounts opened by foreign banks or PEPs.¹⁶³³ In October 2001, Congress enacted the Patriot Act which, among other provisions, strengthened U.S. anti-money laundering law to protect the U.S. financial system from misuse by terrorists, criminals, and corrupt foreign officials.¹⁶³⁴

One of the new provisions, Section 312, explicitly required U.S. financial institutions that opened accounts for non-U.S. financial institutions to “establish appropriate, specific, and, when necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.”¹⁶³⁵ In addition, if a foreign bank held an offshore banking license, was deemed uncooperative with international AML procedures, or was subjected to special AML measures by the U.S. Government, U.S. financial institutions opening accounts for that foreign bank were required:

- “(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each owner;
- (ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions ... and
- (iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information.”¹⁶³⁶

Section 312 also required U.S. financial institutions, for the first time, to establish enhanced due diligence policies, procedures and controls for any private banking account “that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure ... to detect and report transactions that may involve the proceeds of foreign corruption.”¹⁶³⁷ This provision took effect in February 2002. The Patriot Act also made the acceptance of proceeds from foreign corruption offenses a money laundering crime, and made it clear that U.S. money laundering prohibitions applied to all foreign banks operating in the United States.¹⁶³⁸

¹⁶³² HSBC PSI 036668.

¹⁶³³ On July 24, 1998, Republic National Bank nevertheless completed a know-your-customer due diligence review of BAI. Its review stated: “In terms of money laundering, Angola is considered as a ‘no priority’ country by the US State Department. Angola is an extremely difficult country to do business in, which combined with the country’s strict exchange control regulations, makes money laundering a practical impossibility. Even so BAI’s management is aware of international money laundering concerns and would be able to spot suspect transactions were they to come through. They require full identification of all their customers and are obliged to report suspicious transactions to the BNA (Central Bank).” HSBC-PSI 036773.

¹⁶³⁴ See, e.g., Title III of the Patriot Act, P.L. 107-56 (Oct. 26, 2001).

¹⁶³⁵ Section 312 of the Patriot Act, codified at 31 U.S.C. 5318(i)(2)(A).

¹⁶³⁶ Section 312 of the Patriot Act, codified at 31 U.S.C. 5318(i)(2)(B).

¹⁶³⁷ Section 312 of the Patriot Act, codified at 31 U.S.C. 5318(i)(3).

¹⁶³⁸ See Section 315 of the Patriot Act, codified at 18 U.S.C. 1956(c)(7)(B)(iv)(adding foreign corruption offenses); and Section 318 of the Patriot Act, codified at 18 U.S.C. 1956(c)(6)(B)(adding foreign banks).

(2) HSBC USA Accounts

In April 1998, BAI opened its first accounts at Republic National Bank in New York, Correspondent Account No. No. [xxxxxxx]47 and No. [xxxxxxx]22.¹⁶³⁹ In December 1999, Republic National Bank merged with HSBC.¹⁶⁴⁰ As of 2007, BAI had four accounts with HSBC USA: the first correspondent account, No. [xxxxxxx]47; two accounts opened on August 8, 2000, Account Nos. [xxxxxxx]54 and [xxxxxxx]46, to establish a corporate credit card program for BAI clients and provide cash collateral to secure repayment of the credit card debt;¹⁶⁴¹ and an account opened on October 27, 2006, Account No. [xxxxxxx]30, to settle payments to Visa related to credit card charges.¹⁶⁴²

Over the years, BAI has used its HSBC accounts primarily to gain access to HSBC's wire transfer systems so that BAI and its clients can send and receive U.S. dollar transfers across U.S. borders. BAI's monthly wire transfers grew dramatically, for example, from 2003 to 2008. HSBC also provided BAI with foreign currency exchange services, in particular supplying it with U.S. dollars to meet its needs, which grew from \$6 million in 1998,¹⁶⁴³ to \$30 million in 2005, to \$490 million in 2007.¹⁶⁴⁴ In addition, HSBC has provided BAI with occasional certificates of deposits and overnight investments, and access by BAI clients to HSBC credit cards using U.S. dollars.¹⁶⁴⁵

HSBC USA manages the BAI account out of its New York office. The accounts are handled by a "Global Relationship Manager"; most recently, that Global Relationship Manager was based in HSBC offices in South Africa. According to HSBC records, BAI made minimal use of its U.S. accounts at first, but has made increasing use of its correspondent relationship over the years. In 2006, HSBC reported internally that the BAI accounts returned "sizeable" global revenues of \$1.5 million, of which \$1.2 million came from HSBC USA Payments and Cash Management Group.¹⁶⁴⁶

Documents reviewed by the Subcommittee show that Republic National Bank and then HSBC have performed annual AML reviews of the BAI accounts. Republic National Bank conducted a due diligence review when the bank account was first opened and developed a Know-Your-Customer profile for BAI in 1998, which was then updated annually.¹⁶⁴⁷ Later,

¹⁶³⁹ "BAI Timeline of Accounts," prepared by HSBC, HSBC-PSI 037864. A "correspondent account" is an account opened for a financial institution.

¹⁶⁴⁰ Id.

¹⁶⁴¹ Id.; HSBC-PSI 036774.

¹⁶⁴² 2007 HSBC KYC profile of BAI, HSBC-PSI 036739.

¹⁶⁴³ 1998 HSBC KYC profile of BAI, HSBC-PSI 036767-73, at 71.

¹⁶⁴⁴ See 3/15/07 HSBC Call Report, HSBC-PSI 036753-55. The Call Report states that "BAI's primary reason to order USD banknotes is to allow the foreign corporation workers in Angola to withdraw their salaries in USD cash. They have a very large pool of corporate clients due to one of its major shareholders being Sonangol." Id., at 036754.

¹⁶⁴⁵ 2007 HSBC KYC profile of BAI, HSBC-PSI 036740.

¹⁶⁴⁶ 2007 HSBC KYC profile of BAI, HSBC-PSI 036738; 12/21/06 internal HSBC email, HSBC-PSI 036689 ("[t]his is a sizable HSBC Group client").

¹⁶⁴⁷ "BAI Timeline of Accounts," prepared by HSBC, HSBC-PSI 037864. See also 1998 KYC Profile for BAI, HSBC-PSI 036767-73; 2002 KYC profile for BAI, HSBC-PSI 036775-80; 2007 HSBC KYC profile for BAI, HSBC-PSI 036736-51.

HSBC established lower thresholds than it normally did to generate AML “alerts” from BAI wire transfers, due to Angola’s status as a “high risk country.”¹⁶⁴⁸ The documents also show that, over the years, HSBC had several concerns with the BAI accounts, unsuccessfully raised those concerns with BAI, and when BAI failed to cooperate, nevertheless allowed the BAI accounts to continue operating. Those concerns included troubling answers about BAI’s ownership, including the extent to which the bank was owned and controlled by Politically Exposed Persons (PEPs) in Angola, and BAI’s failure to provide a copy of its AML procedures. In 2006, HSBC’s Financial Intelligence Group raised the issue of designating BAI as a “Special Category of Client” (SCC), the term HSBC uses to identify accounts opened for PEPs or other persons or entities of concern, but that suggestion was not followed.¹⁶⁴⁹ Two years later, in November 2008, HSBC reversed course and did designate BAI as an SCC.¹⁶⁵⁰

(3) BAI’s Hidden Owners

Since BAI is a private bank with ownership that includes the Angolan national oil company and a number of Angolan PEPs, the identity of its owners is an important issue. For more than one year, from March 2006 to June 2007, HSBC made a sustained effort to obtain a clear understanding of the owners of BAI. In response, BAI disclosed some of its shareholders, but not all, claiming that two shell companies with 13.5% of the bank’s shares were unable to identify their individual owners and ultimately assigning the companies’ shares “temporarily” to BAI’s chairman of the board. In May 2007, confronted with BAI’s ongoing failure to provide complete ownership information, HSBC stopped pressing for the information. In response to Subcommittee questions, HSBC was unable to identify the owners behind more than 19.5% of BAI’s shares. At the same time, HSBC has continued to provide BAI with ready access to the U.S. financial system.

