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AND EXHIBIT LIST

S. Hrg. 107-84

**ROLE OF U.S. CORRESPONDENT BANKING IN
INTERNATIONAL MONEY LAUNDERING**

HEARINGS

BEFORE THE
PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SEVENTH CONGRESS

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**CORRESPONDENT BANKING:
A GATEWAY FOR MONEY LAUNDERING**

**A REPORT BY THE
MINORITY STAFF OF THE
PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS**

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**MINORITY STAFF OF THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
REPORT ON
CORRESPONDENT BANKING:
A GATEWAY FOR MONEY LAUNDERING**

February 5, 2001

U.S. banks, through the correspondent accounts they provide to foreign banks, have become conduits for dirty money flowing into the American financial system and have, as a result, facilitated illicit enterprises, including drug trafficking and financial frauds. Correspondent banking occurs when one bank provides services to another bank to move funds, exchange currencies, or carry out other financial transactions. Correspondent accounts in U.S. banks give the owners and clients of poorly regulated, poorly managed, sometimes corrupt, foreign banks with weak or no anti-money laundering controls direct access to the U.S. financial system and the freedom to move money within the United States and around the world.

This report summarizes a year-long investigation by the Minority Staff of the U.S. Senate Permanent Subcommittee on Investigations, under the leadership of Ranking Democrat Senator Carl Levin, into correspondent banking and its use as a tool for laundering money. It is the second of two reports compiled by the Minority Staff at Senator Levin's direction on the U.S. banking system's vulnerabilities to money laundering. The first report, released in November 1999, resulted in Subcommittee hearings on the money laundering vulnerabilities in the private banking activities of U.S. banks.¹

I. Executive Summary

Many banks in the United States have established correspondent relationships with high risk foreign banks. These foreign banks are: (a) shell banks with no physical presence in any country for conducting business with their clients; (b) offshore banks with licenses limited to transacting business with persons outside the licensing jurisdiction; or (c) banks licensed and regulated by jurisdictions with weak anti-money laundering controls that invite banking abuses and criminal misconduct. Some of these foreign banks are engaged in criminal behavior, some have clients who are engaged in criminal behavior, and some have such poor anti-money laundering controls that they do not know whether or not their clients are engaged in criminal behavior.

¹See "Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities," S. Hrg. 106-428 (November 9 and 10, 1999), Minority Staff report at 872.

These high risk foreign banks typically have limited resources and staff and use their correspondent bank accounts to conduct operations, provide client services, and move funds. Many deposit all of their funds in, and complete virtually all transactions through, their correspondent accounts, making correspondent banking integral to their operations. Once a correspondent account is open in a U.S. bank, not only the foreign bank but its clients can transact business through the U.S. bank. The result is that the U.S. correspondent banking system has provided a significant gateway into the U.S. financial system for criminals and money launderers.

The industry norm today is for U.S. banks² to have dozens, hundreds, or even thousands of correspondent relationships, including a number of relationships with high risk foreign banks. Virtually every U.S. bank examined by the Minority Staff investigation had accounts with offshore banks,³ and some had relationships with shell banks with no physical presence in any jurisdiction.

High risk foreign banks have been able to open correspondent accounts at U.S. banks and conduct their operations through their U.S. accounts, because, in many cases, U.S. banks fail to adequately screen and monitor foreign banks as clients.

The prevailing principle among U.S. banks has been that any bank holding a valid license issued by a foreign jurisdiction qualifies for a correspondent account, because U.S. banks should be able to rely on the foreign banking license as proof of the foreign bank's good standing. U.S. banks have too often failed to conduct careful due diligence reviews of their foreign bank clients, including obtaining information on the foreign bank's management, finances, reputation, regulatory environment, and anti-money laundering efforts. The frequency of U.S. correspondent relationships with high risk banks, as well as a host of troubling case histories uncovered by the Minority Staff investigation, belie banking industry assertions that existing policies and practices are sufficient to prevent money laundering in the correspondent banking field.

For example, several U.S. banks were unaware that they were servicing respondent banks⁴ which had no office in any location, were operating in a jurisdiction where the bank had no license to operate, had never undergone a bank examination by a regulator, or were using U.S. correspondent accounts to facilitate crimes such as drug trafficking, financial fraud or Internet gambling. In other cases, U.S. banks did not know that their respondent banks lacked basic fiscal controls and procedures and would, for example, open accounts without any account opening documentation, accept deposits directed to persons unknown to the bank, or operate without written anti-money laundering procedures. There are other cases in which U.S. banks lacked information about the extent to which re-

²The term "U.S. bank" refers in this report to any bank authorized to conduct banking activities in the United States, whether or not the bank or its parent corporation is domiciled in the United States.

³The term "offshore bank" is used in this report to refer to banks whose licenses bar them from transacting business with the citizens of their own licensing jurisdiction or bar them from transacting business using the local currency of the licensing jurisdiction. See also the *International Narcotics Control Strategy Report* issued by the U.S. Department of State (March 2000)(hereinafter "INCSR 2000"), "Offshore Financial Centers" at 565-77.

⁴The term "respondent bank" is used in this report to refer to the client of the bank offering correspondent services. The bank offering the services is referred to as the "correspondent bank." All of the respondent banks examined in this investigation are foreign banks.

spondent banks had been named in criminal or civil proceedings involving money laundering or other wrongdoing. In several instances, after being informed by Minority Staff investigators about a foreign bank's history or operations, U.S. banks terminated the foreign bank's correspondent relationship.

U.S. banks' ongoing anti-money laundering oversight of their correspondent accounts is often weak or ineffective. A few large banks have developed automated monitoring systems that detect and report suspicious account patterns and wire transfer activity, but they appear to be the exception rather than the rule. Most U.S. banks appear to rely on manual reviews of account activity and to conduct limited oversight of their correspondent accounts. One problem is the failure of some banks to conduct systematic anti-money laundering reviews of wire transfer activity, even though the majority of correspondent bank transactions consist of incoming and outgoing wire transfers. And, even when suspicious transactions or negative press reports about a respondent bank come to the attention of a U.S. correspondent bank, in too many cases the information does not result in a serious review of the relationship or concrete actions to prevent money laundering.

Two due diligence failures by U.S. banks are particularly noteworthy. The first is the failure of U.S. banks to ask the extent to which their foreign bank clients are allowing other foreign banks to use their U.S. accounts. On numerous occasions, high risk foreign banks gained access to the U.S. financial system, not by opening their own U.S. correspondent accounts, but by operating through U.S. correspondent accounts belonging to other foreign banks. U.S. banks rarely ask their client banks about their correspondent practices and, in almost all cases, remain unaware of their respondent bank's own correspondent accounts. In several instances, U.S. banks were surprised to learn from Minority Staff investigators that they were providing wire transfer services or handling Internet gambling deposits for foreign banks they had never heard of and with whom they had no direct relationship. In one instance, an offshore bank was allowing at least a half dozen offshore shell banks to use its U.S. accounts. In another, a U.S. bank had discovered by chance that a high risk foreign bank it would not have accepted as a client was using a correspondent account the U.S. bank had opened for another foreign bank.

The second failure is the distinction U.S. banks make in their due diligence practices between foreign banks that have few assets and no credit relationship, and foreign banks that seek or obtain credit from the U.S. bank. If a U.S. bank extends credit to a foreign bank, it usually will evaluate the foreign bank's management, finances, business activities, reputation, regulatory environment and operating procedures. The same evaluation usually does not occur where there are only fee-based services, such as wire transfers or check clearing. Since U.S. banks usually provide cash management services⁵ on a fee-for-service basis to high risk foreign banks and infrequently extend credit, U.S. banks have routinely opened and maintained correspondent accounts for these banks based on inad-

⁵ Cash management services are non-credit related banking services such as providing interest-bearing or demand deposit accounts in one or more currencies, international wire transfers of funds, check clearing, check writing, or foreign exchange services.

equate due diligence reviews. Yet these are the very banks that should be carefully scrutinized. Under current practice in the United States, high risk foreign banks in non-credit relationships seem to fly under the radar screen of most U.S. banks' anti-money laundering programs.

The failure of U.S. banks to take adequate steps to prevent money laundering through their correspondent bank accounts is not a new or isolated problem. It is longstanding, widespread and ongoing.

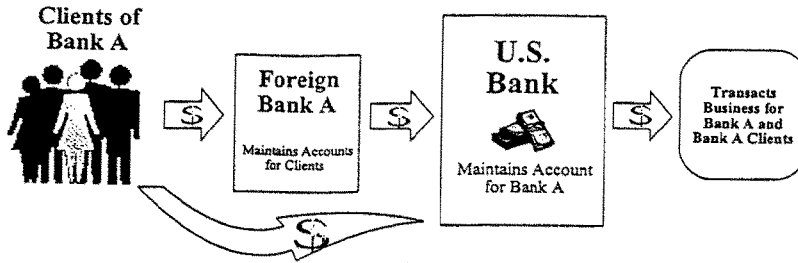
The result of these due diligence failures has made the U.S. correspondent banking system a conduit for criminal proceeds and money laundering for both high risk foreign banks and their criminal clients. Of the ten case histories investigated by the Minority Staff, numerous instances of money laundering through foreign banks' U.S. bank accounts have been documented, including:

- laundering illicit proceeds and facilitating crime by accepting deposits or processing wire transfers involving funds that the high risk foreign bank knew or should have known were associated with drug trafficking, financial fraud or other wrongdoing;
- conducting high yield investment scams by convincing investors to wire transfer funds to the correspondent account to earn high returns and then refusing to return any monies to the defrauded investors;
- conducting advance-fee-for-loan scams by requiring loan applicants to wire transfer large fees to the correspondent account, retaining the fees, and then failing to issue the loans;
- facilitating tax evasion by accepting client deposits, commingling them with other funds in the foreign bank's correspondent account, and encouraging clients to rely on bank and corporate secrecy laws in the foreign bank's home jurisdiction to shield the funds from U.S. tax authorities; and
- facilitating Internet gambling, illegal under U.S. law, by using the correspondent account to accept and transfer gambling proceeds.

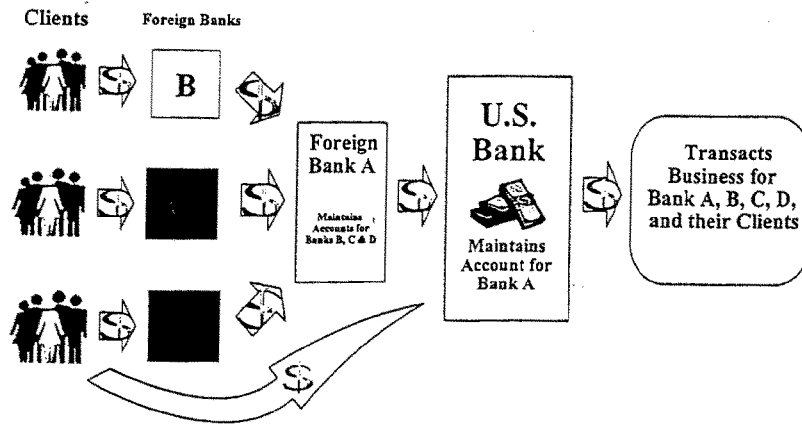
While some U.S. banks have moved to conduct a systematic review of their correspondent banking practices and terminate questionable correspondent relationships, this effort is usually relatively recent and is not industry-wide.

Allowing high risk foreign banks and their criminal clients access to U.S. correspondent bank accounts facilitates crime, undermines the U.S. financial system, burdens U.S. taxpayers and consumers, and fills U.S. court dockets with criminal prosecutions and civil litigation by wronged parties. It is time for U.S. banks to shut the door to high risk foreign banks and eliminate other abuses of the U.S. correspondent banking system.

CORRESPONDENT BANKING



NESTED CORRESPONDENT BANKING



**HIGH RISK FOREIGN BANKS
EXAMINED BY PSI MINORITY STAFF INVESTIGATION**

| NAME OF BANK | CURRENT STATUS | LICENSE AND OPERATION | U.S. CORRESPONDENTS EXAMINED | MONEY LAUNDERING CONCERNS |
|--|-----------------|--|--|---|
| American International Bank (AIB) 1992–1998 | In Receivership | <ul style="list-style-type: none"> • Licensed in Antigua/Barbuda • Offshore • Physical presence in Antigua | BAC of Florida Bank of America Barnett Bank Chase Manhattan Bank Toronto Dominion Union Bank of Jamaica | <ul style="list-style-type: none"> • Financial fraud money • Nested correspondents • Internet gambling |
| British Bank of Latin America (BBLA) 1981–2000 | Closed | <ul style="list-style-type: none"> • Licensed by Bahamas • Offshore • Physical presence in Bahamas and Columbia • Wholly owned subsidiary of Lloyds TSB Bank | Bank of New York | <ul style="list-style-type: none"> • Drug money from Black Market Peso Exchange |
| British Trade and Commerce Bank (BTCB) 1997–present | Open | <ul style="list-style-type: none"> • Licensed by Dominica • Offshore • Physical presence in Dominica | Banco Industrial de Venezuela (Miami) First Union National Bank Security Bank N.A. | <ul style="list-style-type: none"> • Financial fraud money • High yield investments • Nested correspondents • Internet gambling |
| Caribbean American Bank (CAB) 1994–1997 | In Liquidation | <ul style="list-style-type: none"> • Licensed by Antigua/Barbuda • Offshore • No physical presence | U.S. correspondents of AIB | <ul style="list-style-type: none"> • Financial fraud money • Nested correspondents • Shell bank |
| European Bank 1972–present | Open | <ul style="list-style-type: none"> • Licensed by Vanuatu • Onshore • Physical presence in Vanuatu | ANZ Bank (New York) Citibank | <ul style="list-style-type: none"> • Credit card fraud money |
| Federal Bank 1992–present | Open | <ul style="list-style-type: none"> • Licensed by Bahamas • Offshore • No physical presence | Citibank | <ul style="list-style-type: none"> • Bribe money • Shell bank |

**HIGH RISK FOREIGN BANKS
EXAMINED BY PSI MINORITY STAFF INVESTIGATION—Continued**

| NAME OF BANK | CURRENT STATUS | LICENSE AND OPERATION | U.S. CORRESPONDENTS EXAMINED | MONEY LAUNDERING CONCERNS |
|---|----------------|---|--|---|
| Guardian Bank and Trust (Cayman) Ltd. 1984–1995 | Closed | <ul style="list-style-type: none"> • Licensed by Cayman Islands • Offshore • Physical presence in Cayman Islands | Bank of New York | <ul style="list-style-type: none"> • Financial fraud money • Tax evasion |
| Hanover Bank 1992–present | Open | <ul style="list-style-type: none"> • Licensed by Antigua/Barbuda • Offshore • No physical presence | Standard Bank (Jersey) Ltd.'s U.S. correspondent, Harris Bank International (New York) | <ul style="list-style-type: none"> • Financial fraud money • Nested correspondents • Shell bank |
| M.A. Bank 1991–present | Open | <ul style="list-style-type: none"> • Licensed by Cayman Islands • Offshore • No physical presence | Citibank Union Bank of Switzerland (New York) | <ul style="list-style-type: none"> • Drug money • Shell bank |
| Overseas Development Bank and Trust (ODBT) 1996–present | Open | <ul style="list-style-type: none"> • Licensed by Dominica • Offshore • Physical presence in Dominica (formerly in Antigua) | U.S. correspondents of AIB AmTrade International (Florida) Bank One | <ul style="list-style-type: none"> • Financial fraud money • Nested correspondents |
| Swiss American Bank (SAB) 1983–present | Open | <ul style="list-style-type: none"> • Licensed by Antigua/Barbuda • Offshore • Physical presence in Antigua | Bank of America Chase Manhattan Bank | <ul style="list-style-type: none"> • Financial fraud money • Internet gambling • Drug and illegal arms sales money |
| Swiss American National Bank (SANB) 1981–present | Open | <ul style="list-style-type: none"> • Licensed by Antigua/Barbuda • Onshore • Physical presence in Antigua | Bank of New York Chase Manhattan Bank | <ul style="list-style-type: none"> • Financial fraud money • Drug and illegal arms sales money |

Prepared by Minority Staff of the U.S. Senate Permanent Subcommittee on Investigations, January 2001.

II. Minority Staff Investigation Into Correspondent Banking

To examine the vulnerability of correspondent banking to money laundering, the Minority Staff investigation interviewed experts; reviewed relevant banking laws, regulations and examination manuals; surveyed U.S. banks about their correspondent banking practices; reviewed court proceedings and media reports on cases of money laundering and correspondent banking; and developed ten detailed case histories of money laundering misconduct involving U.S. correspondent accounts. The 1-year investigation included hundreds of interviews and the collection and review of over 25 boxes of documentation, including subpoenaed materials from 19 U.S. banks.

The Minority Staff began its investigation by interviewing a variety of anti-money laundering and correspondent banking experts. Included were officials from the U.S. Federal Reserve, U.S. Department of Treasury, Internal Revenue Service, Office of the Comptroller of the Currency, Financial Crimes Enforcement Network ("FinCEN"), U.S. Secret Service, U.S. State Department, and U.S. Department of Justice. Minority Staff investigators also met with bankers from the American Bankers Association, Florida International Bankers Association, and banking groups in the Bahamas and Cayman Islands, and interviewed at length a number of U.S. bankers experienced in monitoring correspondent accounts for suspicious activity. Extensive assistance was also sought from and provided by government and law enforcement officials in Antigua and Barbuda, Argentina, Australia, Bahamas, Cayman Islands, Dominica, Jersey, Ireland, the United Kingdom, and Vanuatu.

Due to a paucity of information about correspondent banking practices in the United States, the Minority Staff conducted a survey of 20 banks with active correspondent banking portfolios. The 18-question survey sought information about the U.S. banks' correspondent banking clients, procedures, and anti-money laundering safeguards. The survey results are described in Chapter IV.

To develop specific information on how correspondent banking is used in the United States to launder illicit funds, Minority Staff investigators identified U.S. criminal and civil money laundering indictments and pleadings which included references to U.S. correspondent accounts. Using these public court pleadings as a starting point, the Minority Staff identified the foreign banks and U.S. banks involved in the facts of the case, and the circumstances associated with how the foreign banks' U.S. correspondent accounts became conduits for laundered funds. The investigation obtained relevant court proceedings, exhibits and related documents, subpoenaed U.S. bank documents, interviewed U.S. correspondent bankers and, when possible, interviewed foreign bank officials and government personnel. From this material, the investigation examined how foreign banks opened and used their U.S. correspondent accounts and how the U.S. banks monitored or failed to monitor the foreign banks and their account activity.

The investigation included an interview of a U.S. citizen who formerly owned a bank in the Cayman Islands, has pleaded guilty to money laundering, and was willing to explain the mechanics of how his bank laundered millions of dollars for U.S. citizens through U.S. correspondent accounts. Another interview was with a U.S.

citizen who has pleaded guilty to conspiracy to commit money laundering and was willing to explain how he used three offshore banks to launder illicit funds from a financial investment scheme that defrauded hundreds of U.S. citizens. Other interviews were with foreign bank owners who explained how their bank operated, how they used correspondent accounts to transact business, and how their bank became a conduit for laundered funds. Numerous interviews were conducted with U.S. bank officials.

Because the investigation began with criminal money laundering indictments in the United States, attention was directed to foreign banks and jurisdictions known to U.S. criminals. The case histories featured in this report are not meant to be interpreted as identifying the most problematic banks or jurisdictions. To the contrary, a number of the jurisdictions identified in this report have taken significant strides in strengthening their banking and anti-money laundering controls. The evidence indicates that equivalent correspondent banking abuses may be found throughout the international banking community,⁶ and that measures need to be taken in major financial centers throughout the world to address the types of money laundering risks identified in this report.

III. Anti-Money Laundering Obligations

Two laws lay out the basic anti-money laundering obligations of all United States banks. First is the Bank Secrecy Act which, in section 5318(h) of Title 31 in the U.S. Code, requires all U.S. banks to have anti-money laundering programs. It states:

In order to guard against money laundering through financial institutions, the Secretary [of the Treasury] may require financial institutions to carry out anti-money laundering programs, including at a minimum—(A) the development of internal policies, procedures, and controls, (B) the designation of a compliance officer, (C) an ongoing employee training program, and (D) an independent audit function to test programs.

The Bank Secrecy Act also authorizes the U.S. Department of the Treasury to require financial institutions to file reports on currency transactions and suspicious activities, again as part of U.S. efforts to combat money laundering. The Treasury Department has accordingly issued regulations and guidance requiring U.S. banks to establish anti-money laundering programs and file certain currency transaction reports (“CTRs”) and suspicious activity reports (“SARs”).⁷

⁶See, for example, “German Officials Investigate Possible Money Laundering,” *Wall Street Journal* (1/16/01)(Germany); “Prosecutors set to focus on Estrada bank records,” *Business World* (1/15/01)(Philippines); Canada’s Exchange Bank & Trust Offers Look at ‘Brass-Plate’ Banks,” *Wall Street Journal* (12/29/00)(Canada, Nauru, St. Kitts-Nevis); “Peru’s Montesinos hires lawyer in Switzerland to keep bank accounts secret,” *Agence France Presse* (12/11/00)(Peru, Switzerland); “The Billion Dollar Shack,” *New York Times Magazine* (12/10/00) (Nauru, Russia); “Launderers put UK banks in a spin,” *Financial Times* (London)(United Kingdom, Luxembourg, Switzerland, Nigeria); “Croats Find Treasury Plundered,” *Washington Post* (6/13/00)(Croatia); “Arrests and millions missing in troubled offshore bank,” *Associated Press* (9/11/00)(Grenada); “Judgement Daze,” *Sunday Times* (London) (10/18/98)(Ireland); “That’s Laird To You, Mister,” *New York Times* (2/27/00)(multiple countries).

⁷See, for example, 31 C.F.R. §§103.11 and 103.21 et seq. CTRs identify cash transactions above a specified threshold; SARs identify possibly illegal transactions observed by bank personnel.

The second key law is the Money Laundering Control Act of 1986, which was enacted partly in response to hearings held by the Permanent Subcommittee on Investigations in 1985. This law was the first in the world to make money laundering an independent crime. It prohibits any person from knowingly engaging in a financial transaction which involves the proceeds of a "specified unlawful activity." The law provides a list of specified unlawful activities, including drug trafficking, fraud, theft and bribery.

The aim of these two statutes is to enlist U.S. banks in the fight against money laundering. Together they require banks to refuse to engage in financial transactions involving criminal proceeds, to monitor transactions and report suspicious activity, and to operate active anti-money laundering programs. Both statutes have been upheld by the Supreme Court.

Recently, U.S. bank regulators have provided additional guidance to U.S. banks about the anti-money laundering risks in correspondent banking and the elements of an effective anti-money laundering program. In the September 2000 "Bank Secrecy Act/Anti-Money Laundering Handbook," the Office of the Comptroller of the Currency (OCC) deemed international correspondent banking a "high-risk area" for money laundering that warrants "heightened scrutiny." The OCC Handbook provides the following anti-money laundering considerations that a U.S. bank should take into account in the correspondent banking field:

A bank must exercise caution and due diligence in determining the level of risk associated with each of its correspondent accounts. Information should be gathered to understand fully the nature of the correspondent's business. Factors to consider include the purpose of the account, whether the correspondent bank is located in a bank secrecy or money laundering haven (if so, the nature of the bank license, i.e., shell/offshore bank, fully licensed bank, or an affiliate/subsidiary of a major financial institution), the level of the correspondent's money laundering prevention and detection efforts, and the condition of bank regulation and supervision in the correspondent's country.⁸

The OCC Handbook singles out three activities in correspondent accounts that warrant heightened anti-money laundering scrutiny and analysis:

Three of the more common types of activity found in international correspondent bank accounts that should receive heightened scrutiny are funds (wire) transfer[s], correspondent accounts used as "payable through accounts" and "pouch/cash letter activity." This heightened risk underscores the need for effective and comprehensive systems and controls particular to these types of accounts.⁹

With respect to wire transfers, the OCC Handbook provides the following additional guidance:

Although money launderers use wire systems in many ways, most money launderers aggregate funds from different sources

⁸ "Bank Secrecy Act/Anti-Money Laundering Handbook" (September 2000), at 22.

⁹ *Id.*

and move them through accounts at different banks until their origin cannot be traced. Most often they are moved out of the country through a bank account in a country where laws are designed to facilitate secrecy, and possibly back into the United States. . . . Unlike cash transactions that are monitored closely, . . . [wire transfer systems and] a bank's wire room are designed to process approved transactions quickly. Wire room personnel usually have no knowledge of the customer or the purpose of the transaction. Therefore, other bank personnel must know the identity and business of the customer on whose behalf they approve the funds transfer to prevent money launderers from using the wire system with little or no scrutiny. Also, review or monitoring procedures should be in place to identify unusual funds transfer activity.¹⁰

IV. Correspondent Banking Industry in the United States

Correspondent banking is the provision of banking services by one bank to another bank. It is a lucrative and important segment of the banking industry. It enables banks to conduct business and provide services for their customers in jurisdictions where the banks have no physical presence. For example, a bank that is licensed in a foreign country and has no office in the United States may want to provide certain services in the United States for its customers in order to attract or retain the business of important clients with U.S. business activities. Instead of bearing the costs of licensing, staffing and operating its own offices in the United States, the bank might open a correspondent account with an existing U.S. bank. By establishing such a relationship, the foreign bank, called a respondent, and through it, its customers, can receive many or all of the services offered by the U.S. bank, called the correspondent.¹¹

Today, banks establish multiple correspondent relationships throughout the world so they may engage in international financial transactions for themselves and their clients in places where they do not have a physical presence. Many of the largest international banks located in the major financial centers of the world serve as correspondents for thousands of other banks. Due to U.S. prominence in international trade and the high demand for U.S. dollars due to their overall stability, most foreign banks that wish to provide international services to their customers have accounts in the United States capable of transacting business in U.S. dollars. Those that lack a physical presence in the United States will do so through correspondent accounts, creating a large market for those services.¹²

¹⁰*Id.* at 23.

¹¹ Similar correspondent banking relationships are also often established between domestic banks, such as when a local domestic bank opens an account at a larger domestic bank located in the country's financial center.

¹² International correspondent banking is a major banking activity in the United States in part due to the popularity of the U.S. dollar. U.S. dollars are one of a handful of major currencies accepted throughout the world. They are also viewed as a stable currency, less likely to lose value over time and, thus, a preferred vehicle for savings, trade and investment. Since U.S. dollars are also the preferred currency of U.S. residents, foreign companies and individuals seeking to do business in the United States may feel compelled to use U.S. dollars.

In the money laundering world, U.S. dollars are popular for many of the same reasons. In addition, U.S. residents targeted by financial frauds often deal only in U.S. dollars, and any per-

Large correspondent banks in the U.S. manage thousands of correspondent relationships with banks in the United States and around the world. Banks that specialize in international funds transfers and process large numbers and dollar volumes of wire transfers daily are sometimes referred to as money center banks. Some money center banks process as much as \$1 trillion in wire transfers each day. As of mid-1999, the top five correspondent bank holding companies in the United States held correspondent account balances exceeding \$17 billion; the total correspondent account balances of the 75 largest U.S. correspondent banks was \$34.9 billion.¹³

A. Correspondent Banking Products and Services

Correspondent banks often provide their respondent banks with an array of cash management services, such as interest-bearing or demand deposit accounts in one or more currencies, international wire transfers of funds, check clearing, payable through accounts,¹⁴ and foreign exchange services. Correspondent banks also often provide an array of investment services, such as providing their respondent banks with access to money market accounts, overnight investment accounts, certificates of deposit, securities trading accounts, or other accounts bearing higher rates of interest than are paid to non-bank clients. Along with these services, some correspondent banks offer computer software programs that enable their respondent banks to complete various transactions, initiate wire transfers, and gain instant updates on their account balances through their own computer terminals.

With smaller, less well-known banks, a correspondent bank may limit its relationship with the respondent bank to non-credit, cash management services. With respondent banks that are judged to be secure credit risks, the correspondent bank may also afford access to a number of credit-related products. These services include loans, daylight or overnight extensions of credit for account transactions, lines of credit, letters of credit, merchant accounts to process credit card transactions, international escrow accounts, and other trade and finance-related services.

An important feature of most correspondent relationships is providing access to international funds transfer systems.¹⁵ These systems facilitate the rapid transfer of funds across international lines and within countries. These transfers are accomplished through a series of electronic communications that trigger a series of debit/

petrator of a fraud planning to take their money must be able to process U.S. dollar checks and wire transfers. The investigation found that foreign offshore banks often believe wire transfers between U.S. banks receive less money laundering scrutiny than wire transfers involving an offshore jurisdiction and, in order to take advantage of the lesser scrutiny afforded U.S. bank interactions, prefer to keep their funds in a U.S. correspondent account and transact business through their U.S. bank. In fact, all of the foreign banks examined in the Minority Staff investigation characterized U.S. dollars as their preferred currency, all sought to open U.S. dollar accounts, and all used their U.S. dollar accounts much more often than their other currency accounts.

¹³“Top 75 Correspondent Bank Holding Companies,” *The American Banker* (12/8/99) at 14.

¹⁴“Payable through accounts” allow a respondent bank’s clients to write checks that draw directly on the respondent bank’s correspondent account. See Advisory Letter 95–3, issued by the Office of the Comptroller of the Currency identifying them as high risk accounts for money laundering. Relatively few banks offer these accounts at the present time.

¹⁵These funds transfer systems include the Society for Worldwide Interbank Financial Telecommunications (“SWIFT”), the Clearing House Interbank Payments System (“CHIPS”), and the United States Federal Wire System (“Fedwire”).

credit transactions in the ledgers of the financial institutions that link the originators and beneficiaries of the payments. Unless the parties to a funds transfer use the same financial institution, multiple banks will be involved in the payment transfer. Correspondent relationships between banks provide the electronic pathway for funds moving from one jurisdiction to another.

For the types of foreign banks investigated by the Minority Staff, in particular shell banks with no office or staff and offshore banks transacting business with non-residents in non-local currencies, correspondent banking services are critical to their existence and operations. These banks keep virtually all funds in their correspondent accounts. They conduct virtually all transactions external to the bank—including deposits, withdrawals, check clearings, certificates of deposit, and wire transfers—through their correspondent accounts. Some use software provided by their correspondents to operate their ledgers, track account balances, and complete wire transfers. Others use their monthly correspondent account statements to identify client deposits and withdrawals, and assess client fees. Others rely on their correspondents for credit lines and overnight investment accounts. Some foreign banks use their correspondents to provide sophisticated investment services to their clients, such as high-interest bearing money market accounts and securities trading. While the foreign banks examined in the investigation lacked the resources, expertise and infrastructure needed to provide such services in-house, they could all afford the fees charged by their correspondents to provide these services and used the services to attract clients and earn revenue.

Every foreign bank interviewed by the investigation indicated that it was completely dependent upon correspondent banking for its access to international wire transfer systems and the infrastructure required to complete most banking transactions today, including handling multiple currencies, clearing checks, paying interest on client deposits, issuing credit cards, making investments, and moving funds. Given their limited resources and staff, all of the foreign banks interviewed by the investigation indicated that, if their access to correspondent banks were cut off, they would be unable to function. Correspondent banking is their lifeblood.

B. Three Categories of High Risk Banks

Three categories of banks present particularly high money laundering risks for U.S. correspondent banks: (1) shell banks that have no physical presence in any jurisdiction; (2) offshore banks that are barred from transacting business with the citizens of their own licensing jurisdictions; and (3) banks licensed by jurisdictions that do not cooperate with international anti-money laundering efforts.

Shell Banks. Shell banks are high risk banks principally because they are so difficult to monitor and operate with great secrecy. As used in this report, the term “shell bank” is intended to have a narrow reach and refer only to banks that have no physical presence in any jurisdiction. The term is not intended to encompass a bank that is a branch or subsidiary of another bank with a physical presence in another jurisdiction. For example, in the Cayman Islands, of the approximately 570 licensed banks, most do not maintain a Cayman office, but are affiliated with banks that main-

tain offices in other locations. As used in this report, “shell bank” is not intended to apply to these affiliated banks—for example, the Cayman branch of a large bank in the United States. About 75 of the 570 Cayman-licensed banks are not branches or subsidiaries of other banks, and an even smaller number operate without a physical presence anywhere. It is these shell banks that are of concern in this report. In the Bahamas, out of a total of about 400 licensed banks, about 65 are unaffiliated with any other bank, and a smaller subset are shell banks. Some jurisdictions, including the Cayman Islands, Bahamas and Jersey, told the Minority Staff investigation that they no longer issue bank licenses to unaffiliated shell banks, but other jurisdictions, including Nauru, Vanuatu and Montenegro, continue to do so. The total number of shell banks operating in the world today is unknown, but banking experts believe it comprises a very small percentage of all licensed banks.

The Minority Staff investigation was able to examine several shell banks in detail. Hanover Bank, for example, is an Antiguan licensed bank that has operated primarily out of its owner’s home in Ireland. M.A. Bank is a Cayman licensed bank which claims to have an administrative office in Uruguay, but actually operated in Argentina using the offices of related companies. Federal Bank is a Bahamian licensed bank which serviced Argentinian clients but appears to have operated from an office or residence in Uruguay. Caribbean American Bank, now closed, was an Antiguan-licensed bank that operated out of the offices of an Antiguan firm that supplied administrative services to banks.

None of these four shell banks had an official business office where it conducted banking activities; none had a regular paid staff. The absence of a physical office with regular employees helped these shell banks avoid oversight by making it more difficult for bank regulators and others to monitor bank activities, inspect records and question bank personnel. Irish banking authorities, for example, were unaware that Hanover Bank had any connection with Ireland, and Antiguan banking regulators did not visit Ireland to examine the bank on-site. Argentine authorities were unaware of M.A. Bank’s presence in their country and so never conducted any review of its activities. Cayman bank regulators did not travel to Argentina or Uruguay for an on-site examination of M.A. Bank; and regulators from the Bahamas did not travel to Argentina or Uruguay to examine Federal Bank.

The Minority Staff was able to gather information about these shell banks by conducting interviews, obtaining court pleadings and reviewing subpoenaed material from U.S. correspondent banks. The evidence shows that these banks had poor to nonexistent administrative and anti-money laundering controls, yet handled millions of dollars in suspect funds, and compiled a record of dubious activities associated with drug trafficking, financial fraud and other misconduct.

Offshore Banks. The second category of high risk banks in correspondent banking are offshore banks. Offshore banks have licenses which bar them from transacting banking activities with the citizens of their own licensing jurisdiction or bar them from transacting business using the local currency of the licensing juris-

diction. Nearly all of the foreign banks investigated by the Minority Staff held offshore licenses.

The latest estimates are that nearly 60 offshore jurisdictions around the globe¹⁶ have, by the end of 1998, licensed about 4,000 offshore banks.¹⁷ About 44% of these offshore banks are thought to be located in the Caribbean and Latin America, 29% in Europe, 19% in Asia and the Pacific, and 10% in Africa and the Middle East.¹⁸ These banks are estimated to control nearly \$5 trillion in assets.¹⁹ Since, by design, offshore banks operate in the international arena, outside their licensing jurisdiction, they have attracted the attention of the international financial community. Over the past few years, as the number, assets and activities of offshore banks have expanded, the international financial community has expressed increasing concerns about their detrimental impact on international anti-money laundering efforts.²⁰

Offshore banks pose high money laundering risks in the correspondent banking field for a variety of reasons. One is that a foreign country has significantly less incentive to oversee and regulate banks that do not do business within the country's boundaries than for banks that do.²¹ Another is that offshore banking is largely a money-making enterprise for the governments of small countries, and the less demands made by the government on bank owners, the more attractive the country becomes as a licensing locale. Offshore banks often rely on these reverse incentives to minimize oversight of their operations, and become vehicles for money laundering, tax evasion, and suspect funds.

One U.S. correspondent banker told the Minority Staff that he is learning that a large percentage of clients of offshore banks are Americans and, if so, there is a "good chance tax evasion is going on." He said there is "no reason" for offshore banking to exist if not for "evasion, crime, or whatever." There is no reason for Americans to bank offshore, he said, noting that if an offshore bank has primarily U.S. clients, it must "be up to no good" which raises a question why a U.S. bank would take on the offshore bank as a client. A former offshore bank owner told the investigation that he thought 100% of his clients had been engaged in tax evasion which was why they sought bank secrecy and were willing to pay costly offshore fees that no U.S. bank would charge.

Another longtime U.S. correspondent banker was asked his opinion of a former offshore banker's comment that to "take-in" deposits from U.S. nationals was not a transgression and that not reporting offshore investments "is no legal concern of the offshore depository institution." The correspondent banker said that the comment showed that the offshore banker "knew his craft." He said that the whole essence of offshore banking is "accounts in the name of corporations with bearer shares, directors that are lawyers that sit in

¹⁶ See INCSR 2000 at 565. Offshore jurisdictions are countries which have enacted laws allowing the formation of offshore banks or other offshore entities.

¹⁷ INCSR 2000 at 566 and footnote 3, citing "The UN Offshore Forum," *Working Paper of the United Nations Office for Drug Control and Crime Prevention* (January 2000) at 6.

¹⁸ *Id.*

¹⁹ INCSR 2000 at 566 and footnote 1, citing "Offshore Banking: An Analysis of Micro- and Macro-Prudential Issues," *Working Paper of the International Monetary Fund* (1999), by Luca Errico and Alberto Musalem, at 10.

²⁰ See, for example, INCSR 2000 discussion of "Offshore Financial Centers," at 565-77.

²¹ See also discussion in Chapter V, subsections (D), (E) and (F).

their tax havens that make up minutes of board meetings.” When asked if part of the correspondent banker’s job was to make sure the client bank did not “go over the line,” the correspondent banker responded if that was the case, then the bank should not be dealing with some of the bank clients it had and should not be doing business in some of the countries where it was doing business.

Because offshore banks use non-local currencies and transact business primarily with non-resident clients, they are particularly dependent upon having correspondent accounts in other countries to transact business. One former offshore banker commented in an interview that if the American government wanted to get offshore banks “off their back,” it would prohibit U.S. banks from having correspondent relationships with offshore banks. This banker noted that without correspondent relationships, the offshore banks “would die.” He said “they need an established bank that can offer U.S. dollars.”

How offshore banks use correspondent accounts to launder funds is discussed in Chapter VI of this report as well as in a number of the Case histories. The offshore banks investigated by the Minority Staff were, like the shell banks, associated with millions of dollars in suspect funds, drug trafficking, financial fraud and other misconduct.

Banks in Non-Cooperating Jurisdictions. The third category of high risk banks in correspondent banking are foreign banks licensed by jurisdictions that do not cooperate with international anti-money laundering efforts. International anti-money laundering efforts have been led by the Financial Action Task Force on Money Laundering (“FATF”), an inter-governmental organization comprised of representatives from the financial, regulatory and law enforcement communities from over two dozen countries. In 1996, FATF developed a set of 40 recommendations that now serve as international benchmarks for evaluating a country’s anti-money laundering efforts. FATF has also encouraged the establishment of international organizations whose members engage in self and mutual evaluations to promote regional compliance with the 40 recommendations.

In June 2000, for the first time, FATF formally identified 15 countries and territories whose anti-money laundering laws and procedures have “serious systemic problems” resulting in their being found “non-cooperative” with international anti-money laundering efforts. The 15 are: The Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines.²² Additional countries are expected to be identified in later evaluations.

FATF had previously established 25 criteria to assist it in the identification of non-cooperative countries or territories.²³ The published criteria included, for example, “inadequate regulation and supervision of financial institutions”; “inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of their managers and beneficial owners”; “inad-

²² See FATF’s “Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures” (6/22/00), at paragraph (64).

