

*Prepared Statement of Michael G. Conn Delivered to the United States Senate  
Permanent Subcommittee on Investigations of the Committee on Homeland  
Security and Governmental Affairs on August 1, 2006*

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Chairman Coleman, Ranking Member Levin, and Members of the Subcommittee, I appreciate the invitation to appear before the Permanent Subcommittee on Investigations to discuss certain domestic brokerage accounts maintained by offshore Private Investment Companies (“PICs”) that are the subject of questions in this Subcommittee’s letter addressed to Bank of America. In this testimony, I intend to discuss these accounts and the changes we have made in response to issues identified by our review of our conduct with respect to these accounts. As you know, we have worked closely with this Subcommittee over the past year to further your investigation and to share our ongoing actions in response to this issue.

Let me first introduce myself. My name is Michael G. Conn and I am a Regional President of the Private Bank of Bank of America. My responsibilities include oversight of the northwest region of the Private Bank, which involves managing Private Bank associates in five states. I previously sat on the Board of Directors of Banc of America Investment Services, Inc. (“BAI”). I have spent over 26 years in the brokerage business, first at Morgan Stanley Dean Witter and then with Bank of America and have been in private banking for four years.

I would like to begin by underscoring that Bank of America takes very seriously its regulatory obligations to know its customers, report suspicious

activity and assist law enforcement and its regulators in the fight against money laundering, drug trafficking, terrorist financing, fraud and other illegal activity. Indeed, Bank of America has long been recognized as a leader in the industry in cooperating with law enforcement, having earned many commendations from various law enforcement agencies. Bank of America is the largest single filer of Currency Transaction Reports, which are reports designed to assist law enforcement in uncovering financial crimes. We have approximately 500 full-time associates dedicated to anti-money laundering (“AML”) efforts across Bank of America and have devoted close to \$60 million to AML technology over the last several years. We have recently hired the former Director of FinCEN as our Senior Compliance Executive for Financial Crimes and the former Director of the American Bankers Association Center for Regulatory Compliance as our AML Strategy Executive. We require AML training for all Bank of America associates. We are committed to continually improving our systems and processes as technology advances, as the environment in which we operate evolves, and as financial crimes become more sophisticated. We believe that Bank of America’s commitment to cooperating with regulatory and law enforcement authorities is further demonstrated by our full cooperation with the Subcommittee staff and the Bank’s implementation of remedial measures.

The Bank fully recognizes that its delay in demanding beneficial ownership information from the customers of the brokerage accounts that are the subject of our testimony was inconsistent with the Bank’s commitment to

knowing its customers. As we will explain in further detail, there are a number of factors that explain, but do not excuse, the delay in demanding such information from the customers. Upon review of the underlying facts of this matter, senior management instructed Bank personnel to demand that the customers provide the beneficial ownership information, ordered that the accounts be closed when the customers refused to provide the information and directed that significant remedial action be taken. In addition, as we detail later in the statement, we have made significant changes and enhancements to our policies and procedures as a result of our review.

### **History and Nature of Wyly Relationship**

The Subcommittee has asked us to testify regarding the Bank's relationship with Sam and Charles Wyly. Charles and Sam Wyly, both well-known businessmen and philanthropists in the Dallas community, began a relationship with Bank of America's Private Bank in 1994. Over time, the Wyly brothers and their families maintained several types of domestic accounts at Bank of America, including checking and savings accounts for individual family members and family trusts and certain partnerships established by Wyly family members; brokerage accounts for individual family members and trusts; lines of credit; credit and debit cards; and mortgages.

### **Offshore Entities**

The brokerage accounts in question that were held by Bank of America were domestic accounts that were transferred from another financial institution to Banc of America Securities LLC (“BAS”) in February 2002 when BAS hired the broker who had previously served as the broker for these accounts. We understand that although the broker did not know the specific beneficial owner of each of the PICs that maintained accounts, he believed, based on his longstanding relationship with the Wyllys and their representatives and conversations he had had with them over the years, that the PICs were owned by trusts that were established and endowed by Charles and Sam Wyly for the benefit of Wyly family members or charitable organizations.

In connection with the transfer of the PIC accounts to BAS in 2002, BAS personnel performed due diligence and obtained certain Know Your Customer (“KYC”) information from the PICs. BAS Compliance collected account opening documentation such as original articles of incorporation, corporate resolutions, W-8 forms, and authorized signatory lists. BAS Compliance also performed background checks on the signatories of the accounts. In early 2002, when these accounts were transferred to BAS, the Bank’s policies were less stringent than they are today and did not always require that beneficial ownership information be obtained in order to open an account for a PIC. In this case, the Bank did not obtain such information at account opening as we would today.