1998 Ownership. In July 1998, within three months of opening the BAI account and prior to enactment of the 2001 Patriot Act, Republic National Bank completed a Know-Your-Customer (KYC) profile of BAI, which included a list of its shareholders.¹⁶⁵¹ The listed shareholders were the following:

- Sonangol, the Angolan-state owned oil company: 19%
- Grupo Credito Agricola, a Portuguese financial institution: 10%
- Service Group Angola, an affiliate of a Portuguese car company: 8%
- Investec Bank Ltd., a South African financial institution: 7.5%
- Ameron, a U.S. corporation: 6%
- Banco Pinto e Sotto Mayor, a Portuguese financial institution: 5%
- Dabas Management Ltd., a French corporation: 5%

¹⁶⁴⁸ 2007 HSBC KYC profile of BAI, HSBC-PSI 036751.

¹⁶⁴⁹ 2007 HSBC Know Your Customer Profile of BAI, HSBC-PSI 036738. See also Subcommittee interview of HSBC officials, September 22, 2008.

¹⁶⁵⁰ 2/2/10 letter from HSBC’s legal counsel to the Subcommittee, at 2 (Sealed Exhibit).

¹⁶⁵¹ 1998 Republic National Bank KYC profile of BAI, HSBC PSI 036764-65, 036767-73. This profile also contains information reflecting KYC due diligence efforts related to BAI over a two-year period, 1998 to 2000. 5/6/08 email from HSBC’s legal counsel to the Subcommittee, item (3)(b), PSI-HSBC-36-0001-12.. Republic National Bank was under no explicit legal obligation at the time to obtain BAI’s ownership information; collecting the information was instead part of a routine internal due diligence procedure then in place at the bank

Brenco International, a French corporation: 4%
 Mota & Cia and Soares Da Costa, Portuguese construction companies: 6%
 Mactrotrade, a Portuguese company, and Endiama, the Angolan state-owned
 diamond company: 4.5%.¹⁶⁵²

The BAI profile also noted that BAI has “28 shareholders of different nationalities,” with 4 Angolans holding 36% of the shares, 17 Portuguese holding another 36%, and 7 persons from other countries holding 28% of the shares.¹⁶⁵³

The document does not provide any further explanation of the shareholders. While most are large financial institutions or corporations, at least three, Brenco International, Dabas Management and Ameron are not.¹⁶⁵⁴ The Subcommittee’s investigation indicates that Brenco International was beneficially owned by Pierre Falcone, a notorious Angolan arms dealer, and his business associate, Arkadi Gaydamak, as explained earlier.¹⁶⁵⁵ From 2000 to 2001, Mr. Falcone was imprisoned in France while under investigation into his conduct in the arms and bribery scandal known as Angolagate.

In 2001 and 2002, HSBC updated its Know-Your-Customer profile of BAI.¹⁶⁵⁶ The shareholder list remained unchanged. By then the Patriot Act’s provisions had taken effect, requiring U.S. financial institutions to establish reasonable due diligence procedures for accounts belonging to foreign financial institutions to detect and prevent money laundering through those accounts.¹⁶⁵⁷

2006 Ownership. During 2006, BAI provided several different lists of its shareholders. On March 16, 2006, for example, BAI gave HSBC the following list of owners:

Sonangol: 17.5%
 Service Group: 8%
 Investec Bank Ltd.: 7.5%
 Jose Carlos Recio, a wealthy Angolan businessman: 7.5%
 Arcinella Assets, S.A.: 7%
 Sforza Properties S.A., a British Virgin Islands corporation: 6.5%
 Amer-Con Corp., a U.S. software company in Miami, Florida: 6%
 Banco Commercial Portugues S.A., a Portuguese financial institution: 5%
 Dabas Management Ltd.: 5%

¹⁶⁵² 1998 Republic National Bank KYC profile of BAI, HSBC-PSI 036767-73, at 68.

¹⁶⁵³ 1998 Republic National Bank KYC profile of BAI, HSBC PSI 036773.

¹⁶⁵⁴ “Ameron” may refer to Amer-Con Corp., a Miami, Florida corporation with a branch in Angola, referred to in later BAI shareholder lists. See 2007 HSBC KYC profile of BAI, HSBC-PSI 036744.

¹⁶⁵⁵ See prior section on Falcone accounts.

¹⁶⁵⁶ “BAI Timeline of Accounts,” prepared by HSBC, HSBC-PSI 037864; HSBC-PSI 036775-80 and 036736-52. See 2002 KYC profile for BAI, HSBC-PSI 036775-80.

¹⁶⁵⁷ Regulations implementing this and related due diligence requirements in the Patriot Act direct U.S. financial institutions to ascertain the ownership interests of persons with a 10% or greater ownership interest in a non-publicly traded foreign financial institution. See 31 CFR 103.176. HSBC determined to implement the statutory requirement by ascertaining the ownership interest of persons with a 5% or greater ownership interest in foreign financial institutions in high-risk jurisdictions. 5/6/08 email from HSBC’s legal counsel to the Subcommittee, item 3(d), PSI-HSBC-36-0001-12..

Others (none with 5% or more shares): 30%.¹⁶⁵⁸

Six months later, on September 20, 2006, BAI provided this list to HSBC:

Sonangol: 8.5%
 Investec Bank Ltd.: 7.5%
 Arcinella Assets, S.A.: 7%
 Sforza Properties S.A.: 6.5%
 Amercon International: 5%
 Dabas Management Ltd., a French corporation: 5%
 ABL Ltd.: 5%
 Mario Palhares, former BAI chairman: 5%
 Theodore Gilletti, BAI director: 5%
 Others (none with 5% or more shares): 33.75%.¹⁶⁵⁹

BAI then furnished a longer and slightly different list to the June 2008 Bankers Almanac which made the list public:

Sonangol: 8.5%
 Investec Bank Ltd.: 7.5%
 Arcinella Assets, S.A.: 7%
 Sforza Properties S.A.: 6.5%
 Amer-Con Corp.: 6%
 Dabas Management Ltd.: 5%
 ABL Ltd.: 5%
 Mario Palhares: 5%
 Theodore Gilletti: 5%
 Joa Batista de Matos: 5%
 Gebela Establishment: 3.15%
 Sociedade de Construcoes Soares da Costa S.A., Porto: 3%
 Mota Gestao e Participacoes SGPS, Porto: 3%
 Mactrotrade - Marketing e Gestao Lda, Lisbon: 3%
 Lobina Anstalt: 3%.¹⁶⁶⁰

Partial Disclosure of Bank Owners. Documents reviewed by the Subcommittee show that, from 2006 to 2008, HSBC pressed BAI for full disclosure of the beneficial owners behind two of the shell corporations that together owned 13.5% of the bank. In response, BAI offered differing explanations, then claimed the shell companies were unable to identify their individual shareholders, and ultimately assigned the shares “temporarily” to BAI’s chairman of the board.

¹⁶⁵⁸ 2/15/05 review of BAI account by HSBC Financial Intelligence Group, appended to a 2006 review, HSBC-PSI 036667-69.

¹⁶⁵⁹ BAI provided this list on September 20, 2006, on HSBC form, “Certification Regarding Correspondent Accounts for Foreign Banks,” HSBC-PSI 036651-55, at 55. It is unclear what happened to Mr. Recio’s 7.5% ownership interest reported six months earlier, in March 2006.

¹⁶⁶⁰ The same list also appears in the online Bankersalmanac.com entry for BAI, under “Ownership,” except that Investec Bank does not appear on that list.

In early 2006, HSBC's Payment Services Regulatory Risk Unit initiated its annual update of BAI's KYC profile. Under HSBC AML procedures in place at the time, this profile had to be reviewed and approved by the appropriate regional Money Laundering Control Officer in its Compliance Department.¹⁶⁶¹

On March 16, 2006, HSBC received a list of BAI's shareholders, as indicated above. The list included three private corporations, each of which would turn out to be a special purpose shell corporation: Arcinella Assets, Sforza Properties, and Dabas Management. The next day, on March 17, 2006, an HSBC regulatory risk officer sent the HSBC global relationship manager for BAI an email asking for additional ownership information:

“In accordance with HSBC Bank USA's ‘Know Your Customer’ Policy and Procedures, and to **satisfy regulatory requirements**, we perform periodical reviews of our client profiles. In reviewing the profile for Banco Africano de Investimento, Angola, we require the following updates:

Ownership: Please provide us with background information on all owners with 5% or more shares in the bank.