²³ See FATF’s 1999–2000 Annual Report, Annex A.

equate customer identification requirements for financial institutions”; “excessive secrecy provisions regarding financial institutions”; “obstacles to international co-operation” by administrative and judicial authorities; and “failure to criminalize laundering of the proceeds from serious crimes.” FATF explained that, “detrimental rules and practices which obstruct international co-operation against money laundering . . . naturally affect domestic prevention or detection of money laundering, government supervision and the success of investigations into money laundering.” FATF recommended that, until the named jurisdictions remedied identified deficiencies, financial institutions around the world should exercise heightened scrutiny of transactions involving those jurisdictions and, if improvements were not made, that FATF members “consider the adoption of counter-measures.”²⁴

Jurisdictions with weak anti-money laundering laws and weak cooperation with international anti-money laundering efforts are more likely to attract persons interested in laundering illicit proceeds. The 15 named jurisdictions have together licensed hundreds and perhaps thousands of banks, all of which introduce money laundering risks into international correspondent banking.

C. Survey on Correspondent Banking

In February 2000, Senator Levin, Ranking Minority Member of the Permanent Subcommittee on Investigations, distributed a survey on correspondent banking to 20 banks providing correspondent services from locations in the United States. Ten of the banks were domiciled in the United States; ten were foreign banks doing business in the United States. Their correspondent banking portfolios varied in size, and in the nature of customers and services involved. The survey of 18 questions was sent to:

ABN AMRO Bank of Chicago, Illinois
 Bank of America, Charlotte, North Carolina
 The Bank of New York, New York, New York
 Bank of Tokyo Mitsubishi Ltd., New York, New York
 Bank One Corporation, Chicago, Illinois
 Barclays Bank PLC—Miami Agency, Miami, Florida
 Chase Manhattan Bank, New York, New York
 Citigroup, Inc., New York, New York
 Deutsche Bank A.G./Bankers Trust, New York, New York
 Dresdner Bank, New York, New York
 First Union Bank, Charlotte, North Carolina
 FleetBoston Bank, Boston, Massachusetts
 HSBC Bank, New York, New York
 Israel Discount Bank, New York, New York
 MTB Bank, New York, New York
 Riggs Bank, Washington, D.C.
 Royal Bank of Canada, Montreal, Quebec, Canada
 The Bank of Nova Scotia (also called ScotiaBank), New York,
 New York
 Union Bank of Switzerland AG, New York, New York
 Wells Fargo Bank, San Francisco, California

²⁴FATF 6/22/00 review at paragraph (67).

All 20 banks responded to the survey, and the Minority Staff compiled and reviewed the responses. One Canadian bank did not respond to the questions directed at its correspondent banking practices, because it said it did not conduct any correspondent banking activities in the United States.

The larger banks in the survey each have, worldwide, over a half trillion dollars in assets, at least 90,000 employees, a physical presence in over 35 countries, and thousands of branches. The smallest bank in the survey operates only in the United States, has less than \$300 million in assets, 132 employees and 2 branches. Three fourths of the banks surveyed have over one-thousand correspondent banking relationships and many have even more correspondent banking accounts. Two foreign banks doing business in the United States had the most correspondent accounts worldwide (12,000 and 7,500, respectively). The U.S. domiciled bank with the most correspondent accounts reported over 3,800 correspondent accounts worldwide.

The survey showed an enormous movement of money through wire transfers by the biggest banks. The largest number of wire transfers processed worldwide by a U.S. domiciled bank averaged almost a million wire transfers processed daily. The largest amount of money processed by a U.S. domiciled bank is over \$1 trillion daily. Eleven of the banks surveyed move over \$50 billion each in wire transfers in the United States each day; 7 move over \$100 billion each day. The smallest bank surveyed moves daily wire transfers in the United States totaling \$114 million.

The banks varied widely on the number of correspondent banking relationship managers employed in comparison to the number of correspondent banking relationships maintained.²⁵ One U.S. domiciled bank, for example, reported it had 31 managers worldwide for 2,975 relationships, or a ratio of 96 to 1. Another bank reported it had 46 relationship managers worldwide handling 1,070 correspondent relationships, or a ratio of 27 to 1. One bank had a ratio of less than 7 to 1, but that was clearly the exception. The average ratio is approximately 40 or 50 correspondent relationships to each relationship manager for U.S. domiciled banks and approximately 95 to 1 for foreign banks.

In response to a survey question asking about the growth of their correspondent banking business since 1995, three banks reported substantial growth, six banks reported moderate growth, two banks reported a substantial decrease in correspondent banking, one bank reported a moderate decrease, and seven banks reported that their correspondent banking business had remained about the same. Several banks reporting changes indicated the change was due to a merger, acquisition or sale of a bank or correspondent banking unit.

The banks varied somewhat on the types of services offered to correspondent banking customers, but almost every bank offered deposit accounts, wire transfers, check clearing, foreign exchange, trade-related services, investment services, and settlement services. Only six banks offered the controversial "payable through ac-

²⁵ "Relationship manager" is a common term used to describe the correspondent bank employees responsible for initiating and overseeing the bank's correspondent relationships.

counts” that allow a respondent bank’s clients to write checks that draw directly on the respondent bank’s correspondent account.

While all banks reported having anti-money laundering and due diligence policies and written guidelines, most of the banks do not have such policies or guidelines specifically tailored to correspondent banking; they rely instead on general provisions in the bank-wide policy for correspondent banking guidance and procedures. One notable exception is the “Know Your Customer Policy Statement” adopted by the former Republic National Bank of New York, now HSBC USA, for its International Banking Group, that specifically addressed new correspondent banking relationships. Effective December 31, 1998, the former Republic National Bank established internal requirements for a thorough, written analysis of any bank applying for a correspondent relationship, including, among other elements, an evaluation of the applicant bank’s management and due diligence policies.

In response to survey questions about opening new correspondent banking relationships, few banks said that their due diligence procedures were mandatory; instead, the majority said they were discretionary depending upon the circumstances of the applicant bank. All banks indicated that they followed three specified procedures, but varied with respect to others. Survey results with respect to 12 specified account opening procedures were as follows:

All banks said they:

- Obtain financial statements;
- Evaluate credit worthiness; and
- Determine an applicant’s primary lines of business.

All but two banks said they:

- Verify an applicant’s bank license; and
- Determine whether an applicant has a fixed, operating office in the licensing jurisdiction.

All but three banks said they:

- Evaluate the overall adequacy of banking supervision in the jurisdiction of the respondent bank; and
- Review media reports for information on an applicant.

All but four banks said they visit an applicant’s primary office in the licensing jurisdiction; all but five banks said they determine if the bank’s license restricts the applicant to operating outside the licensing jurisdiction, making it an offshore bank. A majority of the surveyed banks said they inquire about the applicant with the jurisdiction’s bank regulators. Only six banks said they inquire about an applicant with U.S. bank regulators.

A majority of banks listed several other actions they take to assess a correspondent bank applicant, including:

- Checking with the local branch bank, if there is one;
- Checking with bank rating agencies;
- Obtaining bank references; and
- Completing a customer profile.

The survey asked the banks whether or not, as a policy matter, they would establish a correspondent bank account with a bank that does not have a physical presence in any location or whose only license requires it to operate outside the licensing jurisdiction, meaning it holds only an offshore banking license. Only 18 of the 20 banks responded to these questions. Twelve banks said they would not open a correspondent account with a bank that does not have a physical presence; nine banks said they would not open a correspondent account with an offshore bank. Six banks said there are times, depending upon certain circumstances, under which they would open an account with a bank that does not have a physical presence in any country; eight banks said there are times when they would open an account with an offshore bank. The circumstances include a bank that is part of a known financial group or a subsidiary or affiliate of a well-known, internationally reputable bank. Only one of the surveyed banks said it would, without qualification, open a correspondent account for an offshore bank.

Surveyed banks were asked to identify the number of correspondent accounts they have had in certain specified countries,²⁶ in 1995 and currently. As expected, several banks have had a large number of correspondent accounts with banks in China. For example, one bank reported 218 relationships, another reported 103 relationships, and four others reported 45, 43, 39 and 27 relationships, respectively. Seven banks reported more than 30 relationships with banks in Switzerland, with the largest numbering 95 relationships. Five banks reported having between 14 and 49 relationships each with banks in Colombia.

The U.S. State Department's March 2000 International Narcotics Control Strategy Report and the Financial Action Task Force's June 2000 list of 15 jurisdictions with inadequate anti-money laundering efforts have raised serious concerns about banking practices in a number of countries, and the survey showed that in some of those countries, U.S. banks have longstanding or numerous correspondent relationships. For example, five banks reported having between 40 and 84 relationships each with banks in Russia, down from seven banks reporting relationships that numbered between 52 and 282 each in 1995.²⁷ Five banks reported having between 13 and 44 relationships each with banks in Panama. One bank has a correspondent relationship with a bank in Nauru, and two banks have one correspondent relationship each with a bank in Vanuatu. Three banks have correspondent accounts with one or two banks in the Seychelle Islands and one or two banks in Burma.

There are several countries where only one or two of the surveyed banks has a particularly large number of correspondent relationships. These are Antigua, where most banks have no relationships but one bank has 12; the Channel Islands, where most banks have no relationships but two banks have 29 and 27 relationships, respectively; Nigeria, where most banks have few to no relation-

²⁶The survey asked about correspondent relationships with banks in Antigua, Austria, Bahamas, Burma, Cayman Islands, Channel Islands, China, Colombia, Cyprus, Indonesia, Latvia, Lebanon, Lichtenstein, Luxembourg, Malta, Nauru, Nigeria, Palau, Panama, Paraguay, Seychelle Islands, Singapore, Switzerland, Thailand, United Arab Emirates, Uruguay, Vanuatu, and other Caribbean and South Pacific island nations.

²⁷The survey found that the number of U.S. correspondent relationships with Russian banks dropped significantly after the Bank of New York scandal of 1999, as described in the appendix.

ships but two banks have 34 and 31 relationships, respectively; and Uruguay, where one bank has 28 correspondent relationships and the majority of other banks have ten or less. One bank reported having 67 correspondent relationships with banks in the Bahamas; only two other banks have more than 10 correspondent relationships there. That same bank has 146 correspondent relationships in the Cayman Islands; only two banks have more than 12 such relationships, and the majority of banks have 2 or less.

The survey asked the banks to explain how they monitor their correspondent accounts. The responses varied widely. Some banks use the same monitoring systems that they use with all other accounts—relying on their compliance departments and computer software for reviews. Others place responsibility for monitoring the correspondent banking accounts in the relationship manager, requiring the manager to know what his or her correspondent client is doing on a regular basis. Nine banks reported that they placed the monitoring responsibility with the relationship manager, requiring that the manager perform monthly monitoring of the accounts under his or her responsibility. Others reported relying on a separate compliance office in the bank or an anti-money laundering unit to identify suspicious activity. Monitoring can also be done with other tools. For example, one bank said it added news articles mentioning companies and banks into an information database available to bank employees.

Several banks reported special restrictions they have imposed on correspondent banking relationships in addition to the procedures identified in the survey. One bank reported, for example, that it prohibits correspondent accounts in certain South Pacific locations and monitors all transactions involving Antigua and Barbuda, Belize and Seychelles. Another bank said it requires its relationship managers to certify that a respondent bank does not initiate transfers to high risk geographic areas, and if a bank is located in a high risk geographic area, it requires a separate certification. One bank said its policy is to have a correspondent relationship with a bank in a foreign country only if the U.S. bank has a physical presence in the country as well. Similarly, another bank said it does not accept transfers from or to Antigua, Nauru, Palau, the Seychelles, or Vanuatu. One bank reported that it takes relationship managers off-line, that is, away from their responsibility for their correspondent banks, for 10 days at a time to allow someone else to handle the correspondent accounts as a double-check on the activity. The Minority Staff did not attempt to examine how these stated policies are actually put into practice in the banks.

The surveyed banks were asked how many times between 1995 and 1999 they became aware of possible money laundering activities involving a correspondent bank client. Of the 17 banks that said they could answer the question, seven said there were no instances in which they identified such suspicious activity. Ten banks identified at least one instance of suspicious activity. One bank identified 564 SARs filed due to “sequential strings of travelers checks and money orders.” The next largest number was 60 SARs which the surveyed bank said involved “correspondent banking and possible money laundering.” Another bank said it filed 52 SARs in

the identified time period. Two banks identified only one instance; the remaining banks each referred to a handful of instances.

There were a number of anomalies in the survey results. For example, one large bank which indicated in an interview that it does not market correspondent accounts in secrecy havens, reported in the survey having 146 correspondent relationships with Cayman Island banks and 67 relationships with banks in the Bahamas, both of which have strict bank secrecy laws. Another bank said in a preliminary interview that it would “never” open a correspondent account with a bank in Vanuatu disclosed in the survey that it, in fact, had a longstanding correspondent relationship in Vanuatu. Another bank stated in its survey response it would not open an account with an offshore bank, yet also reported in the survey that its policy was not to ask bank applicants whether they were restricted to offshore licenses. Two other banks reported in the survey that they would not, as a policy matter, open correspondent accounts with offshore or shell banks, but when confronted with information showing they had correspondent relationships with these types of banks, both revised their survey responses to describe a different correspondent banking policy. These and other anomalies suggest that U.S. banks may not have accurate information or a complete understanding of their correspondent banking portfolios and practices in the field.

D. Internet Gambling

One issue that unexpectedly arose during the investigation was the practice of foreign banks using their U.S. correspondent accounts to handle funds related to Internet gambling. As a result, the U.S. correspondent banks facilitated Internet gambling, an activity recognized as a growing industry providing new avenues and opportunities for money laundering.

Two recent national studies address the subject: “The Report of the National Gambling Impact Study Commission,” and a report issued by the Financial Crimes Enforcement Network (“FinCEN”) entitled, “A Survey of Electronic Cash, Electronic Banking, and Internet Gaming.”²⁸ Together, these reports describe the growth of Internet gambling and related legal issues. They report that Internet gambling websites include casino-type games such as virtual blackjack, poker and slot machines; sports event betting; lotteries; and even horse race wagers using real-time audio and video to broadcast live races. Websites also typically require players to fill out registration forms and either purchase “chips” or set up accounts with a minimum amount of funds. The conventional ways of sending money to the gambling website are: (1) providing a credit card number from which a cash advance is taken; (2) sending a check or money order; or (3) sending a wire transfer or other remittance of funds.

An important marketing tool for the Internet gambling industry is the ability to transfer money quickly, inexpensively and se-

²⁸The National Gambling Impact Study Commission (“NGISC”) was created in 1996 to conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States. The NGISC report, published in June 1999, contains a variety of information and recommendations related to Internet gambling. The FinCEN report, published in September 2000, examines money laundering issues related to Internet gambling.

curely.²⁹ These money transfers together with the off-shore locations of most Internet gambling operations and their lack of regulation provide prime opportunities for money laundering.³⁰ As technology progresses, the speed and anonymity of the transactions may prove to be even more attractive to money launderers.

One researcher estimates that in 1997, there were as many as 6.9 million potential Internet gamblers and Internet gambling revenues of \$300 million. By 1998, these estimates had doubled, to an estimated 14.5 million potential Internet gamblers and Internet gambling revenues of \$651 million. The River City Group, an industry consultant, forecasts that U.S. Internet betting will rise from \$1.1 billion in 1999, to \$3 billion in 2002.

Current Federal and State laws. In the United States, gambling regulation is primarily a matter of State law, reinforced by Federal law where the presence of interstate or foreign elements might otherwise frustrate the enforcement policies of State law.³¹ According to a recent Congressional Research Service report, Internet gambling implicates at least six Federal criminal statutes, which make it a Federal crime to: (1) conduct an illegal gambling business, 18 U.S.C. § 1955 (illegal gambling business); (2) use the telephone or telecommunications to conduct an illegal gambling business, 18 U.S.C. § 1084 (Interstate Wire Act); (3) use the facilities of interstate commerce to conduct an illegal gambling business, 18 U.S.C. § 1952 (Travel Act); (4) conduct the activities of an illegal gambling business involving either the collection of an unlawful debt or a pattern of gambling offenses, 18 U.S.C. § 1962 (RICO); (5) launder the proceeds from an illegal gambling business or to plow them back into the business, 18 U.S.C. § 1956 (money laundering); or (6) spend more than \$10,000 of the proceeds from an illegal gambling operation at any one time and place, 18 U.S.C. § 1957 (money laundering).³²

The NGISC reports that the laws governing gambling in cyberspace are not as clear as they should be, pointing out, for example, that the Interstate Wire Act was written before the Internet was invented. The ability of the Internet to facilitate quick and easy interactions across geographic boundaries makes it difficult to apply traditional notions of State and Federal jurisdictions and, some argue, demonstrates the need for additional clarifying legislation.

Yet, there have been a number of successful prosecutions involving Internet gambling. For example, in March 1998, the U.S. Attorney for the Southern District of New York indicted 21 individuals for conspiracy to transmit wagers on sporting events via the Inter-

²⁹ More than a dozen companies develop and sell turnkey software for Internet gambling operations. Some of these companies provide full service packages, which include the processing of financial transactions and maintenance of offshore hardware, while the "owner" of the gambling website simply provides advertising and Internet access to gambling customers. These turnkey services make it very easy for website owners to open new gambling sites.

³⁰ See, for example, the FinCEN report, which states at page 41: "Opposition in the United States to legalized Internet gaming is based on several factors. First, there is the fear that Internet gaming . . . offer[s] unique opportunities for money laundering, fraud, and other crimes. Government officials have also expressed concerns about underage gaming and addictive gambling, which some claim will increase with the spread of Internet gaming. Others point to the fact that specific types of Internet gaming may already be illegal under State laws."

³¹ "Internet Gambling: Overview of Federal Criminal Law," Congressional Research Service, CRS Report No. 97-619A (3/17/00), Summary.

³² *Id.*

net, in violation of the Interstate Wire Act of 1961. At that time, U.S. Attorney General Janet Reno stated, "The Internet is not an electronic sanctuary for illegal betting. To Internet betting operators everywhere, we have a simple message, 'You can't hide online and you can't hide offshore.'" Eleven defendants pled guilty and one, Jay Cohen, was found guilty after a jury trial. He was sentenced to 21 months in prison, a 2-year supervised release, and a \$5,000 fine.

In 1997, the Attorney General of Minnesota successfully prosecuted Granite Gate Resorts, a Nevada corporation with a Belize-based Internet sports betting operation. The lawsuit alleged that Granite Gate and its president, Kerry Rogers, engaged in deceptive trade practices, false advertising, and consumer fraud by offering Minnesotans access to sports betting, since such betting is illegal under State laws. In 1999, the Minnesota Supreme Court upheld the prosecution. Missouri, New York, and Wisconsin have also successfully prosecuted cases involving Internet gaming.

Given the traditional responsibility of the States regarding gambling, many have been in the forefront of efforts to regulate or prohibit Internet gambling. Several States including Louisiana, Texas, Illinois, and Nevada have introduced or passed legislation specifically prohibiting Internet gambling. Florida has taken an active role, including cooperative efforts with Western Union, to stop money-transfer services for 40 offshore sports books.³³ In 1998, Indiana's Attorney General stated as a policy that a person placing a bet from Indiana with an offshore gaming establishment was engaged in in-state gambling just as if the person engaged in conventional gambling. A number of State attorneys general have initiated court actions against Internet gambling owners and operators, and several have won permanent injunctions.

Legislation and recommendations. Several States have concluded that only the Federal Government has the potential to effectively regulate or prohibit Internet gambling. The National Association of Attorneys General has called for an expansion in the language of the Federal anti-wagering statute to prohibit Internet gambling and for Federal-State cooperation on this issue. A number of Internet gambling bills have been introduced in Congress.

The National Gambling Impact Study Commission report made several recommendations pertaining to Internet gambling, one of which was to encourage foreign governments to reject Internet gambling organizations that prey on U.S. citizens.

The Minority Staff investigation found evidence of a number of foreign banks using their U.S. correspondent accounts to move proceeds related to Internet gambling, including wagers or payments made in connection with Internet gambling websites, deposits made by companies managing Internet gambling operations, and deposits made by companies active in the Internet gambling field in such areas as software development or electronic cash transfer systems. One U.S. bank, Chase Manhattan Bank, was fully aware of Internet gambling proceeds being moved through its cor-

³³In December 1997, the Attorney General of Florida and Western Union signed an agreement that Western Union would cease providing Quick Pay money transfer services from Florida residents to known offshore gaming establishments. Quick Pay is a reduced-fee system normally used to expedite collection of debts or payment for goods.

respondent accounts; other U.S. banks were not. Internet gambling issues are addressed in the case histories involving American International Bank, British Trade and Commerce Bank, and Swiss American Bank.

V. Why Correspondent Banking is Vulnerable to Money Laundering

Until the Bank of New York scandal erupted in 1999,³⁴ international correspondent banking had received little attention as a high-risk area for money laundering. In the United States, the general assumption had been that a foreign bank with a valid bank license operated under the watchful eye of its licensing jurisdiction and a U.S. bank had no obligation to conduct its own due diligence. The lesson brought home by the Bank of New York scandal, however, was that some foreign banks carry higher money laundering risks than others, since some countries are seriously deficient in their bank licensing and supervision, and some foreign banks are seriously deficient in their anti-money laundering efforts.

The reality is that U.S. correspondent banking is highly vulnerable to money laundering for a host of reasons. The reasons include: (A) a culture of lax due diligence at U.S. correspondent banks; (B) the role of correspondent bankers or relationship managers; (C) nested correspondents, in which U.S. correspondent accounts are used by a foreign bank's client banks, often without the express knowledge or consent of the U.S. bank; (D) foreign jurisdictions with weak banking or accounting standards; (E) bank secrecy laws; (F) cross border difficulties; and (G) U.S. legal barriers to seizing illicit funds in U.S. correspondent accounts.

A. Culture of Lax Due Diligence

The U.S. correspondent banks examined during the investigation operated, for the most part, in an atmosphere of complacency, with lax due diligence, weak controls, and inadequate responses to troubling information.

In initial meetings in January 2000, U.S. banks told the investigation there is little evidence of money laundering through correspondent accounts. Chase Manhattan Bank, which has one of the largest correspondent banking portfolios in the United States, claimed that U.S. banks do not even open accounts for small foreign banks in remote jurisdictions. These representations, which proved to be inaccurate, illustrate what the investigation found to be a common attitude among correspondent bankers—that money laundering risks are low and anti-money laundering efforts are unnecessary or inconsequential in the correspondent banking field.

Due in part to the industry's poor recognition of the money laundering risks, there is substantial evidence of weak due diligence practices by U.S. banks providing correspondent accounts to foreign banks. U.S. correspondent bankers were found to be poorly informed about the banks they were servicing, particularly small foreign banks licensed in jurisdictions known for bank secrecy or weak banking and anti-money laundering controls. Account documentation was often outdated and incomplete, lacking key informa-

³⁴ For a description of the Bank of New York scandal, see the appendix.

tion about a foreign bank's management, major business activities, reputation, regulatory history, or anti-money laundering procedures. Monitoring procedures were also weak. For example, it was often unclear who, if anyone, was supposed to be reviewing the monthly account statements for correspondent accounts. At larger banks, coordination was often weak or absent between the correspondent bankers dealing directly with foreign bank clients and other bank personnel administering the accounts, reviewing wire transfer activity, or conducting anti-money laundering oversight. Even though wire transfers were frequently the key activity engaged in by foreign banks, many U.S. banks conducted either no monitoring of wire transfer activity or relied on manual reviews of the wire transfer information to identify suspicious activity. Subpoenas directed at foreign banks or their clients were not always brought to the attention of the correspondent banker in charge of the foreign bank relationship.

Specific examples of weak due diligence practices and inadequate anti-money laundering controls at U.S. correspondent banks included the following:

- Security Bank N.A., a U.S. bank in Miami, disclosed that, for almost 2 years, it never reviewed for suspicious activity numerous wire transfers totaling \$50 million that went into and out of the correspondent account of a high risk offshore bank called British Trade and Commerce Bank (BTCB), even after questions arose about the bank. These funds included millions of dollars associated with money laundering, financial fraud and Internet gambling. A Security Bank representative also disclosed that, despite an ongoing dialogue with BTCB's president, he did not understand and could not explain BTCB's major business activities, including a high yield investment program promising extravagant returns.
- The Bank of New York disclosed that it had not known that one of its respondent banks, British Bank of Latin America (BBLA), a small offshore bank operating in Colombia and the Bahamas, which moved \$2.7 million in drug money through its correspondent account, had never been examined by any bank regulator. The Bank of New York disclosed further that: (a) despite being a longtime correspondent for banks operating in Colombia, (b) despite 1999 and 2000 U.S. National Money Laundering Strategies' naming the Colombian black market peso exchange as the largest money laundering system in the Western Hemisphere and a top priority for U.S. law enforcement, and (c) despite having twice received seizure orders for the BBLA correspondent account alleging millions of dollars in drug proceeds laundered through the Colombian black market peso exchange, the Bank of New York had not instituted any special anti-money laundering controls to detect this type of money laundering through its correspondent accounts.
- Several U.S. banks, including Bank of America and Amtrade Bank in Miami, were unaware that their correspondent accounts with American International Bank (AIB), a small offshore bank in Antigua that moved millions of dollars in financial frauds and Internet gambling through its correspondent

accounts, were handling transactions for shell foreign banks that were AIB clients. The U.S. correspondent bankers apparently had failed to determine that one of AIB's major lines of business was to act as a correspondent for other foreign banks, one of which, Caribbean American Bank, was used exclusively for moving the proceeds of a massive advance-fee-for-loan fraud. Most of the U.S. banks had also failed to determine that the majority of AIB's client accounts and deposits were generated by the Forum, an investment organization that has been the subject of U.S. criminal and securities investigations.

- Bank of America disclosed that it did not know, until tipped off by Minority Staff investigators, that the correspondent account it provided to St. Kitts-Nevis-Anguilla National Bank, a small bank in the Caribbean, was being used to move hundreds of millions of dollars in Internet gambling proceeds. Bank of America had not taken a close look at the source of funds in this account even though this small respondent bank was moving as much as \$115 million in a month and many of the companies named in its wire transfer instructions were well known for their involvement in Internet gambling.
- Citibank correspondent bankers in Argentina indicated that while they opened a U.S. correspondent account for M.A. Bank, an offshore shell bank licensed in the Cayman Islands and operating in Argentina that later was used to launder drug money, and handled the bank's day-to-day matters, they did not, as a rule, see any monthly statements or monthly activity reports for the bank's accounts. The Argentine correspondent bankers indicated that they assumed Citibank personnel in New York, who handled administrative matters for the accounts, or Citibank personnel in Florida, who run the bank's anti-money laundering unit, reviewed the accounts for suspicious activity. Citibank's Argentine correspondent bankers indicated, however, that they could not identify specific individuals who reviewed Argentine correspondent accounts for possible money laundering. They also disclosed that they did not have regular contact with Citibank personnel conducting anti-money laundering oversight of Argentine correspondent accounts, nor did they coordinate any anti-money laundering duties with them.
- When U.S. law enforcement filed a 1998 seizure warrant alleging money laundering violations and freezing millions of dollars in a Citibank correspondent account belonging to M.A. Bank and also filed in court an affidavit describing the frozen funds as drug proceeds from a money laundering sting, Citibank never looked into the reasons for the seizure warrant and never learned, until informed by Minority Staff investigators in 1999, that the frozen funds were drug proceeds.
- Citibank had a 10-year correspondent relationship with Banco Republica, licensed and doing business in Argentina, and its offshore affiliate, Federal Bank, which is licensed in the Bahamas. Citibank's relationship manager for these two banks told the investigation that it was "disturbing" and "shocking" to

learn that the Central Bank of Argentina had reported in audit reports of 1996 and 1998 that Banco Republica did not have an anti-money laundering program. When the Minority Staff asked the relationship manager what he had done to determine whether or not there was such a program in place at Banco Republica, he said he was told by Banco Republica management during his annual reviews that the bank had an anti-money laundering program, but he did not confirm that with documentation. The same situation applied to Federal Bank.

- A June 2000 due diligence report prepared by a First Union correspondent banker responsible for an account with a high risk foreign bank called Banque Francaise Commerciale (BFC) in Dominica, contained inadequate and misleading information. For example, only 50% of the BFC documentation required by First Union had been collected, and neither BFC's anti-money laundering procedures, bank charter, nor 1999 financial statement was in the client file. No explanation for the missing documentation was provided, despite instructions requiring it. The report described BFC as engaged principally in "domestic" banking, even though BFC's monthly account statements indicated that most of its transactions involved international money transfers. The report also failed to mention Dominica's weak banking and anti-money laundering controls.
- A number of U.S. banks failed to meet their internal requirements for on-site visits to foreign banks. Internal directives typically require a correspondent banker to visit a foreign bank's offices prior to opening an account for the bank and to pay annual visits thereafter. Such visits are intended, among other purposes, to ensure the foreign bank has a physical presence, to learn more about the bank's management and business activities, and to sell new services. However, in many cases, the required on-site visits were waived, postponed or conducted with insufficient attention to important facts. For example, a Chase Manhattan correspondent banker responsible for 140 accounts said she visited the 25 to 30 banks with the larger accounts each year and visited the rest only occasionally or never. First Union National Bank disclosed that no correspondent banker had visited BFC in Dominica for 3 years. Security Bank N.A. disclosed that it had not made any visits to BTCB in Dominica, because Security Bank had only one account on the island and it was not "cost effective" to travel there. In still another instance, Citibank opened a correspondent account for M.A. Bank, without traveling to either the Cayman Islands where the bank was licensed or Uruguay where the bank claimed to have an "administrative office." Instead, Citibank traveled to Argentina and visited offices belonging to several firms in the same financial group as M.A. Bank, apparently deeming that trip equivalent to visiting M.A. Bank's offices. Citibank even installed wire transfer software for M.A. Bank at the Argentine site, although M.A. Bank has no license to conduct banking activities in Argentina and no office there. Despite repeated requests, Citibank has indicated that it remains unable to inform the investigation whether or

not M.A. Bank has an office in Uruguay. The investigation has concluded that M.A. Bank is, in fact, a shell bank with no physical presence in any jurisdiction.

—Harris Bank International, a New York bank specializing in correspondent banking and international wire transfers, told the investigation that it had no electronic means for monitoring the hundreds of millions of dollars in wire transfers it processes each day. Its correspondent bankers instead have to conduct manual reviews of account activity to identify suspicious activity. The bank said that it had recently allocated funding to purchase its first electronic monitoring software capable of analyzing wire transfer activity for patterns of possible money laundering.

Additional Inadequacies with Non-Credit Relationships. In addition to the lax due diligence and monitoring controls for correspondent accounts in general, U.S. banks performed particularly poor due diligence reviews of high risk foreign banks where no credit was provided by the U.S. bank. Although often inadequate, U.S. banks obtain more information and pay more attention to correspondent relationships involving the extension of credit where the U.S. bank's assets are at risk than when the U.S. bank is providing only cash management services on a fee basis.³⁵ U.S. banks concentrate their due diligence efforts on their larger correspondent accounts and credit relationships and pay significantly less attention to smaller accounts involving foreign banks and where only cash management services are provided.

Money launderers are primarily interested in services that facilitate the swift and anonymous movement of funds across international lines. These services do not require credit relationships, but can be provided by foreign banks with access to wire transfers, checks and credit cards. Money launderers may even prefer small banks in non-credit correspondent relationships since they attract less scrutiny from their U.S. correspondents. Foreign banks intending to launder funds may choose to limit their correspondent relationships to non-credit services to avoid scrutiny and move money quickly, with few questions asked.

Under current practice in the United States, high-risk foreign banks in non-credit correspondent relationships seem to fly under the radar screen of U.S. banks conducting due diligence reviews. Yet from an anti-money laundering perspective, these are precisely the banks which—if they hold an offshore license, conduct a shell operation, move large sums of money across international lines, or demonstrate other high risk factors—warrant heightened scrutiny.

Specific examples of the different treatment that U.S. banks afforded to foreign banks in non-credit relationships included the following:

³⁵ A correspondent bank's analysis of credit risk does not necessarily include the risk of money laundering; rather it is focused on the risk of monetary loss to the correspondent bank, and the two considerations can be very different. For example, one correspondent bank examined in the investigation clearly rejected a credit relationship with a respondent bank due to doubts about its investment activities, but did not hesitate to continue providing it with cash management services such as wire transfers.

- One Chase Manhattan correspondent banker said that she did not review the annual audited financial statement of a foreign bank in a non-credit relationship. Another Chase Manhattan representative described Chase's attitude towards non-credit correspondent relationships as "essentially reactive" and said there was no requirement to make an annual visit to bank clients in non-credit relationships.
- Bank of America representatives said that most small correspondent bank relationships were non-credit in nature, Bank of America "has lots" of these, it views them as "low risk," and such relationships do not require an annual review of the respondent bank's financial statements.
- One bank that maintained a non-credit correspondent relationship for a year with American International Bank (AIB), an offshore bank which used its correspondent accounts to move millions of dollars connected to financial frauds and Internet gambling, sought significantly more due diligence information when AIB requested a non-secured line of credit. To evaluate the credit request, the correspondent bank asked AIB to provide such information as a list of its services; a description of its marketing efforts; the total number of its depositors and "a breakdown of deposits according to maturities"; a description of AIB management's experience "in view of the fact that your institution has been operating for only 1 year"; a profile of the regulatory environment in Antigua"; the latest financial statement of AIB's parent company, and information about certain loan transactions between AIB and its parent. Apparently none of this information was provided a year earlier when the bank first established a non-credit correspondent relationship with AIB.
- A Security Bank representative reported that when he encountered troubling information about British Trade and Commerce Bank, a bank that used its correspondent accounts to move millions of dollars connected with financial frauds, he decided against extending credit to the bank, but continued providing it with cash management services such as wire transfers, because he believed a non-credit relationship did not threaten Security Bank with any monetary loss.

Inadequate Responses to Troubling Information. While some U.S. banks never learned of questionable activities by their foreign bank clients, when troubling information did reach a U.S. correspondent banker, in too many cases, the U.S. bank took little or no action in response. For example:

- Citibank left open a correspondent account belonging to M.A. Bank and allowed hundreds of millions of dollars to flow through it, even after receiving a seizure order from U.S. law enforcement alleging drug money laundering violations and freezing \$7.7 million deposited into the account. Citibank also failed to inquire into the circumstances surrounding the seizure warrant and, until informed by Minority Staff investigators, failed to learn that the funds were drug proceeds from a money laundering sting.

- Chase Manhattan Bank left open a correspondent account with Swiss American Bank (SAB), an offshore bank licensed in Antigua and Barbuda, even after SAB projected that it would need 10,000 checks per month and began generating monthly bank statements exceeding 200 pages in length to process millions of dollars in Internet gambling proceeds.
- First Union National Bank left open a money market account with British Trade and Commerce Bank (BTCB) for almost 18 months after receiving negative information about the bank. When millions of dollars suddenly moved through the account 8 months after it was opened, First Union telephoned BTCB and asked it to voluntarily close the account. When BTCB refused, First Union waited another 9 months, replete with troubling incidents and additional millions of dollars moving through the account, before it unilaterally closed the account.
- When Citibank was asked by the Central Bank of Argentina for information about the owners of Federal Bank, an offshore bank licensed in the Bahamas with which Citibank had a 10-year correspondent relationship, Citibank responded that its “records contain no information that would enable us to determine the identity of the shareholders of the referenced bank.” Citibank gave this response to the Central Bank despite clear information in its own records identifying Federal Bank’s owners. When the Minority Staff asked the relationship manager to explain Citibank’s response, the relationship manager said he had the impression that the Central Bank “was trying to play some kind of game,” that it was “trying to get some legal proof of ownership.” After further discussion, the relationship manager said that he now knows Citibank should have answered the letter “in a different way” and that Citibank “should have done more.”

The investigation saw a number of instances in which U.S. banks were slow to close correspondent accounts, even after receiving ample evidence of misconduct. When asked why it took so long to close an account for Swiss American Bank after receiving troubling information about the bank, Chase Manhattan Bank representatives explained that Chase had solicited Swiss American as a client and felt “it wasn’t ethical to say we’ve changed.” Chase personnel told the investigation, we “couldn’t leave them.” Bank of America explained its delay in closing a correspondent account as due to fear of a lawsuit by the foreign bank seeking damages for hurting its business if the account were closed too quickly. A First Union correspondent banker expressed a similar concern, indicating that it first asked BTCB to close its account voluntarily so that First Union could represent that the decision had been made by the customer and minimize its exposure to litigation. The Minority Staff found this was not an uncommon practice, even though the investigation did not encounter any instance of a foreign bank’s filing such a suit.

B. Role of Correspondent Bankers

Correspondent bankers, also called relationship managers, should serve as the first line of defense against money laundering

in the correspondent banking field, but many appear to be inadequately trained and insufficiently sensitive to the risk of money laundering taking place through the accounts they manage. These deficiencies are attributable, in part, to the industry's overall poor recognition of money laundering problems in correspondent banking.

The primary mission of most correspondent bankers is to expand business—to open new accounts, increase deposits and sell additional services to existing accounts. But many are also expected to execute key anti-money laundering duties, such as evaluating prospective bank clients and reporting suspicious activity. Those correspondent bankers are, in effect, being asked to fill contradictory roles—to add new foreign banks as clients, while maintaining a skeptical stance toward those same banks and monitoring them for suspicious activity. The investigation found that some banks compensate their correspondent bankers by the number of new accounts they open or the amount of money their correspondent accounts bring into the bank. The investigation found few rewards, however, for closing suspect accounts or filing suspicious activity reports. In fact, the financial incentive is just the opposite; closing correspondent accounts reduces a bank's income and can reduce a correspondent banker's compensation. The result was that a correspondent banker's anti-money laundering duties were often a low priority.

For example, the Bank of America told the Minority Staff investigation that their relationship managers used to be seen as sales officers, routinely seeking new accounts, maintaining a "positive sales approach," and signing up as many correspondent banks as possible. Bank of America's attitude in the early and middle 1990s, it said, was that "banks are banks" and "you can trust them." The bank said it has since changed its approach and is no longer "beating the bushes" for new correspondent relationships.

Even if correspondent bankers were motivated to watch for signs of money laundering in their accounts, the investigation found that most did not have the tools needed for effective oversight. Large correspondent banks in the United States operate two or three thousand correspondent accounts at a time and process billions of dollars of wire transactions each day. Yet until very recently, most U.S. banks did not invest in the software, personnel or training needed to identify and manage money laundering risks in correspondent banking. For example, U.S. correspondent bankers reported receiving limited anti-money laundering training and seemed to have little awareness of the money laundering methods, financial frauds and other wrongdoing that rogue foreign banks or their clients perpetrate through correspondent accounts.³⁶ Standard due diligence forms were sometimes absent or provided insufficient guidance on the initial and ongoing due diligence information that correspondent bankers should obtain. Coordination between correspondent bankers and anti-money laundering bank personnel

³⁶The case histories in this report provide specific examples of how rogue foreign banks or their clients are using U.S. correspondent account to launder funds or facilitate crime, including from drug trafficking, prime bank guarantees, high yield investment scams, advanced-fee-for-loan scams, stock fraud, Internet gambling and tax evasion. Correspondent bankers appear to receive little or no training in recognizing and reporting suspicious activity related to such correspondent banking abuses.

was often lacking. Automated systems for reviewing wire transfer activity were usually not available. Few banks had pro-active anti-money laundering programs in place to detect and report suspect activity in correspondent accounts. The absence of effective anti-money laundering tools is further evidence of the low priority assigned to this issue in the correspondent banking field.

Examples of correspondent bankers insufficiently trained and equipped to identify and report suspicious activity included the following:

- A Bank of New York relationship manager told the investigation that there had been little anti-money laundering training for correspondent banking, but it is “in the developmental stages now.” The head of Bank of New York’s Latin American correspondent banking division disclosed that she had received minimal information about the black market peso exchange and was unaware of its importance to U.S. law enforcement. She also said the bank had not instituted any means for detecting this type of money laundering, nor had it instructed its correspondent banks to watch for this problem and refuse wire transfers from money changers involved in the black market.
- A Chase Manhattan Bank relationship manager who handled 140 correspondent accounts told the investigation that she had received no anti-money laundering training during her employment at Chase Manhattan or her prior job at Chemical Bank; she was not trained in due diligence analysis; the bank had no standard due diligence forms; and she received no notice of countries in the Caribbean to which she should pay close attention when opening or monitoring a correspondent banking relationship.
- A Bank of America official said that anti-money laundering training had received little attention for several years as the bank underwent a series of mergers. The bank said it is now improving its efforts in this area.
- A relationship manager at the Miami office of Banco Industrial de Venezuela told the investigation that she had received no training in recognizing possible financial frauds being committed through foreign bank correspondent accounts and never suspected fraudulent activity might be a problem. She indicated that, even after several suspicious incidents involving a multi-million-dollar letter of credit, a proof of funds letter discussing a prime bank guarantee, repeated large cash withdrawals by the respondent bank’s employees, and expressions of concern by her superiors, no one at the bank explained the money laundering risks to her or instructed her to watch the relationship.

