

**Prepared Statement of William J. Fox Delivered to the United States Senate
Permanent Subcommittee on Investigations of the Committee on Homeland
Security and Governmental Affairs on February 4, 2010**

Chairman Levin, Ranking Member Coburn and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am here today representing Bank of America to provide information relating to this Subcommittee's investigation into the financial transactions of certain politically exposed persons. We have worked closely with the staff of the Subcommittee over the past several years to assist this investigation.

I am the Global Anti-Money Laundering and Economic Sanctions Executive at Bank of America, a position that I have held since August 2006. Before joining Bank of America in 2006, I served for over two years as Director of the Financial Crimes Enforcement Network, the United States Financial Intelligence Unit and the Treasury agency responsible for administering the Bank Secrecy Act, as well as certain provisions of Title III of the USA PATRIOT Act. Before that, I served for sixteen years in various positions in the Treasury Department's Legal Division. After September 11, 2001, until I accepted the position at Financial Crimes Enforcement Network, I served as the principal advisor to the Treasury's General Counsel on issues relating to terrorist financing and financial crime. In that position, I helped coordinate U.S. Government efforts to address terrorist financing and I assisted with the development of financial intelligence to assist in our country's counterterrorism efforts. I was also part of the Treasury team that worked closely with the Congress to develop, enact and implement Title III of the USA PATRIOT Act.

Bank of America is one of the world's largest full service financial service providers. We provide individual consumers, small and middle market businesses, corporations, financial institutions and governments with a full range of banking, investing, advisory, asset management and other financial and risk-management products and services.

My company understands the importance of complying with the legal and regulatory requirements in the jurisdictions in which we do business. We also recognize the debilitating effect money laundering, terrorism, fraud and other financial crimes have on the global financial system and the communities and markets we serve.

It is the clear policy of Bank of America to comply with both the letter and the spirit of laws relating to anti-money laundering, the financing of terrorism and

economic sanctions in the jurisdictions in which it does business. It is also our policy to take reasonable, practical and risk-based steps to prevent persons engaged in money laundering, the financing of terrorists or terrorist operations, fraud and other financial crimes, from utilizing the products and services we offer. Any associate or contractor of Bank of America who violates either this policy, our compliance program that implements this policy, or any anti-money laundering or economic sanctions law or regulation is subject to disciplinary action up to and including termination.

At Bank of America, we believe that a clean and transparent financial system is in the direct interest of all responsible financial institutions. A clean and transparent financial system levels the playing field for all. We provide general anti-money laundering and sanctions training to the vast majority of Bank of America's over 300,000 associates and, each line of business and support group develops specialized training for its specific business. We have developed a robust program to address the problems and risks associated with money laundering, terrorist financing and other financial crime. At its most basic level, our program rests on three main principles: First, the collection of sufficient up-front due diligence information to ensure positive identification of prospective clients and to enable us to better know our clients as they walk in the door; second, ongoing due diligence of the client through an intelligence based program of the monitoring of and, in certain cases, the active surveillance of our client's activity; and, third, a dedicated program to analyze potentially suspicious activity and, when suspicious activity is found, to work proactively with law enforcement agencies to assist in any investigation they may undertake.

I state unequivocally that our program has significantly improved over the past few years. We have dramatically increased staff and spent tens of millions of dollars on sophisticated systems which help us to detect and report suspicious activity to appropriate authorities. Our proactive engagement with law enforcement has been very successful. We have received many letters and commendations from law enforcement agencies thanking us for our work and complimenting our efforts.

We are proud of our program, even though much of the good work we do is not reflected in any financial statement or regulatory filing. Our company's commitment to do what we can to address the important problems of money laundering, terrorist financing and other financial crime goes well beyond the necessity to comply with regulatory requirements, or the fear of a damaged reputation. Our company's commitment reflects one of our principal values at Bank of America: "Do the Right Thing." I have had the privilege and good fortune to have worked in both the public and private sector focusing on these issues and, I can testify here today that I have received nothing but outstanding support for our program from the top

leadership at Bank of America. This support is there on both strategic initiatives and specific matters.

Our commitment on these issues is further demonstrated by our long-standing record of full cooperation and complete transparency with this Subcommittee. Notably, our cooperation has gone beyond complying with requests for information and subpoenas. We have actively assisted your staff to better examine and analyze the financial services industry as well as our own procedures and products, both in the past, and as it has completed the important work that led to the report issued yesterday.