New USA Patriot Act Certificate reflecting the change in ownership.”¹⁶⁶²

After two months without an answer, on May 18, 2006, the regulatory risk officer sent another email to the relationship manager with the subject line: “Second Request: Banco Africano des Investimento.”¹⁶⁶³

Seven months after the original request by the regulatory risk officer, on October 25, 2006, the HSBC relationship manager sent an email discussing the ownership issue and providing a copy of the updated Patriot Act certification from BAI.¹⁶⁶⁴ The certification, which was signed by BAI officials, included an updated shareholder list which added one new private corporation with a 5% ownership interest in the bank, ABL Ltd. The relationship manager provided the following information about each of BAI's major shareholders, including the following four corporations:

“Arcinella Assets, S.A. – 7% – Arcinella Assets is an investment services firm
Sforza Properties (British Virgin Island) – 6.5% – This company is involved in the real estate industry

Dabas Management Ltd. – 5% – This company is an investment services firm

Amercon International – 5% – This company deals in trading of bulk goods and construction

ABL – 5% – This is a trading company”¹⁶⁶⁵

¹⁶⁶¹ 1/30/10 email from HSBC's legal counsel to Subcommittee, item (3)(c).

¹⁶⁶² See 3/17/06 internal HSBC email, HSBC-PSI 036627 [emphasis in original]. The regulatory risk officer also asked for the banks most recent financial report, annual report, auditor's report, and for any management changes.

¹⁶⁶³ Id., at 036627.

¹⁶⁶⁴ See HSBC form, “Certification Regarding Correspondent Accounts for Foreign Banks,” HSBC-PSI 036651-55, signed by BAI one month earlier on September 20, 2006. See also 10/25/06 email from relationship manager, HSBC-PSI 036625-26. HSBC prepared this certification form to comply with the new due diligence requirements in the Patriot Act.

¹⁶⁶⁵ 10/25/06 internal HSBC email, HSBC-PSI 036626.

She did not identify any of the beneficial owners behind these companies. The relationship manager provided the information when she did, because BAI was then seeking to open a new account at HSBC to process settlements with Visa for its clients' credit cards. In the October 25, 2006 email, the relationship manager wrote: "Please find the outstanding information for Banco Africano de Investimentos. I hope we can push for approval of this KYC profile, as they are quite keen to have the Visa account opened urgently."¹⁶⁶⁶

Two days later, on October 27, 2006, a vice president at HSBC USA sent an email to the money laundering control officer charged with approving the BAI KYC profile noting that the new BAI account could not be opened "until the profile is Reapproved."¹⁶⁶⁷ The money laundering control officer responded:

"I understand that anew [sic] account is required for Banco Africano de Investimentos and that our normal procedure is to attach an approved KYC to the account opening request so that the operations area can issue an account number.

Since the KYC for this bank is currently under revision, an approved KYC cannot be included with the account opening request.

Please treat this e-mail as authorization from Compliance to establish a Visa Settlement Account for this bank."¹⁶⁶⁸

About 15 minutes later, the money laundering control officer sent a second email, limiting the waiver to a 30-day period.¹⁶⁶⁹ The money laundering control officer wrote:

"Upon further consideration, the waiver stands but on the condition that the profile be AM approved within 30 days otherwise the account may need to be frozen. I understand that we have been waiting [for] some crucial KYC information from this client for some while – they should understand that having accommodated them in this way they should be more responsive to our KYC inquiries."

The money laundering control officer told the Subcommittee that he limited the waiver to 30 days to "light a fire" under HSBC personnel to obtain the missing information from the client.¹⁶⁷⁰

With the waiver in place, HSBC opened the Visa settlement account that same day, October 27, 2006.¹⁶⁷¹ When the waiver expired on or around November 27, 2006, HSBC was still waiting for the new ownership information from BAI.¹⁶⁷² The new Visa account was placed

¹⁶⁶⁶ Id., at 036625.

¹⁶⁶⁷ 10/27/06 internal HSBC email, HSBC-PSI 036691.

¹⁶⁶⁸ 10/27/06 internal HSBC email, HSBC-PSI 036690.

¹⁶⁶⁹ Id.

¹⁶⁷⁰ Subcommittee interview of HSBC, September 22, 2008; 10/10/08 email from HSBC's legal counsel to the Subcommittee, PSI-HSBC 44-0001, item (2).

¹⁶⁷¹ HSBC-PSI 036689.

¹⁶⁷² HSBC-PSI 036604.

into a “CS denied status,” which meant that the KYC profile was not yet approved, although the account could still be used.¹⁶⁷³

On November 30, 2006, the HSBC regulatory risk officer sent an email to the BAI relationship manager that “the 30 day temporary waiver issued by Compliance has expired. Unless you can urgently confirm the status, this matter will be escalated to Compliance.”¹⁶⁷⁴ Twelve days later, on December 12, 2006, the relationship manager responded with additional, but still incomplete ownership information. Her email provided clear information about the beneficial owners of two of the private corporations, Dabas Management and ABL:

“[T]hese two shareholders were ... created as special purpose vehicles. BAI has asked that we maintain confidentiality for the beneficial owners, and that this information be contained within our Compliance/KYC unit. BAI has disclosed that the beneficial owner of Dabas Management Ltd. is Jose Paiva and the beneficial owner of ABL is Manuel Vicente, both of whom are also members of the Board. The SPVs were created to allow these individuals, who are well-known in the Angolan market, some privacy in relation to this investment.”¹⁶⁷⁵

As mentioned earlier, Mr. Paiva is chairman of the board of Sonangol, while Mr. Vicente is Sonangol’s chief executive officer. Each owns 5% of BAI through these special purpose corporations.

With respect to Arcinella Assets and Sforza Properties, however, the relationship manager was unable to provide the same clarity. She wrote:

“[T]he above shareholders were created as special purpose vehicles and there are various individuals with interests in these firms. I have confirmed that there is no single individual with shareholding of 5% or more. BAI advised that in the course of 2007 they will be disclosing the individuals holding shares in these SPVs.”¹⁶⁷⁶

On December 21, 2006, a senior HSBC regulatory risk officer sent an email to the money laundering control officer seeking his advice on how to proceed:

“The above subject’s KYC profile is currently in CS [Client Services] denied status The GRM [Global Relationship Manager] obtained the missing background information on the four shareholders. However, the SPV nature of these entities and the delay in the disclosure of the beneficial owners thereunder raises concern

¹⁶⁷³ 1/30/10 email from HSBC’s legal counsel to the Subcommittee, item (3)(d). “CS” refers to the HSBC Client Services division.

¹⁶⁷⁴ HSBC-PSI 036604. Although HSBC did not receive the requested information within 30 days, the AML officer told the Subcommittee that useful dialogue occurred between HSBC and BAI, but did not recall exactly what was said. Subcommittee interview of HSBC officials, September 22, 2008.

¹⁶⁷⁵ HSBC-PSI 036603.

¹⁶⁷⁶ Id.

This is a sizable HSBC Group client (GRM noted ... that August YTD [yield to date] income was USD820k [\$820,000] globally, and it's projected that we will hit USD1mm [\$1 million] by year end.

Your guidance on how we should proceed will be greatly appreciated.”¹⁶⁷⁷

Three weeks later, in January 2007, BAI provided additional information about Arcinella Assets and Sforza Properties. But instead of providing the names of the “various individuals with interests in these firms” as BAI had promised in December, BAI indicated that the companies’ shares had been “temporarily” given to Mr. Paiva, to be held by him on a custodial basis “in his role as Chairman of BAI,” and to be awarded later apparently by the bank and Sonangol to “private individuals over time as they are able to generate wealth.” The individuals who would receive the shares were to be “of Angolan nationality,” with none to receive more than 1% of either special purpose company. This explanation of the two companies was completely different from the relationship manager’s initial description of Arcinella Assets as an investment services firm and Sforza Properties as involved with the real estate industry.

BAI conveyed the new description of the two companies in an email sent to the HSBC relationship manager who then forwarded it to HSBC regulatory risk office personnel on January 11, 2007. The BAI email stated in whole as follows:

“Re: KYC

HSBC Compliance Unit request for a listing of the shareholders or names of the beneficial owners of Arcinella Assets, S.A. and Sforza Properties (British Virgin Islands).

Both Arcinella and Sforza are special purpose companies, the beneficial ownership of which is Mr. Jose Paiva, in his role as Chairman of BAI. The shares are being held temporarily – in effect on a custodial basis – by the Bank until final shareholder registrations can be concluded. The shareholders are (and will be) individuals of Angolan nationality with the intention that no one individual will have a shareholding of more than 1%.