A few banks have developed new and innovative anti-money laundering controls in their correspondent banking units, including wire transfer monitoring software and pro-active reviews of correspondent bank activity. A number of the banks surveyed or interviewed by the Minority Staff expressed new interest in developing stronger due diligence and monitoring procedures for correspondent accounts. But most of the U.S. banks contacted during the inves-

tigation had not devoted significant resources to help their correspondent bankers detect and report possible money laundering.

C. Nested Correspondents

Another practice in U.S. correspondent banking which increases money laundering risks in the field is the practice of foreign banks operating through the U.S. correspondent accounts of other foreign banks. The investigation uncovered numerous instances of foreign banks gaining access to U.S. banks—not by directly opening a U.S. correspondent account—but by opening an account at another foreign bank which, in turn, has an account at a U.S. bank. In some cases, the U.S. bank was unaware that a foreign bank was “nested” in the correspondent account the U.S. bank had opened for another foreign bank; in other cases, the U.S. bank not only knew but approved of the practice. In a few instances, U.S. banks were surprised to learn that a single correspondent account was serving as a gateway for multiple foreign banks to gain access to U.S. dollar accounts, U.S. wire transfer systems and other services available in the United States.

Examples uncovered during the investigation included the following:

- In 1999, First Union National Bank specifically rejected a request by a Dominican bank, British Trade and Commerce Bank (BTCB), to open a U.S. correspondent account. First Union was unaware, until informed by Minority Staff investigators, that it had already been providing wire transfer services to BTCB for 2 years, through BTCB’s use of a First Union correspondent account belonging to Banque Francaise Commerciale (BFC). BFC is a Dominican bank which had BTCB as a client.
- A Chase Manhattan Bank correspondent banker said that she was well aware that American International Bank (AIB) was allowing other foreign banks to utilize its Chase account. She said that she had no problem with the other banks using AIB’s correspondent account, since she believed they would otherwise have no way to gain entry into the U.S. financial system. She added that she did not pay any attention to the other foreign banks doing business with AIB and using its U.S. account. One of the banks using AIB’s U.S. account was Caribbean American Bank, a bank used exclusively for moving the proceeds of a massive advance-fee-for-loan fraud.
- The president of Swiss American Bank in Antigua said that no U.S. bank had ever asked SAB about its client banks, and SAB had, in fact, allowed at least two other offshore banks to use SAB’s U.S. accounts.
- Harris Bank International in New York said that its policy was not to ask its correspondent banks about their bank clients. Harris Bank indicated, for example, that it had a longstanding correspondent relationship with Standard Bank Jersey Ltd., but no information on Standard Bank’s own correspondent practices. Harris Bank disclosed that it had been unaware that, in providing correspondent services to Standard Bank, it had also

been providing correspondent services to Hanover Bank, a shell bank which, in 1998 alone, handled millions of dollars associated with financial frauds. Hanover Bank apparently would not have met Harris Bank's standards for opening an account directly, yet it was able to use Harris Bank's services through Standard Bank. Harris Bank indicated that it still has no information on what foreign banks may be utilizing Standard Bank's U.S. correspondent account, and it has no immediate plans to find out.

Case histories on American International Bank, Hanover Bank, and British Trade and Commerce Bank demonstrate how millions of dollars can be and have been transferred through U.S. correspondent accounts having no direct links to the foreign banks moving the funds. Despite the money laundering risks involved, no U.S. bank contacted during the investigation had a policy or procedure in place requiring its respondent banks to identify the banks that would be using its correspondent account, although Harris Bank International said it planned to institute that policy for its new bank clients and, during a Minority Staff interview, Bank of America's correspondent banking head stated "it would make sense to know a correspondent bank's correspondent bank customers."

D. Foreign Jurisdictions with Weak Banking or Accounting Practices

International correspondent accounts require U.S. banks to transact business with foreign banks. U.S. correspondent banks are inherently reliant, in part, on foreign banking and accounting practices to safeguard them from money laundering risks in foreign jurisdictions. Weak banking or accounting practices in a foreign jurisdiction increase the money laundering risks for U.S. correspondent banks dealing with foreign banks in that jurisdiction.

Weak Foreign Bank Licensing or Supervision. The international banking system is built upon a hodge podge of differing bank licensing and supervisory approaches in the hundreds of countries that currently participate in international funds transfer systems. It is clear that some financial institutions operate under substantially less stringent requirements and supervision than others. It is also clear that jurisdictions with weak bank licensing and supervision offer more attractive venues for money launderers seeking banks to launder illicit proceeds and move funds into bank accounts in other countries.³⁷

Licensing requirements for new banks vary widely. While some countries require startup capital of millions of dollars in cash reserves deposited with a central bank and public disclosure of a bank's prospective owners, other countries allow startup capital to be kept outside the country, impose no reserve requirements, and conceal bank ownership. Regulatory requirements for existing banks also differ. For example, while some countries use government employees to conduct on-site bank examinations, collect annual fees from banks to finance oversight, and require banks to operate anti-money laundering programs, other countries conduct no bank examinations and collect no fees for oversight, instead relying

³⁷ See, for example, discussion of "Offshore Financial Centers," INCSR 2000, at 565-77.

on self-policing by the country's banking industry and voluntary systems for reporting possible money laundering activities.

Offshore banking has further increased banking disparities. Competition among jurisdictions seeking to expand their offshore banking sectors has generated pressure for an international "race to the bottom" in offshore bank licensing, fees and regulation. Domestic bank regulators appear willing to enact less stringent rules for their offshore banks, not only to respond to the competitive pressure, but also because they may perceive offshore banking rules as having little direct impact on their own citizenry since offshore banks are barred from doing business with the country's citizens. Domestic bank regulators may also have less incentive to exercise careful oversight of their offshore banks, since they are supposed to deal exclusively with foreign citizens and foreign currencies. A number of countries, including in the East Caribbean and South Pacific, have developed separate regulatory regimes for their onshore and offshore banks, with less stringent requirements applicable to the offshore institutions.

The increased money laundering risks for correspondent banking are apparent, for example, in a web site sponsored by a private firm urging viewers to open a new bank in the Republic of Montenegro. The web site trumpets not only the jurisdiction's minimal bank licensing requirements, but also its arrangements for giving new banks immediate access to international correspondent accounts.

"If you're looking to open a **FULLY LICENSED BANK** which is authorized to carry on all banking business worldwide, the **MOST ATTRACTIVE JURISDICTION** is currently the **REPUBLIC OF MONTENEGRO**. . . . JUST USD\$9,999 for a full functioning bank (plus USD\$4,000 annual fees). . . . No large capital requirements—just USD\$10,000 capital gets your Banking License (and which you get **IMMEDIATELY BACK** after the Bank is . . . set-up)[.] . . . [N]o intrusive background checks! . . . The basic package includes opening a **CORRESPONDENT BANK [ACCOUNT]** at the Bank of Montenegro. This allows the new bank to use their existing correspondent network which includes Citibank, Commerzbank, Union Bank of Switzerland etc[.] for sending and receiving payments. For additional fee we can arrange direct **CORRESPONDENT ACCOUNTS** with banks in other countries."³⁸ [Emphasis and capitalization in original text.]

A similar web site offers to provide new banks licensed in Montenegro with a correspondent account not only at the "State Bank of Montenegro," but also at a "Northern European Bank."³⁹ When contacted, Citibank's legal counsel indicated no awareness of the web sites or of how many banks may be transacting business through its Bank of Montenegro correspondent account.

Weak Foreign Accounting Practices. Working in tandem with banking requirements are accounting standards which also vary across international lines. Accountants are often key partici-

³⁸ See global-money.com/offshore/europe-montenegro-bank.html. See also web.offshore.by.net/unitrust/enmontenegro-bank.html and www.permanenttourist.com/offshore-montenegro-bank.html.

³⁹ www.permanenttourist.com/offshore-montenegro-bank.html.

pants in bank regulatory regimes by certifying the financial statements of particular banks as in line with generally accepted accounting principles. Government regulators and U.S. banks, among others, rely on these audited financial statements to depict a bank's earnings, operations and solvency. Accountants may also perform bank examinations or special audits at the request of government regulators. They may also be appointed as receivers or liquidators of banks that have been accused of money laundering or other misconduct.

The investigation encountered a number of instances in which accountants in foreign countries refused to provide information about a bank's financial statements they had audited or about reports they had prepared in the role of a bank receiver or liquidator. Many foreign accountants contacted during the investigation were uncooperative or even hostile when asked for information.

- The Dominican auditing firm of Moreau Winston & Company, for example, refused to provide any information about the 1998 financial statement of British Trade and Commerce Bank, even though the financial statement was a publicly available document published in the country's official gazette, the firm had certified the statement as accurate, and the statement contained unusual entries that could not be understood without further explanation.
- A PriceWaterhouseCoopers auditor in Antigua serving as a government-appointed liquidator for Caribbean American Bank (CAB) refused to provide copies of its reports on CAB's liquidation proceedings, even though the reports were filed in court, they were supposed to be publicly available, and the Antiguan government had asked the auditor to provide the information to the investigation.⁴⁰
- Another Antiguan accounting firm, Pannell Kerr Foster, issued an audited financial statement for Overseas Development Bank and Trust in which the auditor said certain items could not be confirmed because the appropriate information was not available from another bank, American International Bank. Yet Pannell Kerr Foster was also the auditor of American International Bank, with complete access to that bank's financial records.

The investigation also came across disturbing evidence of possible conflicts of interest involving accountants and the banks they audited, and of incompetent or dishonest accounting practices. In one instance, an accounting firm verified a \$300 million item in a balance sheet for British Trade and Commerce Bank that, when challenged by Dominican government officials, has yet to be substantiated. In another instance, an accounting firm approved an offshore bank's financial statements which appear to have concealed indications of insolvency, insider dealing and questionable transactions. In still another instance raising conflict of interest concerns, an accountant responsible for auditing three offshore banks involving the same bank official provided that bank official

⁴⁰See correspondence on CAB between the Minority Staff, the PriceWaterhouseCoopers auditor and the auditor's legal counsel in the case study on American International Bank.

with a letter of reference, which the official then used to help one of the banks open a U.S. correspondent account.

U.S. correspondent bankers repeatedly stated that they attached great importance to a foreign bank's audited financial statements in helping them analyze the foreign bank's operations and solvency. Weak foreign accounting practices damage U.S. correspondent banking by enabling rogue foreign banks to use inaccurate and misleading financial statements to win access to U.S. correspondent accounts.

International banking and accounting organizations, such as the International Monetary Fund, Basle Committee for Banking Supervision, and International Accounting Standards Committee, have initiated efforts to standardize and strengthen banking and accounting standards across international lines. A variety of published materials seek to improve fiscal transparency, bank licensing and supervision, and financial statements, among other measures. For the foreseeable future, however, international banking and accounting variations are expected to continue, and banks will continue to be licensed by jurisdictions with weak banking and accounting practices. The result is that foreign banks operating without adequate capital, without accurate financial statements, without anti-money laundering programs, or without government oversight will be knocking at the door of U.S. correspondent banks.

U.S. correspondent banks varied widely in the extent to which they took into account a foreign country's banking and anti-money laundering controls in deciding whether to open an account for a foreign bank. Some U.S. banks did not perform any country analysis when deciding whether to open a foreign bank account. Several U.S. correspondent bankers admitted opening accounts for banks in countries about which they had little information. Other U.S. banks performed country evaluations that took into account a country's stability and credit risk, but not its reputation for banking or anti-money laundering controls. Still other U.S. banks performed extensive country evaluations that were used only when opening accounts for foreign banks requesting credit. On the other hand, a few banks, such as Republic National Bank of New York, explicitly required their correspondent bankers to provide information about a country's reputation for banking supervision and anti-money laundering controls on the account opening documentation, and routinely considered that information in deciding whether to open an account for a foreign bank.

E. Bank Secrecy

Bank secrecy laws further increase money laundering risks in international correspondent banking. Strict bank secrecy laws are a staple of many countries, including those with offshore banking sectors. Some jurisdictions refuse to disclose bank ownership. Some refuse to disclose the results of bank examinations or special investigations. Other jurisdictions prohibit disclosure of information about particular bank clients or transactions, sometimes refusing to provide that information to correspondent banks and foreign bank regulators.

The Minority Staff identified several areas where bank secrecy impedes anti-money laundering efforts. One area involves secrecy

surrounding bank ownership. In a case involving Dominica, for example, government authorities were legally prohibited from confirming a Dominican bank's statements to a U.S. bank concerning the identity of the Dominican bank's owners. In a case involving the South Pacific island of Vanuatu, bank ownership secrecy impeded local oversight of offshore banks. A local bank owner, who also served as chairman of Vanuatu's key commission regulating offshore banks, was interviewed by Minority Staff investigators. He indicated that Vanuatu law prohibited government officials from disclosing bank ownership information to non-government personnel so that, even though he chaired a key offshore bank oversight body, he was not informed about who owned the 60 banks he oversaw. When asked who he thought might own the offshore banks, he speculated that the owners were wealthy individuals, small financial groups or, in a few cases, foreign banks, but stressed he had no specific information to confirm his speculation.

Another area involves secrecy surrounding bank examinations, audits and special investigations. In several cases, government authorities said they were prohibited by law or custom from revealing the results of bank examinations, even for banks undergoing liquidation or criminal investigations. Bank regulators in Jersey, for example, declined to provide a special report that resulted in the censure of Standard Bank Jersey Ltd. for opening a correspondent account for Hanover Bank, because the Jersey government did not routinely disclose findings of fact or documents accumulated through investigations. The United Kingdom refused a request to describe the results of a 1993 inquiry into a 20 million scandal involving Hanover Bank and a major British insurance company, even though the inquiry had gone on for years, resulted in official findings and recommendations, and involved a closed matter. U.S. Government authorities were also at times uncooperative, declining, for example, to disclose information related to Operation Risky Business, a Customs undercover operation that exposed a \$60 million fraud perpetrated through two foreign banks and multiple U.S. correspondent accounts. Bank examinations, audits and investigations that cannot be released or explained in specific terms hinder international efforts to gather accurate information about suspect financial institutions, companies and individuals.

A third area involves secrecy of information related to specific bank clients and transactions. When Minority Staff investigators sought to trace transactions and bank accounts related to individuals or entities either convicted of or under investigation for wrongdoing in the United States, foreign banks often declined to answer specific questions about their accounts and clients, citing their country's bank secrecy laws. When asked whether particular accounts involved Internet gambling, the same answer was given. When asked about whether funds distributed to respondent bank officials represented insider dealing, the same answer was given.

Bank secrecy laws contribute to money laundering by blocking the free flow of information needed to identify rogue foreign banks and individual wrongdoers seeking to misuse the correspondent banking system to launder illicit funds. Bank secrecy laws slow law enforcement and regulatory efforts. Bank secrecy laws also make it difficult for U.S. banks considering correspondent bank applications

to make informed decisions about opening accounts or restricting certain depositors or lines of business. Money launderers thrive in bank secrecy jurisdictions that hinder disclosure of their accounts and activities, even when transacting business through U.S. correspondent accounts.

F. Cross Border Difficulties

Due diligence reviews of foreign banks, if performed correctly, require U.S. correspondent banks to obtain detailed information from foreign jurisdictions. This information is often difficult to obtain. For example, some governments are constrained by bank secrecy laws from providing even basic information about the banks operating in the country. Jurisdictions with weak banking oversight and anti-money laundering regimes may have little useful information to offer in response to an inquiry by a U.S. based bank. Jurisdictions reliant on offshore businesses for local jobs or government fees may be reluctant to disclose negative information. Other sources of information may be limited or difficult to evaluate. Many foreign jurisdictions have few or no public databases about their banks. Court records may not be computerized or easily accessible. Credit agencies may not operate within the jurisdiction. Media databases may be limited or nonexistent. Language barriers may impose additional difficulties. Travel to foreign jurisdictions by U.S. correspondent bankers to gather first-hand information is costly and may not produce immediate or accurate information, especially if a visit is short or to an unfamiliar place. The bottom line is that due diligence is not easy in international correspondent banking.

The difficulty continues after a correspondent account with a foreign bank is opened. Correspondent banking with foreign banks, by necessity, involves transactions across international lines. The most common correspondent banking transaction is a wire transfer of funds from one country to another. Foreign exchange transactions, including clearing foreign checks or credit card transactions, and international trade transactions are also common. All require tracing transactions from one financial institution to another, usually across international borders, and involve two or more jurisdictions, each with its own administrative and statutory regimes. These cross border financial transactions inevitably raise questions as to which jurisdiction's laws prevail, who is responsible for conducting banking and anti-money laundering oversight, and what information may be shared to what extent with whom. Cross border complexities increase the vulnerability of correspondent banking to money laundering by rendering due diligence more difficult, impeding investigations of questionable transactions, and slowing bank oversight.

G. U.S. Legal Barriers to Seizing Funds in U.S. Correspondent Accounts

Another contributor to money laundering in correspondent banking are U.S. legal barriers to the seizure of laundered funds from a U.S. correspondent bank account.

Under current law in the United States, funds deposited into a correspondent bank account belong to the respondent bank that opened and has signatory authority over the account; the funds do

not belong to the respondent bank's individual depositors.⁴¹ Federal civil forfeiture law, under 18 U.S.C. 984, generally prohibits the United States from seizing suspect funds from a respondent bank's correspondent account based upon the wrongdoing of an individual depositor at the respondent bank. The one exception, under 18 U.S.C. 984(d), is if the United States demonstrates that the bank holding the correspondent account "knowingly engaged" in the laundering of the funds or in other criminal misconduct justifying seizure of the bank's own funds.

Few cases describe the level of bank misconduct that would permit a seizure of funds from a U.S. correspondent account under Section 984(d). One U.S. district court has said that the United States must demonstrate the respondent bank's "knowing involvement" or "willful blindness" to the criminal misconduct giving rise to the seizure action.⁴² That court upheld a forfeiture complaint alleging that the respondent bank had written a letter of reference for the wrongdoer, handled funds used to pay ransom to kidnapers, and appeared to be helping its clients avoid taxes, customs duties and transaction reporting requirements. The court found that, "under the totality of the circumstances . . . the complaint sufficiently allege[d] [the respondent bank's] knowing involvement in the scheme."

Absent such a showing by the United States, a respondent bank may claim status as an "innocent bank" and no funds may be seized from its U.S. correspondent account. If a foreign bank successfully asserts an innocent bank defense, the United States' only alternative is to take legal action in the foreign jurisdiction where the suspect funds were deposited. Foreign litigation is, of course, more difficult and expensive than seizure actions under U.S. law and may require a greater threshold of wrongdoing before it will be undertaken by the U.S. Government.

In some instances, money launderers may be deliberately using correspondent accounts to hinder seizures by U.S. law enforcement, and some foreign banks may be taking advantage of the innocent bank doctrine to shield themselves from the consequences of lax anti-money laundering oversight. For example, there are numerous criminal investigations in the United States of frauds committed by Nigerian nationals and their accomplices involving suspect funds deposited into U.S. correspondent accounts in the name of Nigerian banks.

Nigerian financial fraud cases are a well known, widespread problem which consumes significant U.S. law enforcement and banking resources. The INCSR 2000 report states:

"Nigeria continues to be the money laundering and financial fraud hub of West Africa, and may be assuming that role for the entire continent. Nigerian money launderers operate sophisticated global networks to repatriate illicit proceeds. . . . Nigerian Advance Fee Fraud has arguably become the most lucrative financial crime committed by Nigerian criminals world-

⁴¹ See, for example, *United States v. Proceeds of Drug Trafficking Transferred to Certain Foreign Bank Accounts* (Civil Action No. 98-434(NHJ), U.S. District Court for the District of Columbia 2000), court order dated 4/11/00.

⁴² *United States v. \$15,270,885.69* (2000 U.S. Dist. LEXIS 12602, 2000 WL 1234593 SDNY 2000).

wide, with conservative estimates indicating hundred of millions of dollars in illicit profits generated annually. This type of fraud is referred to internationally as 'Four-One-Nine' (419), referring to the Nigerian criminal statute for fraud, and has affected a large number of American citizens and businesses."⁴³

U.S. prosecutors seeking to recover Nigerian 4-1-9 fraud proceeds face serious legal hurdles if the funds have been deposited into a Nigerian bank's U.S. correspondent account. Section 984(d) precludes seizure of the funds from the correspondent account unless the United States demonstrates that the Nigerian bank was knowingly engaged in misconduct. Demonstrating Nigerian bank misconduct is not an easy task; Nigerian bank information is not readily available and prosecutors would likely have to travel to Nigeria to obtain documents or interview bank personnel. Law enforcement advised that these legal and investigatory complications make U.S. prosecutors reluctant to pursue 4-1-9 cases, that Nigerian wrongdoers are well aware of this reluctance, and that some Nigerians appear to be deliberately using U.S. correspondent accounts to help shield their ill-gotten gains from seizure by U.S. authorities.

The survey conducted by the investigation discovered that at least two U.S. banks have numerous correspondent relationships with Nigerian banks, one listing 34 such correspondent relationships and the other listing 31. The investigation also determined that many of these Nigerian banks were newly established, there was little information readily available about them, and the only method to obtain first hand information about them was to travel to Nigeria. These U.S. correspondent accounts increase money laundering risks in U.S. correspondent banking, not only because of Nigeria's poor anti-money laundering and banking controls, but also because of U.S. legal protections that shield these accounts from seizures of suspect funds.

The special forfeiture protections in U.S. law for deposits into correspondent accounts are not available for deposits into any other type of account at U.S. banks. Additional examples of U.S. legal barriers impeding forfeiture of illicit proceeds from U.S. correspondent accounts are discussed in the case histories involving European Bank, British Bank of Latin America, and British Trade and Commerce Bank.

VI. How an Offshore Bank Launders Money Through a U.S. Correspondent Account: The Lessons of Guardian Bank

In March 2000, the Minority Staff conducted an in-depth interview of a former offshore bank owner who had pled guilty to money laundering in the United States and was willing to provide an insider's account of how his bank used U.S. correspondent accounts to launder funds and facilitate crime in the United States.

⁴³INCSR 2000 at 713. The INCSR 2000 report also expresses concern about Nigeria's weak anti-money laundering efforts, which was echoed by international banking experts interviewed by Minority Staff investigators. The Federal Deposit Insurance Corporation recently issued a special alert urging U.S. financial institutions to scrutinize transactions to avoid funds associated with Nigerian frauds. FDIC Financial Institution Letter No. FIL-64-2000 (9/19/00). See also, for example, "Letters from Lagos promise false riches for the gullible," *The Times* (London) (8/20/99); "Nigerian Con Artists Netting Millions in Advance-Fee Schemes," *Los Angeles Times* (1/24/98).

Guardian Bank and Trust (Cayman) Ltd. was an offshore bank licensed by the Cayman Islands which opened its doors in 1984 and operated for about 10 years before being closed by the Cayman Government. At its peak, Guardian Bank had a physical office in the Cayman Islands' capital city, over 20 employees, over 1,000 clients, and about \$150 million in assets. The bank operated until early 1995, when it was abruptly closed by Cayman authorities and eventually turned over to a government-appointed liquidator due to "serious irregularities" identified in the conduct of the Offshore Bank's business.⁴⁴

The majority owner and chief executive of Guardian Bank for most of its existence was John Mathewson, a U.S. citizen who was then a resident of the Cayman Islands. In 1996, while in the United States, Mathewson was arrested and charged with multiple counts of money laundering, tax evasion and fraud, and later pleaded guilty.⁴⁵ As part of his efforts to cooperate with Federal law enforcement, Mathewson voluntarily provided the United States with an electronic ledger and rolodex providing detailed records for a 1-year period of all Guardian Bank customers, accounts and transactions.

The encrypted computer tapes provided by Mathewson represent the first and only time U.S. law enforcement officials have gained access to the computerized records of an offshore bank in a bank secrecy haven.⁴⁶ Mathewson not only helped decode the tapes, but also explained the workings of his bank, and provided extensive and continuing assistance to Federal prosecutors in securing criminal convictions of his former clients for tax evasion, money laundering and other crimes.⁴⁷

⁴⁴ *Johnson v. United States*, 971 F. Supp. 862, 863 (U.S. District Court for the District of New Jersey 1997).

⁴⁵ In 1997, Mathewson pleaded guilty to charges in three Federal prosecutions. The U.S. District of New Jersey had indicted him on three counts of money laundering, *United States v. Mathewson* (Criminal Case No. 96-353-AJL); the Eastern District of New York had charged him with four counts of aiding and abetting the evasion of income tax, *United States v. Mathewson* (Criminal Case No. 97-00189-001-ALJ); and the Southern District of Florida had charged him with one count of conspiracy to commit wire fraud, *United States v. Mathewson* (Criminal Case No. 97-0188-Marcus). He was also subject to a 1993 civil tax judgment for over \$11.3 million from *United States v. Mathewson* (U.S. District Court for the Southern District of Florida Civil Case No. 92-1054-Davis).

⁴⁶ The government-appointed liquidator of Guardian Bank sued unsuccessfully to recover the computer tapes from the U.S. Government, arguing that they had been improperly obtained and disclosure of the bank information would violate Cayman confidentiality laws and damage the reputation of the Cayman banking industry. *Johnson v. United States*, 971 F. Supp. 862 (U.S. District Court for the District of New Jersey 1997). The Cayman Government also refused U.S. requests for assistance in decoding the information on the computer tapes.

⁴⁷ Some of the former clients for whom Mathewson has provided assistance in obtaining a criminal conviction include: (1) Mark A. Vicini of New Jersey, who had deposited \$9 million into a Guardian account and pleaded guilty to evading \$2.2 million in taxes (U.S. District Court for the Eastern District of New York Case No. CR-97-684); (2) members of the Abboud family of Omaha, Nebraska, who have been indicted for money laundering and fraud in connection with \$27 million in cable piracy proceeds transferred to Guardian Bank (U.S. District Court for the District of Nebraska Case No. 8:99CR-80); (3) Frederick Gipp, a Long Island golf pro who had deposited \$150,000 into a Guardian account and pleaded guilty to tax evasion (U.S. District Court for the Eastern District of New York Case No. CR-98-147-ERK); (4) Dr. Jeffrey E. LaVigne, a New York proctologist who deposited \$560,000 into a Guardian account and who pleaded guilty to evading \$160,000 in taxes (U.S. District Court for the Eastern District of New York Case No. 94-1060-CR-ARR); (5) Dr. Bartholomew D'Ascoli, a New Jersey orthopedic surgeon, who had deposited \$395,000 into a Guardian account and pleaded guilty to evading \$118,000 in taxes (U.S. District Court for the Eastern District of New York Criminal Case No. 98-739-RJD); (6) Michael and Terrence Hogan of Ohio, who had deposited \$750,000 of undeclared income into a Guardian account and pleaded guilty to tax evasion (U.S. District Court for the Southern District of Ohio Criminal Case No. CR-1-98-045); (7) David L. Bamford of New Jersey, who had diverted corporate income into a Guardian account and pleaded guilty

Continued

Mathewson stated at his sentencing hearing, "I have no excuse for what I did in aiding U.S. Citizens to evade taxes, and the fact that every other bank in the Caymans was doing it is no excuse. . . . But I have cooperated." His cooperation has reportedly resulted in the collection of more than \$50 million in unpaid taxes and penalties, with additional recoveries possible.⁴⁸ One prosecutor has characterized Mathewson's assistance as "the most important cooperation for the government in the history of tax haven prosecution."⁴⁹

Pursuant to his plea agreement to provide assistance to government officials investigating matters related to Guardian Bank, Mathewson provided the Minority Staff investigation with a lengthy interview and answers to written questions on how Guardian Bank laundered funds through its U.S. correspondent accounts.

Bank Secrecy. Mathewson first explained why bank secrecy plays a central role in the offshore banking industry. He said that Cayman laws strictly limit government and bank disclosure of bank records and personal information associated with depositors. He said that, in his experience, Cayman bank clients relied on those secrecy laws and believed no one would be able to trace a Cayman bank account or corporation back to them. Mathewson asserted that this secrecy was and still is the basis of the Cayman financial industry, and is protected by Cayman authorities. He indicated that, without this secrecy, he thought there would be no reason for U.S. citizens to establish offshore bank accounts, trusts or corporations in the Cayman Islands and pay the costly fees associated with them.

Mathewson stated at another point that he thought 100% of his clients had been engaged in tax evasion, which was one reason they sought bank secrecy. He pointed out that tax evasion is not a crime in the Cayman Islands; Guardian Bank could legally accept the proceeds of tax evasion without violating any Cayman criminal or money laundering prohibitions; and Cayman law placed no legal obligation on its banks to avoid accepting such deposits.⁵⁰ His analysis of the bank's clients is echoed in statements made on behalf of the Guardian Bank liquidator in a letter warning of the consequences of Guardian computer tapes remaining in U.S. custody:

"[I]t is quite obvious that the consequences of the seizure of these records by the Federal authorities are potentially very damaging to those of the [Offshore] Bank's clients liable for taxation in the U.S. In the likely event that the Federal authorities share the information . . . with the Internal Revenue Service, we would anticipate widespread investigation and possibly prosecution of the [Offshore] Bank's clients."⁵¹

to tax evasion (U.S. District Court for the District of New Jersey Case Number 2:98-CR-0712); and (8) Marcello Schiller of Florida who had deposited funds in a Guardian account, pleaded guilty to Medicare fraud, and was ordered to pay restitution exceeding \$14 million (U.S. District Court for the Southern District of Florida Criminal Case No. 1:98-CR-0397).

⁴⁸ *The Record (Bergen County, N.J.)* (8/3/97).

⁴⁹ *New York Times* (8/3/99).

⁵⁰ Mathewson drew a sharp contrast between the proceeds of tax evasion, which his bank had accepted, and the proceeds of drug trafficking, which his bank had not. He stated that Guardian Bank had refused to accept suspected drug proceeds, and multiple reviews of its accounts by law enforcement had found no evidence of any drug proceeds in the bank.

⁵¹ *Johnson v. United States*, 971 F. Supp. at 865.

Subsequent U.S. tax prosecutions against Guardian clients have demonstrated the accuracy of this prediction, establishing that numerous depositors had, in fact, failed to pay U.S. tax on the funds in their offshore accounts.

Guardian Procedures Maximizing Secrecy. Mathewson said that Guardian Bank had complied with Cayman secrecy requirements, and he had designed Guardian Bank policies and procedures to maximize secrecy protections for its clients. He stated, for example, that he had begun by changing the name of the bank from Argosy Bank to Guardian Bank. He indicated that he had selected the name Guardian Bank in part after determining that at least 11 other banks around the world used the word Guardian in their title. Mathewson indicated that he had thought the commonness of the name would help secure Guardian's anonymity or at least make it more difficult to trace transactions related to the bank. He indicated that this was a key concern, because offshore banks in small jurisdictions by necessity conduct most of their transactions through international payment systems and so need to find ways to minimize detection and disclosure of client information.

Mathewson advised that a second set of Guardian procedures designed to maximize client secrecy involved the bank's opening client accounts in the name of shell corporations whose true ownership was not reported in public records. He said that almost all Guardian clients had chosen to open their accounts in the name of a corporation established by the bank. Mathewson explained that Guardian Bank had typically set up several corporations at a time and left them "on the shelf" for ready use when a client requested one.

Mathewson said that Guardian Bank had typically charged \$5,000 to supply a "shelf corporation" to a client and \$3,000 to cover the corporation's first-year management fee, for a total initial charge of \$8,000. He said that clients were then required to pay an annual management fee of \$3,000 for each corporation they owned. He said that these fees represented mostly revenue for Guardian Bank, since, at the time, the only major expense per corporation was about \$500 charged by the Cayman authorities each year for taxes and other fees. He said that many Cayman banks offered the same service, and \$8,000 was the going rate at the time.

According to Mathewson, for an additional fee, Guardian clients could obtain an "aged" shelf corporation. He explained that an aged shelf corporation was one which had been in existence for several years and which either had never been sold to a client or had been sold and returned by a client after a period of time. Mathewson indicated that some clients wanted aged shelf corporations in order to back-date invoices or create other fictitious records to suggest past years of operation. He said that this type of corporation helped Guardian clients with preexisting tax problems to fabricate proof of corporate existence and business activity. Mathewson stated that he and other Cayman bankers would customize these aged shelf corporation to suit a client's specific needs.

In addition to providing a shelf corporation to serve as a client's acountholder, Mathewson stated that Guardian Bank usually provided each client with nominee shareholders and directors to fur-

ther shield their ownership of the corporation from public records. He explained that Cayman law allowed Cayman corporations to issue a single share which could then be held by a single corporate shareholder. He said that a Guardian subsidiary, such as Fulcrum Ltd., was typically named as the shelf corporation's single shareholder. He said that Fulcrum Ltd. would then be the only shareholder listed on the incorporation papers.

Mathewson said that Guardian also usually supplied nominee directors for the shelf corporation. He explained that Cayman law required only one director to appear on the incorporation papers, allowed that director to be a corporation, and allowed companies to conduct business in most cases with only one director's signature. He said that a Guardian subsidiary called Guardian Directors Ltd. was typically used to provide nominee directors for clients and to manage their shelf corporations. He said that the only director's name that would appear on a shelf corporation's incorporation papers was "Guardian Directors Ltd.," and that only one signature from the subsidiary was then needed to conduct business on the shelf corporation's behalf. That meant, Mathewson advised, that a client's name need never appear on the shelf corporation's incorporation papers or on any other document requiring a corporate signature; signatures were instead provided by a person from Guardian Directors Ltd. In this way, Mathewson indicated, a client's corporation "could do business worldwide and the U.S. client (beneficial owner) could be confident that his name would never appear and, in fact, he or she would have complete anonymity."

Mathewson explained that, to establish a client's ownership of a particular shelf corporation, Guardian Bank typically used a separate "assignment" document which assigned the corporation's single share from the Guardian subsidiary to the client. He said this assignment document was typically the only documentary evidence of the client's ownership of the shelf corporation. He indicated that the assignment document could then be kept by Guardian Bank in the Cayman Islands, under Cayman banking and corporate secrecy laws, to further ensure nondisclosure of the client's ownership interest.

Mathewson said Guardian Bank usually kept clients' bank account statements in the Cayman Islands as well, again to preserve client secrecy. His written materials state, "No bank statements were ever sent to the client in the United States." Instead, he indicated, a client visiting the Cayman Islands would give the bank a few days notice, and Guardian Bank would produce an account statement for an appropriate period of time, for the client's in-person review and signature during their visit to the bank.

Guardian Use of Correspondent Accounts. Mathewson said Guardian Bank utilized correspondent bank accounts to facilitate client transactions, while minimizing disclosure of client information and maximizing Guardian revenues.

Mathewson noted that, because Guardian Bank was an offshore bank, all of its depositors were required to be non-Cayman citizens. He said that 95% of the bank's clientele came from the United States, with the other 5% from Canada, South America and Europe, which he said was a typical mix of clients for Cayman banks. In order to function, he said, Guardian had to be able to handle for-

eign currency transactions, particularly U.S. dollar transactions, including clearing U.S. dollar checks and wires. He said that, as a non-U.S. bank, Guardian Bank had no capability to clear a U.S. dollar check by itself and no direct access to the check and wire clearing capabilities of Fedwire or CHIPS. But Guardian Bank had easily resolved this problem, he said, by opening correspondent accounts at U.S. banks.

Mathewson said that, over time, Guardian Bank had opened about 15 correspondent accounts and conducted 100% of its transactions through them. He said, "Without them, Guardian would not have been able to do business." He said that, at various times, Guardian had accounts at seven banks in the United States, including Bank of New York; Capital Bank in Miami; Eurobank Miami; First Union in Miami; Popular Bank of Florida; Sun Bank; and United Bank in Miami. He said Guardian also had accounts at non-U.S. banks, including Bank of Butterfield in the Cayman Islands; Bank of Bermuda in the Cayman Islands; Barclay's Grand Cayman; Credit Suisse in Guernsey; Credit Suisse in Toronto; Royal Bank of Canada in the Cayman Islands; and Toronto Dominion Bank.

Mathewson indicated that Guardian Bank's major correspondents were Bank of New York, First Union in Miami, and Credit Suisse in Guernsey, with \$1-\$5 million on deposit at each bank at any given time. He said that when Guardian Bank was closed in early 1995, it had a total of about \$150 million in its correspondent accounts. He estimated that, over 10 years of operation, about \$300-\$500 million had passed through Guardian Bank's correspondent accounts.

Mathewson said that Guardian Bank had used the services provided by its correspondent banks to provide its clients with a wide array of financial services, including checking accounts, credit cards, wire transfer services, loans and investments. He wrote, "The bank offered almost any service that a U.S. bank would offer, i.e., wire transfers, current accounts, certificates of deposit, the purchase of shares on any share market in the world, purchase of U.S. treasury bills, bonds, credit cards (Visa), and almost any investment that the client might wish." He explained that, while Guardian Bank itself lacked the resources, expertise and infrastructure needed to provide such services in-house, it easily afforded the fees charged by correspondent banks to provide these services for its clients.

Mathewson said that to ensure these correspondent services did not undermine Cayman secrecy protections, Guardian Bank had also developed a series of policies and procedures to minimize disclosure of client information.

Client Deposits. Mathewson said that one set of policies and procedures were designed to minimize documentation linking particular deposits to particular clients or accounts and to impede the tracing of individual client transactions. He said that Guardian Bank provided its clients with instructions on how to make deposits with either checks or wire transfers.

Client Deposits Through Checks. If a client wanted to use a check to make a deposit, Mathewson said, the client was advised to make the check payable to Guardian Bank; one of Guardian's

subsidiaries—Fulcrum Ltd., Sentinel Ltd., or Tower Ltd.; or the client's own shelf corporation. He said the client was then instructed to wrap the check in a sheet of plain paper, and write their Guardian account number on the sheet of paper. He said that the client account number was written on the plain sheet of paper rather than on the check, so that the account number would not be directly associated with the check instrument used to make the deposit.

Mathewson said that Guardian Bank provided its clients with several options for check payees to make a pattern harder to detect at their own bank. He said that if a check was made out to the client's shelf corporation, the client was advised not to endorse it on the back and Guardian Bank would ensure payment anyway. He said that Guardian would then stamp each check on the back with: "For deposit at [name of correspondent bank] for credit to Guardian Bank" and provide Guardian's account number at the correspondent bank. He noted that this endorsement included no reference to the Cayman Islands which meant, since there were multiple Guardian Banks around the world, the transaction would be harder to trace.

Mathewson said that after Guardian Bank accumulated a number of U.S. dollar checks sent by its clients to the bank in the Cayman Islands, it batched them into groups of 50 to 100 checks and delivered them by international courier to one of its U.S. correspondent banks for deposit into a Guardian account. He said that the U.S. bank would then clear the client checks using its own U.S. bank stamp, which meant the client's U.S. bank records would show only a U.S. bank, and not a Cayman bank, as the payor. He said the correspondent bank would then credit the check funds to Guardian's account, leaving it to Guardian Bank itself to apportion the funds among its client accounts.

Mathewson explained that Guardian Bank never actually transferred client funds out of Guardian's correspondent accounts to the bank in the Cayman Islands, nor did it create subaccounts within its U.S. correspondent accounts for each client. He said that Guardian Bank purposely left all client funds in its correspondent accounts in order to earn the relatively higher interest rates paid on large deposits, thereby generating revenue for the bank. For example, Mathewson said, a Guardian correspondent account might generate 6% interest, a higher rate of return based on the large amount of funds on deposit, and Guardian Bank would then pay its clients 5%, keeping the 1% differential for itself. He said that Guardian might also transfer some funds to an investment account in its own name to generate still larger revenues for the bank. He said that Guardian Bank had opened investment accounts at 10 or more securities firms, including Prudential Bache in New York, Prudential Securities in Miami, Smith Barney Shearson, and Charles Schwab.