In August 2003, the PIC accounts were moved from BAS (which focuses on institutional customers) to BAI (the retail brokerage arm of Bank of America) as part of a wholesale move of all retail accounts from BAS to BAI. In early 2004, in the course of reviewing certain activity in the PIC accounts, National Financial Services (“NFS”), BAI’s clearing firm, asked BAI compliance personnel for certain information, including beneficial owner information, concerning a handful of the PIC accounts. BAI and NFS work cooperatively to analyze activity in BAI accounts and to identify and investigate potential compliance issues. These inquiries led to an ongoing dialogue among numerous BAI associates, BAI in-house lawyers and compliance personnel and NFS. The BAI broker for the accounts, along with the customers’ representative, explained that these offshore customers were PICs, owned by trusts created by Charles and Sam Wyly, and the beneficiaries of those trusts were Wyly family members, as well as charitable institutions.

The brokerage accounts contained principally cash, fixed income investments or Michaels Stores’ stock. There was minimal trading in the accounts. We understand that NFS periodically expressed concern about money movements among the brokerage accounts and the possibility that the stock in the accounts was insider stock given the large concentration in the stock of Michaels Stores, Inc., of which Charles Wyly was the Chairman of the Board and Sam Wyly was the Vice-Chairman. From BAI’s perspective at the time, however, the focus of NFS’s inquiries was on beneficial ownership information. As a result,

BAI personnel concentrated on the beneficial ownership question raised by NFS and few within BAI were aware that there was any concern raised about account activity or stock affiliation or control.

The dialogue regarding these accounts continued between NFS and BAI for many months, as various alternative proposals for obtaining the beneficial ownership information were considered. The customers, through their representatives, maintained that the beneficial ownership information was not required as a matter of law, even if it was required by BAI's policies, and that other financial institutions did not insist upon obtaining such information. The customers explained that their reluctance to provide the information was motivated by confidentiality and asset protection considerations.

A protracted discussion and internal analysis as to whether BAI would grant an exception to its policies ensued. BAI ultimately decided to require the customers to provide specific beneficial ownership information for the PIC accounts. BAI and NFS agreed upon a detailed list of specific questions to give to the customers requiring beneficial ownership information and other information about the accounts. Shortly thereafter, the Bank received governmental inquiries relating to these accounts. At that time, senior management for the Bank became involved and demanded that the customers immediately provide beneficial ownership information. When the PICs did not provide the information, BAI promptly closed the accounts for these PICs and the Bank terminated its broader private banking relationship with the Wyllys.

We recognize that, with the benefit of hindsight, it is difficult to understand why the resolution of these issues took months. In order to put the delay into context, there are several important factors to consider. First, because of the Private Bank's longstanding relationship with the Wyllys and their established reputation in the Dallas community and nationally as successful business persons and philanthropists, BAI associates had a good faith belief that the accounts were not being used for money laundering or other illegal activity. As a result, unlike in cases in which the Bank suspects that the customer may be engaged in illegal activity, here, BAI personnel did not see a critical need to bring the issues to immediate resolution. Second, as is discussed above, there were extensive discussions with the customers and their representatives as to whether the Bank was legally required to obtain the information. The BAI broker for the accounts maintained that other financial institutions did not require such information. The Bank, in response, maintained that whether the beneficial ownership information was technically required as a matter of law was irrelevant, because the Bank's policies and best practices required it. Bank of America recognizes that it spent far too long discussing the issue with the customers and addressing their concerns, and that it did not act as swiftly or as decisively as it should have in forcing disclosure or closing the accounts, as we ultimately did.

Following a review of this matter, the Bank took immediate steps to ensure that appropriate remedial measures were implemented. In addition to closing the accounts, the Bank took disciplinary and other personnel action with

respect to employees who were involved in discussions relating to these accounts and failed to demand that the customers immediately provide the beneficial ownership information. Moreover, the Bank has improved its compliance structure and processes in several ways, including increasing the number of BAI surveillance officers responsible for monitoring activity and conducting inquiries. The Bank has made a concerted effort to improve lines of communication between NFS and BAI to ensure a more timely response to compliance issues raised by NFS and to facilitate oversight and follow-up of such issues within BAI. The Bank has improved training for associates to assist them in identifying PIC accounts and obtaining the necessary Know Your Customer information. In addition, the Bank has enhanced account opening, due diligence and closure procedures. With regard to account closures, Bank of America has a project underway to ensure oversight, accountability and follow-up concerning the account closure process. Finally, the Bank accelerated its internal review and audit of accounts to ensure that they were compliant with the Bank's Know Your Customer policies.

In conclusion, I wish to thank the Chairman, Senator Levin and the other Members of the Subcommittee for this opportunity to allow us to explain our role in this issue. Bank of America recognizes the seriousness of the Bank Secrecy Act and the Patriot Act and is committing the full resources necessary to meet these requirements. As a result of what Bank of America has learned through its investigation of these accounts, the Bank has enhanced its policies and practices

in this important area. The Bank looks forward to continuing its partnership with regulators and law enforcement in the global fight against money laundering and other illegal activity.