This is in line with the Bank’s strategy, and also the strategy of our main shareholder Sonangol, to encourage and to facilitate on an orderly basis share ownership by private individuals over time as they are able to generate wealth and then purchase shares. As you know there is not yet a public stock exchange operating in Angola. Nevertheless, BAI is endeavoring to achieve a broader distribution of our shares until such time this public vehicle does commence operation.”¹⁶⁷⁸

BAI did not explain why it did not simply keep its shares at the bank until the selected Angolans earned enough money to buy them, and instead assigned the shares to the two offshore shell

¹⁶⁷⁷ 12/21/06 internal HSBC email, HSBC-PSI 036689. HSBC told the Subcommittee that in the HSBC “computer system, ‘denied’ is a misnomer and indicates only that review has occurred but approval has not yet been issued, typically because of a pending information request.” See 5/6/08 letter from HSBC’s legal counsel to the Subcommittee, item (3)(n), PSI-HSBC-36-0001-12.

¹⁶⁷⁸ HSBC-PSI 036686.

corporations for further sale to Angolans as determined by BAI and Sonangol. HSBC did not raise any concerns about this offshore ownership arrangement.

Upon receiving the email, the HSBC senior regulatory risk officer sent it on the same day, January 11, 2006, to the money laundering control officer in Compliance: “[F]urther to our discussion late last month, please find beneficial shareholder information on the two SPV’s.”¹⁶⁷⁹ The money laundering control officer responded that he was out of town, but would review it.¹⁶⁸⁰ Later the same day, the regulatory risk officer’s supervisor wrote: “[The money laundering control officer] has reviewed the contents and requested that we document the contents in the KYC profile accordingly. ... As we had discussed, please note Jose Paiva’s current majority ownership position (18.5%) listing his ownership stake in the 3 SPVs in the general comments section. Also note his current positions as non-executive chairman and MD [managing director] of Sonangol Ltd, the London based wholly owned subsidiary.”¹⁶⁸¹

The final BAI Know-Your-Customer profile contained the following entry:

“Noteworthy is BAI’s current Chairman Jose Paiva is the majority shareholder with 18.5% beneficial ownership through Arcinella Assets SA (7%), Sforza Properties (6.5%) and Dabas Management Limited (5.0%). Jose Paiva was elected as the beneficial owner of Arcinella and Sforza, both Special Purpose Vehicle (SPV) companies purely as a result of his role as Chairman. The shares are being held temporarily, in effect on a custodial basis by the Bank until final shareholder registration can be concluded. The shareholders are (and will be) individuals of Angolan nationality with the intention that no one individual will have a shareholding more than 1%.”¹⁶⁸²

Over the next few months, HSBC continued to press BAI for information on the identity of the beneficial owners of Arcinella Assets and Sforza Properties, since Mr. Paiva was acting as only a temporary placeholder for other individuals. On April 20, 2007, the HSBC relationship manager for the BAI account sent an email to the senior regulatory risk officer with an update on the two companies.¹⁶⁸³ She wrote:

“BAI has advised that the SPVs do have individual shareholders, however, the bank confirmed that this information would be disclosed this year. ... I have recently followed up with BAI on this issue, and they should be able to provide me with the information in the next few weeks. ... This is the most update[d] information I have available on the issue, and I will follow up with the customer to obtain further details on the SPV[s] and the individuals with ownership in these SPVs.”¹⁶⁸⁴

Five days later, on April 25, 2007, the relationship manager brought the issue to BAI’s attention in a telephone call with Theodore Giletti, a senior BAI official. The relationship

¹⁶⁷⁹ HSBC-PSI 036683.

¹⁶⁸⁰ Id.

¹⁶⁸¹ Id.

¹⁶⁸² HSBC-PSI 036738.

¹⁶⁸³ HSBC-PSI 036585.

¹⁶⁸⁴ 4/20/06 internal HSBC email, HSBC-PSI 036585. The senior risk regulatory officer forwarded the email to the AML officer, commenting, “please find Darko’s partial response to your comments.” HSBC-PSI 036589.

manager later described their conversation in a “call report.”¹⁶⁸⁵ The relationship manager reported that Mr. Giletti, “was reminded that additional details on the SPV/shareholding were outstanding.” She said that he:

“advised shareholders of the SPVs had not yet been published, there were still some details to be finalized. TG confirmed that the SPVs in question did not have any link with the President of Angola. AD [the relationship manager, Abijah Darko] requested an update on the situation at TG’s earliest convenience, as this was an important issue for the Compliance team. TG was also reminded that BAI’s AML policy had not been provided to HSBC. He advised that he would provide information on their AML policy within the next few weeks.”¹⁶⁸⁶

On May 4, 2007, the senior regulatory risk officer asked the relationship manager if she had any additional information on the beneficial owners of Arcinella Assets and Sforza Properties.¹⁶⁸⁷ Three weeks later, on May 25, 2007, the relationship manager responded that, “from my discussion with BAI, it does not seem that there is any ‘hidden’ Sonangol shareholding and that Mr. Paiva was elected as the beneficial owner purely in his position as Chairman. As you’ll notice in the report, it was also mentioned that the President [of Angola] does not have any links to these SPVs.”¹⁶⁸⁸

On May 29, 2007, despite not having received any additional information about the beneficial owners of Arcinella Assets or Sforza Properties which together held 13.5% of BAI’s shares, the money laundering control officer sent an email to HSBC’s senior regulatory risk officer stating: “Many thanks – I’m satisfied with the answers on ownership.”¹⁶⁸⁹

When asked why he was satisfied, HSBC wrote to the Subcommittee that the money laundering control officer:

“learned that Mr. Paiva was temporarily holding Arcinella and Sforza in trust for the benefit of a wider group of Angolan shareholders. That information answered [the money laundering control officer’s] question concerning whether Sonangol’s ownership might be more concentrated. Also because the SPV owners were individuals with no more than one percent stakes in Arcinella and Sforza, which in turn owned 7 percent and 6.5 percent of BAI, the risk associated with individual owners was so small as to alleviate the need for further investigation.”

Given the context of a long, stable relationship with BAI and a sharing of information, [the money laundering control officer] concluded that it was not necessary to sever the discussion or the relationship. [The money laundering control officer] ultimately received the information he wanted.”¹⁶⁹⁰

¹⁶⁸⁵ HSBC-PSI 036577.

¹⁶⁸⁶ Id.

¹⁶⁸⁷ HSBC-PSI 036584.

¹⁶⁸⁸ Id.

¹⁶⁸⁹ HSBC-PSI 036672.

¹⁶⁹⁰ 10/10/08 email from HSBC’s legal counsel to the Subcommittee, PSI-HSBC-44-0005, item 2.

On June 8, 2007, the money laundering control officer approved the Know-Your-Customer profile for BAI.¹⁶⁹¹ More than a year later, HSBC's legal counsel told the Subcommittee "upon information and belief that both SPVs continue to be held in trust by Paiva."¹⁶⁹² HSBC also told the Subcommittee that it was aware of two additional private corporate entities listed in the Bankers Almanac as owning shares of BAI, Gebela Establishment which owned 3.15% of the shares of the bank; and Lobina Anstalt which owned 3%, but did not provide additional information about these entities to the Subcommittee.¹⁶⁹³ While each of these two entities hold less than 5% of BAI's shares, when considered in connection with Arcinella Assets and Sforza Properties, the entities with hidden owners together hold 19.5% of BAI's shares.

For more than one year, from March 2006 to June 2007, HSBC pressed BAI for ownership information that it routinely obtained from other foreign financial institutions and which the bank had determined was important due diligence information to understand its client's operations. BAI provided some of the requested information, but offered differing explanations for two shell companies holding 13.5% of its shares, finally claiming the shell companies were unable to identify their individual shareholders and assigning their shares "temporarily" to BAI's chairman of the board. HSBC failed to express any concern about BAI's decision to place 13.5% of its shares into two offshore shell companies under the personal control of the bank's chairman of the board, who is also a senior official at Sonangol, rather than retain those shares at the bank itself. To date, the hidden owners of Arcinella Assets, Sforza Properties, Gebela Establishment, and Lobina Anstalt together control more than 19.5% of BAI's shares. HSBC nevertheless continued to provide full banking services to BAI.

(4) BAI's Missing AML Policies and Procedures

A second issue of concern was BAI's failure to comply with an HSBC request for a copy of its AML policies and procedures. As of 2010, HSBC still did not have a copy of these basic documents.