He explained that Guardian did not create client subaccounts or otherwise ask its correspondent banks keep track of Guardian client transactions, since to do so would have risked disclosing specific client information. Instead, he said, transactions involving individual Guardian accounts were recorded in only one place, Guardian Bank's ledgers. He said that Guardian Bank's ledgers

were kept electronically, using encrypted banking software that was capable of tracking multiple clients, accounts, transactions and currencies and that ran on computers physically located in the Cayman Islands, protected by Cayman bank secrecy laws.

Client Deposits Through Wire Transfers. Mathewson also described the arrangements for client deposits made through wire transfers. He said that clients were provided the names of banks where they could direct wire transfers for depositing funds into a Guardian correspondent account. He said the wire instructions typically told clients to transfer their funds to the named bank "for further credit to Guardian Bank," and provided Guardian's correspondent account number.

Mathewson said that Guardian Bank had preferred its clients to send wire deposits to a non-U.S. bank, such as Credit Suisse in Guernsey, or the Bank of Butterfield in the Caymans, to minimize documentation in the United States. He said the clients were given Guardian's account number at each of the banks and were instructed to direct the funds to be deposited into Guardian's account, but not to provide any other identifying information on the wire documentation. He said clients were then instructed to telephone Guardian Bank to alert it to the incoming amount and the account to which it should be credited. He said that Guardian Bank commingled the deposit with other funds in its correspondent account, recording the individual client transaction only in its Cayman records.

Mathewson stated that, although discouraged from doing so, some clients did wire transfer funds to a Guardian correspondent account at a U.S. bank. He said that Guardian had also, on occasion, permitted clients to make cash deposits into a Guardian correspondent account at a U.S. bank. In both cases, however, he indicated that the clients were warned against providing documentation directly linking the funds to themselves or their Guardian account numbers. He said that after making a deposit at a U.S. bank, clients were supposed to telephone Guardian Bank to alert it to the deposit and to indicate which Guardian account was supposed to be credited. He indicated that, as a precaution in such cases, Guardian Bank would sometimes wire the funds to another Guardian correspondent account at a bank in a secrecy jurisdiction, such as Credit Suisse in Guernsey, before sending it to the next destination, to protect client funds from being traced.

Mathewson said that, whether a client used a check or wire transfer to deposit funds, if the client followed Guardian's instructions, the documentation at the correspondent bank ought to have contained no information directly linking the incoming funds to a named client or to a specific account at Guardian Bank in the Cayman Islands.

Client Withdrawals. Mathewson next explained how Guardian Bank used its U.S. correspondent accounts to provide its clients with easy, yet difficult-to-trace access to their offshore funds. He described three options for client withdrawals involving credit cards, checks or wire transfers.

Client Withdrawals Through Credit Cards. Mathewson said that Guardian Bank had recommended that its clients access their account funds through use of a credit card issued by the bank,

which he described as the easiest and safest way for them to access their offshore funds. He explained that Guardian Bank had set up a program to assign its U.S. clients a corporate Visa Gold Card issued in the name of their shelf corporation. He said that the only identifier appearing on the face of the card was the name of the shelf corporation, imprinted with raised type. He said that the clients were then told to sign the back of the card, using a signature that was reproducible but hard to read. He said that, while some clients had expressed concern about merchants accepting the credit card, Guardian had never experienced any problems.

Mathewson said that Guardian Bank had charged its clients an annual fee of \$100 for use of a Visa card. Mathewson explained that the cards were issued and managed on a day-to-day basis by a Miami firm called Credomatic. To obtain a card for a particular client, Mathewson explained that Guardian Bank had typically sent a letter of credit on behalf of the client's shelf corporation to Credomatic. He said the amount of the letter of credit would equal the credit limit for the particular card. He said that, to ensure payment by the client, Guardian Bank would simultaneously establish a separate account within Guardian Bank containing funds from the client in an amount equal to twice the client's credit card limit. He said these client funds then served as a security deposit for the credit card. He said, for example, if a client had a \$50,000 credit card limit, the security deposit would contain \$100,000 in client funds. He said that, while most of their cardholders had \$5,000 credit limits, some went as high as \$50,000.

Mathewson stated that Credomatic had not required nor conducted background checks on Guardian's cardholders, because Guardian Bank had guaranteed payment of their credit card balances through the letters of credit, which meant Credomatic had little or no risk of nonpayment. Mathewson stated that Guardian Bank had instructed Credomatic never to carry a credit card balance over to a new month, but to ensure payment in full each month using client funds on deposit at Guardian Bank. In that way, he said, the client funds in the security deposit eliminated any nonpayment risk to Guardian Bank. According to Mathewson, the arrangement was the equivalent of a monthly loan by the bank to its clients, backed by cash, through a device which gave its U.S. banking clients ready access to their offshore funds.

Mathewson observed that Guardian Bank had earned money from the Visa card arrangement, not only through the \$100 annual fee, but also through commissions on the card activity. He explained that once a credit card was issued, Credomatic managed the credit relationship, compiling the monthly charges for each card and forwarding the balances to Guardian Bank which immediately paid the total in full and then debited each client. In return, he said, Credomatic received from merchants the standard Visa commission of approximately 3% of the sales drafts and, because Guardian Bank had guaranteed payment of the monthly credit card balances, forwarded 1% to the bank. He said it was a popular service with clients and profitable for Guardian Bank. In response to questions, he said that, as far as he knew, Credomatic had never questioned Guardian Bank's operations or clients and

was “delighted” to have the business. Credomatic is still in operation in Miami.

Client Withdrawals Through Correspondent Checks.

Mathewson said that a second method Guardian Bank sometimes used to provide U.S. clients with access to their offshore funds was to make payments on behalf of its clients using checks drawn on Guardian’s U.S. correspondent accounts.

Mathewson explained that each correspondent bank had typically provided Guardian Bank with a checkbook that the bank could use to withdraw funds from its correspondent account. He said that the Bank of New York, which provided correspondent services to Guardian Bank from 1992 until 1996, had actually provided two checkbooks. He said the first checkbook from the Bank of New York had provided checks in which the only identifier at the top of the check was “Guardian Bank”—without any address, telephone number or other information linking the bank to the Cayman Islands—and the only account number at the bottom was Guardian’s correspondent account number at the Bank of New York in New York City. He said the second checkbook provided even less information—the checks had no identifier at the top at all and at the bottom referenced only the Bank of New York and an account number that, upon further investigation, would have identified the Guardian account. He explained that checks without any identifying information on them were common in Europe, Asia and offshore jurisdictions, and that Guardian Bank had experienced no trouble in using them.

He said that Guardian Bank sometimes used these checks to transact business on behalf of a client—such as sending a check to a third party like a U.S. car dealership. He said that if the amount owed was over \$10,000, such as a \$40,000 payment for a car, the client would authorize the withdrawal of the total amount of funds from their Cayman account, and Guardian Bank would send multiple checks to the car dealership, perhaps five or six, each in an amount less than \$10,000, to avoid generating any currency report. He noted that, once deposited, each check would be cleared as a payment from a U.S. bank, rather than from a Cayman bank. He said that if the check used did not have an identifier on top, the payee would not even be aware of Guardian Bank’s involvement in the transaction. If traced, he noted that the funds would lead only to the correspondent account held by Guardian Bank, rather than to a specific Guardian client. He said that Cayman secrecy laws would then prohibit Guardian Bank from providing any specific client information, so that the trail would end at the correspondent account in the United States.

Mathewson said that correspondent checks, like the VISA credit cards, gave Guardian clients ready access to their offshore funds in ways that did not raise red flags and would not have been possible without Guardian Bank’s correspondent relationships.

Client Withdrawals Through Wire Transfers. A third option for clients to access their offshore funds involved the use of wire transfers. Mathewson explained that Guardian clients had no authority to wire transfer funds directly from Guardian Bank’s correspondent accounts, since only the bank itself had signatory authority over those accounts. He said that the clients would instead

send wire transfer instructions to Guardian Bank, which Guardian Bank would then forward to the appropriate correspondent bank. He said that Guardian Bank would order the transfer of funds to the third party account specified by the client, without any client identifier on the wire documentation itself, requiring the client to take responsibility for informing the third party that the incoming funds had originated from the client.

Mathewson observed that its correspondent accounts not only enabled its clients readily to deposit and withdraw their offshore funds and hide their association with Guardian Bank, but also generated ongoing revenues for Guardian Bank, such as the higher interest paid on aggregated client deposits, credit card commissions, and wire transfer fees.

Two Other Client Services. In addition to routine client services, Mathewson described two other services that Guardian Bank had extended to some U.S. clients, each of which made use of Guardian Bank's correspondent accounts. Both of these services enabled Guardian clients to evade U.S. taxes, with the active assistance of the bank.

Invoicing. Mathewson first described a service he called invoicing, which he said was provided in connection with sales transactions between two corporations controlled by the same Guardian client. He said that a typical transaction was one in which the client's Cayman corporation purchased a product from abroad and then sold it to the client's U.S. corporation at a higher price, perhaps with a 30% markup, using an invoice provided by Guardian Bank. He said that this transaction benefited the client in two ways: (1) the client's Cayman corporation could deposit the price differential into the client's account at Guardian Bank tax free (since the Cayman Islands imposes no corporate taxes) and, if the client chose, avoid mention of the income on the client's U.S. taxes; and (2) the client's U.S. corporation could claim higher costs and less revenue on its U.S. tax return, resulting in a lower U.S. tax liability.

Mathewson said that the Guardian Bank service had included supplying any type of invoice the client requested, with any specified price or other information. He said Guardian Bank had also made its correspondent accounts available to transfer the funds needed by the client's Cayman corporation for the initial product purchase, and to accept the sales price later "paid" by the client's U.S. corporation. In return for its services, he said, Guardian Bank had charged the client in one of three ways: (1) a fee based upon the time expended, such as \$1,000 for 4 hours of work; (2) a flat fee for the service provided, such as \$25,000 per year; or (3) a fee based on a percentage of the shipment cost of the product invoiced. Mathewson observed that, at the time, he did not consider this activity to be illegal since, unlike the United States, the Cayman Islands collected no corporate taxes and did not consider tax evasion a crime. However, Cayman authorities told Minority Staff investigators that Guardian Bank's invoicing services were both unusual in Cayman banking circles and a clearly fraudulent practice.

Dutch Corporations. Mathewson advised that Guardian Bank had also assisted a few U.S. clients in obtaining Dutch corporations to effect a scheme involving fake loans and lucrative U.S. tax de-

ductions. He explained that Guardian Bank had begun offering this service after hiring a new vice president who had set up Dutch corporations in his prior employment. Mathewson said, for a \$30,000 fee, Guardian Bank would establish a Dutch corporation whose shares would be wholly owned by the client's Cayman corporation. Mathewson said that Guardian Bank used a Dutch trust company to incorporate and manage the Dutch corporations, paying the trust company about \$3,000–\$4,000 per year per corporation. He said that Guardian Bank was able to charge ten times that amount to its clients, because the few clients who wanted a Dutch corporation were willing to pay.

Once established, Mathewson said, the Dutch corporation would issue a "loan" to the U.S. client, using the client's own funds on deposit with Guardian Bank. He said the U.S. client would then repay the "loan" with "interest," by sending payments to the Dutch corporation's bank account, opened by the Dutch trust company at ANB AMRO Bank in Rotterdam. He said that the Dutch corporation would then forward the "loan payments" to the client's Guardian account, using one of Guardian Bank's correspondent accounts.

In essence, he said, the U.S. client was using Guardian Bank's correspondent accounts to transfer and receive the client's own funds in a closed loop. He said the benefits to the client were fourfold: (1) the client secretly utilized his or her offshore funds; (2) the client obtained seeming legitimate loan proceeds which could be used for any purpose in the United States; (3) the client repaid not only the loan amount, but additional "interest" to the Dutch corporation, which in turn sent these funds to the client's growing account at Guardian Bank; and (4) if the client characterized the loan as a "mortgage," the client could deduct the "interest" payments from his or her U.S. taxes, under a U.S.-Netherlands tax treaty loophole which has since been eliminated.

Due Diligence Efforts of U.S. Banks. When asked about the due diligence efforts of the U.S. banks that had provided correspondent services to Guardian Bank, Mathewson said that he thought the U.S. banks had required little information to open a correspondent account, had requested no information about Guardian Bank's clients, and had conducted little or no monitoring of the account activity.

Mathewson said the account opening process was "not difficult." He said that, during the 10 years of Guardian Bank's operation from 1984 to 1994, U.S. banks wanted the large deposits of offshore banks like Guardian Bank and were "delighted" to get the business. He said it was his understanding that they would open a correspondent relationship almost immediately upon request and completion of a simple form. He said the account was opened within "a matter of days" and apparently with little verification, documentation, or research by the correspondent bank. He could not recall any U.S. based bank turning down Guardian Bank's request for an account, nor could he recall any U.S. correspondent bank officer visiting Guardian Bank prior to initiating a correspondent relationship.

Mathewson also could not remember any effort by a U.S. based bank to monitor Guardian Bank's correspondent account activity. He said, "I don't think any of them ever attempted to monitor the

account.” He stated that, to his knowledge, Guardian Bank’s correspondent banks also had no information related to Guardian’s individual clients, since Guardian Bank had designed its procedures to minimize information about its clients in the United States.

An Insider’s View. Guardian Bank was in operation for 10 years. It had over 1,000 clients and \$150 million in its correspondent accounts when it was closed by the Cayman Government in early 1995. Since then, Mathewson has pled guilty to money laundering, tax evasion and fraud, and has helped convict numerous former bank clients of similar misconduct. He has also provided the most detailed account yet of the operations of an offshore bank.

Mathewson informed Minority Staff investigators that correspondent banks are fundamental to the operations of offshore banks, because they enable offshore banks to transact business in the United States, while cloaking the activities of bank clients.

When asked whether he thought Guardian Bank’s experience was unusual, Mathewson said that, to his knowledge, he was “the first and last U.S. citizen” allowed to attain a position of authority at a Cayman bank. He said he thought he was both the first and last, because Cayman authorities had been wary of allowing a U.S. citizen to become a senior bank official due to their vulnerability to U.S. subpoenas, and because he had met their fears of a worst case scenario—he was, in fact, subpoenaed and, in response, had turned over the records of all his bank clients to criminal and tax authorities in the United States. However, in terms of Guardian Bank’s operations, Mathewson said that Guardian Bank “was not unusual, it was typical of the banks in the Cayman Islands and this type of activity continues to this day.” He maintained that he had learned everything he knew from other Cayman bankers, and Guardian Bank had broken no new ground, but had simply followed the footsteps made by others in the offshore banking community.

The Mathewson account of Guardian Bank provides vivid details about an offshore bank’s use of U.S. correspondent accounts to move client funds, cloak client transactions, and maximize bank revenues. One hundred percent of Guardian Bank’s transactions took place through its correspondent accounts, including all of the criminal transactions being prosecuted in the United States. A number of the following case histories demonstrate that Guardian Bank was not a unique case, and that the deliberate misuse of the U.S. correspondent banking system by rogue foreign banks to launder illicit funds is longstanding, widespread and ongoing.

VII. Conclusions and Recommendations

The year-long Minority Staff investigation into the use of international correspondent banking for money laundering led to several conclusions and recommendations by the Minority Staff.

Based upon the survey results, case histories and other evidence collected during the investigation, the Minority Staff has concluded that:

- (1) U.S. correspondent banking provides a significant gateway for rogue foreign banks and their criminal clients to carry on money laundering and other criminal activity in the United

States and to benefit from the protections afforded by the safety and soundness of the U.S. banking industry.

(2) Shell banks, offshore banks, and banks in jurisdictions with weak anti-money laundering controls carry high money laundering risks. Because these high risk foreign banks typically have limited resources and staff and operate in the international arena outside their licensing jurisdiction, they use their correspondent banking accounts to conduct their banking operations.

(3) U.S. banks have routinely established correspondent relationships with foreign banks that carry high money laundering risks. Most U.S. banks do not have adequate anti-money laundering safeguards in place to screen and monitor such banks, and this problem is longstanding, widespread and ongoing.

(4) U.S. banks are often unaware of legal actions related to money laundering, fraud and drug trafficking that involve their current or prospective correspondent banks.

(5) U.S. banks have particularly inadequate anti-money laundering safeguards when a correspondent relationship does not involve credit-related services.

(6) High risk foreign banks that may be denied their own correspondent accounts at U.S. banks can obtain the same access to the U.S. financial system by opening correspondent accounts at foreign banks that already have a U.S. bank account. U.S. banks have largely ignored or failed to address the money laundering risks associated with “nested” correspondent banking.

(7) In the last 2 years, some U.S. banks have begun to show concern about the vulnerability of their correspondent banking to money laundering and are taking steps to reduce the money laundering risks, but the steps are slow, incomplete, and not industry-wide.

(8) Foreign banks with U.S. correspondent accounts have special forfeiture protections in U.S. law which are not available to other U.S. bank accounts and which present additional legal barriers to efforts by U.S. law enforcement to seize illicit funds. In some instances, money launderers appear to be deliberately using correspondent accounts to hinder seizures by law enforcement, while foreign banks may be using the “innocent bank” doctrine to shield themselves from the consequences of lax anti-money laundering oversight.

(9) If U.S. correspondent banks were to close their doors to rogue foreign banks and to adequately screen and monitor high risk foreign banks, the United States would reap significant benefits by eliminating a major money laundering mechanism, frustrating ongoing criminal activity, reducing illicit income fueling offshore banking, and denying criminals the ability to deposit illicit proceeds in U.S. banks with impunity and profit from the safety and soundness of the U.S. financial system.

Based upon its investigation, the Minority Staff makes the following recommendations to reduce the use of U.S. correspondent banks for money laundering:

- (1) U.S. banks should be barred from opening correspondent accounts with foreign banks that are shell operations with no physical presence in any country.
- (2) U.S. banks should be required to use enhanced due diligence and heightened anti-money laundering safeguards as specified in guidance or regulations issued by the U.S. Treasury Department before opening correspondent accounts with foreign banks that have offshore licenses or are licensed in jurisdictions identified by the United States as non-cooperative with international anti-money laundering efforts.
- (3) U.S. banks should conduct a systematic review of their correspondent accounts with foreign banks to identify high risk banks and close accounts with problem banks. They should also strengthen their anti-money laundering oversight, including by providing regular reviews of wire transfer activity and providing training to correspondent bankers to recognize misconduct by foreign banks.
- (4) U.S. banks should be required to identify a respondent bank's correspondent banking clients, and refuse to open accounts for respondent banks that would allow shell foreign banks or bearer share corporations to use their U.S. accounts.
- (5) U.S. bank regulators and law enforcement officials should offer improved assistance to U.S. banks in identifying and evaluating high risk foreign banks.
- (6) The forfeiture protections in U.S. law should be amended to allow U.S. law enforcement officials to seize and extinguish claims to laundered funds in a foreign bank's U.S. correspondent account on the same basis as funds seized from other U.S. accounts.

Banking and anti-money laundering experts repeatedly advised the Minority Staff throughout the course of the investigation that U.S. banks should terminate their correspondent relationships with certain high risk foreign banks, in particular shell banks. They also advised that offshore banks and banks in countries with poor bank supervision, weak anti-money laundering controls and strict bank secrecy laws should be carefully scrutinized. The Minority Staff believes that if U.S. banks terminate relationships with the small percentage of high risk foreign banks that cause the greatest problems and tighten their anti-money laundering controls in the correspondent banking area, they can eliminate the bulk of the correspondent banking problem at minimal cost.

VIII. Ten Case Histories

The investigation developed the following ten case histories of high risk foreign banks with U.S. correspondent accounts.

Case Histories

No. 1: AMERICAN INTERNATIONAL BANK

No. 2: CARIBBEAN AMERICAN BANK

No. 3: OVERSEAS DEVELOPMENT BANK AND TRUST COMPANY

American International Bank (AIB) is a small offshore bank that was licensed in Antigua and Barbuda and is now in liquidation. This case history shows how, for 5 years, AIB facilitated and profited from financial frauds in the United States, laundering millions of dollars through a succession of U.S. correspondent accounts, before collapsing from insufficient capital, insider abuse, and the sudden withdrawal of deposits. The case history examines how, along the way, AIB enabled other offshore shell banks to gain access to the U.S. banking system through AIB's own U.S. correspondent accounts, including Caribbean American Bank, a notorious shell bank set up by convicted U.S. felons. Finally, the case history shows that AIB's questionable financial condition went unnoticed due, in part, to years of late and inaccurate financial statements by AIB's outside auditor.

The following information was obtained from documents provided by the Government of Antigua and Barbuda, the Government of Dominica, Bank of America, Toronto Dominion Bank (New York), Chase Manhattan Bank, Popular Bank of Florida (now BAC Florida Bank), First National Bank of Commerce (now Bank One Corporation), Jamaica Citizens Bank Ltd. (now Union Bank of Jamaica, Miami Agency), AmTrade International Bank; court pleadings; interviews of government officials and other persons in Antigua and Barbuda, the United Kingdom, Dominica, and the United States, and other materials. Key sources of information were interviews with William Cooper, owner and Chairman of American International Bank, conducted on October 12, 2000; John Greaves, President of American International Bank, owner of American International Management Services (later called Overseas Management Services), and formerly owner and Director of Overseas Development Bank and Trust of Dominica and Overseas Development Bank (in Antigua and Barbuda), conducted on July 24 and 25, 2000; Malcolm West, owner of Overseas Development Bank and Trust of Dominica and Overseas Development Bank (in Antigua and Barbuda), conducted on October 13, 2000; relationship managers and other officials from Bank of America (conducted July 10, 11 and 31 and October 24, 2000), Chase Manhattan Bank (conducted August 2, 3, and 4, 2000), Popular Bank of Florida (now BAC Florida Bank) (conducted July 31 and December 12, 2000), Barnett Bank (conducted October 26, 2000) and AmTrade International Bank (conducted October 26, 2000); Eddie St. Clair Smith, receiver of American International Bank, conducted October 12, 2000; and Wilbur Harrigan, partner for Pannell Keff and Forster,

conducted October 10, 2000. The investigation greatly benefited from the cooperation and assistance provided by a number of officials of the Government of Antigua and Barbuda, particularly the Executive Director of the International Financial Sector Regulatory Authority and the Director of the Office of Drugs and Narcotics Control Policy; and officials from the Government of Dominica.

A. THE FACTS

(1) American International Bank Ownership and Management

American International Bank (“AIB”) was incorporated as an offshore bank in Antigua and Barbuda on April 18, 1990, one day after applying for its license. Antigua Management and Trust Ltd., (hereafter called “AMT Trust”) an Antiguan trust company owned by William Cooper and his wife, formed AIB, served as its agent and one of the three directors of the bank, and was to manage the bank for the shareholder, Shirley Zeigler-Feinberg of Boca Raton, Florida.⁵² However, according to Cooper, the Feinbergs’ plans for the bank never materialized, and in September 1992, Cooper and his wife purchased the 1 million capital shares of AIB using a British Virgin Islands (BVI) corporation that they owned, called AMT Management Ltd. (hereafter called “AMT Management”). Cooper then became President of AIB.⁵³

(2) Financial Information and Primary Activities

AIB was part of a group of companies owned by Cooper and his wife collectively known as the American International Banking Group. The companies offered banking, trust, company formation and management and ship registry services to clients.⁵⁴

AIB’s brochures indicated that its primary banking business was focused on private banking and investment banking services. The bank grew quite rapidly from when it began operations in mid-1993 and became one of the largest offshore banks in Antigua and Barbuda. According to the bank’s audited financial statements, its asset base grew from \$1.2 million from the end of 1993 to \$57 million at the end of 1996. According to Cooper, after 2½ years of operation the bank had \$3.5 million in accumulated earnings. No financial statement was produced in 1997, but Cooper indicated that the assets of the bank had grown to about \$100 million by the end of 1997. AIB’s receiver put AIB’s assets as high as \$110 million.

⁵² Although the owner of the bank at the time of formation was listed as Shirley Zeigler-Feinberg, the true owner of the bank, according to Cooper, was her son who didn’t want to be identified as the owner of the bank.

⁵³ At that time, Antiguan law required a bank to be capitalized with \$1 million. In the case of AIB, the capital shares of the bank were acquired through a “book entry transaction,” according to the bank’s current receiver. AMT Management borrowed \$1 million from AIB to pay for the purchase of the bank’s stock, and it secured that loan with the very stock AMT Management was purchasing. The initial financial audit of the bank shows that upon opening, the bank had \$1.1 million in outstanding loans; it doesn’t show that at least \$1 million was to finance the purchase of the bank itself. This transaction set a pattern for future lending activity at the bank that ultimately contributed to a liquidity crisis leading to its collapse.

⁵⁴ The companies that comprised American International Banking Group were: American International Bank, AMT Management, AMT Trust, and Ship Registry Services, Ltd., a ship registry company. All four companies in the group were owned by Cooper and his wife. In June 1996 Cooper formed and licensed another offshore bank, American International Bank and Trust. It was one of the first banks licensed under Dominica’s offshore banking law which had been enacted in early 1996. However, the bank had very little activity and ceased operations 1997.

By the end of 1997, AIB had approximately 8,000 clients and the same number of accounts. According to Cooper, about 50% of AIB's client base was from the United States; 10% was from Canada; 40% was from Europe and the Middle East. Almost all clients had established International Business Corporations ("IBCs")⁵⁵ in whose names the accounts were opened. Cooper said the main reason why Americans established accounts at AIB was for "confidentiality" reasons.

The AIB Banking Group created and operated offshore banks for individuals with no staff of their own or any physical presence in Antigua and Barbuda. AIB generated revenue by serving as a correspondent bank to a number of these and other offshore banks. According to Cooper and John Greaves, former President and Board Member of AIB, six banks formed by AMT Trust established correspondent relationships with AIB. At least two of these banks were the centers for financial frauds and money laundering activity.

Cooper told the Minority Staff that through AMT Trust, he helped form and obtain Antiguan offshore banking licenses for approximately 15 other offshore banks.⁵⁶ Antiguan law requires that the board of each offshore bank include an Antiguan citizen with banking experience. Since only a small number of Antiguan could qualify for that position and Cooper was one of them, he often became the local director for the banks that he formed through AMT Trust. In a number of instances he would also serve as an officer of the bank.⁵⁷

In 1995 Greaves formed American International Management Services (AIMS).⁵⁸ Greaves had over 30 years of banking experience at the time, having just served as the General Manager of the Swiss American Bank Operation—comprised of an Antiguan bank, an offshore bank licensed in Antigua and Barbuda, and a management and trust company (Antigua International Trust). AIMS was created to provide back office, or administrative, operations for offshore banks. After its formation in 1995, AIMS became closely

⁵⁵International Business Corporations ("IBCs") are corporations that are established in offshore jurisdictions and are generally licensed to conduct business only outside the country of incorporation. Often, jurisdictions with IBC statutes will also offer little or no taxation and regulation of the IBCs and will have corporate secrecy laws that prohibit the release of information about the ownership of the IBC. In some jurisdictions, IBCs are not required to keep books and records. A report for the United Nations Global Programme Against Money Laundering, *Financial Havens, Banking Secrecy and Money Laundering*, stated: "International Business Corporations ("IBCs") are at the heart of the money laundering problem . . . virtually all money laundering schemes use these entities as part of the scheme to hide the ownership of assets."

⁵⁶The Minority Staff identified 30 banks with Antiguan offshore banking licenses that identified AMT Trust as their agent. This could mean that Cooper underestimated the number of banks he and his company formed and licensed, or that AMT Trust became the agent for some of the banks after another company had formed and licensed the bank.

⁵⁷The value of the legal requirement of a local board member is questionable, however. As Cooper informed the Minority Staff, he never followed the activities of the banks on whose boards he served. He said he was sitting on the board only to fulfill the legal requirement for a local director and, in fact, required each of his client banks to sign liability waivers and indemnity provisions to protect him from any liability that might accrue as a result of his position on the board.

⁵⁸The ownership of AIMS is uncertain. Greaves informed the Minority Staff that he and Cooper each owned half of AIMS. Cooper told the Minority Staff he had nothing to do with AIMS. The company's incorporation papers list only Greaves as the owner. However, the bank management services contract used by AIMS lists both Greaves and Cooper as signing on behalf of AIMS. Additionally, brochures on the AIB group include AIMS as a member of the group.

linked to the AIB Banking Group operations.⁵⁹ AIMS assumed back office operations for a number of AIB respondent banks, including Caribbean American Bank, Hanover Bank and Overseas Development Bank and Trust. AIMS also serviced some other banks that were not clients of AIB. Because of his long experience in banking, Greaves often served as the local director for offshore banks that were formed by AMT and/or operated by AIMS. In September 1995, Greaves became Senior Vice President and a Director of AIB. In November 1996, he was appointed President of AIB, with Cooper assuming the position of Chairman of the Board. Throughout this association with AIB, Greaves retained his ownership of AIMS.

(3) AIB Correspondents

In order to service its clients who wanted to conduct financial activity in the major economies of the world, AIB established correspondent relationships with banks in a number of countries. As will be discussed in more detail below, AIB had numerous correspondent accounts with U.S. banks. They included: Jamaica Citizens Bank Ltd. (now Union Bank of Jamaica, Miami Agency), the New York Branch of Toronto Dominion Bank, Bank of America, Popular Bank of Florida (now BAC Florida Bank), Chase Manhattan Bank, Norwest Bank in Minnesota, and Barnett Bank. According to Cooper and AIB documents, AIB correspondents in other jurisdictions included Privat Kredit Bank in Switzerland, Toronto Dominion Bank in Canada, Midland Bank in England, a German bank (whose name could not be recalled by Cooper)⁶⁰ and Antigua Overseas Bank.

Antigua Overseas Bank, an offshore bank licensed by the Government of Antigua and Barbuda, became particularly useful to AIB when AIB was no longer able to obtain correspondent accounts at U.S. banks. Antigua Overseas Bank had a number of correspondent accounts at U.S. banks, including Bank of America, Chase Manhattan Bank and Bank of New York. AIB, through its relationship with Antigua Overseas Bank, exploited Antigua Overseas Bank's correspondent relationships with U.S. banks to maintain its (AIB's) access to the U.S. banking system.

(4) AIB Operations and Anti-Money Laundering Controls

Cooper described AIB's due diligence and anti-money laundering controls to the Minority Staff. According to Cooper, AIB had many requests to establish accounts for IBCs without identifying the beneficial owner but AIB never granted the request. The bank did not establish pseudonym accounts or numbered accounts. AIB required the identification of the owner and shareholder of all accounts and that it be able to contact all account holders. AIB required passports, a bank reference letter, a professional letter of reference and the full address, and phone number for all account holders. Daily reports on all transactions of \$5,000 or more were produced and reviewed by Cooper. According to Cooper AIB's correspondent banks

⁵⁹One of the back office services listed in the AIMS bank management contract was "the establishment of a correspondent banking relationship with American International Bank to effect wire transfers and issue multi-currency drafts."

⁶⁰Account opening documentation supplied by AIB to one of its U.S. correspondents identified Berenberg Bank in Germany as a correspondent bank.

always inquired about its due diligence policies and requested a copy of AIB's operation manual. An AIB brochure that contained a description of its operating procedures stated:

Each new client is screened by the account officer of American International Bank Ltd. before being accepted. In each individual case, the origin of the funds have to be known. No cash deposits are accepted. Any and all deposits with the bank are to be done through wire transfer or by check.

However, in a number of AIB relationships discussed in this case study, it is apparent that these policies were not implemented.

(5) Regulatory Oversight

During its operation between 1993 and 1998, AIB was never subjected to a bank examination by its sole regulator, the Government of Antigua and Barbuda. Regulators did not conduct examinations of any licensed offshore banks until 1999, relying on audited financial statements and other filings prepared by the banks as a means of monitoring their activity. The government made an effort in the 1997–1998 period to collect information on the ownership and activities of all licensed offshore banks in Antigua and Barbuda. However, there was no follow up on the information that was collected. In 1999, Antigua and Barbuda initiated a new program for government bank examinations of licensed offshore banks.

(6) Money Laundering and Fraud Involving AIB

After operating for 4½ years, AIB eventually failed as a result of bad loans and loss of deposits. Despite several attempts to sell the bank, AIB was formally placed in receivership in July 1998, where it remains today.

During its period of operation, AIB had correspondent relationships with over seven U.S. banks. These correspondent accounts were essential to AIB's operations and provided AIB's clients with access to U.S. banks as well. AIB's growth centered around three activities, some of which evidence a high probability of money laundering, and which ultimately contributed to the collapse of the bank in 1998:

- servicing accounts associated with a highly questionable investment scheme;
- providing correspondent banking to other questionable banks; and
- highly questionable and unsound lending practices.

(a) The Forum Investment Scheme

As many as 3,000 to 6,000 of AIB's 8,000 accounts were related to investors in a highly questionable investment scheme called the Forum.⁶¹ The Forum established a relationship with AIB shortly after the bank was opened in 1993. The Forum is an Antiguan corporation that promotes investment schemes and provides administrative services to individuals who invest in those schemes. It has a staff that serves as a point of contact between investors and the

⁶¹Cooper estimated that 30% to 40% of AIB's accounts were related to Forum investors. Greaves estimated that as many as 60% of the accounts were related to Forum investors. The AIB receiver concurs with the latter figure.

offshore banks and accounting firms handling their accounts. The Forum appears to be a Ponzi-type investment scheme, apparently targeted at low and middle income individuals, offering investors extraordinarily high returns. It appears that the investment returns investors received actually came from funds paid by new investors. The Forum also employed a multi-level marketing plan to bring in new investors. That is, partners (existing investors) who brought in new investors would receive a portion of the initial payments made by those new investors and also would receive descending percentages of the initial payments made by subsequent members recruited by the new investors. According to AIB's receiver, at the end of 1997, when AIB's assets were \$110 million, approximately \$60 million were attributable to accounts by the Forum and its investors.

A central figure in the Forum is Melvin Ford of Bowie, Maryland.⁶² Ford has a history of developing questionable investment programs.⁶³ Using financial empowerment messages at seminars and rallies, Ford told attendees they could become wealthy through a series of high yield and speculative investment schemes.⁶⁴

⁶²Ford did not assume a formal position of leadership in the organization. This may be the result of a former civil action brought against him by the SEC in the early 1990's. (See next footnote.) However, there are clear indications that he played a leading role in the activities of the Forum. A 1996 story in *The Washington Post* on the Forum reported:

Last week Ford requested and was granted a meeting with Prime Minister [Lester] Bird [of the Government of Antigua and Barbuda]. According to Bird, Ford represented himself as the leader of the Forum and explained that his group's operation was legal and above-board.

Many times, Ford was the featured speaker at Forum gatherings. Forum members and leaders referred to him as "Chief" or "chief consultant." One insider described Ford as the leader of the organization and identified Ford as the originator of many of the Forum investment schemes. He and an associate, Gwendolyn Ford Moody, were the ones who directly dealt with Cooper regarding the account that held the funds received from the IBCs and the fund used for the dispersal of those funds. In interviews with the Minority Staff, both Cooper and Greaves spoke of Ford as the leader of the Forum and its investment activities.

⁶³Prior to his involvement with the Forum, Ford was the founder and president of an organization called the International Loan Network ("ILN"), which he described as "a financial distribution network whose members believe that through the control of money and through the control of real estate you can accumulate wealth and become financially independent." The organization included, among other things, a multi-level marketing program where ILN members shared in the fees paid by individuals they recruited into the program, as well as descending percentages of fees for additional members recruited by the new members they had brought in (i.e., "downline recruitments"). ILN also ran a series of property acquisition programs in which ILN investors would receive their choice of either rights to property or cash pay outs equivalent to five to ten times their initial investment within 3 to 6 months. One version of the program also offered a refund (with 50% interest). The SEC alleged that over \$11 million in refunds were requested and only \$2 million had been paid. It was estimated that participants paid over \$100 million into the ILN during its operation. In May 1991 the SEC commenced an action against Ford and one of his partners for the fraudulent sale of unregistered securities. The U.S. District Court for the District of Columbia subsequently issued a Temporary Restraining Order and then a Preliminary Injunction against ILN and Ford and his partner and froze the assets of ILN. In its decision, the court concluded:

. . . the evidence is clear that ILN is nothing more than a glorified chain letter, destined to collapse of its own weight. Despite the inevitability of this outcome, potential investors were, until the issuance of the temporary restraining order in this case, continuing to be promised great wealth through their participation in the ILN. The pyramid nature of the organization was never fully revealed to them.

In 1992, the SEC and Ford reached a settlement in which Ford agreed to pay an \$863,000 fine, and a trustee was appointed to recover funds for the investors. After paying approximately \$5,000 of the fine, Ford declared bankruptcy. To date, the trustee has been able to recover only a small percentage of the investors' funds.

⁶⁴International Debt Recovery ("IDR"), an Irish corporation that seeks to recover funds lost by victims of frauds, representing over 1,600 Forum-related IBCs that have invested in Forum-related ventures provided details of some of the investment schemes. They included a commercial fishing venture in Gambia called Pelican Foods, which has been directed by Chester Moody, a close associate of Ford. The company has been unable to obtain a fishing license from the government because of non-payment of port duties. Only one of four fishing boats owned by the

Investors were required to establish International Business Corporations (IBCs) and accounts for the IBCs at overseas banks. The accounts were structured so power of attorney to withdraw funds from the account was transferred to other accounting and management entities. According to one individual familiar with the organization, the transfer of funds was really controlled by associates of Ford. When investors deposited funds to their IBCs, the funds were transferred to a holding account. Disbursements were made from a second account ("disbursement account"). Authority to order disbursements from the disbursement account was vested in Gwendolyn Ford Moody, a close associate of Ford. The funds in the holding account were apparently used as collateral for expenditures from the disbursement account.

The funds were used to support highly speculative investments—many of which were controlled by Ford and his associates—and lavish lifestyles for Ford and his associates. International Debt Recovery ("IDR"), an Irish corporation that seeks to recover funds lost by victims of frauds and now represents over 1,600 Forum-related IBCs that have invested in Forum-related ventures, discovered one scheme in which Ford and his associate, Gwendolyn Ford Moody, held AIB-issued Visa Cards with very high limits. The disbursement account was used to pay the debts accumulated on the cards. Although the funds supporting the disbursement account represented deposits that were for investments, they were used to fund operations, staff salaries and personal expenses of Ford and Moody. Millions of dollars of investors' funds were expended in this way.

Cooper told investigators that significant sums obtained through Ford's schemes were transferred from AIB to The Marc Harris Organization ("The Harris Organization") in Panama. The Harris Organization, which is the owner of a number of investment and trust companies licensed in different offshore jurisdictions, is owned by Marc M. Harris. Harris and the companies he controls have been found to be behind a number of international bank and investment frauds, including banks that have been shut down by the British banking authorities for conducting illegal and fraudulent activities. More recently, his organization is alleged to have co-mingled and misapplied client funds and engaged in securities fraud.⁶⁵ In addi-

company is seaworthy. Workers had been unpaid for nearly 8 months and the company has many large unpaid bills due.

Another recipient of Forum-related investors is the A.A. Mining Company, which has a joint venture with the De Beers diamond company. A Forum-related management committee recently wrote to investors "that the Mining company has entered into a letter of intent to joint venture on a project which could be worth over 500 million dollars. In addition, with proper funding this venture could start to send money back to the Trustees within 180 days." However, according to De Beers officials and publications, De Beers has put up the bulk of the funds in the operation, and results at the site which is the subject of the venture "are so far disappointing," and the prospects for discovery of diamond-containing minerals is "moderate to low."

A November 1999 article in *The Washington Post* identified two other Forum-related investments: purchases of locked boxes from Sierra Leone that reportedly contained \$10 million worth of gold, but only contained rocks and dirt, and the Diamond Club International, a venture that sold mail order diamonds and has been sued by creditors for over \$500,000 in unpaid bills.