Regarding our role in the case studies before the Subcommittee today, we have provided your staff with the facts. While there is no question that the Bank of America associates involved in these matters were acting in good faith, when we look at these facts with hindsight, we believe we should have done better. However, I am confident that the decisions that were made several years ago would be different than the decisions we would make today. Our current program, processes, systems, oversight and methods are all much more robust today than they were in years past. We believe the enhancements we have made significantly mitigate many of the issues identified in the Subcommittee's report.

I would like to highlight several such enhancements specific to the issues before the Subcommittee today. Through our intelligence and screening processes, we have improved our ability to detect attempts by customers who have had their accounts closed to re-enter our Bank. We have adopted policies at our company that go beyond what is legally required in the United States that will require certain non-publicly traded entity customers to provide beneficial ownership information when opening accounts. We have also decided to make no distinction between foreign and domestic politically exposed persons. We believe it is prudent to take these steps to effectively manage our money laundering and sanctions risks. And while some may say it will place our firm at a competitive disadvantage, we do not believe that is the case. It is simply the right thing to do.

Finally, Mr. Chairman, I would respectfully submit to this Subcommittee that the practical way to move forward on the important issues you are discussing today is to encourage a more robust implementation of the public-private partnership envisioned by Title III of the USA PATRIOT Act. Specifically, section 314(a) of that Act contemplates a new paradigm and approach to address the problems of money laundering, terrorist financing and other financial crime. The timely, non-public sharing of sensitive information in the government's possession with financial institutions could do as much to prevent access by kleptocratic officials and their

associates to the U.S. financial system as almost any other action the government could take. This partnership and sharing is helping to keep us safer every day in the context of terrorism investigations, and I believe this same approach could be very useful in addressing this significant issue.

No program is perfect. However, I can unequivocally state that Bank of America remains committed to continually improving our systems and procedures as technology advances, as the environment in which we operate evolves, and as financial crimes become more sophisticated.

Thank you for allowing me this time, and I would be pleased to answer any questions.

The Subcommittee has asked Bank of America to provide information regarding accounts maintained by former customers MSA, Inc., Teodoro N. Obiang and Pierre and Sonia Falcone and their relatives.

MSA, Inc.

In 2002, an individual opened a savings account at a banking center in San Diego in the name of MSA, Inc. The customer informed the Bank that MSA, Inc. was a company involved in managing humanitarian projects for the government of Angola. A few weeks later, \$50 million was wired to the account by Banco Nacional de Angola and, shortly thereafter, the customer demanded that the Bank release the funds. Given a number of factors, including the dollar amount of the wire and the fact that it was sent to a recently opened account, a diligent bank officer reported the matter for investigation, and the Bank froze the funds.

An investigation ensued, in which, among other things, the investigator attempted to verify the source of the funds, but identified inconsistencies in the information provided. Although the customer and its counsel threatened the Bank with legal action, the Bank refused to release the proceeds of the \$50 million wire, which were ultimately returned through banking channels. The account was thereafter closed.

Teodoro Nguema Obiang and Michael Berger

In March 2004, Bank of America initiated an investigation into accounts maintained by a customer with ties to the government of Equatorial Guinea, which resulted in the closure of such accounts. Teodoro N. Obiang was not the subject of that investigation. However, during that investigation, the Bank detected that Mr. Obiang maintained a checking account and had recently deposited \$200,000 into that account and, at the same time, opened two certificates of deposit in amounts totaling \$800,000. As a result of that inquiry, the Bank closed Mr. Obiang's accounts in June 2004, *prior* to the release of this Subcommittee's July 14, 2004 Report on Riggs Bank and the Obiangs.

In 2004, Michael Berger was a long-standing customer of Bank of America, having opened an attorney trust account with the Bank in 1996. Based on information he provided to the Bank, Mr. Berger maintained a law office near the Bank's Beverly - Wilshire banking center. In October 2004, four months after Bank of America closed Mr. Obiang's accounts, Mr. Berger and Mr. Obiang opened two checking accounts at the Beverly - Wilshire banking center in the name of a company called Beautiful Vision,

Inc. Mr. Berger signed the account opening documents, identifying himself as an officer of Beautiful Vision, and providing his contact information. Mr. Berger was listed as the authorized signer on one of the Beautiful Vision accounts; Mr. Obiang was listed as the signer on the other account. At that time, the banking center personnel who opened the Beautiful Vision accounts did not detect that Mr. Obiang was the same person from whom the Bank disengaged earlier that year.