In 1998, when the BAI account was first opened, Republic National Bank asked BAI about its AML procedures, but did not request a copy of any written procedures. Its 1998 KYC profile of BAI stated:

"In terms of money laundering, Angola is considered as a 'no priority' country by the US State Department. Angola is an extremely difficult country to do business in, which combined with the country's strict exchange control regulations, makes money laundering a practical impossibility. Even so BAI's management is aware of international money laundering concerns and would be able to spot suspect transactions

¹⁶⁹¹ HSBC-PSI 036671. The money laundering control officer noted in BAI's approved KYC profile: "CO Reviewer and PSRR have extensive correspondence regarding the exact ownership structure of the bank and the investigation as to the degree of ownership exercised by Sonangol."

¹⁶⁹² 10/10/08 email from HSBC's legal counsel to the Subcommittee, PSI-HSBC-44-0001-06, item (7)(a).

¹⁶⁹³ See shareholder list in the online Bankersalmanac.com entry for BAI, under "Ownership."

were they to come through. They require full identification of all their customers and are obliged to report suspicious transactions to the BNA (Central Bank).”¹⁶⁹⁴

The same was true in 2001, after HSBC had purchased Republic National Bank. The HSBC 2001 KYC profile of BAI stated:

“[I]n our best judgment the bank adheres to the policies and practices established by the Central Bank which requires that banks 1) request identification and know the background of each and all of their clients, 2) ensure that funds going through their bank do not originate from illegal sources; verify source of funds 3) Monitor transactions for that purpose.”¹⁶⁹⁵

In 2003, an internal HSBC document explicitly noted that BAI did not have any written AML policies. It stated that BAI did “not have documented KYC policies.”¹⁶⁹⁶ Nonetheless, HSBC approved BAI’s KYC profile in 2003.¹⁶⁹⁷

In 2005, HSBC asked BAI to complete a questionnaire on its AML policies and procedures.¹⁶⁹⁸ BAI returned a signed questionnaire in mid-June 2005, with handwritten responses.¹⁶⁹⁹ When the form asked if the bank had “KYC and Anti-Money Laundering (AML) policies and procedures documented,” BAI checked the box indicating “yes.”¹⁷⁰⁰ BAI also indicated that it required customer identification and verification at account opening, screened the source of funds for accounts, and had a system in place to monitor and report suspicious activity.

In early 2007, two years after BAI said it had written AML policies and procedures, during the annual updating of BAI’s KYC profile, a senior regulatory risk officer sent an email to the BAI relationship manager noting that “one of the deficiencies” in the KYC profile was that HSBC had “no copies” of BAI’s AML policies and procedures. The email continued: “As BAI confirmed that they have their AML policies and procedures documented, please urgently provide a copy for our files.”¹⁷⁰¹ The relationship manager responded: “I have contacted BAI this morning regarding the AML policy, and I will revert as soon as this has been provided to me.”¹⁷⁰²

A week later, on February 13, 2007, the regulatory risk officer informed the BAI relationship manager that “[u]nfortunately,” the BAI account had been selected for a routine,

¹⁶⁹⁴ 1998 KYC profile of BAI, HSBC-PSI 036773.

¹⁶⁹⁵ HSBC-PSI 036779.

¹⁶⁹⁶ 1998 KYC profile of BAI, HSBC-PSI 036750 (information provided by “CS” [HSBC Client Services Group] on 6/17/03).

¹⁶⁹⁷ HSBC-PSI036736-036752.

¹⁶⁹⁸ HSBC AML questionnaire, HSBC-PSI 036663-65 (handwritten responses, signed by BAI officials in June 2005).

¹⁶⁹⁹ *Id.*

¹⁷⁰⁰ *Id.*, at 036663.

¹⁷⁰¹ 2/6/07 HSBC email from regulatory risk officer to BAI relationship manager, HSBC-PSI 036657.

¹⁷⁰² 2/7/07 HSBC email from BAI relationship manager to regulatory risk officer, HSBC-PSI 036656-57.

internal HSBC audit.¹⁷⁰³ He wrote: “As discussed, please pull whatever strings and obtain a copy of the AML policy and your English translation where relevant.”¹⁷⁰⁴ He indicated that the information had to be provided to the auditors the next day. She responded: “Unfortunately, I have not yet received a copy of the AML policy for BAI, but I am sending an updated AML practices questionnaire, based on discussions with BAI. This will hopefully suffice until a copy of their AML policy is provided.”¹⁷⁰⁵ A second version of the AML questionnaire, with more detailed, typed answers, but no signature from a BAI official, was apparently prepared by the relationship manager overnight and presumably given to the HSBC internal auditors.¹⁷⁰⁶

Two months later, on April 25, 2007, the relationship manager reminded Theodore Giletti, a senior BAI official, that a copy of the bank’s AML policies and procedures still had not been provided to HSBC. She wrote: “He advised that he would provide information on their AML policy within the next few weeks.”¹⁷⁰⁷

On January 31, 2010, HSBC told the Subcommittee that it still did not have a copy of BAI’s AML policies or procedures.¹⁷⁰⁸ HSBC’s legal counsel told the Subcommittee that HSBC’s policy permitted longtime financial institutions “who are in good standing to either provide their AML policies and procedures or to provide a summary of such documents via the AML questionnaire,” as BAI did.¹⁷⁰⁹ HSBC’s legal counsel stated that HSBC had:

“found that having foreign financial institutions complete the AML questionnaires is often more useful than receiving AML policies in foreign languages or that may be part of the bank’s overall compliance policy manual. By having the foreign financial institutions respond to specific questions in the AML questionnaire, HBUS can drill down on the areas of most interest to it and most pertinent to protecting HBUS from being used by money launderers.”¹⁷¹⁰

The documents reviewed by the Subcommittee do not indicate, however, that HSBC used the questionnaire provided by BAI to “drill down” into any AML issues; to the contrary, it remains unclear to this day whether BAI, in fact, has written AML policies and procedures and, if so, what they provide. Moreover, HSBC’s response suggesting that it was content with the BAI questionnaire that had been largely prepared by its own staff does not explain why HSBC personnel repeatedly requested a copy of BAI’s written AML policies and procedures in 2007, why BAI failed to comply, and why HSBC allowed BAI to ignore such a basic due diligence request.

¹⁷⁰³ 2/13/07 HSBC email from regulatory risk officer to BAI relationship manager, HSBC-PSI 036656. The regulatory risk officer referred to a “Banknotes Audit” which HSBC told the Subcommittee is a “routine audit of Banknotes’ AML Function.” 5/6/08 email from HSBC’s legal counsel to the Subcommittee, item 3(bb), PSI-HSBC-36-0001-12. The BAI correspondent account was within the Banknotes group at HSBC.

¹⁷⁰⁴ 2/13/07 HSBC email from regulatory risk officer to BAI relationship manager, HSBC-PSI 036656.

¹⁷⁰⁵ 2/14/07 HSBC email from BAI relationship manager to regulatory risk officer, HSBC-PSI 036656-57.

¹⁷⁰⁶ HSBC AML questionnaire, HSBC-PSI 036660-62 (unsigned and undated).

¹⁷⁰⁷ 4/25/07 Call Report prepared by BAI relationship manager, HSBC-PSI 036577-78, at 036577.

¹⁷⁰⁸ 1/31/10 email from HSBC’s legal counsel to the Subcommittee, 5/6/08 email from HSBC’s legal counsel to the Subcommittee, item (3)(b), PSI-HSBC-36-0001-12.

¹⁷⁰⁹ 10/10/08 email from HSBC’s legal counsel to the Subcommittee, PSI-HSBC 44-0001, item (3)(a).

¹⁷¹⁰ *Id.* HSBC also pointed out that existing U.S. AML laws do not explicitly require it to obtain a copy of a foreign financial institution’s AML policies and procedures. *Id.*, at item (3)(d).

U.S. financial institutions that provide bank accounts to foreign financial institutions are not required under U.S. law to perform due diligence reviews of the foreign financial institution's individual clients, so long as the U.S. financial institution takes reasonable steps to ensure that the foreign financial institution has reasonable AML policies and procedures in place. Here, HSBC was unable to review BAI's AML policies and procedures, because BAI failed to provide a copy, even after a request was directed to one of BAI's most senior officials. Angola has been designated by HSBC as a high risk country, it suffers from an ongoing corruption problem and weak AML controls, BAI's ownership includes Sonangol and other Angolan PEPs, and it caters to a PEP clientele, yet HSBC has allowed BAI to continue to send hundreds of millions of dollars each month through HSBC into the U.S. financial system without providing written assurance of its AML policies and procedures.