⁶⁵In 1998 Harris filed a claim against an investigative journalist named David Marchant for reporting these facts. *Marc M. Harris v. David E. Marchant* (United States District Court for the Southern District of Florida, Miami Division, Case No. 98-761-CIV-MOORE), Final Judgment (August 10, 1999). The court's opinion listed some of the allegations:

" . . . 12. Marchant learned from Shockey [John Shockey, former investigator for the U.S. Office of the Comptroller of the Currency] that Marc M. Harris ("Harris"), the founder and de facto

Continued

tion, Harris and his organizations are allegedly closely associated with organizations that advocate offshore mechanisms for evading taxes and avoiding other legal judgments.⁶⁶ Recently some clients of Harris have been indicted in the United States for money laundering and tax evasion through offshore vehicles set up and established by The Harris Organization.⁶⁷

head of the Harris Organization, had operated several offshore shell banks in Montserrat in the 1980's. These banks were subsequently closed down in 1988 by British banking authorities for conducting "illegal and fraudulent activities." According to Shockey, these banks exhibited numerous financial and fiduciary improprieties. One of the banks, the Fidelity Overseas Bank, took fees from clients even though it never performed any services for them. Another bank, the First City Bank, doctored its financial statements. Finally, a third bank, the Allied Reserve Bank, was issued cease-and-desist orders for operating in the United States without authorization. . . .

33. On March 31, 1998, Marchant published an article in *Offshore Alert* titled "We Expose The Harris Organization's Multi-Million Dollar Ponzi Scheme."

34. This article made a number for factual allegations, which substantively accused The Harris Organization of defrauding its clients and misappropriating clients' funds. These allegations specifically at issue are:

- a. That The Harris Organization operates as a "Ponzi" scheme.
- b. That The Harris Organization was insolvent by \$25 million.
- c. That Harris used clients funds to invest in the Infra-fit [a Chilean bicycle manufacturer] venture.

d. That The Harris Organization inflated the land value of the LARE [Latin American Real Estate Fund, a Harris-affiliate entity] investment in their financial statements. . . .

g. That The Harris Organization might be laundering the proceeds of crime.

h. That The Harris Organization had issued \$20 million of worthless preference shares."

In its conclusion in support of Marchant, the court found:

8. From the time he published the initial article to the present, Marchant had evidence which provided persuasive support for the truth of each of the allegations at issue. He spoke with numerous inside sources, including Dilley (a consultant who served in a position equivalent to the CEO of The Harris Organization), and outside sources such as Shockey, who appeared credible and knowledgeable about Harris, The Harris Organization, and the financial situation within The Organization. Marchant was privy to internal financial and management documentation which supported the information learned from his sources."

A 1998 *Business Week* article on Marc Harris ("Tax Haven Whiz or Rogue Banker?" *Business Week*, June 1, 1998, p. 136) reported that the Florida Professional Regulation Department suspended Harris' Certified Public Accountant license in 1990 for various "accounting violations." One violation cited in the order was that Harris "issued an accounting compilation, similar to an audit, for MMH Equity Fund Inc. The compilation did not disclose that Harris was an officer and director of the fund."

The article also notes that: ". . . Harris is now flouting U.S. law that prohibits U.S. citizens from making investments in Cuba." His Cuba Web site offers Americans just that . . . if Americans take his advice and form offshore corporations to invest in Cuba, that's "entirely their decision," he says. Yet a senior Treasury Dept. official says such moves are illegal: "Even if you interpose a third-country company, it's the same as going to Cuba directly."

In October 2000, La Commission Nacional de Valores, the Panamanian Securities Commission, suspended the operations of The Harris Organization.

⁶⁶28. The Harris Organization maintained substantial links, either directly or indirectly, with persons and entities known variously as 'PT Shamrock,' 'Peter Trevellian,' and 'Adam Starchild,' that advocated in print and on the Internet offshore mechanisms for evading the payment of taxes, judgments, and other debts in the United States . . . in essence, tax evasion and fraudulent conveyance of funds to offshore locations." (*Marc M. Harris v. David E. Marchant*, Case No. 98-761-CIV-MOORE, United States District Court for The Southern District of Florida Miami Division).

⁶⁷"Anthony Vigna and his son Joseph were arrested on November 9, 2000 in Panama . . . 22 months after they were criminally indicted at the U.S. District Court for the Southern District of Florida on multiple counts of money laundering and conspiracy to defraud the IRS," according to *Offshore Alert* ("Two more Harris clients deported to the US", *Offshore Alert*, November 30, 2000, Issue 46, p. 5).

The 1998 *Business Week* article provided a description of the structure used by Harris:

Harris insists he is not trying to help folks illegally evade taxes. But an attendee of two Harris seminars, Jay Adkisson, an Oklahoma City tax lawyer, says Harris explicitly promoted tax evasion. He says Harris "starts with the premise: We're going to evade taxes. No. 2, we're going to make this so smooth that while we're evading taxes, we don't get caught." Adkisson sets up offshore trusts to protect clients from the future creditors, not the IRS.

Harris' scheme, says Adkisson, is for clients to move assets offshore to avoid taxes yet still retain control over those assets. Harris recommends setting up what he refers to as "the octopus," says Adkisson. Its head is a Panamanian foundation, an amorphous legal entity where neither the owner of the assets nor his beneficiaries' names need be disclosed. The foundation creates a tangle of companies—banks, leasing companies, insurance firms—in other offshore havens that appear to be unrelated. They then bill the client for various expenses. The client pays the invoices to offshore entities, then deducts the payments as business expenses on his tax re-

Documents show that by 1996, Ford had established four accounts in his name at The Harris Organization: Fundacion Greenwich, Greenwich Trading Company, S.A., Melvin J. Ford Trust, and Onan Enterprises, Inc. (incorporated in Nevada). His associates, Chester Moody and Gwendolyn Ford Moody, had established six accounts: Chester and Goldie Moody Trust, Jackson Management, Inc., Sancar International, S.A., Argyll Trading Corporation, Steel Management Corporation, and the Chester and Goldie Moody Trust (business). Cooper estimated that for a period of time Ford and his associates were transferring up to \$800,000 per week from investors' accounts to The Harris Organization and that during a period of 6 to 8 months during 1997–1998, between \$5 million and \$10 million were moved to The Harris Organization. Antiguan officials confirmed extensive transfers from the Forum-related accounts at AIB to The Harris Organization. Antiguan officials estimate that the amounts transferred are likely as high as tens of millions of dollars.⁶⁸ In a letter to Senator Levin, IDR estimates that during an 18-month period starting in 1997, approximately \$100 million from Forum-related investors flowed through AIB to The Harris Organization.

Thousands of individuals were drawn into Ford's investment schemes. One individual close to the operation estimated that as many as 30,000 people invested in Forum-related ventures. IDR represents over 1,600 IBC's whose owners (estimated to number approximately 16,000 individuals) lost investments through Forum-related ventures. IDR told the Subcommittee that its clients had provided documentation of a total of \$52 million that they had lost to those ventures. In the 1998–1999 time period, Federal IRS agents executed search warrants on the homes of Melvin Ford and Gwendolyn Ford Moody, and the Federal investigation into this investment scheme is still continuing.

Ford and his associates used a series of offshore corporations, banks, accounting firms and trusts that were established in offshore banking and corporate secrecy jurisdictions such as the Bahamas, Antigua and Barbuda, Nevis, Panama, St. Vincent and the Grenadines.⁶⁹ Administration of investor IBC accounts was, over time, shifted among at least two different accounting firms.⁷⁰ IBC

turn. To the IRS, it appears that the client has been billed by many unrelated third parties, says Adkisson. Under offshore secrecy laws, the IRS can't determine whether the entities the octopus controls are really controlled by the same person.

The article reports that Harris said "that 80% of his 'several thousand' clients are Americans or Canadians."

⁶⁸The AIB receiver concurred with the estimates of Cooper and the Antiguan officials. He told the Minority Staff that during 1997, large transfers on the order of \$300,000 were made from Forum-related accounts two to three times each week. He stated that most, if not all, of the transfers went to The Harris Organization in Panama.

⁶⁹For example, investment programs funded by Forum-related IBCs have been operated or administered by a company in the Bahamas and a company in Dominica (which apparently later moved to St. Vincent and the Grenadines), and an investment company in Nevis. In the past few years documents indicate that Forum-related investment programs have been placed under the control of The Wilshire Trust, which granted the shares to the WT Trust, which then appointed a company called Financial and Corporate Services as the trustee. All of those entities are located in Nevis.

⁷⁰Two accounting firms—LMB Accounting Services Ltd. ("LMBASL") in the Bahamas and Corporate Accounting Services Ltd. ("CASL") in Antigua and Barbuda (now re-located to Dominica)—were utilized to administer investor IBC accounts (which included forwarding investments to the IBC accounts at the offshore banks). Each investor in an IBC was charged an annual fee of \$100 for this service. LMBASL had an account at BTCB—another bank profiled in this report. One of BTCB's U.S. correspondent banks questioned the LMBASL deposits into

formation and renewal were handled by at least three different firms.⁷¹ Investor relations with AIB, the bank that managed their accounts, was handled through the Forum. All of this had the effect of generating more fees, obscuring the flow of funds, obscuring the involvement of Ford and his associates, confusing the investors and making it more difficult for U.S. regulators and law enforcement officials to regulate and investigate their activities. A major base of operation for the Forum was the nation of Antigua and Barbuda, where Ford held regular meetings and seminars, drawing many prospective U.S. investors.

AIB became the base through which Ford ran his investment scheme⁷² and millions of dollars flowed through the bank. Cooper, the owner and Chairman of the Board of AIB, was directly involved in servicing the Forum program. He attended Forum seminars, spoke about offshore corporations and passed out material on off-shore corporation formation and AIB. With the assistance and encouragement of Forum personnel, investors would apply for the creation of an IBC and an account at AIB. AMT Trust, Cooper's company, would form IBCs for Forum investors. (Often as many as five, ten or more individuals would jointly invest through one IBC.)⁷³ One of the entities established to manage some of the Forum-related investments, Equity Management Services, Ltd. at one point used the offices of AMT Trust as its mailing address. Cooper told the Minority Staff that most of the profits that the AIB Banking group made from Forum-related operations resulted from the formation of the IBCs.

Ford and his associates used AIB's correspondent accounts with U.S. banks to hide the trail of the funds. For example, by piecing

BTCB's account. LMBASL's response provided an explanation of its operations and relationships:

LMBASL is a domestic Bahamian company which was incorporated on April 2, 1996, to provide accounting services for International Business Companies (IBC's).

The source of LMBASL customers are Trust Companies in various Caribbean jurisdictions. These companies are primarily engaged in company formation and off-shore financial services. LMBASL provides accounting services for companies formed by Antigua and Barbuda Management and Trust in Antigua and Barbuda; Antigua Barbuda International Trust in Antigua and Barbuda; International Management & Trust in Dominica and upon referral other Trust companies.

The number of IBC's formed by these companies number in the hundreds. Also each IBC could have three or more members. It is not unusual for some IBC's to have five to ten members. LMBASL charges each IBC member a \$100.00 annual fee for computer services. This fee compensates LMBASL for accounting services involving processing transactions which relate to individual IBC members.

Also IBC members send larger deposits for the account of the IBC. LMBASL has satisfied itself that the sources of these IBC funds are from savings accounts or other banks, or investment accounts of the IBC members and are not derived from any questionable sources. LMBASL has also taken steps to personally meet many of these IBC members and feel comfortable that they are solid citizens.

⁷¹AMT Trust initially formed most of the IBCs. After AIB collapsed, Forum-investors were told to have their IBCs renewed through LMBASL or CASL, rather than AMT Trust, Cooper's firm. The investors were told that their investments would no longer be accepted if their IBCs were still managed through AMT Trust.

⁷²Other Antigua banks were also used to hold Forum-related investments. Before the Forum operations began to use AIB, investor funds were deposited into Swiss American Bank. Another Antigua bank, Worldwide International Bank (whose President, Joan DeNully, had previously been an official at AIB), was also used by the Forum and its investors, as was Antigua Overseas Bank.

⁷³Normally, AMT Trust charged a fee of \$1,225 for the formation of an IBC, but in the case of the Forum-related IBCs, AMT Trust charged clients \$1,500. AMT Trust kept \$1,225 and the additional \$275 was put into accounts controlled by Ford and associates at the Forum. This business alone was very lucrative for Cooper and his company, since it is estimated that there were approximately 3,000 to 6,000 IBC accounts at AIB. In addition, each account was charged an annual administrative fee of \$100 and an annual IBC renewal fee of approximately \$800.

together documents made available to the Minority Staff and the Government of Antigua and Barbuda, it can be seen that a number of transfers from Forum accounts utilized AIB's correspondent relationship with Chase Manhattan Bank. From there, the funds were transferred to Banco de Brazil in New York. Banco de Brazil then transferred the funds to its branch in Panama, which transferred the funds to The Harris Organization in Panama. Funds were also transferred from AIB to Gwendolyn Ford Moody's account at a Maryland branch of NationsBank.

The Forum is still an operating organization. Meetings and seminars are still held in the U.S.⁷⁴ and elsewhere to continue to attract investors. Offshoot organizations, controlled by Ford associates, are still promoting investments.⁷⁵

(b) Nested Correspondent Banking at AIB

AIB provided correspondent banking services to a number of other offshore banks licensed in Antigua and Barbuda. By establishing correspondent accounts at AIB, those banks (and their clients), like Russian Matryoshka dolls, nested within AIB and gained access to the same U.S. dollar accounts at U.S. banks that AIB enjoyed through its correspondent accounts at those U.S. banks. The U.S. banks performed no due diligence review of AIB's correspondent accounts. Instead, they relied on AIB to review and clear its client banks, even though the U.S. correspondent banks were the vehicles for their access into the U.S. financial system. In a number of instances, AIB's client banks utilized their accounts with AIB to launder funds and take advantage of AIB's correspondent accounts with U.S. banks to work the illicit funds into the U.S. financial system. The most notorious example is Caribbean American Bank.

Caribbean American Bank. Caribbean American Bank emerged as the focal point of a major advance-fee-for-loan fraud that originated in the United States and defrauded victims across the world of over \$60 million over 8 years. Between 1991 and 1997, members of the organization posed as representatives of a group of venture capital investors willing to provide funding to business projects. Individuals and businesses seeking capital were required to pay advanced fees or retainers which, ostensibly, were to be used for processing loans and syndicating the investors. Applicants were instructed to wire the retainers to an attorney or bank escrow account, often located at an offshore bank. However, the terms of the funding agreements were almost impossible for the applicants to

⁷⁴ One such meeting, at which Ford spoke, was held at the Raleigh Sheraton in Raleigh, North Carolina on November 7, 1999. Presentations on IBC formation and investment are still being held. One victim of the Forum-related investments recently received a notice of "private workshops" that are scheduled for 2001 and will involve the W.T. Trust, the Nevis company that serves as trustee for many of the Forum-related investments.

⁷⁵ For example, an organization called the Offshore Business Managers Association (formerly called the Offshore Business Managers Forum) was established to: "provide a vehicle to bring together parties that share an interest in wealth accumulation through international trade and international financial activities. The common theme among all members is the use of the International Business Company (IBC) as a trading and financial entity and the belief that confidentiality and the right to financial privacy is a right that the government should respect and not hinder." (See the organization's Web site at www.osbma.com.) In the early stages of the organization, the Executive Committee included such close Ford associates as Gwendolyn Ford Moody and Chester Moody. More recently, the Chairman was Earl Coley, a frequent speaker at the Forum meetings and reportedly a relative of Moody. According to the organization's mailings, the point of contact for the organization was the Forum offices in Antigua and Barbuda.

fulfill. For example, applicants were required to produce fully collateralized bank payment guarantees or letters of credit equivalent to 20% of the loan amount requested. Usually, the guarantee had to be produced within 5 to 7 days. Members of the organization targeted applicants who had little financial resources and were, therefore, unlikely to secure such a guarantee within the 5 to 7 day time period. Sometimes, for an additional fee, the organization would supply the applicants with a facilitator who pretended to assist the applicants in their efforts to obtain a guarantee from a financial institution. When the applicants were unable to meet this or other terms of the agreement, the members of the organization notified the applicants that they had violated the terms of the agreement, that no loans would be made and that their retainers were forfeited. If any of the funds still remained in the escrow accounts, they were quickly moved to other accounts controlled by accomplices of the organization.⁷⁶

A document seized during the execution of a search warrant issued for the residence of one of the leaders of the organization provided a description of the fraud. It was marked “Confidential” and addresses payments made by the loan applicants under the terms of the contract. It makes clear that members of the fraud should not expect to collect loan fees other than the initial retainer from the applicant because the loan will never be provided. The only fees that the organization focused on were the fees that the client paid in advance of receipt of the loan:

You have to make the client think you are really working to get to the second payment and the third payment. This draws his attention away from the first payment—which is the only payment you will see but he doesn’t know that.

. . . FOR YOUR INFORMATION the 2nd and 3rd payments will never come. You are in it for the first payment. However, you act like you are after all 3 payments.

. . . What all the clients refuse to see, just plain do not understand is that in Section 3 the Syndication Agreement demands that the Payment Guarantee be COLLATERALIZED. That means it must be cash backed or no bank will issue it. It is the clients responsibility to do that. However, you do not call any attention to that UNTIL you have been paid. Period. No exceptions.

Perpetrators of the fraud also required their applicants to establish Antiguan IBCs, with the idea that all transactions would take

⁷⁶U.S. Customs Service press release “U.S. Customs and FBI Crack Huge Money Laundering Scam,” May 7, 1998.

USA v. Donald Ray Gamble a/k/a Donald Jake Gamble (U.S. District Court for the Middle District of Tennessee, Northeastern Division, Criminal Case No. 2:97-00002), Information and Accompanying Statement of Facts, February 10, 1997.

USA v. Arthur Householder, et. al. (U.S. District Court for the Northern District of Florida, Gainesville Division, Criminal Case No. 1:98CR19), Testimony of Lawrence Sangaree, June 19, 2000.

USA v. Lawrence Sanizaree, Terri Sangaree, Maxine Barnum and Peter Barnum (U.S. District Court for the Northern District of Florida, Gainesville Division, Criminal Case No. 1:97CR MMP), Statement of Facts in Support of Guilty Plea of Peter and Maine Barnum, 11/25/97, and Statement of Facts in Support of Guilty Plea of Lawrence Sangaree, December 8, 1997.

USA v. William Cooper, et. al. (U.S. District Court for the Northern District of Florida, Gainesville Division, Criminal Case No. 1:98CR19 MMP), Superseding Indictment, April 27, 1999.

place between Antiguan entities. This was an effort to ensure that if applicants initiated legal action against the organization, the dispute would be subject to Antiguan, rather than U.S. jurisdiction since both parties would be Antiguan entities. A document seized from one of the organization's representatives, entitled Business Development Syndications Program Description, stated:

You must be an Antiguan offshore business corporation to enter our programs. To guarantee this is done before a DBA [sic] (Business Development Agreement-Equity Purchase) is entered into such incorporation will be handled for you by your syndicator. We will not accept any other method of incorporation. Neither your syndicator nor the investors wish to become familiar with any laws, corporate or otherwise, other than those of Antigua and Barbuda. All transactions will be done between chartered Antiguan corporations only. No exceptions.

Between 1994 and 1998 the U.S. FBI and the U.S. Customs Service conducted an investigation (called "Operation Risky Business") of the fraud operation. The Customs Service described the operation as the largest non-drug related undercover operation that it ever conducted. The government estimates that as many as 300 to 400 firms or individuals in 10 different countries have been victimized by the fraud. It is estimated that as much as \$60 million dollars were stolen through this operation. Twenty-two individuals have been indicted or charged as a result of their participation in this operation; 14 have pleaded guilty; and 4 have been found guilty at trial. Investigations and prosecutions are continuing.

AIB, AMT Trust and AIMS played key roles in the formation and operation of Caribbean American Bank.⁷⁷ In August 1994, William Cooper (through AMT Trust) established two IBCs—BSS Capital and RHARTE. The beneficial owners of those corporations were, respectively, Jake Gamble and Larry Sangaree, two organizers of the fee-for-loan scam. Cooper then formed Caribbean American Bank. The bank license application identifies BSS Capital and RHARTE as the shareholders/owners of the bank. Cooper was listed as the President of both BSS Capital and RHARTE. Cooper and Gamble were listed as the Directors of the bank.⁷⁸ In September 1994, Car-

⁷⁷In 1993, fairly early in the history of this fraud operation, members of the organization flew to Antigua and Barbuda to establish a bank that would serve as the repository for the retainer payments and facilitate the laundering of the illicit proceeds of the operations. According to court records, they met with Vere Bird, Jr., son of the former Prime Minister of Antigua and Barbuda. The introduction was arranged by Julien Giraud, a senior member of the Democrat Labor Party in Dominica who knew Frank Dzwonkowski, a member of the organization who had been convicted of distribution of methaqualone in the U.S. and had contacts in Antigua and Barbuda. In 1994, members of the organization again flew to Antigua and Barbuda and met with William Cooper, owner of AIB. The members of the organization who made the trip were Jake Gamble, a Tennessee attorney who served as the agent for the escrow accounts that received the retainer payments and posed as an underwriter with access to the venture capital (backed by a fraudulent Japanese Yen bond); Larry Sangaree, who had been convicted of murder and served as the organization's field operations manager; and Dzwonkowski. Dzwonkowski maintained an account at another Antiguan offshore bank, Swiss American Bank, which members of the organization had been using to launder funds stolen in the fraud. Sangaree testified that the group decided to establish a bank in Antigua and Barbuda because of the favorable secrecy laws ("you could effectively hide funds down there from the government"); the connections enjoyed by Giraud; and the desire to mirror the operations of another group within the organization that was claiming to use a bank in the Cayman Islands. Cooper agreed to assist in the formation and operation of the bank.

⁷⁸According to one U.S. bank that provided correspondent services to AIB, Cooper informed the bank that the offshore bank licensing process in Antigua and Barbuda required detailed in-

Continued

ibbean American Bank was granted an offshore banking license by the Government of Antigua and Barbuda. AMT Trust initially managed the CAB account at AIB for a fee of \$5,000 per month. The administration of CAB was taken over by AIMS after it was formed and took over management of the correspondent accounts at AIB.

A number of other accomplices in the organization also established IBCs in Antigua and Barbuda, many of them with the assistance of Cooper and his company, AMT Trust. Those IBCs in turn established accounts at Caribbean American Bank. The Department of Justice informed the Minority Staff that it identified 79 IBC accounts established at CAB that were controlled by members of the fee-for-loan fraud organization. According to DOJ, all of those IBCs were formed by Cooper or his company AMT Trust. Many were bearer share corporations, meaning that ownership was vested in whoever had physical possession of the corporate shares. Such an arrangement makes it virtually impossible for a bank to really know who the ultimate account holder is and what the purpose of the organization is. Retainer fees wired into the organization's escrow account by the fraud victims would be dispersed into the IBC accounts controlled by accomplices of the scheme. From there, the accomplices transferred the funds to other accounts they maintained at other banks, using the correspondent accounts of AIB.

AIB also issued credit cards to CAB clients. This provided a perfect avenue for money laundering. The card holder would use a credit card to charge purchases and other transactions. The outstanding balance on the cards could be paid out of the illicit proceeds the clients had on deposit in their CAB accounts. This enabled the card holders to utilize their funds without even engaging

formation about all shareholders and directors, verified with background checks, bank and professional references. The applicant, whether it is a corporation or an individual, must submit financial information for review by the Director of International Business Corporations. Biographical information for each proposed director, officer and subscriber of 5% or more of the bank stock must be submitted.

It appears as if AMT Trust did not comply with these requirements. The Minority Staff asked Cooper what due diligence he performed on the owners of the bank before he submitted the application to the Antiguan licensing authority, and if he was aware of Sangaree's conviction. Cooper stated that he had asked the Finance Minister Keith Hurst about obtaining information on those individuals and Hurst informed him that it would not be possible to obtain information from the United States and, based on Hurst's statement, Cooper did not try to obtain any information on Sangaree. One part of the application asks "Have any of the proposed directors, officers or proposed stockholders of five percent or more of the IBC's stock ever been charged with or convicted of any criminal offense? If so, give details, including status of case." The answer on the form is "No." However, Sangaree was convicted of first degree murder in Florida in 1970 and sentenced to life imprisonment. He was released from prison in the late 1980's. He was subsequently arrested for aggravated assault in 1987 and arrested for grand theft in 1990.

To receive an offshore banking license in Antigua and Barbuda at that time, applicants were required to demonstrate that they had \$1 million in capital. A report of CAB's liquidators filed in the High Court of Justice of Antigua and Barbuda offers the following description of CAB's capitalization funds:

There are two shareholder loans of record, both of which are for \$500,00. The loans appear to have been generated by the Bank to enable the shareholders to finance the capitalization of the Bank. The funds were never deposited in the bank. The two shareholders are holding companies, which have issued bearer shares, and we do not know who is in possession of the shares. Collectibility of these loans is unlikely and the amounts have been written-off in the books of the Bank.

Lawrence Sangaree, the owner of one of the bearer share corporations that owned CAB, testified at the trial of one of his accomplices earlier this year. He said that to comply with the \$1 million capitalization requirement, perpetrators of the fraud used funds that had been wired into the bank by one of the victims. The funds were placed in AIB in August of 1994. After an auditing firm confirmed the presence of the \$1 million in AIB, it was distributed among the members of the organization.

in additional wire transfers that might raise questions about the origins of the funds.

Documentation shows that in 1994, AIB attempted to use its correspondent relationship with Bank of America to confirm letters of credit issued to the fraudulent venture capital companies, American European Venture Capital and Bond Street Commercial Corporation, operated by the perpetrators of the advance-fee-for-loan fraud. The confirmed letters of credit would then be used by the criminals to convince victims that venture capital was available once the advance payments were made by the victims.⁷⁹

In October 1996, one of the loan applicants sent a facsimile to Caribbean American Bank, instructing it to return \$62,500 his company had wired into a CAB escrow account. A copy of the facsimile was supplied to the FBI. The funds were never returned.

In early 1997, a due diligence report performed by an Antiguan law firm for a Russian bank that was considering doing business with the organization wrote the following about Caribbean American Bank:

Caribbean American Bank has two shareholders both of which are non-banking offshore companies and were incorporated by William Cooper, one of Caribbean American Bank's two Directors, who is known to be an active figure in Antigua and Barbuda's offshore banking industry. Non-banking offshore companies are not required to disclose details of their shareholders or show financial statements.

The company files disclosed that inquiries similar to yours have been addressed to the Director of International Banking & Trust Corporations in respect of Caribbean American Bank involving foreign investors who have been required to deposit funds into escrow accounts to be held by Caribbean American Bank. In one such instance Barclays Bank of Antigua made inquiries of the Director of International Banking & Trust Corporations and in light of the information received about Caribbean American Bank advised their customers not to proceed with the transaction.

Further it may be of interest to you to learn that the share issue of Caribbean American Bank apparently consists of bearer shares only and Caribbean American Bank's filed annual returns disclose No Activity, in terms of movement of funds, whatsoever.

As noted above, the report of CAB's liquidator confirmed that the listed owners of the bank were bearer share corporations. The current receiver of AIB informed the Minority Staff that the CAB account at AIB had multiple sub accounts. According to the receiver, tens of millions of dollars moved quickly through the CAB account, with the funds being wired to many different locations. In addition,

⁷⁹In April 1994, AIB requested that Bank of America confirm letters of credit for two entities. Although AIB did not have a credit relationship with BOA, the communications AIB forwarded to one of the targeted victims of the fraud suggest that AIB had developed a financing plan with Bank of America. Communications sent by AIB to Bank of America 2 months later in June 1994 indicate AIB was still pursuing the confirmation of two letters of credit. Since CAB was not licensed until September 1994, it suggests that Cooper and AIB were providing assistance to the entities involved in the fraud even before CAB was opened and those entities became account holders at CAB.

monthly statements of AIB's correspondent accounts at U.S. banks clearly show movements of funds through the IBC accounts at CAB. The Minority Staff could not gain access to the CAB "filed annual returns" referenced above. However, the information contained in AIB's monthly statements and the AIB receiver's comments about the flow of funds suggest that either the due diligence report on the filed financial statements was inaccurate or the financial statements filed by CAB's manager (AIMS) were false.

Key perpetrators of the fraud were arrested and convicted in 1997.⁸⁰ Greaves and Cooper told the Minority Staff that despite their role in forming and managing CAB and forming many of the IBCs used by the perpetrators of the fraud, they were unaware of the fraud being perpetrated through Caribbean American Bank and AIB. Greaves told the Minority Staff that in the March/April 1997 time frame his staff began to develop concerns about the CAB account because of customer complaints and the transactions being conducted. Greaves said he contacted the Antiguan Supervisor of International Banks and Trust Corporations⁸¹ about his concerns, and then unilaterally froze the CAB account. However, events in the U.S. suggest that Greaves may have been acting in response to actions taken by U.S. law enforcement agencies.⁸² In addition, CAB internal documents show that the bank continued to disburse funds at the instruction of one of the perpetrators at least until early May. In August 1997, the Antiguan Supervisor of International Banks and Trust Corporations appointed Price Waterhouse as the Receiver/Manager of CAB. On November 19, 1997, the High Court of Antigua and Barbuda ordered the Receiver/Manager to liquidate CAB.

At a hearing in a U.S. Federal District Court, a U.S. Customs Service agent testified that U.S. law enforcement agencies investigating the fraud had identified no legitimate purpose for the existence of Caribbean American Bank. That conclusion was supported by the report of the CAB liquidator which reported that: "The shareholders of the Bank are under investigation for money laundering" and that "(a)ll depositors of the Bank are under investigation for money laundering."

An FBI agent's affidavit contained a description of how IBCs and AIB's correspondent accounts were used to perpetrate the fraud and launder the funds that were illicitly obtained:

The violators also make extensive use of offshore corporations, principally in Antigua, W.I., to shield themselves from inves-

⁸⁰In February 1997, Gamble was indicted, provided information to government officials and pleaded guilty to money laundering in early May 1997. On February 16, 1997, a U.S. District Court Judge issued a warrant for the search of Sangaree's property for information and materials related to the advance-fee-for-loan fraud. Sangaree was subsequently arrested and charged on a parole violation related to weapons possession in February 1997. Information on his role in the fraud was brought out during a subsequent bail hearing. In August 1997, Sangaree and several other members of the organization were indicted for money laundering and fraud. Sangaree pleaded guilty in December 1997.

⁸¹This is the predecessor to the International Financial Sector Regulatory Authority, which is the Government of Antigua and Barbuda authority that regulates offshore banks.

⁸²The U.S. Government served a subpoena on one of the perpetrators of the fraud, Judith Giglio, in January or early February of 1997. Lawrence Sangaree, one of the leaders of the fraud, testified at the trial of one of the perpetrators that: "A copy of that subpoena was circulated by Giglio to everybody in this operation. They all knew that the U.S. Government was targeting AIB, CAB and people associated with that operation." Also, see footnote 29, above, for additional actions taken against the perpetrators before the March/April 1997 time period.

tigation and lend credibility to their assertion that they have access to funds from unidentified offshore investors. Additionally, fees received from victims are, at the direction of the violators, transferred offshore through American International Bank accounts in Canada, Switzerland, Germany, and elsewhere, ultimately ending up in the Caribbean American Bank in St. Johns, Antigua. As indicated in previous paragraphs, funds have already been traced from victims to American International Bank correspondent accounts in the U.S. and Caribbean American bank accounts in Antigua, W.I. These funds have also been traced as they are returned to the violators to purchase a variety of assets.

These fund transfers were accomplished by exploiting the correspondent banking network. Since CAB had a correspondent account with AIB, CAB and its account holders could transact business through the correspondent accounts that AIB had established with other banks, including U.S. banks. AIB accounts at Bank of America, Chase Manhattan Bank, Toronto Dominion Bank were used to receive wire transfers from fraud victims and/or to disburse the illicit funds to accounts controlled by the criminals. Funds would be transferred from AIB's accounts in the United States to accounts controlled by the criminals in other U.S. banks and securities firms.⁸³ The banks that served as AIB's correspondents were either unaware that AIB itself had correspondent accounts, or they relied on AIB to review and monitor its own clients, including the banks that had accounts at AIB. Thus, by nesting within AIB, CAB and the criminals who were its owners and account holders gained entry into the U.S. banking system with no review or due diligence by the host U.S. banks.

In April 1999, Cooper was also indicted in the United States for money laundering related to the illicit funds associated with the advance-fee-for-loan fraud.

Other Correspondent Accounts at AIB. Other banks that established correspondent accounts at AIB include Hanover Bank,⁸⁴ Overseas Development Bank and Trust Company,⁸⁵ Washington Commercial Bank, and Bank Kometa.

(c) Internet Gambling/Sports Betting

Another portion of AIB's account base was comprised of sports gambling entities. The legal and money laundering issues related to this type of activity are addressed in another section of this report. Many U.S. banks have been unwilling to accept these types of accounts or enter into correspondent relationships with banks engaged in this activity primarily because of the reputational risk that they pose. Moreover, recent court cases in the United States have held that the wire transfer of funds for gambling is illegal,

⁸³ At the trial of one of the perpetrators of the fraud, the government produced a list of wire codes obtained through the execution of a search warrant. The seven page document identifies over 35 accounts at over 20 U.S. and foreign banks that the perpetrators used for the movement of these funds.

⁸⁴ For more information about Hanover Bank, see the case history in this report.

⁸⁵ Overseas Development Bank and Trust Company Ltd., a bank licensed in 1995 in Dominica, was a correspondent of AIB from mid-1996 until late 1997. This bank is discussed later in this case history.

raising serious legal questions for banks that facilitate the transfer of such funds.

From the earliest days of its activity, AIB serviced sports betting accounts. In the period 1994–95, AIB had the accounts of a number of sports betting firms that advertised widely and directed clients to wire transfer funds through the correspondent accounts AIB had established at U.S. correspondent banks. AIB maintained these types of accounts at least through 1997, despite its representation to its correspondents that it did not want that type of business.⁸⁶ Clients associated with gambling/sports betting included Top Turf, English Sports Betting, Caribe International Sheridan Investment Trust and World Wide Tele-Sports (“WWTS”). WWTS, an Antiguan sports betting firm, was one of 11 sports betting firms indicted by the U.S. Government in March 1998 for illegally accepting wagers on sports events over the phone or Internet. In December 1997, an article in the *Atlanta Constitution* described WWTS as “the island’s largest sports book, tak[ing] 35,000 wagers a week, with a Monday-to-Sunday handle [the amount of money wagered before the payment of prizes] ranging from \$5 million to \$10 million.” The article noted that the winnings are tax free. “If the gamblers want to declare their profits to the Internal Revenue Service, fine. But [the director of the operation in Antigua and Barbuda]’s not forwarding any information. . . . He points to a paper shredder in the accounting office. ‘That’s what I do for the U.S. Government,’ he says, laughing as he guides a piece of paper into the machine. ‘We have clients with sensitive information.’” Through AIB and its correspondent account, WWTS was able to use U.S. banks for processing customer gambling deposits and possibly disbursements.

(d) Loans/Self Dealing

In marketing brochures that it shared with prospective correspondent banks, AIB reported its loan philosophy as follows:

The bank engages in lending only under certain conditions. Loans must be either cash collateralized or properly backed up by valuables or other guarantees to the satisfaction of and under control of the bank. Loans are given only to the best of clients. A credit analysis is made, and the sources of pay-back must be clearly identifiable. A reserve for loan losses will be established, if required, but the bank will not take significant commercial lending risks.

Every loan is approved by at least two officers, and every loan agreement is signed by at least two directors of the bank. Every loan is reviewed at least on an annual basis.

However, within its first year of existence, the AIB loan portfolio swelled from \$1.1 million to \$25 million. It receded slightly in 1994 and 1995. By the end of 1996, AIB’s loan portfolio reached \$41.2

⁸⁶In October 1994 Bank of America (“BOA”), a correspondent bank of AIBs, learned that a client of AIBs was a sports betting company and that gambling proceeds were being moved through the BOA account. In an October 1994 fax memo to BOA, Cooper wrote that, “It is clearly not our policy to deal with such companies and we are pursuing as quickly as possible to terminate the entire relationship.” In May of 1997, the relationship manager who handled the AIB account for Popular Bank (now BAC Florida Bank) asked AIB about some of AIB’s customers, including Caribe International and Sheridan Investment Trust. AIB identified those two entities as sports betting establishments.

million. A significant portion of those loans (estimated by the receiver to be roughly 40%) were loans that AIB made to Cooper (AIBs owner), his family members and business interests. According to the receiver, this included a \$6 million dollar loan to Woods Estate Holdings Ltd., which was half owned by Cooper and his wife.⁸⁷ Other loans were a loan to Julien Giraud, a well-known political figure in Dominica, who introduced some of the criminals involved in the Caribbean American Bank fraud to Vere Bird, Jr., and one to a broker who handled the AIB trading account at a U.S. securities firm.

By the time AIB encountered serious financial trouble in late 1997, non-performing loans represented a substantial problem to the institution and contributed to its closure. When AIB was placed under the control of a receiver in July 1998, the receiver discovered that most of the outstanding loans were non-performing. In a November 1998 letter to the bank's clients, the receiver wrote:

I have since conducted a more thorough examination of the records and received a draft report of the Bank's activities for the year ended December 31, 1997. Of particular concern to me, has been the quality of the Bank's assets, particularly, its loan portfolio. In many instances, I have been forced to refer these accounts to legal counsel for collection and where necessary, to utilize the Courts, in this exercise.

The receiver informed the Minority Staff that there were numerous non-performing loans. In some instances, provisions weren't made for non-performance. No security was provided for a number of loans. According to the receiver, there were instances where loans were issued with the expectation that security would be provided after the issuance of the loan, but no security was provided for the loan. The receiver stated that there were also a number of instances in which AIB had circumvented regulations that prohibit offshore banks from making loans to local residents and businesses by making loans to Cooper's BVI Company, AMT Management, which would then make loans to the local businesses. In those cases, the collateral was assigned to AMT Management, and not the bank. This has impeded the receiver's efforts to collect on non-performing loans.

Presently, the receiver estimates that there are approximately \$18 million in outstanding loans and \$10 million in overdrafts on the bank's books. The receiver estimates that approximately 50% of those are loans to Cooper or individuals or entities associated with Cooper. The receiver has retained legal counsel to recover about \$13 million of the outstanding loans.⁸⁸

⁸⁷ Brochures of the AIB Group show that AMT Management, the BVI company wholly owned by Cooper and his wife, owned 50% of Woods Estate Holdings Ltd. Greaves told the Subcommittee that the amount of the loan was \$6 million, and that Cooper owned half of the venture. The AIB receiver confirmed the size of the loan and Cooper's ownership.

⁸⁸ In late 1997, when AIB was encountering severe financial problems, Overseas Development Bank and Trust ("ODBT"), a Dominican bank, attempted to purchase AIB. The effort lasted about 4 months before it was abandoned by ODBT. When it abandoned its effort to acquire AIB, ODBT accepted approximately \$4.5 million worth of AIB loans as settlement, for the funds it had on account at AIB and for the funds it expended while it had tried to take over AIB. Many of those loans are not being repaid. Malcolm West, owner of ODBT, informed the Minority Staff that ODBT was planning to go to court to attempt to collect on many of those loans.

According to the receiver, the AIB annual Audited financial statements prepared by Pannel Kerr Forster did not accurately portray the status or nature of the loans made by AIB. Review by the Minority Staff of the annual audits shows that the auditors never identified any problems with the loan portfolio. The audits did not reflect any concern about a lack of provisions for bad loans,⁸⁹ nor did they reflect that a high portion of the loans were made to individuals or interests associated with the owner or officers of the bank. For example, the audited financials for 1993 through 1996 report that 8%, 23.9%, 18.4% and 11.9%, respectively, of AIB's loans were issued to owners, staff or interests associated with owners. This sharply contrasts with the estimates made by the receiver and Greaves.