In August 2005, less than a year later, Mr. Berger attempted to open a new account for Beautiful Vision. In connection with the Bank's internal diligence processes, a Bank associate detected that Mr. Obiang was a signer on the Beautiful Vision account, an internal investigation followed, and all the Beautiful Vision accounts were promptly closed. Notably, this investigation was not limited to Beautiful Vision and Mr. Obiang. The investigator also identified several checks drawn on the Beautiful Vision account and made payable to an individual believed to be one of Mr. Obiang's employees, Ms. Rosalinda Romo. The Bank also closed two accounts maintained in her name.

Because Mr. Berger opened the Beautiful Vision accounts, the Bank's investigator also reviewed Mr. Berger's attorney trust account activity. At that time the investigator made a judgment call not to close Mr. Berger's account since it was believed that Mr. Berger's account activity reflected that he was acting as an attorney representing a client and did not require closure.

Thereafter, the Bank conducted additional investigations into Mr. Berger's account which, among other things, identified wire activity from companies in Equatorial Guinea that were mentioned in this Subcommittee's Riggs Bank Report and ultimately closed the account.

In 2005, the Bank's investigators, though well-intentioned, ultimately made a judgment call not to close Mr. Berger's account. In hindsight, we recognize that there was sufficient basis to close the account at that time.

Pierre and Sonia Falcone

Pierre Falcone opened his first account at Bank of America in 1989. During approximately the next fifteen years, Mr. Falcone and various members of his family opened several accounts at the Bank, including checking, savings and credit card accounts, and several safe deposit boxes. In addition to these personal accounts, Sonia Falcone was an officer and authorized signer on a corporate account in the name of Monthigne, Inc.

In 2005, a Bank investigator reviewed certain of Ms. Falcone's accounts, prompted by an internal suspicious transaction report of four cash withdrawals from a single account on the same day. The investigator reviewed account transactions for a nineteen month period, and found very little cash activity. The investigator also identified, but did not review in detail, the activity in certain related Falcone accounts, including Monthigne, Inc.

As part of the investigation, the investigator also conducted research into the Falcones, which revealed mixed information. The research indicated that Pierre and his wife Sonia were living in Arizona, in what was at the time the most expensive house ever sold in that state. As public figures at the top of the social elite, they attended numerous charitable benefit functions and donated to both major U.S. political parties.

Regarding Mr. Falcone, press reports that pre-dated his then current status described him as a billionaire international arms dealer. He was also a consultant to the French government for the French Interior Ministry's export of military equipment. It was also reported that Mr. Falcone developed a close relationship with the government of Angola and was allegedly granted Angolan citizenship. Also, the press reported that Mr. Falcone had been indicted in France on corruption charges and sentenced to jail for one year. The investigator also saw reports that additional charges were brought against Mr. Falcone that could not be substantiated or proven. Finally, the investigator noted that Mr. Falcone had been released from jail and, at the time of the Bank's investigation, was living in Arizona as a relatively prominent citizen.

Regarding the account that was the subject of the initial report, the investigator noted there was little cash activity. With respect to wire transfers for the nineteen month review period, the investigator noted incoming wires of approximately \$8.5 million. However, the investigator also noted that many of the wires originated from entities she believed were related to the Falcones, and which appeared to include the proceeds of real estate sales and the proceeds of loans obtained from other financial institutions.

Given the above information, including that the negative information preceded Mr. Falcone's current status, the investigator concluded that the account activity was not unusual for customers of such wealth and social status, and that the four relatively small cash withdrawals on one day appeared to be a one-time event. Accordingly, the investigator closed the investigation without escalating it further. Thereafter, in 2007, after receiving a subpoena from this Subcommittee, the Bank reviewed the Falcone accounts again, recognized that they should have been closed in 2005, and proceeded to close the accounts.

It must be understood that the investigator was, at all times, acting in good

faith. However, in hindsight, her focus clearly was too narrow and she missed important high-risk factors that should have triggered further scrutiny. Specifically, the investigator relied to a large extent on the most recent public information, which was very favorable, especially regarding the Falcones' social status, wealth and apparent political connections. Thus, the investigator believed the total account activity was consistent with normal activity for the customer, and that the small cash withdrawals that prompted the investigation were an isolated event. Nevertheless, the negative news reports about Mr. Falcone, and his alleged connections with foreign governments (whether actually true or false), should have been considered red flags, and should have prompted the investigator to escalate the case for further review and appropriate action.