(5) BAI Credit Cards

A third issue involved BAI's credit card program which enabled BAI clients to use U.S. dollar credit cards to transact business here and abroad. These credit cards were held by high-end BAI clients, including Angolan PEPs. HSBC treated these credit cards as low risk, since they did not permit cash withdrawals and had a \$10,000 limit per card. From 2001 to 2007, HSBC conducted no AML monitoring of the credit card account activity, but simply relied on BAI to perform its own AML oversight. In 2007, HSBC instituted a process to screen potential cardholders against lists compiled by the Treasury Department's Office of Foreign Assets Control (OFAC) of persons who are prohibited from doing business in the United States, including terrorists and narcotics traffickers. This monitoring did not, however, include any AML monitoring of day-to-day account activity.

Establishing the Credit Card Accounts. In 2000, HSBC established a corporate credit card account for BAI which provided U.S. dollar credit cards to BAI clients, characterized as "top level executives in the field of diamonds and oil in Angola."¹⁷¹¹ Internally, HSBC provided the following reasons for providing these credit cards to BAI customers:

"Banks in Angola are not allowed to issue USD credit cards; therefore, our client Banco Africano de Investimentos (BAI) asked HSBC to issued [sic] corporate cards to the top 37 wealthies[t] clients. The cards carry the log[o] of BAI. The card holders are top level executives in the field of diamonds and oil in Angola. These companies are all customers of BAI. These customers travel abroad often as well as in Angola for business. In addition their children are studying in Europe and in the USA[.] BAI guar[a]ntees payments on the credit cards by holding its customers funds as collateral."¹⁷¹²

In August 2000, HSBC opened two new BAI accounts, a BAI Credit Cards Operating Account which handled the credit card charges and repayments, and a BAI Cash Collateral

¹⁷¹¹ HSBC PSI 036787.

¹⁷¹² Id. When asked about the statement that Angolan banks cannot issue U.S. dollar credit cards, HSBC responded that the statement appears to be incorrect and may be a reference to the "infrastructure and practical barriers to issuing credit cards, rather than a legal prohibition," since credit cards have been available in Angola since 2001. 10/10/08 email from HSBC's legal counsel to the Subcommittee, PSI-HSBC 44-0001, items (1)(a)(1) and (2).

Account which kept cash collateral to secure repayment of 100% of the credit card debt.¹⁷¹³
 HSBC told the Subcommittee that the arrangement was:

“similar to a standard corporate credit card that is provided to employees of a particular business for use in travel activity. The corporation is the accountholder, and is fully responsible for payment. The corporation is also responsible for evaluating credit risk and determining which individuals should receive cards.”¹⁷¹⁴

HSBC created credit cards which carried the BAI logo and the name of a client, as supplied by BAI.¹⁷¹⁵ In 2000, BAI began issuing the credit cards to its clients who began activating the cards in the spring of 2001.¹⁷¹⁶

On April 16, 2001, HSBC reported internally that “thus far, 36 credit cards have been issued (each with a maximum limit of \$10,000) and 2-3 cards have been activated.”¹⁷¹⁷ Over the years, BAI added more cardholders. In January 2004, for example, HSBC records indicate that BAI sponsored 53 credit cards.¹⁷¹⁸ In 2006, HSBC records show BAI sponsored 118 cardholders.¹⁷¹⁹ By 2008, the number was 238.¹⁷²⁰

In 2006, according to HSBC, “BAI and several other Angolan banks negotiated with the Visa network to become credit card issuers in their own right to meet increasing demand in the domestic Angolan market.”¹⁷²¹ To accommodate this development, BAI requested and HSBC agreed to open a third credit card-related account “to clear payments to Visa in connect with that program.”¹⁷²² That account was referred to as the Visa settlement account.

HSBC records indicate that the BAI credit cards were issued to multiple Angolan PEPs, including senior Angolan government officials. The Angolan government officials included, over time, the President of Angola Jose Eduardo dos Santos; Aguinaldo Jaime, Governor of the Angolan central bank; Joaquim David, Minister of Finance; Leonel da Silva, Minister of Finance; Joao de Matos, Minister of Defense; Kundi Paihama, Minister of Defense; Jose de Vasconcelos, Minister of Oil; Desiderio Da Costa, Minister of Oil; Manuel Antonio Africano, Minister of Geology and Mines; Andre Luis Brandao, Minister of Transport; Francisco Higino Carneiro, Minister of Public Works; Antonio Van Dunem, Minister in the Office of the Presidency; Fernando Miala, Chief of the Angolan Security Services; Sindika Dokolo, son-in-law of President dos Santos; and several Sonangol executives including Mr. Paiva and

¹⁷¹³ HSBC-PSI 036787.

¹⁷¹⁴ 10/10/08 email from HSBC’s legal counsel to the Subcommittee, PSI-HSBC 44-0001, item (1)(b).

¹⁷¹⁵ See 5/26/06 internal HSBC email, HSBC-PSI 037908.

¹⁷¹⁶ See HSBC-PSI 037864.

¹⁷¹⁷ 4/16/01 internal HSBC email, HSBC-PSI 036785.

¹⁷¹⁸ HSBC “Cash Collateral Accounts Balances As of 05 Jan 2004,” HSBC-PSI 036762.

¹⁷¹⁹ 6/20/06 internal HSBC email, HSBC-PSI 037903-04.

¹⁷²⁰ 1/30/10 email from HSBC’s legal counsel to the Subcommittee, item (3)(g).

¹⁷²¹ 10/10/08 email from HSBC’s legal counsel to the Subcommittee, PSI-HSBC 44-0001, item (1)(h).

¹⁷²² Id.

Mr. Vincente.¹⁷²³ HSBC told the Subcommittee that President dos Santos stopped using his credit card in 2003, and that by 2007, no longer had a BAI credit card account.¹⁷²⁴

Due Diligence Issues. In February 2001, soon after the credit card account was established, BAI asked HSBC to increase the dollar limit for the credit card debt from \$2 million to \$6 million. Before doing so, HSBC inquired into whether “we have proper KYC and controls in place for this type of business.”¹⁷²⁵ Identified issues included whether BAI was using KYC procedures, verifying the source of funds, asking about the expected use of the cards, and monitoring account activity.

On February 23, 2001, an HSBC memorandum was prepared summarizing the credit card due diligence issues.¹⁷²⁶ It noted that BAI officials had traveled to New York and discussed the credit card issues in detail for two days. The memorandum stated: “BAI emphasized that the cards are for a very select portion of their clientele (Ministers and Heads of companies ... including Sonangol, the Angolan Oil company). The major industries in Angola are oil and diamonds: also fishing and agriculture.” The memorandum noted that the credit cards would not allow cash withdrawals, each had a \$10,000 limit per card,¹⁷²⁷ the credit card bills would be paid in full each month so that no tax issues related to accrued interest charges would occur, and BAI would be required to obtain KYC information for each credit card client. HSBC determined that, based upon these discussions, it would increase the credit card debt limit to \$6 million.

In October 2001, the Patriot Act was enacted by Congress and, for the first time, required credit card issuers to institute AML programs.¹⁷²⁸ The law also required enhanced monitoring of private banking accounts opened for foreign officials and made handling the proceeds of foreign corruption a U.S. money laundering offense. The documents reviewed by the Subcommittee show no evidence, however, that in response to these new legal requirements, HSBC conducted any special review or instituted any new AML or PEP procedures related to the HSBC credit cards issued to BAI clients.

Five years after the BAI credit card program began, in 2006, the HSBC money laundering control officer charged with approving BAI’s annual KYC profile began to ask questions about the due diligence procedures applied to BAI cardholders and account activity. On May 11, 2006, he sent an email to his colleagues in Compliance stating:

“I have become aware that we have a credit card issuing program for [BAI]. ... The cardholders are ... high-end clients of BAI. They are executives of oil and diamond

¹⁷²³ For a list of BAI cardholders in 2001 including President dos Santos, see HSBC-PSI 036792-98. For an updated list of BAI cardholders as of 2006, see HSBC-PSI 037905-7. See also 5/18/07 internal HSBC email, HSBC-PSI 036693-95.

¹⁷²⁴ Subcommittee interview of HSBC officials, October 24, 2007.

¹⁷²⁵ February 22, 2001 internal HSBC email with handwritten notations, HSBC-PSI 036788.

¹⁷²⁶ See HSBC-PSI 036789.

¹⁷²⁷ According to HSBC records, this \$10,000 maximum was established in regulations issued by the Angolan central bank. *Id.* By 2006, the limit had been increased to \$20,000 for a number of accounts, see HSBC-PSI 037905-7.