Greaves agreed that the percentage of loans to related individuals or entities was much higher than reflected in the audited financial statements. The AIB marketing brochure states, "All reports that are made available to sources outside the bank are checked, approved and signed by two directors." When the Minority Staff asked Greaves why he signed off on the auditor's report if he realized that it understated the amount of loans to related entities, he stated that he had written a letter to the auditor advising him that the information in the report was not correct, yet the numbers in the report were not changed.

The auditor for Pannell Kerr Foster noted that initially, in 1993, AIB did not make provisions for bad debts because the bank was new and the loans were new. He stated that when AIB officials conducted subsequent reviews of the loan portfolio, and as loans went bad, they required provisions for bad loans. He did state that AIB became a "little bit loose" with its loans. He disagreed with the receiver that many of the loans were uncollectible and that AIB was insolvent. He told the staff that he had conducted a review of the loan portfolio and concluded the loans were good and AIB was not insolvent. He noted that he had contacted Cooper and told Cooper that the loans associated with Cooper had to be "regularized" and that Cooper agreed to fulfill the loans that he was responsible for and to his knowledge Cooper had not "shirked" any of his responsibilities to those loans.

The auditor also disagreed that a high percentage of the bank's loans were to individuals and entities associated with Cooper and AIB staff. He pointed out that in December of 1997, AIB had \$66 million in outstanding loans, \$40 million of which were associated with a fully collateralized loan associated with the Forum. He did not address prior years. According to the auditor, in June 1998, after the Forum-related loan was repaid, \$13 million of the \$26

⁸⁹The 1993 audited financial statement contains the following language under Note 4 ("Loans") of the statement: "There were no loans requiring provision for bad debts during the period under review." The financial statements for 1993 through 1996 all contained the following language: "The provision for loan losses is based on a monthly evaluation of the loan portfolio by management. In this evaluation management considers numerous factors including, but not necessarily limited to, general economic conditions, loan portfolio composition, prior loan loss experience and management's estimation of future potential losses." This seems to conflict with the brochure distributed by AIB to potential correspondents, which stated: "Loans must be either cash collateralized or properly backed up by valuables or other guarantees to the satisfaction of and under control of the bank. Loans are given only to the best of clients. A credit analysis is made, and the sources of for payback must be clearly identifiable."

million in outstanding loans were associated with entities or individuals associated with Cooper or AIB staff.

The auditor also told the Minority Staff that he did not receive a letter from Greaves reporting that the information regarding the amount of associated loans on the financial statement was incorrect.⁹⁰

(7) Correspondent Accounts at U.S. Banks

Over its short life, June 1993-July 1998, AIB established correspondent accounts with a number of U.S. banks. They included: Jamaica Citizens Bank Ltd. (now Union Bank of Jamaica, Miami Agency), the New York Branch of Toronto Dominion Bank, Bank of America, Popular Bank of Florida (now BAC Florida Bank), Chase Manhattan Bank, Norwest Bank in Minnesota, and Barnett Bank. With many of the banks, the pattern of the relationship was similar. AIB would apply for a correspondent account at a U.S. bank; due diligence reviews would not identify any problems with AIB; the U.S. bank would establish a correspondent account for AIB; then, account activity over time would generate concerns that would lead to the termination of the account. The termination would then often be delayed at AIB's request to allow it to first associate with another correspondent bank.

(a) Bank of America

AIB maintained a correspondent account at Bank of America ("BOA") from June 1993 through April 1996. During that period, \$128 million moved through its account. AIB approached BOA about a correspondent relationship in June 1993, shortly after it began to function as a bank. The BOA relationship manager had known Cooper from the time that Cooper had been manager of another offshore institution, Antigua Barbuda Investment Bank, that was a customer of BOA. BOA employees said that before 1997, there was a great reliance on the relationship manager's decision about a client, and this appears to be the case with AIB.

At that time BOA was one of the more active U.S. banks in the Caribbean area. A senior BOA official said that at that time the relationship managers were primarily sales officers and the primary objective of the relationship managers was on expanding the business. BOA readily established correspondent relationships with offshore banks that wanted demand deposit accounts or cash management services in the United States. Because no credit was involved, BOA said relationship managers placed less emphasis on those accounts and did not follow those kind of accounts as closely as accounts with more potential for additional business. There was an expectation that documentation on a bank client would be obtained and available, but depending on the relationship, sometimes it would not be required. To the extent there was concern about risk, the focus was placed on a client bank's credit risk, not the money laundering risk it posed.

The BOA relationship manager for AIB said he typically did not establish relationships with offshore banks. He generally estab-

⁹⁰Cooper told the Minority Staff that all loans to his family members either had been repaid or are in the process of being repaid.

lished relationships only with commercial, indigenous banks (banks that were licensed to operate and serve residents in the jurisdiction that granted the license). The only exceptions to that practice were AIB and Swiss American Bank (addressed in a later section). According to the relationship manager, although he had heard that the regulatory program in Antigua and Barbuda was weak at the time, BOA representatives relied more upon the individual owning the bank than the regulatory apparatus. The relationship manager said the key to doing business in the Caribbean was to know your customer. He told the Minority Staff that he knew Cooper personally, spoke to people in the community about him and that he thought Cooper had a good reputation.

Account opening documentation for AIB that was provided to the Subcommittee showed that BOA obtained the following: a background description of America International Banking Group; a copy of the articles of incorporation of AIB; minutes of the organizational meeting of the board; and a copy of the bank license and certificate of good standing. Financial statements for the bank were not yet available because the bank only started operation in June 1993 and the first audited financial statement was not issued until March 1994. There were no written references.

In June 1993 the relationship manager wrote a memo to the credit manager seeking a decision on whether to open the AIB account. He described AIB as a commercial bank in the process of formation. He said he knew the directors and major stockholders, having worked with them in their previous banks. Since AIB was a new bank, there was not much of an operational history from which to assess its performance. However, BOA did little probing into the nature of the bank or its clientele. Material provided to BOA indicated that although AIB was formed in 1990, it did not hold its first organizational meeting until December 1992. A senior BOA official acknowledged this was not typical operating procedure for a bank and that it should have raised questions about the regulatory authority when it allowed such a thing to happen. However, there is no indication in the account opening materials supplied by BOA that this issue was a factor in BOA's decision to open a correspondent account for AIB.

An AIB brochure identified the commercial activities and objectives of the bank: to provide offshore financial services in a tax free environment, primarily but not exclusively to private banking and corporate customers. It stated, "The ability to provide this complete service in a confidential manner is seen as a competitive advantage which will enable the bank to expand its client base on a worldwide basis." The issue of confidentiality did not raise concerns with BOA. As one senior official noted, while it is an issue today, it was not so in the early 1990's. It was viewed as standard wording for offshore banks and the relationship manager was comfortable with the relationship.

A senior BOA official observed that more should have been done before the account was accepted, although he said it is difficult to say exactly what should have been done. The relationship manager made a trip to AIB in 1993 and saw AIB's premises and an organizational chart. In May 1994 he made another site visit and saw the AIB offices, employees, and customers. According to the relation-

ship manager, everything BOA heard about Cooper at that time was positive. The senior official suggested that there should be a more careful analysis by the bank of why it wants to do business with a particular client, and whether the regulatory authority can be relied upon.

Ongoing monitoring of the bank was the responsibility of the account administrator, who handled the day to day operations of the correspondent account. The relationship manager was liaison with 80 banks that had relationships with BOA; the account administrator had more accounts to handle than the relationship manager. In addition, as noted above, because the AIB account was a cash management account and not classified as a full relationship involving credit, it received less attention from the relationship manager. BOA officials told the Minority Staff that the account administrator monitored account activity, but if the activity did not reach a certain level it would likely not be noticed. The relationship manager would see summaries of balances and the checks issued by the client to get an idea of the business being conducted, but there was no anticipated account activity profile established and there did not appear to be any tracking to make sure the activity in the account was in line with account purposes. In addition, because the AIB account was a non-credit relationship, annual audited financials were not required. No audited financial statements were issued by AIB between March 1994 and June 1996.

In May 1994, the relationship manager wrote a description, of his site visit:

Formed just a year ago by a former general manager of Antigua Barbuda Bank, American Int'l. is already profitable . . . nice quarters and a very slick operation. The group includes the bank (offshore/private), a management and trust co. (offshore records and registration), asset management and even a ship registry Co. While probably never a user of any volume corbank services, this is already a nice relationship. . . . Cooper is also a big supporter of BofA as the result of his experiences at Antigua Barbuda, and provided a new lead during the visit.

According to BOA officials, they did not see any indications of problems with the AIB account until 1995. However, in April and June 1994 AIB asked BOA to confirm letters of credit for two entities—American European Venture Capital and Bond Street Commercial Corporation. These requests raised a number of questions. Although AIB did not have a credit relationship with BOA, the communications AIB forwarded to BOA suggest that AIB had developed a financing plan with BOA. Communications sent to BOA 2 months later indicate AIB was still pursuing the confirmation of the same letters of credit. However, these requests did not lead to further investigation or review by BOA. The relationship manager explained that the communications did not make him suspicious, because it appeared to him that Cooper had designed a scheme to make a deposit and convert it into a loan to accommodate a private banking customer. However these entities were two of the venture capital corporations that were used to perpetrate the advance-fee-

for-loan fraud that eventually operated through CAB, an offshore bank that had a correspondent account at AIB.

In October 1994, BOA learned that a client of AIBs was a sports betting company. Gambling proceeds were being moved through the BOA account, and the AIB client was telling its customers to wire money through the AIB account at BOA. BOA notified AIB. AIB told BOA that the account was being terminated and wrote to BOA that "It is clearly not our policy to deal with such companies and we are pursuing as quickly as possible to terminate the entire relationship."⁹¹

However, AIB maintained other accounts related to sports betting and gambling throughout its existence.

On October 10, 1995, an internal BOA memo from the Vice President of International Deposit Services to the Vice President of Account Administration notes that the AIB account "has recently seen a number of returned items for large dollar amounts." The returns were for forged checks. After providing details of the parties involved, the memo states:

It would seem to me that our customer is dealing with clients on their side that are unknown to them. The area in which they are located, St. John's Antigua W.I. is already well known to us and has caused us substantial problems in the past. Therefore, based on our limited knowledge of customers practices I would suggest the following:

1. Contact Tom Wulff and request a background check on this account.
2. Increase the availability given to this customer from 5 business days to 10 in order to avoid a potential overdraft situation that will not be covered.
3. Upon review of the background make a logical decision as to why we should **NOT** disengage from this customer. [Emphasis in original.]

On October 18, the relationship manager reported to the Vice President for International Deposit services that he contacted Cooper, President of AIB and informed him that BOA wanted to terminate the correspondent relationship with AIB within 60 days. As a reason he "reiterated the several transactions below which has [sic] recently passed through his account and which we considered unacceptable." He later notes some of the unacceptable transactions included: 10/94—apparent gambling proceeds, advertising leaflets; 4/95—clearing high volumes of small money orders, apparent gambling or money laundering; 10/95—clearing large denomination forged checks. Cash letter activity was terminated 60 days later, and the account was completely closed in April 1996. The relationship manager said this arrangement was reached in order to give AIB time to find a new bank and establish a correspondent relationship while still reducing AIB's ability to move more funds through the account.

⁹¹Fax memo from William Cooper, President, AIB, to Lee Roy King, a BOA relationship manager, October 1994. Although Wulff was the relationship manager for the AIB account, he worked closely with King, who had worked in the Caribbean region for BOA for a long time. According to Wulff, sometimes Cooper would communicate with King.

In July 1996, the relationship manager wrote a memo about a visit he made to another Antiguan bank. As part of that memo he included the following:

On a related subject, and although I did not call on American International Bank for obvious reasons, exiting that relationship (the account is now totally closed) also seems to have been prudent since although no proof is of course available, their reputation in the local market is abysmal. Rumors include money laundering, Russian Mafia, etc., while management of that bank also now includes the former manager of SAB, again not a reassuring situation.

The relationship manager told staff that the situation with Cooper's reputation changed suddenly and he "became the poster boy for bad banking." He stated that he brought the AIB account in as an exception and he shouldn't have. It should be noted that no one else in the BOA system objected to opening the account. He also told the Minority Staff when informed that other U.S. banks serviced AIB after BOA closed the account, that it was hard to believe that other banks would accept AIB as a client as late as 1997, noting that they should have known better by that time.

(b) Toronto Dominion Bank (New York Branch)

AIB maintained a correspondent account at the New York Branch of Toronto Dominion Bank from January 1996 to January 1997. During that period, \$16 million moved through its account. AIB had previously established a correspondent account with Toronto Dominion Bank in Canada and on January 8, 1996, requested that the Canadian branch establish a U.S. dollar account at the New York office, which the New York office did on January 10, 1996.

Information on due diligence and account opening activities in the Canadian branch were not made available to the Subcommittee. The New York branch did not perform any due diligence on AIB before establishing an account, apparently relying on the due diligence performed by the Toronto office when AIB first became a customer of the bank. The individual who handled the AIB account in New York has left the bank, and a box of records related to the account cannot be located.

Monthly statements which are available show a high level of activity in the account. On November 1, 1996, the account manager in New York sent the following email to the Toronto office:

To accommodate your request, we opened the above account last January. However, this is a heavy volume account and we are not set up for this accommodation. We have therefore, decided to close the account. Since they made their opening arrangements through Corresponding Banking in Toronto, we now request that you notify the customer.

On the same day, the Toronto office sent a letter to AIB informing the bank that the New York correspondent account was going to be closed. The letter stated:

As you are aware, this account was opened to accommodate your request to have a US dollar account in the United States.

Because of the high volume activity on this account (approx. 2000 per month), special arrangements had to be made with our Toronto Office to have regular transfers made to the subject account to cover any overdrafts. This account has since had to be monitored on a daily basis to ensure coverage of funds.

Clearly this has become a high cost account for us and it is no longer economically feasible for us to retain this or any other such accounts.

Toronto Dominion Bank informed AIB that the account would remain open until November 30. The closing date was subsequently moved. The account was frozen in mid-December and was closed as of January 9, 1997. In December the Toronto Dominion head office in Canada also informed AIB that it would no longer provide cash letter services for U.S. dollar items drawn on U.S. locations; it would continue to accept cash letters for Canadian dollar and U.S. dollar items drawn on Canadian locations. In January 1997, the New York branch transferred the remaining account balance to the head office in Toronto.

The Vice President and Director for the New York office where the AIB account had been located informed the Minority Staff that the bank had not seen any suspicious activity associated with the account. According to the counsel, the basis for the closure of the account was what was noted in the letter to AIB—given the volume of activity, it was too costly for the Toronto Dominion branch in New York to service the account.

In addition to the activity in AIB's account in Toronto Dominion's New York branch, records of AIB's other U.S. correspondent accounts suggest that the Toronto Dominion account in Canada was a major conduit for AIB funds into the U.S. banking system. For example, between June 1996 and January 1997, \$20.9 million was wired to the AIB correspondent account at Chase Manhattan Bank from the AIB account at Toronto Dominion Bank in Canada.

From the records available to the Subcommittee, it appears as if the Toronto Dominion office in Canada maintained AIB's correspondent account until at least mid-1997.

(c) Chase Manhattan Bank

AIB maintained a correspondent account at Chase Manhattan Bank (Chase) from April 1996 through June 1997. During that period, \$116 million moved through its account. The initial contact was made through a "cold" or unsolicited call to AIB from a Chase representative. At the time, AIB had been notified by BOA that its correspondent relationship would be terminated.

In the mid 1990's Chase was not promoting credit relationships with banks in many nations in the Caribbean and South America. However, it was making a concerted effort to promote service products that would generate fees without exposing the bank to credit risk. A major product was electronic banking—taking advantage of the bank's sophisticated computer equipment and hardware to provide U.S. bank accounts and non-credit related services to offshore banks. As a result of this focus, Chase's contact with banks in those areas was conducted primarily through sales representatives

rather than a relationship manager that would have a wider range of responsibilities and functions. The sales team was overseen by a credit risk manager. At the time, Chase sales representatives working in the area handled a large number of bank clients. One representative had more than 75 banks. The salary of the Chase representatives was tied to revenues and fees generated by the accounts they handled. One representative reported that it could be a large part of one's salary.

At the time of Chase's association with AIB, the account opening procedures required the sales representative to obtain a letter from the client requesting to open an account, bank reference letters, bank financials and a background/justification memo. In addition, the individual who served as the credit risk manager at the time stated that the representatives were required to know the nature of the bank's business through an on-site visit and have a reasonable understanding of the transactions the bank would initiate.

The initial contact memo for AIB was written on January 23, 1996. The memo states that AIB will provide the copies of audited figures for the 3 years that AIB had been in existence. Neither the Chase sales representative nor the risk manager could remember if the financials were provided. A subsequent memo indicates that financial statements were received and reviewed during February or March. However, at that time the only audited financial statement available was the 1993 statement. Financial statements for 1994 and 1995 were not published until June 1996. Although Antigua regulations require that audited financial statements be produced within 4 or 5 months of the end of the year, Chase did not question the absence or lateness of the financial audit for 1994. The memo also describes a primary function of AIB:

As I understand it, his [Greaves'] typical pitch is to "incorporate" individuals into offshore citizenship which then makes them eligible for a host of products voided to domestic (U.S.) Nationals. Such set-up typically costs \$1,250 and is efficient for someone with as little as \$20M [thousand]–\$25M [thousand] to invest. John elaborated to the effect that to "take-in" deposits from US nationals is not a transgression. It becomes a transgression if and when these nationals end up not reporting the investment, which is no legal concern of the offshore depository institution.

When asked by staff if these comments by Greaves had caused any concern, the sales representative who is still involved in correspondent banking for Chase replied that they showed that Greaves knew his craft—that he set up mechanisms to ensure compliance with the law. The representative noted that the whole essence of offshore banking is non-resident accounts, accounts in the name of corporations with bearer shares, and directors that are lawyers "that sit in these tax havens that make up minutes of board meetings." He noted that the comments in the memo were intended to be informational and not questioning whether Chase should be in the field. When asked if part of the sales representative's job was to make sure the client bank did not go over the line, the representative responded if that was the case, then the bank should not be dealing with some of the clients it had and shouldn't

be doing business in some of the countries where it was doing business. He added, however, that in the case of AIB, it did not seem that AIB was doing anything illicit, rather it was in the business of offshore banking and that is the type of thing AIB needed to do to attract clients.

In March 1996, the Chase sales representative and the credit risk manager participated in a conference call with Greaves. The purpose was to clarify three specific points before establishing a relationship with AIB: the ownership of AIB, AIB's due diligence and KYC policies, and Chase's expectations regarding cash management letters. Both Chase officials admitted that it was rather unusual for the credit risk manager to participate in such a call before approving an account. The credit manager could not remember if there was something in the AIB material that caused the call. However, he noted that he generally had developed a heightened concern about small "boutique" banks and because of the ongoing Chase-Chemical Bank merger, he was concerned that if his department were eliminated he did not want to admit a bank that might later create problems for whoever inherited the account. The risk manager wrote a memo on the phone conversation, and in the section regarding AIB's due diligence and KYC programs, he included the sales representative's characterization that: "Greaves stated that AIB exceeds the U.S. Treasury's guidelines in this area. AIB takes this issue so seriously that Greaves himself was unable to 'free up' any time to see [the Chase sales representative] in Miami last month while attending a local Treasury-sponsored Anti Money Laundering Seminar." A Chase representative noted that this characterization of AIB's commitment to anti-money laundering was perhaps an "embellishment."

Regarding AIB's Due Diligence/Know Your Customer policies, the memo reported that: "A 12-page instructional document is sent to, and acknowledged by all AIB staffers who handle accounts." However, neither the credit manager nor the sales representative can recall if they ever saw the document. After the March 26 teleconference, the AIB correspondent account was approved and established.

As noted above, Chase representatives were required to know the nature of the bank's business through an on-site visit and have a reasonable understanding of the transactions they would initiate. The sales representative stated that he believed that AIB's businesses included offering products to personal corporations, forming trusts and a ship registry. He told staff that although he was not told so by AIB, on the basis of his experience, he understood that since AIB was an offshore bank, its clientele was largely private banking type clients, individuals with enough discretionary wealth to form trusts and other products. Neither the sales representative nor the credit manager was aware of the Forum or the large presence that Forum-related accounts had at AIB.

In addition neither the sales representative or the credit risk manager were aware that AIB served as a correspondent bank for a number of other offshore banks such as Caribbean American Bank, Hanover Bank or Overseas Development and Trust Company. The manager noted that at that time Chase representatives were not required to ask a client bank if it served as a cor-

respondent for other banks. He said the issue never came up, but if it were a regular service offered by AIB it should have been raised to him. He noted that there was no Chase policy against establishing a correspondent relationship with a bank that served as a correspondent to other banks, but noted that if he had been aware that AIB served as a correspondent to other banks, he would have asked additional questions about that situation.

Chase's ongoing monitoring efforts were admittedly less rigorous for non-credit correspondent relationships than the ongoing monitoring for credit relationships. The credit risk manager described the effort as "reactive," responding to any suspicious activity or any other reports that might come to the attention of the bank. According to the credit risk manager, while the general policy was to keep alert in all areas where Chase conducted business, there was no annual review of non-credit relationships such as AIB's and clients were not required to supply updated financials. Sales representatives did not review monthly statements; they would review billing statement analyses to get an idea of the activity of the account. Although a key aspect of ongoing monitoring was maintenance of direct contact with the client through site visits, smaller revenue clients were not visited on a regular basis, if at all.

In May 1996, a new sales representative assumed responsibility for the account. The new representative visited the AIB offices in September 1996. The report of the meeting indicates that AIB officials advised the representative that BOA had previously handled AIB's accounts and that AIB had been unhappy with the support received from BOA. There was no mention that BOA, not AIB, had terminated the relationship. The new representative stated that since she had taken over the account after it was opened up, she didn't inquire about the BOA relationship because she assumed that the matter had been addressed during the opening of the account. The new representative stated there was no information in the file about the customer base and she had inquired about the nature of AIB's clientele. The site visit representative noted that AIB managed "three to four thousand offshore customers (trust private banking) and they are not allowed to operate locally in Antigua." The representative was not aware of the large base of Forum-related IBCs that were part of AIB's clientele. She noted that while she obtained an overview of the clientele, she felt that the bank would not provide information on what the offshore client base was. The report also noted:

A subsidiary, American International Management Services (AIMS) provides head office services for other banks. They manage twelve banks, have dedicated systems, preparing statements (outsourcing) that have physical presence in Venezuela, Canada, Australia, St. Petersburg, Brazil, England, Antigua due to offshore nature. They are purely international and wholesale in nature . . . involved in project financing, non discretionary funds only (have branches in Dominica, St. Kitts).

This apparently did not raise concerns with the new representative. She told the Minority Staff that she did not pay attention to AIB's respondent banks. When asked by the Minority Staff if she made further inquiries about the banks serviced by AIB, she noted

that AIB had told her that the banks it serviced were much smaller banks and that no money center banks would do business with them. She noted it was a judgment call as to whether the client would tell the representative what its customers were doing.

In March 1997, the sales representative was instructed by the Chase fraud department to terminate the relationship with AIB. According to the sales representative, the instruction was delivered shortly after AIB received a sizable stolen check and had recently completed a questionable wire transfer. On March 12, 1997, Chase informed AIB that it would close the account in 30 days (April 12). After two letters of complaint from AIB about the decision and the difficulty of establishing a new relationship within 30 days, Chase informed AIB that it would extend the closing date to May 17, 1997, and agreed to accept cash letters until May 2.

On April 7, AIB reiterated a request for an additional 3,000 checks. On May 21, 1997, AIB requested that its remaining balance be forwarded to Popular Bank in Florida. A June 2 Chase memo addressed the account:

[W]e concluded that it should be closed, we can't wait any more. . . . I tried to get a list of outstanding checks from Syracuse but the list was not only very long but also included pending items from June/96. I do not think the list is accurate. We have given them over two weeks more from the date the account was supposed to be closed which was May 16/97. You can go ahead and do what is necessary to close it. . . .

On June 17, 1997, the account was officially closed. After its correspondent account with Chase was terminated, AIB informed its clients of the closure in the following way:

Due to certain operational considerations, we have decided to close our account with Chase Manhattan Bank in New York by May 15, 1997.

(d) Popular Bank of Florida (now BAC Florida Bank)

AIB maintained a correspondent account at Popular Bank from April 1997 through July 1997. During that period, \$18 million moved through its account. Popular Bank had approached AIB about a correspondent account in early 1997.

Since April 1995, AIB maintained a Visa Credit Card settlement account at Popular Bank, backed by a \$100,000 Certificate of Deposit. Credomatic, a credit card payment processing company, was owned by the same individuals who owned Popular Bank. Some of the financial institutions that utilized Credomatic's services established their escrow accounts at Popular Bank. Popular Bank used that escrow account list to market its correspondent banking services.

In early March the relationship manager for Popular Bank wrote a letter to AIB describing the correspondent services Popular Bank could provide and requested the following from AIB: financial statements for the past 3 years, background on the bank and the nature of its business, identity of the major shareholders and other business interests they had, and a list of senior officers. A site visit was not made before the account was opened. The account manager was planning a visit to Antigua and Barbuda in the near future

and planned to make a site visit at that time. In a later communication, the relationship manager requested a list of some of the correspondent banks used by AIB.

In a letter responding to the request, Greaves pointed out that AIB operated in Antigua, Barbuda and Dominica. The letter noted that AMT Trust was a part of the American International Banking Group, formed and managed corporations, and had over 5,000 corporations on its books that could be incorporated in Antigua and Barbuda, St. Kitts or Dominica. Greaves also pointed out that American International Management Services Ltd. provided full back office services for offshore banks and corporations. The letter also states that "the bank does very little lending and is mainly used as an investment vehicle for our clients." At the same time, AIB's balance sheet showed that as of December 1996, AIB had over \$40 million in loans and advances out of a total asset base of \$57 million. The list of correspondent banks provided by AIB named Toronto Dominion Bank in Canada, Privat Kredit Bank in Switzerland and Berenberg Bank in Germany. The list did not include any of AIB's U.S. correspondents.

As part of the due diligence process, the relationship manager made inquiries about AIB with a European bank with a branch in Antigua and Barbuda. He was cautioned to be careful about doing business in Antigua and Barbuda, although no negative information about AIB or its officers was transmitted.

The account became operational on April 1, 1997. Although the account was quiet during the first month, activity increased dramatically in the month of May. During that month, \$7.5 million was deposited and \$2.7 million was withdrawn from the account (including \$1.6 million withdrawn through 488 checks). Also in May, the relationship manager made an inquiry of AIB about some of AIB's customers and, at the end of May, learned that AIB serviced the accounts of sports betting companies. In June, Popular Bank received a request from a Russian bank to transmit the text of two loan guarantees (\$10 million and \$20 million) to AIB, for further transmittal to Overseas Development Bank and Trust. Popular Bank refused to transmit the guarantees, because it would have put Popular Bank in the position of guaranteeing the loans for the Russian banks, which were not clients of Popular Bank.

In early June, the relationship manager visited Antigua and Barbuda. During the trip, he visited the AIB offices and acquired some AIB brochures that highlighted some services of the group that raised questions about its vulnerability to money laundering and the nature of the clientele it was trying to attract. One document described the various entities that made up the American International Banking Group and the bank formation and management services offered by the group, including the fact that AIMS provided back office services for some of the offshore banks that had accounts with AIB. The description of the management services offered by the American International Management Services Ltd. ("AIMS") contained the following:

It has become increasingly important for overseas tax authorities to see that the "mind and management" of a bank is in the country of origin. Therefore, we are now providing management services for a number of our clients. American Inter-

national Management Services Ltd. can provide offshore management services for an offshore bank.

. . . In addition to the administrative responsibilities mentioned above, we will also provide full back office services. These services will include but not be limited to: **establishing an account with American International Bank** to make wire transfers and the issuance of multi-currency drafts; the operation of a computerized banking and accounting system; issuance of certificates of deposit and account statements; administrative/clerical functions relating to the purchase and sale of securities and foreign exchange and the filing of all correspondence/documentation and all other ancillary functions of an administrative nature. . . . [emphasis added]

Another document describing the corporate and trust services of the American International Banking Group identified a number of advantages of incorporating in Antigua and Barbuda, some of which stressed how, under Antiguan law, it was easy to hide information about account activity and ownership:

- Antigua and Barbuda only has an Exchange of Information Treaty with the U.S.A and this is only for criminal matters.
- There are no requirements to file any corporate reports with the government regarding any offshore activities.
- The books of the corporation may be kept in any part of the world.
- Share [stock] certificates can be issued in registered or bearer share form.

The manager informed the Minority Staff that he also visited with governmental officials and became concerned when he learned that although the government was in the process of collecting a great deal of information about its offshore banks, it lacked the resources to review and analyze the information it had collected.

On June 13, he filed a report on his visit to AIB. The memo reviewed the various entities that made up the American International Banking group. After noting that one of the entities in the group provided back office services that included establishing accounts at AIB, he commented: “The back up services provided by the group offer a high risk as we do not know either the entities nor the people behind those banks receiving the service.”

The memo also noted that information obtained from the Antiguan banking community about Greaves “leaves me uncomfortable.” The memo concluded with the following recommendation:

I recommend that we do cut our banking relationship with American International Bank for the following reasons:

Antigua has no regulations nor the capacity to enforce them for offshore banks.

American International Bank offers management services to offshore banks incorporated in Antigua. We do not know who are behind those banks. Therefore, the risk of any of those

banks being involved in unlawful activities (as per US regulations) results extremely high.

John Greaves has not the best prestige among bankers in Antigua. [emphasis in original]

On June 16, the relationship manager sent a facsimile to AIB, stating the following:

Please be advised that we will be unable to continue servicing your operating account effective Monday June 23, 1997. Please do not send any more items for deposit after today June 16, 1997.

We thank you for your business but we must be guided by U.S. banking regulations which require a disclosure of comprehensive information about our clients and parties involved in our transactions.

The bank refused to grant an extension to AIB. Two days later, Popular Bank also terminated AIB's credit card settlement account, which had been at the bank since 1995. In the month of June, \$7.8 million was deposited into AIB's account at Popular Bank and \$11.6 million was withdrawn (including \$3.4 million through 962 checks). All account activity was ceased at the end of June and the account was closed in early July.

(e) Barnett Bank

AIB maintained a correspondent account at Barnett Bank from May 1997 through November 1997. During that period, \$63 million moved through its account. AIB President John Greaves contacted the relationship manager for Barnett's Caribbean division and said that AIB was looking for a correspondent bank to provide cash management activities for the bank in the United States.

Barnett Bank had a small correspondent banking department. It consisted of four correspondent bankers who covered four geographic regions. They were assisted by one administrative assistant. The bankers reported to the head of International Banking. The work on correspondent accounts was shared with the Treasury Management Services Department, which handled the cash management services of the account. The correspondent banker, also called the relationship manager, would handle both credit and cash management relationships. The Caribbean Region office in Barnett had about 25 clients and did a lot of cash letter and wire transfer business. While financial incentives were not offered to relationship managers for attracting new accounts, they were related to fee income and loan balances.

To open a correspondent account, a bank was required to supply financial statements, management organizational charts and bank references. Barnett Bank said it would not deal with shell banks that didn't have a physical presence in the jurisdiction in which they were licensed. According to the relationship manager of the AIB account, all of Barnett Bank's clients had a physical presence. In fact Barnett Bank said it had only one or two offshore banks as clients and had no client banks that held bearer share accounts. The relationship manager did not know if any client banks were providing correspondent services to other banks, because that was

not an inquiry made of prospective client banks. One of the off-shore banks that was a correspondent of AIB had a number of bearer share IBC accounts that had been formed by Cooper's company, AMT Trust.

The relationship manager said that as part of her due diligence review, she would check with the bank regulator of the jurisdiction in which the client was located. The regulatory authority of the bank's home jurisdiction was assessed as part of a country risk evaluation. However those assessments were performed for credit relationships; they were not done for cash management, non-credit relationships. Similarly, although reports of agencies that rated the creditworthiness of banks were reviewed, the reports didn't include Caribbean banks. Bankers were not required to perform an initial site visit or write a call memo before the relationship was established. An initial site visit was not made to AIB, because the relationship manager had just returned from a trip to Antigua and Barbuda when AIB made its request to open an account. The manager made a site visit during the next scheduled trip to Antigua and Barbuda in August 1997.

Treasury Management would review the account opening documentation for completeness and establish the account. The relationship manager had the authority to approve the opening of a non-credit relationship. Credit relationships had to be reviewed and approved by a credit committee.

When Greaves initially contacted the relationship manager, he explained that the bank serviced private banking clients and trusts. Information materials supplied to Barnett by AIB indicated that the bank serviced wealthy individuals. The manager was unaware of Melvin Ford or the Forum and had not heard of Caribbean American Bank and the relationship those entities had with AIB. The relationship manager was not aware that AIB served as a correspondent to a number of offshore banks. The relationship manager was unaware that AIB had licensed a bank in Dominica in June 1996. The fact that there were other companies in the American International Banking Group that formed IBCs was not viewed as relevant to the bank. Barnett did not obtain any information that provided details of AIB's client base. Because AIB had a cash management relationship, its loan profile and loan philosophy were not reviewed.

The relationship manager noted that the staff always tried to perform substantial due diligence but Barnett did not have a presence in the local market and had to rely on the opinions of people in the market and the regulatory agencies. However, the manager noted that those entities are reluctant to provide information and don't want to say anything negative about another party. Barnett said that their reluctance to provide information made it difficult for Barnett to assess the entire situation.

With respect to ongoing monitoring, the relationship manager would make annual on-site visits to banks that had cash management relationships with Barnett and more frequent visits to clients with credit relationships. The relationship manager would review some recent monthly statements and check with Treasury Management on the status of the account before making site visits. Treasury Management would notify the manager if any unusual activity

was noticed, and Barnett said it had an Anti-Money Laundering unit that monitored accounts.

The AIB account at Barnett Bank operated for 5 months. During that period, the account experienced substantial wire and checking activity. In June and July, there was a large number of transfers out of the account valued between 1 and 10 thousand dollars. In July, there were over 500 checks issued for a total value of \$3.2 million. The relationship manager noted that the volume of checks was unusual and it was also unusual to issue checks in the denomination of 75 to 100 thousand dollars, as AIB was doing. In August, there were \$5 million worth of checks written against the account.

The relationship manager was informed by Treasury Management personnel in about July that there was a large volume of wire transfer activity in the account and it was difficult to keep up with the volume. When an inquiry was made to AIB, the bank explained that the activity was related to many payments to trust accounts. This response didn't raise the suspicions of the manager.

In late July or early August, prior to a trip to Antigua and Barbuda, the relationship manager noted an incoming wire transfer for \$13 million. It attracted the manager's attention because it was unusually large. She was unable to reach Greaves, and she received an unsatisfactory explanation about the wire from AIB's operations manager. The following week the relationship manager traveled to Antigua and Barbuda and met with AIB officials. She was still unable to receive a satisfactory explanation for the \$13 million transfer. After returning to Miami, she spoke with the head of the International Banking Department and the Compliance Department and the decision was made to close the account. Initially, Barnett informed AIB that the account would be closed at the beginning of October. AIB requested additional time, and Barnett agreed to hold the account open until November. AIB was able to use wire transfer services throughout that period. The account was closed in November.

(8) AIB's Relationship with Overseas Development Bank and Trust Company

In late 1997 AIB was suffering severe liquidity problems largely because of non-performing loans and the attempt by certain investors to withdraw their funds. As the growing liquidity problem threatened the solvency of the bank, the owners of Overseas Development Bank and Trust Company Ltd. ("ODBT"), an offshore bank licensed in Dominica, attempted to take over AIB. ODBT was licensed in 1995 in Dominica; it was one of the first offshore banks licensed in Dominica after Dominica passed its law allowing offshore banks in June 1996.⁹² ODBT's formation was handled by AMT Management, the British Virgin Islands corporation owned by William Cooper and his wife. ODBT's initial shareholders were Cooper, his wife and John Greaves. The Coopers disposed of their

⁹²The other offshore bank initially licensed was American International Bank and Trust Company Ltd., owned by Cooper and his wife. According to the manager of the Dominica International Business Unit (the governmental body that regulates offshore banks), American International and ODBT were closely aligned. The banks' applications were submitted at the same time, they shared the same agent (AMT Management) and they shared the same office space.

shares and the owners of ODBT, each with an equal share, became John Greaves, Arthur Reynolds and Malcolm West.

On December 30, 1997, AIB and ODBT signed an agreement for the sale of all of AIB's assets and liabilities to ODBT. At the same time, officers of both AIB and ODBT wrote to a former U.S. correspondent bank of AIB and informed it that ODBT was taking over the assets of AIB.⁹³ In January 1998, the counsel for ODBT issued an opinion certifying that he had examined the documents associated with the purchase (purchase agreement, deed of assignment, absolute bill of sale, assumption of liabilities) and that the documents were "duly executed and legally binding and enforceable." On January 6, 1998, the Board of Directors of ODBT published a public notice stating that the bank had purchased the assets and liabilities of AIB, that it had applied to the Government of Antigua and Barbuda for a banking license and that if the license was granted it hoped to employ 50 people in its bank in Antigua and Barbuda. However over the next 4 months, the financial problems of AIB did not abate and by April, after ODBT had invested nearly \$4.5 million in AIB, the purchase agreement was dissolved. The owners of ODBT subsequently worked out an arrangement with the receiver of AIB to assume \$4.5 million worth of loans payable to AIB as repayment for the funds it had invested into AIB.⁹⁴ In the second half of 1999, Greaves and Reynolds sold

⁹³In order to comply with Antigua regulations that prohibit a bank from using the word "trust" in its name, the owners of ODBT applied for, and received, a temporary bank license for a new Antiguan bank in the name of Overseas Development Bank ("ODB"). In a December 1997 letter to the counsel in Antigua and Barbuda who was handling the incorporation and licensing for ODBT, John Greaves supplied "a full name of all shareholders in various companies that own the Overseas Development Bank & Trust Company Ltd." According to Greaves' letter, ODBT was owned 100% by Overseas Development Corporation, an Antiguan Corporation, which was owned by three companies—Financial Services Group, International Management Services, Inc., and Overseas Development & Trust Company. The owners of the Financial Services group were listed John Greaves, Arthur Reynolds and Derek Pinard (General Manager of ODBT). Greaves was listed as the owner of International Management Services, Inc. The owner of Overseas Development Trust Company was listed as the Honorable Ivan Buchanan (a director of ODBT). Malcolm West was not listed.

⁹⁴The owners of ODBT subsequently characterized the relationship with AIB in different ways. In one instance, the investment in AIB was a "loan" rather than expenditures associated with the purchase of the bank. In another communication, Greaves stated that "in order to offer final assistance to American International Bank and their clients aimed more at perhaps assisting the image of the offshore banking industry than the individual bank, we purchased loans from the Receiver to the sum of US\$4.5 million. All of these loans are active and in good standing although some of them are longer than we would prefer." The receiver of AIB informed the Minority Staff that many of the loans assumed by ODBT were non-performing and the current owner of ODBT concurred, stating that the bank was planning to initiate legal proceeding to recover the funds. ODBT officials estimated that approximately one half of the \$4.5 million in loans were related to interest associated with the former owner of AIB, Cooper.

In December 1999, the Supervisor of International Banks of the Antiguan International Financial Sector Authority (the immediate predecessor to the International Financial Sector Regulatory Authority, the current regulator of offshore banks in Antigua and Barbuda) wrote to ODB and informed the bank that its tentative license was to be revoked on January 14, 2000, due to lack of activity and assets.

After ODBT abandoned its takeover of AIB, a second takeover effort was mounted. In May, another Antiguan bank, called Overseas Development Bank, Antigua was formed. The bank was granted a license in 1 day. According to filings that accompanied the license application, that leadership of the bank was closely connected to the Forum operations. The major shareholder (owning 3 million of 5 million shares of the capital stock) was Wilshire Trust Limited, which was one of the trusts that controlled many of the Forum-related investments. Some board members of the new Overseas Development Bank, Antigua, also had ties with the Forum. David Jarvis had run the Forum office in Antigua and Barbuda. Earl Coley of Clinton, Maryland, was a frequent speaker at Forum meetings and is reported to be a relative of Gwendolyn Ford Moody, who handled much of the financial activity for Melvin Ford and the Forum. A number of individuals familiar with the formation of Overseas Development Bank, Antigua told the Minority Staff that backers of the new bank were two Antiguan banks, Antigua Overseas Bank and World Wide International Bank. Both of those banks serviced accounts of Forum-related investors. However, the staff saw no written record of their involvement. Within a month or two,

their shares to West, who told the Minority Staff that he is currently the sole shareholder of ODBT.

Like AIB, ODBT was one of a group of companies within an umbrella group; ODBT's umbrella group was called Overseas Development Banking Group. In addition to ODBT, the group contained companies for corporate and trust formation and bank management.

ODBT shared a number of common elements with AIB. Although licensed in Dominica, the bank was operated out of Antigua and Barbuda by AIMS, the bank management service owned by Greaves and closely tied with AIB.⁹⁵ A number of officers and employees of AIB and the management service became employees of ODBT and were authorized signatories for the correspondent accounts established for ODBT.⁹⁶ From the time that ODBT commenced operations as an offshore bank through the end of 1997, it used AIB as its correspondent bank to access the U.S. financial system. ODBT also issued Visa cards to its clients through AIB.

Promotional literature of ODBT touted the secrecy and anonymity the bank used to attract clients:

Numbered accounts—are available and are particularly useful; not only in providing anonymity but, as further security against unauthorized access to accounts. . . . Bank secrecy regulations do not permit the release of any information without specific written permission from the account holder. . . . Annual bank audits required by government do not reflect individual accounts. . . . Account information is otherwise only available by order from the high Court. . . . Formation of “International Business ‘offshore’ companies” can be arranged in a variety of Caribbean jurisdictions. Such companies can be comprised of Registered, or Bearer shares, or a combination of both, at the discretion of the client. . . . In the case of Bearer Share companies, where the client is concerned about anonymity, our trust company can function as the Sole Director.

Another brochure on the Overseas Development Banking Group offered clients economic citizenship in other jurisdictions.⁹⁷

after investing a few million dollars, Overseas Development Bank, Antigua abandoned its efforts to takeover AIB. The Minority Staff has acquired records that show that at the same time that Overseas Development Bank, Antigua was formed, Corporate and Accounting Services Ltd., one of the accounting firms that administered accounts of the Forum-related IBCs, sent out a letter to IBC members offering them the opportunity to buy shares of Overseas Development Bank, Antigua.

In August 2000, the Antiguan International Financial Sector Regulatory Authority informed the Minority Staff that Overseas Development Bank, Antigua had not been in operation since August 1998 and the bank had been put on notice that its license was to be revoked.

⁹⁵AIMS changed its name to Overseas Management Services (“OMS”) before closing in August 1999. Greaves also informed the Minority Staff that AIMS was also known as International Management Services (“IMS”) before its name was changed to Overseas Management Services (“OMS”).

⁹⁶They included: Pat Randall Diedrick, Assistant Manager, ODBT (Corporate Secretary and Director, AIB), Danley Philip, Assistant Manager, ODBT (Assistant Manager/Accountant, AIB) Sharon Weeks, Accounts Manager, ODBT (AIMS employee), Anne Marie Athill, Office Manager, ODBT (AIMS employee).

⁹⁷Economic citizenship is conferred when an individual makes the investment of a certain amount of money in, and/or pays a fee to, a country and in return receives a citizenship in that country. The required level of investment and/or fee is set by the country offering the citizenship. As with IBCs, economic citizenship is generally offered by jurisdictions that also have little or no taxation and bank secrecy and corporate secrecy statutes. Individuals who obtain the economic citizenship can then enjoy the economic benefits of those policies and obtain second passports.

As a result of these policies, ODBT had numerous accounts where the true owners were unknown to the bank. In an interview with the Minority Staff, ODBT officials said that because of the wide use of bearer share accounts in the bank, they could not determine the beneficial owners of almost half of ODBT's accounts. So, for example, when asked how many of their clients were from the United States, they were unable to answer. Bank personnel knew who the signators on the accounts were, but they had no way of identifying the beneficial owner of the accounts. The bank personnel told the Minority Staff that when ownership of ODBT was shifted to West in July 1999, the bank had roughly 3,000 accounts and nearly 45% of those accounts did not contain sufficient information to establish ownership and were closed. West told the Minority Staff that the bank currently had approximately 100 accounts.

At the same time, ODBT's due diligence policy told a different story. In an August 1996 publication, which was sent to one of its U.S. correspondent banks, ODBT stated that its policy for International Business Corporation (IBC) accounts was to require its employees to obtain, among other things: "Full details of beneficial owner, including address, work and home telephone number and relationships with employer and social security number of U.S. citizen," a copy of the beneficial owner's passport; and a banker's reference. For individual accounts, the policy directed that "personal identification must be taken and retained on file, i.e. a copy of the front page of the passport with photographs, drivers license, etc.," and that employees should "obtain a home address and telephone number and verify that by calling after the interview if there is no acceptable supporting information."

Of those clients who were actually identifiable, several raise serious concerns.

(a) The Koop Fraud

ODBT was a key offshore vehicle used in the Koop fraud.⁹⁸ William H. Koop, a U.S. citizen from New Jersey, was the central figure in a financial fraud which, in 2 years from 1997 to 1998, bilked hundreds of U.S. investors out of millions of dollars through a fraudulent high yield investment program. Koop carried out this fraud in part by using three offshore banks, ODBT, Hanover Bank, and British Trade and Commerce Bank (BTCB). In February 2000, Koop pleaded guilty to conspiracy to commit money laundering. As part of his plea agreement to cooperate with government investigations into his crimes, Koop provided the Minority Staff investigation with a lengthy interview as well as documents related to his use of offshore banks.

ODBT was the first offshore bank Koop used in his fraud and seemed to set a pattern for how he used the other two. First, ODBT established Koop's initial offshore corporation, International Financial Solutions, Ltd., a Dominican company that would become one of Koop's primary corporate vehicles for the fraud. Second, over time, ODBT opened five accounts for Koop and allowed him to move millions of dollars in illicit proceeds through them. Third,

⁹⁸For more information, see the explanation of the Koop fraud in the appendix.

ODBT itself began to feature in the fraud after Koop offered, for a fee, to open an offshore account for any investor wishing to keep funds offshore. Documentation suggests that Koop opened at least 60 ODBT accounts for fraud victims, before ODBT liquidity problems caused Koop to switch his operations to Hanover Bank and BTCB.

The documentation indicates that Koop had accounts at ODBT for almost 2 years, from August 1997 until April 1999, which was also the key time period for his fraudulent activity.⁹⁹ ODBT documentation indicates that the bank established at least five Dominican corporations for Koop and opened bank accounts in their names.¹⁰⁰

The statements for one of the accounts established by Koop include four entries showing that Koop paid \$300 per account to open 60 additional accounts at ODBT, apparently for fraud victims who wished to open their own offshore accounts.¹⁰¹ When asked, West indicated during his interview that he had been unaware of the 60 accounts opened by Koop for third parties. He said that, in 1999, ODBT had closed numerous accounts with small balances due to a lack of information about the beneficial owners of the funds, and guessed that the 60 accounts were among the closed accounts. While he promised to research the 60 accounts, he did not provide any additional information about them.

Koop directed his co-conspirators and fraud victims to send funds to his ODBT accounts through various U.S. correspondent accounts. For example, account statements for Jamaica Citizens Bank Ltd. (now Union Bank of Jamaica, Miami Agency) show numerous Koop-related transactions from October 1997 into early 1998. Wire transfer documentation shows repeated transfers through Barnett Bank in Jacksonville. In both cases, the funds went through a U.S. account belonging to AIB, and from there were credited to ODBT and then to Koop. In January 1998, Koop also issued wire transfer instructions directing funds to be sent to Bank of America in New York, for credit to Antigua Overseas Bank, for further credit to Overseas Development Bank, and then to one of his five accounts at ODBT.

Given the millions of dollars that went through his ODBT accounts, it is likely that Koop was one of ODBT's larger clients. The documentation indicates that Koop was in frequent contact with West and ODBT administrative personnel at AIMS, in part due to his establishment of new corporations and frequent wire transfers. West said that he recognized the name but professed not to remember Koop. There is also no documentation indicating that ODBT expressed any concerns about the nature of Koop's business, the deposits made to his account from so many sources, the source of the funds, or their rapid turnover.

⁹⁹ ODBT also appears to have kept the Koop-related accounts after it terminated its association with AIB in the spring of 1998, possibly because Koop was one of the few AIB depositors with substantial assets.

¹⁰⁰ See the appendix for more details on the corporations and accounts.

¹⁰¹ These account entries were:

- \$7,500 on 11/7/97 for 25 accounts;
- \$4,500 on 11/12/97 for 15 accounts;
- \$4,500 on 1/16/98 for 15 accounts; and
- \$1,800 on 2/13/98 for 6 accounts.

Koop might have remained at ODBT, except that in the spring of 1998, ODBT began experiencing liquidity problems due to its efforts to prop up the solvency of AIB, and it began failing to complete Koop's wire transfer requests. Koop materials from this time period state:

We are currently transacting our banking business with the Overseas Development Bank and Trust Company, which is domiciled in the island of Dominic[a] in the West Indies. We have witnessed a slowness in doing business with this bank as far as deposit transfers and wire transfers are concerned. Because of these delays, we have made arrangements with the Hanover Bank to open accounts for each of our clients that are currently with ODB, without any charge to you. If you are interested in doing so, please send a duplicate copy of your bank reference letter . . . passport picture . . . [and] drivers license. . . . IFS [one of Koop's companies] will then open an account for you in the Hanover Bank, in the name of your trust.

By April 1998, Koop began directing his co-conspirators and fraud victims to deposit funds in U.S. correspondent accounts being used by Hanover Bank or British Trade and Commerce Bank, and generally stopped using his ODBT accounts.¹⁰²

(b) Financial Statements

The audited financial statements of ODBT also raised some issues. The 1996 audit, due in the spring of 1997, was not produced until July 1997. In the 1998 audit, produced in July 1999, the auditor noted:

[W]e were unable to verify the accuracy and collectability of the amount of \$1,365,089 due from American International Bank (In Receivership) since we have not yet received a third party confirmation and there were no practical alternative audit procedures to enable us to substantiate the collectability of the amount. No provision has been made in the Financial Statements in the event of any uncollectable amounts.

The same report also noted that:

Our examination of the US Dollar bank reconciliation revealed that there were numerous reconciling items totaling \$2,198,181.72 for which management was unable to obtain the supporting information from American International Bank to substantiate their entries on the bank statement. Management is of the view that although the balance is in its favor, it arose as a result of errors on the path of American International Bank.

In January 1999 three default judgments totaling \$1.2 million had been entered against ODBT in Dominica. Two of the judgments (one for \$487,000 and another for \$350,000) involved unauthorized use of client funds and failure to return client funds. The third judgment was for \$400,000 and involved a complaint by Western Union that ODBT failed to repay Western Union for wires sent through and paid by Western Union.

¹⁰²Both of these banks are the subject of case studies in this report.

(c) ODBT's Correspondent Relationships

First National Bank of Commerce (now Bank One International Corporation). ODBT maintained a correspondent account at First National Bank of Commerce ("FNBC") from January 1998 through October 1998. One of the owners of ODBT contacted an attorney associated with FNBC about opening a correspondent account with the bank.

In late 1997, shortly after ODBT and AIB reached an agreement on the sale of AIB to ODBT, Arthur Reynolds, one of the owners and Board members of ODBT, wrote a letter to a New Orleans attorney, Joseph Kavanaugh, asking for assistance in setting up a correspondent account. Reynolds noted that ODBT was acquiring AIB and that ODBT had previously utilized AIB's correspondent banking network and Visa card services. However, he said, those services had been withdrawn from AIB, and ODBT would not be able to use those services "pending a complete new due diligence and reviewing an audited statement on the expanded ODBT operation." Reynolds also noted that one U.S. bank that had been processing over 1,000 checks per week for AIB and ODBT was expected to terminate the relationship because it could not handle the volume. Reynolds concluded the letter by noting that "time is of the essence in this situation."

Reynolds forwarded his business card, a copy of ODBT's banking license, a one page consolidated balance sheet covering the period up to December 11, 1998, and resumes and reference letters for himself and Greaves. Kavanaugh then sent this material to a correspondent banker at FNBC on January 2, 1998. By January 29, 1998, FNBC had established a correspondent account for ODBT. None of the documents related to the ODBT account that were supplied by FNBC in response to a Subcommittee subpoena indicate what, if any, additional information was collected or due diligence was performed.

Over the course of the relationship, two additional accounts at FNBC were opened for ODBT, one in March 1998 and another in May 1998. Other than communications regarding the updating of signatures on signature cards and the return of a few checks, there are no records to indicate there was any contact between the relationship manager at FNBC and ODBT between the time the accounts were opened and late August 1998.

There were two communications which raise questions about how well FNBC representatives understood the operations of their client, ODBT. On July 27, 1998, the FNBC relationship manager wrote a letter to Eddie St. Clair Smith, the receiver of AIB in Antigua and Barbuda, enclosing the signature cards and resolutions for the three ODBT accounts at FNBC and asking Smith to sign and return them. On August 31, the FNBC Regional Manager for Latin America also wrote to Smith to inform him that Bank One had acquired FNBC ("your correspondent in New Orleans"). The regional manager informed Smith that he would try to contact Smith within the next day or so and looked forward "to, continuing and developing the correspondent banking relationship that your institution has maintained with First National Bank of Commerce."

Smith was, and continues to be, the receiver for AIB. As far as the Minority Staff can tell, Smith had no affiliation with ODBT

other than as receiver for AIB negotiating the settlement of accounts and money owed with respect to ODBT's former dealings with AIB. ODBT wasn't in receivership, and if it had been, that should have raised questions for FNBC. Yet, FNBC communicated with an individual identified as such, and there is nothing in the FNBC records to indicate that FNBC had any concerns or made any inquiry about the fact that its correspondent appeared to be in receivership, even though it was the wrong bank.

On September 22, 1998, nearly 9 months after FNBC established a correspondent relationship with ODBT, the FNBC Latin America Regional Manager wrote the following to Greaves of ODBT:

. . . the following information is required in order to document and evaluate the correspondent banking relationship with Overseas Development Bank & Trust Company, Ltd.:

Annual reports for the last 3 years including the auditor's statement of opinion.

The most recent 1998 interim financial statement.

A brief explanation of significant changes in the balance sheet and income statement over the last 3 years.

Number of years in business.

Management discussion of the bank's activities such as overall strategy, targeted business segments, resources to carry out the strategy, and strategy accomplishments that need to be consistent with the financial information provided.

Bank's market share in terms of total assets, deposit, capitalization, number of branches (include locations if outside Antigua) and number of deposit accounts.

Peer comparison in terms of capitalization, asset quality, earnings, and liquidity/funding. Also list of main competitors.

Information on the main stockholders/investors and resumes of the banks's executive management.

At least three bank references from existing correspondents outside Antigua.

The following day, Greaves responded with a letter that answered some of the questions posed by the manager and included some of the requested documents. He promised to supply the rest of the requested materials and wrote, "The Certificate of Good Standing will be included but will, of course, come from the Dominican banking regulators." On August 9, 2000, the manager of the International Business Unit for Dominica informed the Subcommittee that a Certificate of Good Standing had never been issued to ODBT.

On October 2, 1998, the FNBC relationship manager received a letter from the President of a U.S. company requesting FNBC to confirm that a large quantity of oil was available for sale by a client of ODBT's and asking FNBC to issue a 2% performance bond as guarantee of delivery.

On October 5, 1998, the bank informed ODBT that the correspondent relationship would be terminated on October 15, 1998.

The reason given for terminating the relationship was lack of “strategic fit” between FNBC and ODBT. It was subsequently agreed that FNBC would move the closure date back to November 2, 1998, and ODBT would discontinue sending cash letters for processing on October 28, 1998. Two of the three ODBT accounts were closed on November 2, 1998. A third account remained open solely for the payment of pending drafts. That account was closed on December 16, 1998.

AmTrade International Bank. ODBT maintained a correspondent account at AmTrade International Bank from June 1999 through August 2000. ODBT reached out to AmTrade through an ODBT Board member who had an acquaintance with the majority owner of AmTrade International who also served on AmTrade’s advisory board. ODBT had already been using AmTrade’s services indirectly. Antigua Overseas Bank, with whom ODBT had a correspondent relationship, had a correspondent account at AmTrade. Therefore, by nesting within AOB, ODBT was able to utilize the correspondent relationship that AOB had with AmTrade to gain access to the U.S. financial system.

At the time, according to the Senior Vice President for correspondent banking, AmTrade had a very small correspondent banking business, with a focus on Latin/South America and the Caribbean. The staff consisted of a Senior Vice President, who reported to the President of the bank, another correspondent banker and some assistants. The Senior Vice President handled credit relationships and the other banker was responsible for depository, or cash management, relationships. The bank had about 40–45 credit relationships and 20 depository relationships on the Caribbean/Latin American area. The Senior Vice President and the compliance officer were responsible for approving new accounts. According to the Senior Vice President, in principle the bank had a policy of visiting correspondent clients once a year at the client’s bank site, but he added that bank representatives also met with clients at meetings outside the bank’s jurisdiction, such as banking conferences.

In March 1999 Malcolm West, a shareholder of ODBT, met with AmTrade officials and discussed establishing a correspondent relationship. Later in March, the President of AmTrade Bank, Herbert Espinosa, asked the Senior Vice President to meet with West to discuss the opening of a correspondent account. According to the Senior Vice President, ODBT was referred to AmTrade by its majority owner, Lord Sandberg, who had an acquaintance with a board member of ODBT, Lord Razzle. Espinosa asked the Senior Vice President to be the account manager and have the primary relationship with West because of the Sandberg/Razzle connection. The Senior Vice President had little connection with the day to day operation of the account, which was assigned to another account manager.

The Senior Vice President understood that ODBT did a fair amount of private banking and served businesses and individuals in the area. It was expected that the bank would require cash management services such as wire transfers, possibly check clearances and a pass though checking account. No site visit was made before opening the account. The Senior Vice President said he understood

that the President was traveling and would meet with the client on site during his trip (sometime between April and August). There is no site visit or call report in the client file. However, the Vice President stated that he met with West four or five times between March and August, when he left the bank.

Significant details of ODBT's ownership, its background, practices and current status, which may have affected the decision to open the account were unknown to AmTrade. The government investigation and prosecution of the fee-for-loan fraud that was operated through Caribbean American Bank and American International Bank occurred in Florida. Significant national and local publicity had been focused on the case as indictments and prosecutions were initiated from mid-1997 and continued through the time that AmTrade was conducting its due diligence review of ODBT. The Senior Vice President was not aware of the role of AIB, where Greaves served as President, in the fraud, but said he would have raised it as an issue had he known.

Although AmTrade did not have a policy against accepting banks that offered bearer share account, the Senior Vice President said he typically did not like to deal with them because of the problems they present. However, he was not aware that a significant portion of ODBT's accounts were bearer share accounts.

AmTrade received ODBT's internal financials for 1998 and was aware that ODBT resources had been committed to the takeover of AIB and resulted in the assumption of loans from AIB. The Vice President was not sure if AmTrade had received the audited financial statements for previous years and was not aware of the issues raised in the audited financial statements for FY97, such as the auditor's finding that ODBT management could not find supporting information to substantiate over \$2 million worth of entries into its balance sheet. He stated that the issue would have raised concerns with respect of the adequacy of assets and questions as to the strength of the balance sheets. The auditor's finding that it could not verify the accuracy and collectibility of \$1.3 million due from AIB, and that ODBT had made no provision to address uncollectible amounts, raised issues as to the quality of the asset base and the impact on the balance sheet and the capital base.

The official was unaware that in early 1999 three judgments totaling \$1.2 million had been entered against ODBT in Dominica. He mentioned that it would have been an issue that needed to be resolved. Similarly, he was unaware that in April 1999, shortly before the due diligence review on ODBT was initiated, the President of the bank received a subpoena for ODBT records from a governmental enforcement agency investigating financial crimes. The Senior Vice President stated that he was never informed of the subpoena and thought it was strange that he was not informed. He stated that had he known about the subpoena he would have held up opening the account until he knew how the investigation was resolved.

The Senior Vice President left AmTrade in August 1999. There are no documents in the records supplied to the Subcommittee that indicate that there was any additional contact or interaction between AmTrade representatives and ODBT after that period (other

than monthly statements) until AmTrade sent a letter to ODBT terminating the relationship on August 8, 2000.

The Senior Vice President observed that some additional oversight probably should have been performed and AmTrade could have done more with respect to the background check on the bank itself. He also noted it would have been helpful if he or the other account manager had visited the site earlier.

B. THE ISSUES

AIB was a troubled bank from the beginning. It was licensed and operated in a jurisdiction, Antigua and Barbuda, which did not effectively regulate its banks during the time that the bank existed. There were a number of warning signs that certain policies and practices of AIB posed serious money laundering vulnerabilities: the servicing of correspondent accounts, Internet gambling, and bearer share accounts, and AIB's related business activities such as arranging economic citizenship and promoting IBCs.

Relationship managers of a number of banks acknowledged that some of these practices would have raised concerns or caused them to ask additional questions, but they were not aware of, or had not inquired about, them during the account opening/due diligence process.

Moreover, even as troubles for AIB mounted, activities of its clients came under law enforcement attention and its reputation diminished in the local banking community. U.S. correspondents did not seem to pick up on those developments. As a Bank of America representative wrote of AIB in 1996, "their reputation in the local market is abysmal." Yet, even after that assessment, a number of new correspondent accounts for AIB was established. No one appeared to question why AIB moved from bank to bank. As one manager noted it was difficult to receive candid appraisals from other banks who serviced the account. This enabled AIB to continue opening new correspondent banking accounts and maintain its access into the U.S. financial system.

The nature of the correspondent relationship that most banks had with AIB also resulted in a weakened degree of scrutiny. Non-credit, cash management relationships were viewed as opportunities to generate fees without putting the correspondent bank at risk. Since the basic investment in the cash management systems had already been made and the incremental costs of handling additional accounts were generally nominal, the cash management accounts provided a risk-free, solid rate of return. Because of the low level of risk, the banks that established relationships with AIB performed a lower level of scrutiny during both the account opening and monitoring stages than if they had established a credit relationship where their own funds were at risk. Most of the banks interviewed by staff noted that certain reviews or assessments were only applied to banks that were attempting to establish credit relationships and therefore would put the correspondents' funds at risk. In the case of ODBT, fundamental due diligence questions were never asked until almost 9 months after the correspondent relationship was established.

The fact that a certain type of correspondent relationship poses a lower level of financial risk to the correspondent bank does not

mean that it poses a lower risk of money laundering. In fact, it could be quite the opposite. The lower level of scrutiny applied to non-credit relationships plays into the hands of money launderers who require only a system to move funds back into the U.S. financial system. The less scrutiny that system receives, the greater the money laundering opportunities and greater the chances for success.

Although some of the banks reviewed in this section reacted quickly after problems and issues surfaced during the operation of the AIB account, initial due diligence was often lacking. This enabled AIB to move from one correspondent relationship to another, opening a new account at one bank while an existing account at another bank was being terminated, even as its problems accumulated and its reputation diminished. Then, as its access to U.S. correspondents began to diminish, AIB was able to utilize the services of U.S. banks through a correspondent account it established at Antigua Overseas Bank, which itself had correspondent relationships with U.S. banks. Through its relationship with Antigua Overseas Bank, AIB received banking services from some of the same banks that had said they no longer wanted to provide those services to AIB. All of these factors allowed AIB and the clients it served to maintain their gateway into the U.S. banking system.

AIB'S CORRESPONDENT ACCOUNT HISTORY

“... their reputation in the local market is abysmal.”

- Memo on AIB from Bank of America Relationship Manager, July 1996

██████████
BARNETT BANK

██████████
POPULAR BANK OF FLORIDA

██████████
CHASE MANHATTAN BANK

██████████
TORONTO DOMINION BANK (NEW YORK)

████████████████████
BANK OF AMERICA

| | | | | | |
|------|------|------|------|------|------|
| 1993 | 1994 | 1995 | 1996 | 1997 | 1998 |
| | | | | | |

AMERICAN INTERNATIONAL BANK

**AIB MONTHLY ACTIVITY AT BANK OF AMERICA
INTERNATIONAL
June 1993–March 1996**

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|--------------------|--------------|--------------|--------------------|
| June 1993 | \$0 | \$20,000 | \$0 | \$20,000 |
| July 1993 | \$20,000 | \$73,153 | \$11,367 | \$81,786 |
| August 1993 | \$81,786 | \$136,586 | \$96,940 | \$121,431 |
| September 1993 | \$121,431 | \$346,127 | \$287,884 | \$179,674 |
| October 1993 | \$179,674 | \$4,695,780 | \$1,774,703 | \$3,100,751 |
| November 1993 | \$3,100,751 | \$3,098,838 | \$6,057,870 | \$141,719 |
| December 1993 | \$141,719 | \$1,073,867 | \$1,024,258 | \$191,329 |
| January 1994 | \$191,329 | \$1,237,299 | \$1,401,875 | \$26,753 |
| February 1994 | \$26,753 | \$1,433,432 | \$1,255,310 | \$204,875 |
| March 1994 | \$204,875 | \$2,422,740 | \$2,018,959 | \$608,656 |
| April 1994 | \$608,656 | \$3,594,492 | \$2,975,453 | \$1,227,695 |
| May 1994 | \$1,227,695 | \$3,080,657 | \$4,298,991 | \$9,361 |
| June 1994 | \$9,361 | \$2,779,597 | \$1,861,106 | \$927,851 |
| July 1994 | \$927,851 | \$2,847,385 | \$3,694,989 | \$80,247 |
| August 1994 | \$80,247 | \$6,687,074 | \$6,546,953 | \$220,369 |
| September 1994 | \$220,369 | \$2,494,651 | \$2,401,337 | \$313,683 |
| October 1994 | \$313,683 | \$2,404,374 | \$2,128,733 | \$589,324 |
| November 1994 | \$589,324 | \$2,181,186 | \$2,714,179 | \$56,331 |
| December 1994 | \$56,331 | \$3,221,380 | \$3,181,498 | \$96,213 |
| January 1995 | \$96,213 | \$6,624,614 | \$5,586,309 | \$134,519 |
| February 1995 | \$134,519 | \$5,649,710 | \$5,803,829 | \$130,400 |
| March 1995 | \$130,400 | \$5,443,313 | \$5,316,281 | \$109,708 |
| April 1995 | \$109,708 | \$3,589,229 | \$3,934,975 | \$13,962 |
| May 1995 | \$13,962 | \$3,932,691 | \$3,806,137 | \$140,516 |
| June 1995 | \$140,516 | \$2,788,443 | \$3,014,974 | \$63,986 |
| July 1995 | \$63,986 | \$5,067,879 | \$5,191,144 | \$90,721 |
| August 1995 | \$90,721 | \$14,574,482 | \$12,588,704 | \$126,499 |
| September 1995 | \$126,499 | \$7,002,374 | \$8,363,786 | \$115,087 |
| October 1995 | \$115,087 | \$9,088,930 | \$9,961,814 | \$105,202 |
| November 1995 | \$105,202 | \$8,932,140 | \$10,682,259 | \$85,083 |

**AIB MONTHLY ACTIVITY AT BANK OF AMERICA
INTERNATIONAL—Continued
June 1993–March 1996**

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|---------------|--------------------|----------------------|----------------------|--------------------|
| December 1995 | \$85,083 | \$5,097,470 | \$4,690,992 | \$141,560 |
| January 1996 | \$141,560 | \$4,742,504 | \$4,470,813 | \$113,251 |
| February 1996 | \$113,251 | \$540,586 | \$409,628 | \$144,129 |
| March 1996 | \$144,129 | \$456,529 | \$941,711 | \$8,947 |
| TOTALS | | \$127,359,432 | \$128,498,761 | |

Prepared by the U.S. Senate Permanent Subcommittee of Investigations, Minority Staff, December 2000.

**AIB MONTHLY ACTIVITY AT TORONTO-DOMINION BANK
(New York Branch)
January 1996–January 1997**

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|--------------------|---------------------|---------------------|--------------------|
| January 1996 | \$0 | \$0 | \$0 | \$0 |
| February 1996 | \$0 | \$200,000 | \$105,121 | \$94,878 |
| March 1996 | \$94,878 | \$1,250,000 | \$1,394,805 | -\$49,928 |
| April 1996 | -\$49,928 | \$2,000,000 | \$1,948,056 | \$2,013 |
| May 1996 | \$2,013 | \$2,599,454 | \$2,601,308 | \$156 |
| June 1996 | \$156 | \$2,000,000 | \$1,986,688 | \$13,467 |
| July 1996 | \$13,467 | \$3,552,100 | \$3,542,127 | \$23,437 |
| August 1996 | \$23,437 | \$2,300,000 | \$2,405,157 | -\$81,722 |
| September 1996 | -\$81,722 | \$1,850,000 | \$1,721,878 | \$46,396 |
| October 1996 | \$46,396 | \$300,000 | \$328,420 | \$17,975 |
| November 1996 | \$17,975 | \$50,000 | \$22,231 | \$45,743 |
| December 1996 | \$45,743 | \$0 | \$6,069 | \$39,674 |
| January 1997 | \$39,674 | \$0 | \$39,674 | \$0 |
| TOTAL | | \$16,101,554 | \$16,101,534 | |

Prepared by the U.S. Senate Permanent Subcommittee on Investigations, Minority Staff, December 2000.

AIB-CHASE ACCOUNT
TORONTO-DOMINION BANK TRANSACTIONS
 April 1996–June 1997

| DATE | DEBIT | CREDIT | ORDER PARTY |
|-----------------|----------|-------------|---------------------------|
| June 26, 1996 | | \$300,000 | AIB |
| July 11, 1996 | | \$300,000 | AIB |
| August 2, 1996 | | \$400,000 | AIB |
| August 15, 1996 | \$500 | | ??? |
| Sept. 10, 1996 | | \$500,000 | AIB |
| Sept. 13, 1996 | | \$400,000 | AIB |
| Sept. 18, 1996 | | \$700,000 | AIB |
| Sept. 23, 1996 | | \$700,000 | AIB |
| Sept. 25, 1996 | | \$650,000 | AIB |
| Sept. 26, 1996 | | \$500,000 | Stanford Intl Bank Ltd. |
| Oct. 1, 1996 | | \$450,000 | AIB |
| Oct. 3, 1996 | | \$400,000 | AIB |
| Oct. 7, 1996 | | \$400,000 | AIB |
| Oct. 9, 1996 | | \$100,000 | AIB |
| Oct. 10, 1996 | | \$400,000 | B/O Toronto-Dominion Bank |
| Oct. 16, 1996 | | \$500,000 | B/O AIB |
| Oct. 17, 1996 | \$25,000 | | ???? |
| Oct. 18, 1996 | | \$800,000 | B/O AIB |
| Oct. 21, 1996 | | \$500,000 | AIB |
| Oct. 22, 1996 | | \$500,000 | AIB |
| Oct. 24, 1996 | | \$600,000 | B/O AIB |
| Oct. 25, 1996 | | \$500,000 | AIB |
| Oct. 29, 1996 | | \$700,000 | AIB |
| Oct. 31, 1996 | | \$500,000 | AIB |
| Nov. 4, 1996 | | \$800,000 | B/O AIB |
| Nov. 5, 1996 | | \$500,000 | AIB |
| Nov. 12, 1996 | | \$500,000 | AIB |
| Nov. 12, 1996 | | \$500,000 | B/O AIB |
| Nov. 19, 1996 | | \$500,000 | AIB |
| Nov. 26, 1996 | | \$1,000,000 | AIB |
| Dec. 2, 1996 | | \$700,000 | AIB |

AIB-CHASE ACCOUNT—Continued
TORONTO-DOMINION BANK TRANSACTIONS
 April 1996–June 1997

| DATE | DEBIT | CREDIT | ORDER PARTY |
|---------------|-----------------|---------------------|-------------|
| Dec. 5, 1996 | | \$900,000 | AIB |
| Dec. 6, 1996 | | \$700,000 | AIB |
| Dec. 9, 1996 | | \$1,000,000 | AIB |
| Dec. 12, 1996 | | \$300,000 | AIB |
| Jan. 15, 1997 | | \$1,000,000 | AIB |
| Jan. 17, 1997 | | \$100,000 | AIB |
| Jan. 21, 1997 | | \$100,000 | B/O AIB |
| Jan. 22, 1997 | | \$400,000 | AIB |
| Jan. 23, 1997 | | \$95,000 | B/O AIB |
| Jan. 24, 1997 | | \$60,000 | AIB |
| Jan. 28, 1997 | | \$700,000 | AIB |
| Jan. 30, 1997 | | \$250,000 | AIB |
| May 2, 1997 | \$15,000 | | ???? |
| TOTAL | \$40,500 | \$20,905,000 | |

Prepared by the U.S. Senate Permanent Subcommittee on Investigations, Minority Staff, December 2000.

AIB MONTHLY ACTIVITY AT CHASE
May 1996–June 1997

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | | | CLOSING BALANCE |
|-------------------|--------------------|----------------------|----------------------|---------------------|-----|--------------------|
| | | | OTHER | CHECKS | | |
| | | | | AMOUNT | No. | |
| May 1996 | \$0 | \$2,025,000 | \$1,500,000 | \$0 | 0 | \$525,000 |
| June 1996 | \$525,000 | \$327,355 | \$754,678 | \$0 | 0 | \$99,723 |
| July 1996 | \$99,723 | \$814,535 | \$570,730 | \$0 | 0 | \$343,704 |
| August 1996 | \$343,704 | \$9,069,808 | \$8,746,338 | \$0 | 0 | \$667,600 |
| September 1996 | \$667,600 | \$5,241,279 | \$5,234,400 | \$454,276 | 110 | \$222,162 |
| October 1996 | \$222,162 | \$11,320,529 | \$10,327,642 | \$1,163,742 | 331 | \$51,666 |
| November 1996 | \$51,666 | \$12,059,520 | \$11,649,928 | \$88,875 | 15 | \$372,355 |
| December 1996 | \$372,355 | \$11,667,993 | \$10,676,801 | \$873,885 | 112 | \$490,501 |
| January 1997 | \$490,501 | \$13,209,330 | \$10,907,526 | \$1,159,973 | 327 | \$1,632,906 |
| February 1997 | \$1,632,906 | \$9,821,060 | \$9,613,906 | \$1,313,950 | 273 | \$526,632 |
| March 1997 | \$526,632 | \$14,434,982 | \$8,311,270 | \$2,983,634 | 861 | \$3,667,529 |
| April 1997 | \$3,667,529 | \$18,626,782 | \$14,703,004 | \$3,082,215 | 686 | \$4,511,912 |
| May 1997 | \$4,511,912 | \$7,062,740 | \$11,249,950 | \$205,579 | 50 | \$151,315 |
| June 1997 | \$151,315 | \$482,088 | \$692,823 | \$9,902 | 10 | \$0 |
| TOTAL | | \$116,162,830 | \$104,938,996 | \$11,336,031 | | |
| | | | \$116,275,027 | | | |

Prepared by the U.S. Senate Permanent Subcommittee on Investigations, Minority Staff, December 2000.

AIB MONTHLY ACTIVITY AT POPULAR BANK
April 1997–June 1997

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | | | CLOSING BALANCE |
|---------------|--------------------|---------------------|---------------------|--------------------|--------|--------------------|
| | | | OTHER | CHECKS | | |
| | | | | AMOUNT | NUMBER | |
| April | \$0 | \$2,446,265 | \$0 | \$79,760 | 8 | \$2,368,099 |
| May | \$2,368,099 | \$7,514,083 | \$1,129,247 | \$1,634,090 | 488 | \$7,135,558 |
| June | \$7,135,558 | \$7,854,094 | \$11,603,700 | \$3,488,219 | 962 | -\$88,291 |
| July | \$0 | \$122,906 | \$289 | \$121,620 | 17 | \$0 |
| TOTALS | | \$17,937,348 | \$12,733,236 | \$5,323,689 | | |
| | | | \$18,056,925 | | | |

Prepared by the U.S. Senate Permanent Subcommittee of Investigations, Minority Staff, December 2000.

AIB MONTHLY ACTIVITY AT BARNETT BANK
May 1997–November 1997

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | | | CLOSING BALANCE |
|---------------|--------------------|---------------------|---------------------|---------------------|--------|--------------------|
| | | | OTHER | CHECKS | | |
| | | | | AMOUNT | NUMBER | |
| May | \$0 | \$220,000 | \$0 | \$0 | 0 | \$.66 |
| June | \$.66 | \$2,419,588 | \$1,877,551 | \$26,457 | 12 | \$7,243 |
| July | \$7,243 | \$18,783,934 | \$14,027,641 | \$3,200,766 | 858 | \$37,390 |
| August | \$37,390 | \$21,310,634 | \$18,525,032 | \$5,625,795 | 1001 | \$70,959 |
| September | \$70,959 | \$16,406,311 | \$13,899,129 | \$2,974,534 | 863 | \$.79 |
| October | \$.79 | \$3,625,040 | \$3,320,245 | \$396,434 | 89 | \$50,473 |
| November | \$50,473 | \$0 | \$50,473 | \$0 | 0 | \$0 |
| TOTALS | | \$62,765,507 | \$51,700,071 | \$12,223,986 | | |
| | | | \$63,924,057 | | | |

Prepared by the U.S. Senate Permanent Subcommittee of Investigations, Minority Staff, December 2000.

Case History No. 4**BRITISH TRADE AND COMMERCE BANK**

British Trade and Commerce Bank (BTCB) is a small offshore bank licensed in Dominica, a Caribbean island nation that has been identified as non-cooperative with international anti-money laundering efforts.¹⁰³ This case history examines the failure of U.S. banks to exercise adequate anti-money laundering oversight in their correspondent relationships with this offshore bank, which is managed by persons with dubious credentials, abusive of its U.S. correspondent relationships, and surrounded by mounting evidence of deceptive practices and financial fraud. Although each of the U.S. banks examined in this case history ended its relationship with BTCB in less than 2 years, the end result was that BTCB succeeded in using U.S. bank accounts to engage in numerous questionable transactions and move millions of dollars in suspect funds.

BTCB was among the least cooperative of the foreign banks contacted during the Minority Staff investigation. The bank declined to be interviewed, took 4 months to answer a letter requesting basic information, and refused to disclose or discuss important aspects of its operations and activities. The following information was obtained from BTCB's written submission to the Subcommittee dated September 18, 2000; BTCB's website and other websites; documents subpoenaed from U.S. banks; court pleadings; interviews in Dominica, Antigua, Canada and the United States; and documents provided by persons who transacted business with the bank. The investigation also benefited from assistance provided by the Governments of Dominica and the Bahamas.

A. THE FACTS**(1) BTCB Ownership and Management**

Although BTCB refused to identify its owners and Dominican bank secrecy laws prohibit government disclosure of bank ownership, evidence obtained by the Minority Staff investigation indicates that this offshore bank was formed and directed for much of its existence by a U.S. citizen, John G. Long IV of Oklahoma. The bank's other owners and senior management have ties to Dominica, Venezuela, the United States and Canada. BTCB is very active within the United States, through its affiliation with a U.S. securities firm, solicitation of U.S. clients, and preference for transacting business in U.S. dollars.

BTCB's Formation. BTCB was established as a Dominican corporation on February 26, 1997, and received its offshore banking license 1 month later, on March 27, 1997. BTCB's banking license was issued about 6 months after enactment of Dominica's 1996 Offshore Banking Act, the country's first offshore banking law. BTCB is one of the first offshore banks approved by the government and,

¹⁰³Dominica is one of 15 countries named in the Financial Action Task Force's "Review to Identify Non-Cooperative Countries or Territories" (6/22/00), at paragraph (64). See also Chapter IV(B) of this report.

to date, is one of only a handful of offshore banks actually operating in Dominica.¹⁰⁴

BTCB's 1998 financial statement indicates that BTCB began actual banking operations in October 1997, about 7 months after receiving its license. If accurate, BTCB has been in operation for a little more than 3 years. BTCB has one office in Roseau, the capital city of Dominica. It refused to disclose the total number of its employees, but appears to employ less than ten people. The bank refused to disclose the total number of its clients and accounts. The bank's 1998 financial statement claimed total assets of approximately \$370 million, but the evidence suggests the bank is, in fact, suffering severe liquidity problems.