¹⁷²⁸ Section 352 of the 2001 Patriot Act, codified at 31 U.S.C. §5318(h), required a variety of financial institutions to establish AML programs including, under 31 U.S.C. §5312(a)(2)(L), any “operator of a credit card system.”

companies; executives of banks; and some government officials. ... Can you find out more about this product ... most specifically how (if?) it is being monitored for AML. If it is not being monitored then we will need to figure out what can be done.”¹⁷²⁹

The same day, an AML officer responded: “There is no AML monitoring taking place but we can get a report on a regular basis that would show us all the cardholders and their activity.”¹⁷³⁰ She suggested obtaining those reports for a recent month, so that they could review them and “determine what we should monitor.” She also determined that the cards were already subject to routine monitoring to detect any fraudulent use.

Later that month, the AML officer determined that BAI had issued 118 credit cards which were being used by both individuals and Angolan government agencies.¹⁷³¹ In July 2006, she reported that, when she checked the list of cardholders against a list of 34 Angolan government officials, 6 of the government officials held BAI credit cards.¹⁷³² When she forwarded this information to the money laundering control officer who had requested it, he responded: “This is good information – I note that 48 of the accounts have been inactive for more than 6 months. ... [W]e will need to come up with some parameters for what we look at and how frequently.”

Apparently the issue was not resolved and nearly a year later, in early April 2007, in connection with reviewing the latest KYC profile for BAI and evaluating whether BAI should be treated as a Special Category of Client (SCC), the term HSBC used to identify PEPs and other clients raising issues of concern, the money laundering control officer renewed his questions about the BAI credit card program. In an email sent to his colleagues, he wrote:

“Lastly, I’ve not seen this profile before and the description of the users of the credit cards raises my interest. The profile indicates that the users are “executives of oil and diamond companies...and some government officials” – some of these individuals would be SCC’s if we banked them directly. I have asked for Worldchecks on all the card holders to find out more but by copy of this note I’m asking [an AML officer] to reach out to ... Fraud to determine precisely what monitoring is done on card usage.”¹⁷³³

On April 26, 2007, the money laundering control officer was told that, about 80 BAI cardholders had been cleared, but 22 others had matches in the Worldcheck PEP database, indicating they were Politically Exposed Persons.¹⁷³⁴ The money laundering control officer

¹⁷²⁹ 5/11/06 internal HSBC email, HSBC PSI 037913.

¹⁷³⁰ Id. Two weeks later, his colleague let the AML officer know she had met with the credit card program manager and was setting up “a meeting on Wednesday to discuss a monitoring approach.” 5/26/06 internal HSBC email, HSBC-PSI 037908.

¹⁷³¹ 5/26/06 internal HSBC email, HSBC-PSI 037908.

¹⁷³² 6/20/06 internal HSBC email, HSBC-PSI 037903-04.

¹⁷³³ 4/5/07 email from AML officer to HSBC colleagues, HSBC-PSI 036602. The day before, the AML officer had requested that a Worldcheck be run on a number of credit card account holders, noting “this is not an urgent request – next week will be fine.” 4/4/07 internal HSBC email, HSBC-PSI 036697.

¹⁷³⁴ 4/26/07 internal HSBC email, HSBC-PSI 036696-97.

requested more information on those 22 PEPs, and learned that they were Angolan Cabinet officials and, in one case, a relative of the President of Angola.¹⁷³⁵

A month later, on May 21, 2007, the money laundering control officer wrote that the KYC profile for BAI “is in my inbox awaiting approval,” but “[b]efore approving I wanted to understand better the credit card program that is in place for this bank and to get some comfort as to who is holding the HBUS credit cards. I therefore obtained a list of the card holders and ran them through Worldcheck to determine if any of the names were notable. Most of the names were unremarkable but a handful listed below are politically exposed people.”¹⁷³⁶ The next day, May 22, 2007, he requested and the HSBC Commercial Cards division initiated “more controls under the ‘Credit Card Program’ for BAI” by requiring all potential cardholders to be “scanned by the OFAC team in Buffalo against OFAC and other internal ‘Watch Lists’ prior to receiving an HSBC credit card.”¹⁷³⁷ HSBC told the Subcommittee that this team also began reviewing select account statements every six months for “questionable activity, with particular attention to PEPs.”¹⁷³⁸

On May 29, 2007, the money laundering control officer sent an email to his colleagues stating: “It is my belief that we do not understand the degree of risk that we have here – largely because we did not seem to know that the holders are PEPs.”¹⁷³⁹ A week later he approved the updated KYC profile for BAI in part on the condition that: “The credit card business being offered by PCM [the HSBC Payments and Cash Management Group] needs to have additional controls put in place as regards onboarding and regular OFAC scanning. Customer profile needs to address the risks of the credit card activity. Additional transaction monitoring for this activity has been implemented.”¹⁷⁴⁰

Despite the money laundering control officer’s awareness and concerns about Angolan PEP clients using HSBC credit cards, he did not require BAI to explain its AML efforts or provide a copy of its AML policies and procedures, which would have disclosed how those procedures applied, if at all, to BAI’s credit card clients.

(6) No SCC Designation Despite PEP Involvement

A final issue in the documents reviewed by the Subcommittee involved HSBC’s deliberations on whether it should designate BAI as a Special Category of Client (SCC), the term used by HSBC to identify PEPs and other clients raising special due diligence concerns. If BAI had been designated an SCC client, HSBC would have subjected its accounts to enhanced AML monitoring.¹⁷⁴¹ In 2006, HSBC’s Financial Intelligence Group considered designating BAI as an SCC client, but decided not to go forward. That decision was made despite BAI’s close

¹⁷³⁵ 4/27/07 internal HSBC email, HSBC-PSI 036693-96.

¹⁷³⁶ HSBC-PSI 036693

¹⁷³⁷ Entry in 2007 KYC profile for BAI, HSBC-PSI 036741.

¹⁷³⁸ 2/2/10 letter from HSBC’s legal counsel to the Subcommittee, at 9-10.

¹⁷³⁹ 5/29/07 internal HSBC email, HSBC-PSI 036672.

¹⁷⁴⁰ 6/8/07 internal HSBC email, HSBC-PSI 036671; entry in 2007 KYC profile for BAI, HSBC-PSI 036752. See also 10/10/08 email from HSBC’s legal counsel to the Subcommittee, PSI-HSBC-44-0003.

¹⁷⁴¹ 1/30/10 email from HSBC’s legal counsel to the Subcommittee, item (3)(i).

association with Sonangol, its PEP clientele, and its failure to provide its AML policies and procedures, and despite Angola's ongoing corruption problem and weak AML efforts. More than two years later, in November 2008, HSBC reversed course and designated BAI as an SCC client.

Since its inception, BAI has been closely aligned with Sonangol, which has been its major shareholder and whose executives have often held senior BAI positions. For example, one of the bank's initial senior administrators was Joaquim David, former head of Sonangol. As of 2007, BAI's chairman of the board was Mr. Paiva, who is Sonangol's chairman of the board, and who owned 5% of BAI's shares through an offshore shell corporation, Dabas Management Ltd., and controlled another 13.5% through two other offshore shell corporations, Arcinella Assets and Sforza Properties as explained earlier. Another BAI director was Mr. Vicente, who is Sonangol's CEO, and who owned 5% of BAI's shares through ABL Ltd., another offshore shell corporation.¹⁷⁴² BAI's current CEO, Jose de Lima Massano, is also a former Sonangol executive. Sonangol itself currently holds an 8.5% ownership stake in BAI.

Because Sonangol is a government-owned entity and a powerful force in Angolan politics and economy, its executives qualify as PEPs, which means BAI's own leadership includes PEPs as well as its owners and clients. In addition, BAI explicitly caters to the Angolan elite and has a clientele replete with other Angolan PEPs, including senior government officials and executives from the state-owned diamond company, Endiama, as well as their relatives and close associates.¹⁷⁴³

Still another factor is Angola's ongoing corruption problem, a problem so severe that it led Citibank to close all accounts associated with the Angolan government and Sonangol in 2003.¹⁷⁴⁴ Those risks were repeatedly noted by HSBC compliance personnel involved with preparing BAI's KYC profile. On March 16, 2006, for example, an HSBC regulatory risk officer asked HSBC's Financial Intelligence Group to conduct an enhanced due diligence review of BAI.¹⁷⁴⁵

Two months later, on May 10, 2006, a three-page internal HSBC report on BAI was provided, along with a copy of a two-page 2005 report on BAI.¹⁷⁴⁶ One focus of the 2006 report was poor AML controls in Angola. The 2006 report noted that Angola had been designated a "high-risk country" by HSBC, and that "laundering of funds derived from continuous and widespread high-level corruption is a concern, as is the use of diamonds as a vehicle for money laundering." The report also stated:

"Angola currently has no comprehensive laws, regulations, or other procedures to detect money laundering and financial crimes, although some related crimes are addressed through other provisions of the criminal code. ... The local banking system imports

¹⁷⁴² HSBC-PSI 036667. Mr. Vicente has also served as vice president of the Eduardo dos Santos Foundation, in honor of the Angolan president. *Id.*

¹⁷⁴³ A partial list of Angolan PEP clients with HSBC credit cards is provided above.

¹⁷⁴⁴ See discussion of BNA, above.

¹⁷⁴⁵ 3/16/06 email from Payment Services Regulatory Risk Unit to Financial Intelligence Group, HSBC-PSI 036669.

¹⁷⁴⁶ 5/10/06 internal HSBC email forwarding enhanced due diligence report on BAI, prepared by HSBC Financial Intelligence Group, HSBC-PSI 036666-70.

approximately \$200-300 million in net cash per month, largely in dollars, without a corresponding cash outflow. Reportedly, local bank representatives have noted that clients have walked into banks with up to \$2 million in a briefcase to make a deposit. These massive cash flows occur in a banking system ill equipped to detect and report suspicious activity.”¹⁷⁴⁷

The report noted that BAI’s major shareholder, Sonangol, was classified as a PEP on the PEP database used by HSBC, as was Mr. Vincente, a BAI director. The attached 2005 report stated that BAI “appears to be running under the close direction of ... Sonangol.”¹⁷⁴⁸ The 2006 report concluded that “since one of its major shareholders, Sonangol (owned by the Government of Angola) and one of its directors, Manuel Vicente, were listed on World-Check as Politically Exposed Persons,” BAI itself should be “considered for classification” as an SCC client.¹⁷⁴⁹ The report also noted that it had “found no evidence of money laundering, terrorist financing or other substantive criminal activity regarding BAI, its ownership or top executives.”

The 2006 report was forwarded to a more senior AML officer who determined that SCC status “was not warranted.” He reasoned as follows:

“As Sonangol’s stake is not very large (and 1 of 8 owners with 5% or more) and the fact that the director noted is not apparently involved in the day-to-day operations, I would not make this acct an SCC. If the GRM/RM [global relationship manager] notes anything different which may warrant a review of the SCC status, please let me know.”¹⁷⁵⁰

In April 2007, the money laundering control officer charged with approving BAI’s KYC profile examined the issue. On April 5, 2007, he sent a memorandum to HSBC’s senior regulatory risk officer and others in the New York office expressing his concerns:

“I’ve been reviewing the profile for BAI and am trying to understand how much influence Sonangol might exercise over the bank. ... On the face of it their ownership is 8.5% and the determination by [another less senior AML officer] that the bank not be an SCC due to the low level of ownership looks valid. A deeper review presents a rather different picture as Jose Paiva is also a director of Sonangol so the three entities (Sforza, Dabas and Arcinella) of which he is beneficial owner could represent additional Sonangol control; the beneficial owner of ABL is also president of Sonangol – put it all together and we have potential Sonangol control of 32% which, when combined with the likelihood of voting the treasury stock means that the bank appears to be a closer subsidiary of Sonangol than the profile indicates.

¹⁷⁴⁷ Id., at 036670.

¹⁷⁴⁸ Id., at 036668.

¹⁷⁴⁹ Id., at 036667.

¹⁷⁵⁰ 2007 KYC profile for BAI, HSBC-PSI 036738. See also undated, unattributed one-page HSBC document discussing SCC issue, HSBC-PSI 036688. The HSBC compliance officer reported that he could have overridden this decision if he had wanted to. Subcommittee interview of HSBC officials, September 22, 2008.

I found nothing at all on Gilletti. Palhares previous role is well documented – I was unable to determine if he has any links to Sonangol but think it probable as he was the bank’s former president and must have dealt with the major shareholders.

33.75% of the shares are widely held but it would take very little to bring effective Sonangol control to over 51%. Indeed the Wikipedia entry on Sonangol describes BAI as a subsidiary of Sonangol while Sonangol’s website indicates that they own 17.5% of BAI.

So what.

Ordinarily partial ownership by a state owned oil company would be a point of interest and little more but the fact that this information is so deeply buried and you had to really fight to obtain details of ownership of Sforza, Dabas and Arcinella suggests a desire to veil the bank’s ownership for reasons that I do not understand (unless it is also to ‘protect’ Paiva from undesirable attention – but since he is chairman he is likely to attract attention anyway.) Please ask the GRM (Abi) to comment and give us a deeper understanding of this but I’d appreciate it if you have any insights.¹⁷⁵¹

Ultimately, the money laundering control officer opted not to categorize BAI as an SCC client.¹⁷⁵² When asked why, HSBC’s legal counsel told the Subcommittee that “Sonangol’s level of ownership did not raise any concerns per se,”¹⁷⁵³ and that Mr. Paiva’s control of two of the corporations holding 10% of BAI’s shares was only temporary and “for the benefit of a wider group of Angolan shareholders.”¹⁷⁵⁴ HSBC did not include in its analysis any consideration of the facts that Mr. Paiva’s “temporary” control of the offshore corporations was already two years old, BAI had failed to provide its AML policies and procedures when asked, BAI was operating in a country known for weak AML controls, and it catered to a PEP clientele from the oil and diamond industries, both known for widespread corruption.

The Subcommittee reviewed a number of BAI’s monthly bank statements to get a sense of the volume of wire transfers being sent by BAI clients each month through the bank’s correspondent account at HSBC in New York and the extent to which these wire transfers involved PEP clients. The monthly statements itemized each wire transfer that went through the account, providing the date and funds involved, but did not identify the originator or recipient of the wire transfers, making them of limited use in evaluating the AML risks involved.¹⁷⁵⁵ For example, the information in the monthly statements did not show whether individual Angolan government officials were sending wire transfers into the United States in amounts disproportionate to the officials’ government salaries.

Given BAI’s history as a private bank that was established in large part to assist Sonangol, a government-owned oil company, the heavy involvement of PEPs in its management

¹⁷⁵¹ 4/5/07 email from AML officer to HSBC colleagues, HSBC-PSI 036602 (emphasis in original).

¹⁷⁵² HSBC-PSI 036602.

¹⁷⁵³ 10/10/08 email from HSBC’s legal counsel to the Subcommittee, item (4), PSI-HSBC 44-0007.

¹⁷⁵⁴ Id.

¹⁷⁵⁵ See, e.g., December 2006 BAI account statement, HSBC-PSI 036306-35.

and clientele, and Angola's ongoing corruption problems in government and the oil and diamond industries, it is difficult to understand HSBC's decision in 2006, not to designate the bank as a Special Category of Client meriting enhanced oversight. The unresolved nature of the bank's ownership due to the four offshore shell entities, Arcinella Assets, Sforza Properties, Gebala Establishment, and Lobina Anstalt that together held over 19.5% of the bank's shares, as well as the bank's secretive approach to its ownership, provide more reason for enhanced monitoring. In addition, BAI's failure, despite repeated requests, to provide its AML policies and procedures makes it virtually impossible for HSBC to reasonably rely on BAI to conduct its own AML due diligence and monitoring. Still another concern is that, when HSBC provides BAI with ready access to the U.S. financial system despite the bank's poor AML controls, HSBC is providing that same ready access to a host of PEP clients. BAI is exactly the type of foreign financial institution that the Patriot Act intended to subject to enhanced monitoring, not only to prevent terrorists and criminals from misusing the U.S. financial system, but also corrupt foreign officials.

In 2008, HSBC reversed course and designated BAI as an SCC client. It has not provided the Subcommittee with contemporaneous documents explaining its decision or what new controls were put into place as a result.

E. Conclusion

Angola continues to have weak AML controls, a cash-intensive banking system, and an ongoing corruption problem. This case history shows how an Angolan PEP like Pierre Falcone, an Angolan government official like Aguinaldo Jaime, and an Angolan financial institution like Banco Africano de Investimentos, have used U.S. banks to gain access to the U.S. financial system, often bypassing AML and PEP safeguards. Each of these examples demonstrates the need for U.S. financial institutions to strengthen their AML and PEP oversight.