BTCB Ownership. BTCB refused a request by the Minority Staff investigation to identify its owners. However, when applying for correspondent relationships at U.S. banks, BTCB provided the following specific ownership information.

In 1997, when applying for its first U.S. correspondent relationship at the Miami office of Banco Industrial de Venezuela, BTCB stated in a September 17, 1997 letter that it had two owners, Rodolfo Requena Perez and Clarence A. Butler.¹⁰⁵ Requena, a citizen of Venezuela, has been associated with BTCB from its inception and serves as BTCB's chairman of the board and president. BTCB materials state that he has extensive banking experience, including past positions with major financial institutions in Venezuela. Requena, spends considerable time in Florida, maintaining a Florida office, residence and drivers license. Butler is a citizen of Dominica and, according to BTCB materials, his credentials include heading the Dominican Chamber of Commerce and Tourism, and helping to form and operate The Ross Medical University in Dominica. He does not appear to be involved with the daily management of the bank.

In 1998, when applying for correspondent relationships at two other U.S. banks, Security Bank N.A. and First Union National Bank BTCB provided new ownership information indicating that it had seven shareholders, with the largest shareholder controlling 50% of its stock. BTCB provided both banks with the same one-page "confidential" document listing the following "Shareholders of British Trade & Commerce Bank":

British Trade & Commerce Bank Bancorp Trust represented by Rodolfo Requena, Trustee, beneficial interests are held by John Long—15,000 [shares]

Rodolfo Requena—3,000 [shares]

¹⁰⁴ A Dominican Ministry of Finance official told the investigation that, as of September 6, 2000, the government had issued licenses to seven offshore banks, of which three were actually operating. The official said the three operating banks were BTCB, Overseas Development Bank and Trust, and Banc Caribe. The official listed four other banks which held licenses but were not yet operating because they were still raising required capital: Euro Bank, First International Bank, Global Fidelity Bank and Griffon Bank. The official said that one bank, American International Bank and Trust, had its offshore license revoked in 1999. The official noted that Dominica also had two onshore banks: National Commercial Bank of Dominica and Dominica Agricultural Industrial and Development Bank. One bank that was not mentioned by the official but also operates in Dominica is Banque Francaise Commerciale, which is a branch of a wholly owned subsidiary of a French bank, Credit Agricole-Indosuez.

¹⁰⁵ Documentation indicates that Requena and Butler were the original "subscribers" to the "Memorandum of Association" that established "British Trade and Commerce Ltd.," before it received its banking license.

Baillet[t] International Ltd.[,] beneficial interests held by Dr. Dana Bailey and Scott Brett ¹⁰⁶—3,000 [shares]

Bayfront Investment Trust[,], beneficial owner Pablo Urbano ¹⁰⁷—750 [shares]

Diran Sarkissian ¹⁰⁸—750 [shares]

Herry Royer ¹⁰⁹—750 [shares]

Clarence Butler—750 [shares]

Treasury shares held for officer and employee profit sharing ¹¹⁰—6,000 [shares]

Total shares authorized and outstanding—30,000[.]

This BTCB shareholder list indicates that BTCB's controlling shareholder is a trust beneficially owned by John Long. Other BTCB materials describe Long as chairman of the bank's "advisory committee," a two-person committee that apparently consisted of himself and Brett."¹¹¹ John G. Long IV is a U.S. citizen residing in Antlers, Oklahoma. In a telephone conversation on July 11, 2000, initiated by a Minority Staff investigator, Long stated that he had helped form BTCB and assisted it in purchasing a securities firm in Florida. However, Long vigorously denied being a

¹⁰⁶ Baillett International Ltd. was apparently a Bahamian corporation. Bahamian Government officials informed the investigation that its records show this company was incorporated in the Bahamas on 1/17/95, but "struck" on 10/31/97, and is no longer a recognized corporation in the jurisdiction. BTCB materials provided by the Dominican Government to the investigation describe Dana Bailey as a medical doctor and "the Canadian representative for Bail[le]tt International Ltd., a consulting firm specializ[ing] in Trust and Fund Management activities." Evidence obtained by the investigation indicates that Scott Brett is a U.S. citizen who has resided in Texas, transacted business with John Long and BTCB, and served on BTCB's advisory committee.

¹⁰⁷ The BTCB shareholder list and other information indicate that the beneficial owner of Bayfront Investment Trust, Pablo Urbano Torres, is a Venezuelan citizen. The trust is described in BTCB documentation as a "Dominica corporation," and U.S. bank records reference what appears to be a related company, "Bayfront Ltd."

¹⁰⁸ BTCB documents indicate that Diran Sarkissian Ramos is a citizen of Venezuela.

¹⁰⁹ Herry Calvin Royer, a citizen of Dominica, serves as BTCB's corporate secretary. Documentation and interviews indicate he is involved with BTCB's activities on a daily basis. According to BTCB's Subcommittee submission, Royer is also a director of International Corporate Services, Ltd., a wholly owned BTCB subsidiary.

¹¹⁰ BTCB's 1998 balance sheet indicates that, sometime during the bank's first 15 months of operation, it paid \$1.1 million for "Treasury stock." It is unclear whether the Treasury stock referenced in the balance sheet is the 6,000 shares referenced in the BTCB shareholder list. It is also unclear who, if anyone, was the original owner of this stock and why BTCB expended over \$1 million to repurchase its stock at such an early stage of its existence.

¹¹¹ BTCB materials include various descriptions of Long's background. For example, BTCB materials provided by the Dominican Government state the following:

"John G.[.] Long, Chairman of the [BTCB] Advisory Committee. JD, MBA, CPA (USA), with extensive experience in banking originating with his family which has been in banking for over 100 years. His family was the founders of the Farmers Exchange Bank in Oklahoma and co-owners of the First State Bank McKinney in Dallas[,], Texas. . . . He has also served as Senior Financial Analyst for projects in Central America for US AID (United States Agency for International Development); Special Attache of the United States Justice Department based in Geneva, with contacts with all major Western European Banks. Serves as consultant to financial projects and to managing trust operations in the Bahamas."

Minority Staff investigators were unable to confirm much of this biographical information. Sources in Antlers, Oklahoma confirmed that the Long family had been in banking for decades and once owned the two listed banks, but denied that Long had acquired extensive banking experience through the family businesses. Antlers sources also denied that Long held a law degree or accounting certification. The U.S. Justice Department and U.S. Agency for International Development each sent letters denying any record of Long's employment with them over the past 25 and 30 years respectively. Since Long and BTCB declined to be interviewed, neither was available to provide additional information or answer questions about Long's credentials, past experience or current employment.

shareholder, insisting, "I have never owned one share of stock in the bank."¹¹²

Besides his own admission of involvement with the bank, the investigation found considerable evidence of Long's continuing association with BTCB. The evidence includes monthly account statements at U.S. banks showing BTCB transactions involving Long, his companies Republic Products Corporation and Templier Caisse S.A., and companies such as Nelson Brothers Construction involved with building a new house in Oklahoma for the Long family. One U.S. correspondent banker described meeting Long, and sources in Antlers spoke of Long's association with a Dominican bank. The investigation also has reason to believe that Long and his son attended a BTCB board meeting in the spring of 2000 in Dominica. Dominican Government officials, when asked whether BTCB was correct in telling U.S. banks that Long was the bank's majority owner, indicated that, while they could not disclose BTCB's ownership, they were "not unfamiliar" with Long's name.

The evidence suggests that Long formed and has been actively involved in the bank's affairs, but chose to conceal from the investigation his majority ownership of the bank.

BTCB Management. In its September submission to the Subcommittee, BTCB asserted that a list of its "Officers, Consultants, and Directors . . . shows the breadth, depth and integrity of the [bank's] senior management. . . . Unlike some 'offshore' banks, this is no haven for misfits; rather BTCB is composed of officers whose backgrounds compare to those at high levels in the United States."

BTCB lists four directors in its September 2000 submission: Royer, Butler, Urbano, and Oscar Rodriguez Gondelles.¹¹³ However, a list of BTCB directors provided by the Dominican Government in August 2000, identifies seven directors. The government-supplied BTCB director list names three persons mentioned in BTCB's submission—Royer, Butler and Urbano—as well as Requena, Sarkissian, Bailey, and George E. Betts. The discrepancies between the two director lists has not been explained.

BTCB's chief executive officer is Requena. Documentation and interviews indicate that Requena is actively involved in the day-to-day business of BTCB, including its correspondent relationships. Requena is also president of BTC Financial Services, a U.S. holding company whose primary subsidiary is First Equity Corporation of Florida ("FECE"), an SEC-regulated broker-dealer. He is also the president of FECE. When Minority Staff attempted to reach Requena by telephone in Dominica, BTCB personnel suggested calling him at BTC Financial Services in Miami, where he maintains another office. Requena, did not, however, return calls placed to him and never spoke with any Minority Staff.

George Elwood Betts, who like Requena has been associated with BTCB from its inception, is listed in BTCB's submission to the Subcommittee as a key management official. His job title is Executive

¹¹² Long's characterization of his ownership interest, while misleading, could be seen as consistent with BTCB's shareholder list if, in fact, Long has held his BTCB shares through a trust or corporation. There is also some evidence that the trust's official beneficiaries may be Long's two minor children.

¹¹³ BTCB's submission describes Rodriguez as having 20 years of experience "in Venezuelan banking and credit card institutions."

Vice President and Chief Financial Officer of BTCB. Documentation and interviews indicate that he is actively involved in the day-to-day operations of the bank. Betts has also served as the treasurer of BTC Financial Services.

The background provided by BTCB for Betts highlights his accounting degree and experience with Deloitte & Touche in Asia, which Minority Staff investigators were able to confirm. Further investigation indicates that Betts is a U.S. citizen who formerly resided in Idaho and whose wife apparently still resides there. In November 1997, after beginning work at BTCB, Betts pleaded guilty in U.S. criminal proceedings¹¹⁴ to one count of illegally transporting hazardous waste materials from a wood laminating company, Lam Pine, Inc., which he owned and operated in Oregon, to the site of another company he owned in Idaho, North Point Milling Company. In 1998, in connection with his guilty plea, Betts served 2 weeks in Federal prison and agreed to pay a \$163,000 fine. He was also placed on criminal probation for 5 years ending in 2003. Dominican Government officials told the investigation that they were unaware of this criminal conviction and that BTCB should have but did not report it to the Dominican Government.

A third key BTCB management official listed in BTCB's submission is Charles L. ("Chuck") Brazie, Vice President of Managed Accounts. Documentation and interviews indicate Brazie is actively involved with BTCB clients and investment activities. Brazie is a U.S. citizen who has resided in various U.S. States, including Florida, Missouri, Nebraska and Virginia. Minority Staff investigators located documentation supporting some of his past employment and education credentials. Information was also located regarding a key credential listed in the BTCB submission to the Subcommittee, Brazie's service as a "Special Consultant to the Executive Office of the President." Brazie discussed this experience in a sworn deposition he provided to the Securities and Exchange Commission (SEC) on November 7, 1994, in connection with *SEC v. Fulcrum Holding Co.* (Civil Case No. 1:94:CV02352, DDC) and *United States v. Andrews* (Criminal Case No. 96-139 (RCL), DDC). These cases involved fraud investigations which were examining, in part, Brazie's work for Fulcrum Holding Company. In his deposition, Brazie indicated that his association with the Executive Office of the President occurred in 1973, more than 25 years ago, when as part of his work for a "think tank," he was "assigned to a project in the White House and spent a year and a half-plus on a temporary assignment at a remote location."¹¹⁵ Brazie also disclosed during his deposition that, in 1992, he declared bankruptcy in St. Louis, Missouri.¹¹⁶ His deposition presents additional disturbing information about his conduct at Fulcrum Holding Co. and involvement with individuals such as Arthur Andrews, later convicted of securities fraud.

BTCB's submission to the Subcommittee was noticeably silent with respect to Long. It also failed to mention Ralph Glen Hines, a U.S. citizen who resides in Florida and North Carolina, has han-

¹¹⁴ See *United States v. Betts*, (Criminal Case No. 97-011-S-BLW, U.S. District Court for the District of Idaho), plea agreement dated 11/13/97, and judgment dated 5/29/98.

¹¹⁵ Deposition of Brazie at 13.

¹¹⁶ Deposition of Brazie at 11.

dled some of BTCB's administrative and computer operations, and served as the contact person for BTCB's account at First Union National Bank. Hines has a criminal record which includes serving more than a year in prison for obtaining goods and property under false pretenses, more than 6 months in prison for unauthorized use of state equipment, and 60 days of probation for misappropriation of an insurance refund check. The BTCB submission also stated that BTCB has "no managing agents" in other countries, despite U.S. bank records showing 3 years of regular transactions with Stuart K. Moss, a London resident identified in some interviews as working for BTCB. The management list provided by BTCB to the Subcommittee is marred by these omissions, the discrepancies over BTCB's directors, the questionable credentials of some BTCB officials which include past criminal convictions, a bankruptcy and an SEC fraud investigation, and BTCB's refusal to answer questions about its staff.

(2) BTCB Financial Information

Dominican law requires its offshore banks to submit annual audited financial statements which are then published in the country's official gazette. These audited financial statements are intended to provide the public with reliable information regarding the solvency and business activities of Dominica's offshore banks.

BTCB's 1999 audited financial statement was required to be submitted in April 2000, but as of October 2000, had not been filed. BTCB has filed only one, publicly available audited financial statement. This financial statement covers a 15-month period, from October 1, 1997 until December 31, 1998, which BTCB presents as covering the first 15 months of its operations. Although the 1998 audited financial statement is a public document, BTCB declined to provide a copy. The Dominican Government, however, did provide it.

BTCB's 1998 financial statement was audited by Moreau, Winston & Co., an accounting firm located in Dominica.¹¹⁷ On August 22, 2000, after speaking by telephone with Austin Winston who requested all inquiries to be placed in writing, Minority Staff investigators sent a letter requesting the firm's assistance in understanding BTCB's 1998 financial statement. The firm's legal counsel responded the next day with a letter stating that the auditors would be unable to provide any information. The legal counsel wrote:

[BTCB] is a private bank chartered under the Offshore Banking Act of the Commonwealth of Dominica. Our clients are constrained by the provisions of the governing statute. All information might better be provided by [BTCB] itself or as otherwise allowed under the said statute.

¹¹⁷ Moreau, Winston & Co. stated in a covering letter:

"These financial statements are the responsibility of management of British Trade and Commerce Bank Limited; our responsibility is to express an opinion on the financial statements based on our audit. We conducted our audit . . . in accordance with generally accepted auditing standards . . . to obtain reasonable assurance as to whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. . . . In our opinion, these financial statements present fairly, in all material respects, the financial position of the Bank as at December 31, 1998."

On September 22, 2000, the Minority Staff asked BTCB to authorize its auditors to answer questions about the 1998 financial statement, but BTCB never responded. Accordingly, neither the bank nor its auditors have provided any information about the 1998 audited statement.

In the absence of obtaining first hand information from the bank or its auditors, inquiries were directed to Dominican Government officials and U.S. bankers for their analysis of BTCB's 1998 financial statement. Without exception, those reviewing BTCB's 1998 financial statement said it contained questionable entries. The questionable entries included the following:

- \$300 Million Assets.** The two largest entries on BTCB's 1998 balance sheet cite over \$300 million in “[s]ecurities held for investment and financing” and a \$300 million “reserve for project financing.” Dominican Government officials informed the investigation that, when they asked BTCB about these entries during the summer of 2000, BTCB refused to provide any concrete information or support for them, claiming they involved “secret” transactions which the U.S. and U.K. Governments prohibited them from disclosing. The Dominican officials indicated that they considered this explanation unsubstantiated and insufficient. The Minority Staff investigation obtained an earlier version of the 1998 financial statement, which BTCB had given to First Union National Bank when applying for a correspondent account. That version reported BTCB's finances as of June 30, 1998, and cited over \$400 million in “securities held for investment and financing.” This figure is \$100 million, or 25% larger than the comparable entry in the financial statement dated just 6 months later. Note 4 in the June 1998 statement provides a breakdown of the \$400 million figure into four constituent elements: \$130 million in “Government of Grenada Guarantees”; over \$76 million in “Bolivian Municipal Bonds”; \$140 million in “Russian Government Guarantees” and \$55 million attributed to “Other.” When asked about these items, the First Union correspondent banker who analyzed BTCB's financial statement said they were “not credible,” and were part of the reason First Union had rejected a correspondent relationship with BTCB. A Dominican Government official stated that Grenadian Government officials, when asked about the alleged \$130 million in “Government of Grenada Guarantees,” had refused to confirm their existence.
- \$51 Million in Receivables.** The next largest entry in BTCB's balance sheet is \$51 million in “[l]oans, debentures and other receivables,” which Note 5 in the audited statement attributes primarily to \$49.4 million in “fees receivable.” Both Dominican Government officials and U.S. bankers expressed skepticism about a new bank's generating \$50 million in fees in the first 15 months of operation. When asked, neither could offer a banking scenario which would explain the nature of the fees or who would be expected to pay them.

—**\$16 Million in Investment Fees.** Another BTCB balance sheet entry reports that, as of the end of 1998, BTCB had over \$27 million in “customers’ deposits.” Note 10 states that, as of December 31, 1998, BTCB “held \$27,100,000 of such funds and had earned an investment transaction fee of \$16,330,000 from the management of those funds and execution of such transactions during the year.” Both Dominican Government officials and U.S. bankers expressed doubt that any bank could have earned \$16 million in fees on \$27 million in deposits, especially in a 15-month period.

—**\$1.1 Million For Treasury Stock.** Under stockholders’ equity, the BTCB balance sheet records a \$1.1 million reduction due to “Treasury stock.” Both Dominican Government officials and U.S. bankers questioned why a new bank, in operation for only 15 months, would have re-purchased its stock and paid such a substantial price for it. It is also unclear from the financial statement whether the stock repurchase was paid in cash.

The Minority Staff investigation was unable to obtain any BTCB financial statements for 1999 or 2000. Evidence obtained through documents and interviews indicates, however, that BTCB experienced severe liquidity problems throughout the latter half of 2000, including nonpayment of bills and a failure to honor a \$3 million letter of credit posted with a Canadian bank.¹¹⁸ On November 30, 2000, a publication that tracks offshore business developments carried an article entitled, “British Trade & Commerce Bank: Financial troubles deepen.”¹¹⁹ It published the text of a November 9, 2000 letter allegedly sent by BTCB to its clients in which the bank essentially admitted that it was temporarily insolvent. The letter, by BTCB president Rodolfo Requena, begins:

You may be aware our bank has been suffering from a temporary liquidity situation. This situation has continued to the point that the bank is unable to meet its obligations with its depositors and creditors.

The letter provides several explanations for the bank’s liquidity problems, including citing “a large withdrawal of deposits from the bank” after the retirement of the bank’s “major shareholder” in May 2000. It also described steps the bank was taking “to re-capitalize the bank, rebuild its liquidity, and meet its obligations with its depositors and creditors,” including “holding conversations with three different investor groups . . . to bring fresh capital to the bank.”

The letter asked the bank’s clients to consider converting their existing accounts to “a one-year Certificate of Deposit earning interest at a 15% per annum” or to purchase “convertible preferred stock of the bank” with one share for “every \$500 of bank deposit you have.” The letter stated, “Customers requesting withdrawals from their accounts must wait for new investors or wait until the

¹¹⁸ See *Gold Chance International Ltd. v. Daigle & Hancock* (Ontario Superior Court of Justice, Case No. 00-CV-188866). BTCB’s role in this litigation is discussed in the appendix.

¹¹⁹ *OffshoreAlert* newsletter (11/30/00) at 9. See also “British Trade & Commerce Bank answers questions about its liquidity,” *OffshoreAlert* newsletter (7/31/00) at 8. Both are available at www.offshorebusiness.com.

bank works its way out of the liquidity problem,” an arrangement characterized by the newsletter as equivalent to an admission by the bank “to running a Ponzi scheme.”

(3) BTCB Correspondents

When asked about its correspondent banks, BTCB indicated that it kept 100% of its funds in correspondent accounts. BTCB stated the following in its September 2000 submission to the Subcommittee:

It is very important to note that all of BTCB’s deposits are held in the bank’s regulated accounts, inside the United States. . . . Moreover, with rare exceptions, all our transactions are denominated in United States dollars and . . . all transfers to BTCB’s accounts flow through the United States Federal Wire System or the SWIFT (Society for Worldwide Interbank Financial Telecommunications). . . . BTCB is very protective of its U.S. correspondent banking relations, since this is our only way to transfer and move funds.

BTCB stated that it had no “formal correspondent relationships with any other banks,” but had maintained “customary commercial banking accounts with a few reputable institutions as needed.” BTCB specified accounts at three U.S. banks: (1) First Union National Bank; (2) Security Bank N.A. of Miami; and (3) Banco International de Costa Rica (Miami).

The list provided by BTCB is incomplete, omitting BTCB accounts at the Miami office of Banco Industrial de Venezuela, the Miami office of Pacific National Bank,¹²⁰ U.S. Bank, and the New York office of Bank of Nova Scotia. In addition, the Minority Staff investigation uncovered three U.S. correspondent accounts belonging to other foreign banks through which BTCB transacted business on a regular basis: a Citibank correspondent account for Suisse Security Bank and Trust; a First Union correspondent account for Banque Francaise Commercial; and a Bank of America correspondent account for St. Kitts-Nevis-Anguilla National Bank. The evidence indicates that BTCB also had correspondent accounts at several banks located outside the United States.¹²¹

(4) BTCB Anti-Money Laundering Controls

BTCB provided one page of information in response to a request to describe its anti-money laundering efforts. Without providing a copy of any written anti-money laundering policies or procedures, BTCB’s September 2000 submission to the Subcommittee provided the following description of its anti-money laundering efforts:

It is very important to note that all of BTCB’s deposits are held in the bank’s regulated accounts inside the United States. . . . [I]ndeed, all transfers to BTCB’s accounts flow through the United States Federal Wire System or the SWIFT (Society for Worldwide Interbank Financial Telecommunications). As you are aware, any transaction approved and flowing through the U.S. Fed Wire System via SWIFT is already deemed or ap-

¹²⁰ Pacific National Bank is a subsidiary of Banco del Pacifico of Ecuador.

¹²¹ These non-U.S. banks include National Commercial Bank of Dominica and Banco Cypress.

proved to be “good, clean, legitimately earned funds of non-criminal origin.” Thus BTCB’s Know Your Customer Policies are the same as all U.S. banks’ policies, since we must satisfy the regulated U.S. banks with respect to any deposit BTCB receives in our corporate banking account at their institution.

BTCB also stated:

Our bank’s Know Your Customer Policies require, among other things, that a senior bank officer conduct an interview with each new customer. This interview covers such things as the nature of the customer’s business, how their profits are earned and where those profits are earned. In many cases, we require audited financial statements . . . or in the case of individuals, we require bank reference letters. . . . We require copies of their passports, and if warranted, BTCB will have a security check conducted in their home country.

BTCB stated further that it “employs a full-time staff person who monitors for suspicious activity in customer accounts, and reports weekly to the Chief Financial Officer.” It also stated that “BTCB has a special compliance consultant who had a long and distinguished career with the Florida Department of Banking Regulation and advises on our regulatory policies and compliance issues.”

BTCB’s description of its anti-money laundering efforts suggests a fundamental misunderstanding of U.S. banking law. BTCB seems to suggest that as long as it uses U.S. correspondent accounts and U.S. wire transfer systems, its funds automatically qualify as “good, clean, legitimately earned funds of non-criminal origin.” BTCB also seems to suggest that if a U.S. bank accepts its funds, the U.S. bank has reached a judgment about the funds’ legitimacy and BTCB has met the U.S. bank’s due diligence standards. In fact, the opposite is true. U.S. correspondent banks rely in large part upon their respondent banks to ensure the legitimacy of funds transferred into their U.S. correspondent accounts. U.S. law does not require and U.S. banks do not routinely undertake to examine a foreign bank’s individual clients or the source of funds involved individual client transactions. Nor do U.S. banks certify the legitimacy of a foreign bank’s funds simply by accepting them.

Because BTCB did not agree to an interview, the Minority Staff investigation was unable to clarify its policies or obtain additional information about its anti-money laundering efforts. It is still unclear, for example, whether BTCB has written anti-money laundering procedures. None of the U.S. banks with BTCB accounts requested or received materials documenting BTCB’s anti-money laundering efforts. Minority Staff investigators were unable to learn which BTCB employee is assigned to monitoring client accounts for suspicious activity. The compliance consultant BTCB mentioned appears to be Dr. Wilbert O. Bascom, who is also listed in BTCB’s description of its senior management team as the bank’s “Consultant on Compliance Issues.” When a Minority Staff investigator contacted Bascom at the suggestion of Long, however, Bascom said that he works for BTC Financial Services, has “no direct connection” to BTCB, “did not get involved with the bank’s ac-

tivities,” and could not provide any information or assistance regarding the bank.¹²²

It is also important to note that, despite more than three years of operation, BTCB has never been the subject of an on-site examination by any bank regulator. In July 2000, the United States issued a bank advisory warning U.S. banks that offshore banks licensed by Dominica “are subject to no effective supervision.” In June 2000, Dominica was named by the Financial Action Task Force as non-cooperative with international anti-money laundering efforts. Dominica is attempting to strengthen its anti-money laundering oversight by, for example, authorizing the East Caribbean Central Bank (ECCB), a respected regional financial institution, to audit its offshore banks, but the ECCB has never actually audited BTCB.

(5) BTCB Affiliates

BTCB was asked to identify its subsidiaries and affiliates. In its September 2000 submission to the Subcommittee, BTCB stated that, while it had no affiliations with other banks, it did have affiliations with a number of companies. These affiliations depict the bank’s participation in a network of inter-related companies in Dominica, as well as BTCB’s increasing business activities in the United States.

(1) Dominican Affiliates—BTCB identified four Dominican companies as affiliates. One was International Corporate Services, Ltd. (“ICS”) which plays an active role in BTCB’s operations, primarily by forming the Dominican trusts and corporations that serve as BTCB’s account holders.¹²³ Two of the affiliates, InSatCom Ltd.¹²⁴ and Dominica Unit Trust Corporation,¹²⁵ are active in the Dominican telecommunications and investment industries, while the fourth, Generale International Assurance,¹²⁶ is currently dormant.

(2) U.S. Affiliates—BTCB also acknowledged a relationship with two U.S. corporations, First Equity Corporation of Florida (FECF) and BTC Financial Services, but attempted to hide its ongoing, close association with them. BTCB stated in its September 2000 submission to the Subcommittee that, “in mid 1998, BTCB acquired the stock of First Equity Corporation, a licensed broker-dealer in Miami, Florida” and “legally held First Equity’s stock for approximately 8 months, when the stock was transferred into a U.S. publicly traded company” called BTC Financial Services (Inc.). BTCB stated that, cur-

¹²² Memorandum of telephone conversation with Bascom on 8/22/00.

¹²³ In its September 2000 submission to the Subcommittee, BTCB described ICS as a “separate, corporate services company affiliated with BTCB to incorporate [international business corporations] in Dominica and provide routine nominee, director, and shareholder services to various [corporations] in Dominica.” BTCB stated that Herry Royer was a director of both ICS and BTCB, and in another document BTCB indicated that it owned 100% of ICS.

¹²⁴ BTCB stated in its September 2000 submission that it owns 55% of InSatCom Ltd., a telecommunications company which holds a Dominican license “to provide data transmission services to customers and web hosting services” and which operates a satellite earth station “in conjunction with Cable & Wireless of Dominica.” InSatCom also provides services to companies involved with Internet gambling. Requena is the president of InSatCom.

¹²⁵ BTCB stated that it held a 20% ownership interest in Dominica Unit Trust Corporation, an investment company that is also partly owned by “Dominican Government entities.”

¹²⁶ BTCB described Generale International Assurance as an “inactive” Dominican corporation that it may someday use to offer insurance products.

rently, it “has no ownership, management, nor any other affiliation with [FECF] except for a routine corporate account, line of credit and loan as would be the case for any other corporate client.”

This description does not accurately depict the ongoing, close relationships among BTCB, FECF, BTC Financial, and related affiliates.¹²⁷ Long, Requena and Brett are major shareholders of both BTCB and BTC Financial. Requena is the president of BTCB, BTC Financial and FECF. BTCB’s website prominently lists FECF as an affiliated company. FECF used to be owned by FEC Financial Holdings, Inc., a U.S. holding company which BTCB acquired when it took control of FECF and with which it still does business. BTC Financial, FECF, FEC Financial Holdings and other affiliates operate out of the same Miami address, 444 Brickell Avenue. They also share personnel.¹²⁸ Bank records reflect ongoing transactions and the regular movement of funds among the various companies. One U.S. bank, First Union, mailed BTCB’s monthly account statements to 444 Brickell, “c/o FEC Financial Holdings.” In short, BTCB is closely intertwined with the BTC Financial and FECF group of companies, it regularly uses FECF to transact business in the United States, and its declaration that it has no FECF affiliation beyond “any other corporate client” is both inaccurate and misleading.

(3) Website Affiliates—BTCB’s September 2000 submission also addressed its apparent affiliation with three entities listed in BTCB’s websites. BTCB stated that “[t]o avoid confusion” it wanted to make clear that certain names appearing on its websites, “WorldWideAsset Protection,” “IBC Now, Limited” and “EZ WebHosting,” were “merely websites” and not companies or subsidiaries of the bank. This clarification by BTCB was helpful, because the websites do imply the existence of companies separate from the bank. For example, a WorldWide Assets Protection website lists six “corporate members” who have “joined” its organization, including BTCB. The WorldWide website contains no indication that WorldWide itself is simply a BTCB-operated website with no independent corporate existence. The IBC Now website¹²⁹ encourages individuals to consider becoming a paid representative of a variety of companies offering “Internet banking, brokerage, web hosting, confidential e-mail, and on-line casino’s.” IBC Now lists BTCB as one option, again, without ever indicating that IBC Now is itself a BTCB creation with no independent corporate existence.

¹²⁷ BTC Financial owns FECF, which has a number of subsidiaries and affiliates. See, for example, affiliates listed in FECF’s website, www.lsteguity.com/directory.html including a “Ft. Lauderdale Affiliate,” First Equity Properties, Inc. and Swiss Atlantic Mortgage Corp. Another possible FECF affiliate, listed in the SEC Edgar database, is First Equity Group, Inc.

¹²⁸ For example, Betts is the financial controller of BTCB and the treasurer of BTC Financial. Wilbert Bascom is described as a consultant to both BTCB and BTC Financial. Ralph Hines has performed work for BTCB, BTC Financial, FECF and FEC Financial Holdings. Robert Garner, an attorney, is listed on FECF’s website as its general counsel and has also signed letters as general counsel to BTCB. Long was also, until recently, the chairman of BTC Financial and the chairman of BTCB’s advisory committee.

¹²⁹ See www.ibcnow.com/service.html.

More disturbing is BTCB's failure to provide clarification with respect to other entities that may be its subsidiaries or affiliates. BTCB's 1998 audited financial statement, for example, records over \$4 million in "[i]nvestments and advances to subsidiaries," which Note 8 states represented "the cost of acquisition and advances to First Equity Corporation of Florida, International Corporate Services S.A., Generale International Assurance Inc., InSatCom Ltd., Global Investment Fund S.A., FEC Holdings Inc. and Swiss Atlantic Inc." The latter three "subsidiaries" are not mentioned in BTCB's September 2000 submission to the Subcommittee. Yet Global Investment Fund appears repeatedly in BTCB documentation and U.S. bank records; in 1998, it was the recipient of millions of dollars transferred from BTCB accounts. A September 15, 1998 letter by Brazie describes Global Investment Fund as "wholly owned by ICS/BTCB." FEC Holdings Inc. is listed on BTCB's website as an affiliated company. It is unclear whether it is a separate company from FEC Financial Holdings Inc., which BTCB purchased in 1998. Swiss Atlantic Inc. is presumably the same company as Swiss Atlantic Corporation, which is also listed on BTCB's website as an affiliated company and cites 444 Brickell as its address. It may also be related to Swiss Atlantic Mortgage Company, a Florida corporation which is an FECF affiliate, lists 444 Brickell as its principal address, and lists Robert Garner as its registered agent. The Minority Staff investigation uncovered evidence of other possible BTCB affiliates as well.¹³⁰

BTCB's subsidiaries and affiliates bespeak a bank that is fluent in international corporate structures; functions through a complex network of related companies and contractual relationships; and is willing to use website names to suggest nonexistent corporate structures. Together, BTCB's subsidiaries and affiliates depict a sophisticated corporate operation, active in both Dominica and the United States.

(6) BTCB Major Lines of Business

In its September 2000 submission to the Subcommittee, BTCB provided the following description of its major lines of business:

BTCB is a full service bank that provides standard services in the areas of private banking, investment banking, and securities trading. Our private banking services include money management services and financial planning, as well as investment accounts of securities for long-term appreciation, global investment funds, and Certificates of Deposit (CD's) with competitive interest rates. . . . Our investment banking activities include:

¹³⁰ For example, Lugano Synergy Global Services, S.A. has used as its address the same postal box as BTCB, Box 2042 in Roseau, Dominica. This company is associated with the Lugano Synergy Investment Group, Ltd., a company which claims in its website to have a contract with BTCB to provide financial services. See <http://lsynergy.com/investmentbanking/high-yield-investment.html>. U.S. bank records show a number of transactions between BTCB and the Lugano Synergy companies. Another possible affiliate is Global Medical Technologies, Inc., a Florida corporation which changed its name in 1999, to Vector Medical Technologies, Inc. BTCB held the right to over 1 million unissued shares in the company and provided it with substantial funding, as described in the appendix. A third possible affiliate is British Trade and Commerce Securities, Ltd. (Bahamas), which was listed in a BTCB document supplied by the Dominican Government. When asked about this company, the Bahamas Government indicated that it found no record of its existence; however, corporate licensing records did show a company called British Trade and Securities Ltd., which was incorporated on 9/15/97, and "struck off the record" on 1/1/00.

debt financing for both private and public companies in the form of senior, mezzanine, subordinated or convertible debt; bridge loans for leveraged and management buyouts; and recapitalization transactions. BTCB assists in the establishment and administration of trusts, international business corporations, limited liability companies, and bank accounts. Finally, the securities trading services include foreign securities trading on behalf of our clients. . . . BTCB offers credit card services as a principal MasterCard Member.

This description of BTCB's major activities, while consistent with evidence collected during the investigation, is incomplete and fails to address two of BTCB's major activities: high yield investments and Internet gambling.

High Yield Investments. BTCB is known for offering high yield investments. Dominican Government officials, U.S. and Dominican bankers, and BTCB clients all confirmed this activity by the bank. Numerous documents obtained by the Minority Staff provide vivid details regarding BTCB's efforts in this area.

BTCB's statement to the Subcommittee that it offers CDs with "competitive interest rates" does not begin to provide meaningful disclosure about the investment returns promised to clients. Two documents on BTCB letterhead, for example, offer to pay annual rates of return on BTCB certificates of deposit in amounts as high as 46% and 79%. Higher yields are promised for "amounts exceeding US\$5,000,000." When asked about these rates of return, Dominican Government officials indicated that they did not understand how any bank could produce them. Every U.S. banker contacted by the Minority Staff investigation expressed the opinion that such large returns were impossible for a bank to achieve, either for itself or its clients. Several described the offers as fraudulent.

Civil suits have been commenced in the United States and Canada over BTCB's high yield investment program.¹³¹ Documents associated with these cases, as well as other evidence collected by the investigation, indicate that the key personnel administering BTCB's high yield investment program are Brazie and Betts. Brazie advises potential investors on how to set up an investment structure, enter into agreements with BTCB and related companies to invest funds, and use BTCB bank accounts to make investments and obtain promised profits. A two-page document on BTCB letterhead, signed by Brazie and provided to investors in the high yield program, includes the following advice:

¹³¹ A civil suit filed in New York, for example, involves a BTCB certificate of deposit for \$10 million whose funds would allegedly be invested and produce returns in excess of \$50 million. See *Correspondent Services Corp. v. J.V.W. Investment Ltd.* (U.S. District Court for the Southern District of New York Civil Case No. 99-CIV-8934 (RWS))(9/23/98 letter from Waggoner to his investment advisor, Kelleher, referencing \$50 million return; 4/13/99 letter from Kelleher to BTCB referencing \$58 million return). A civil suit before a Canadian court complains that a BTCB investor wrongly took possession of the plaintiffs' \$3 million and placed it in the BTCB high yield program, after which BTCB wrongly refused to refund the funds. *Gold Chance International Ltd. v. Daigle & Hancock* (Ontario Superior Court of Justice, Case No. 00-CV-188866)(hereinafter "*Gold Chance*"). A civil suit in New Jersey includes sworn deposition testimony from a U.S. citizen regarding an alleged \$1.3 million payment into BTCB's high yield program that has yet to produce any return. See *Schmidt v. Koop* (U.S. District Court for the District of New Jersey Civil Case No. 98-4305)(Koop deposition (3/2/99) at 433). Each of these suits is discussed in more detail in the appendix.

In order to protect assets properly, whether in BTCB or elsewhere you should consider setting-up a specific structure to assure privacy and avoid unnecessary reporting and taxation issues. . . . (1) Immediately, establish an [International Business Corporation or IBC] in Dominica (if necessary, in the same name as the one in which you have contractual identity. . . . This will allow an orderly and mostly invisible transition. This IBC should have an Account at BTCB in order to receive the proceeds of Programs and to disburse them as instructed. This IBC should be 100% owned by bearer shares to be held by the Business Trust. . . . (2) Simultaneously, you could establish a Business Trust . . . in Dominica. This trust would not hold . . . any assets except the bearer shares of [the] IBC. . . . (3) You should select an “Organizer” of the IBC and Business Trust, and could designate International Corporate Services Ltd. (an IBC owned 100% by BTCB) as the Director-Designee for the IBC and BTCB as Trustee of the Business Trust. . . . (4) The IBC’s Accounts should be set-up with dual signatures required, including an officer of ICS Ltd. and an officer of BTCB (usually myself as Vice President over all managed accounts). . . . (7) The IBC held under the Business Trust would be the entity that would enter into subsequent Trading Programs on a 50/50 cooperative venture with BTCB and would receive all resulting “Investor” earnings. . . . Such IBC Account would operate under a Cooperative Venture Agreement. . . . (10) The choice of structure is of course yours, however any client entity that is not domiciled in Dominica is prohibited by our Board from participating in our High Yield Income Programs, so that we may protect the bank and its clients against “cross-jurisdiction” exposure/penetration.

Brazie closed the document by providing telephone, fax and cellular numbers to contact him, including cellular numbers in Dominica and Virginia.

The Brazie proposals involve BTCB in every aspect of a client’s investment program, from establishing the client’s IBC and trust, to providing dual signatory authority over the IBC’s account at BTCB, to joining the IBC in a “cooperative venture agreement.” In fact, by encouraging clients to name BTCB as the trustee of their trust and giving the trust full ownership of the client’s IBC, Brazie was, in effect, encouraging BTCB clients to cede control over their entire investment structure to the bank. The Brazie document also states that only Dominican entities are allowed to participate in BTCB’s high yield programs and urges clients to use the bank’s wholly-owned subsidiary, ICS, to establish them.¹³² Numerous documents collected by the investigation establish that the suggested structure was, in fact, used by BTCB clients.¹³³ One key feature of

¹³² Similar advice has appeared in a BTCB-related website, under a subsection called “The Wall Structure.” The website states, “This structure was submitted by the Managed Account Division for British Trade and Commerce Bank—for further information, please contact them.” See www.worldwideassets.org/structure2.html.

¹³³ See, for example, in the *Gold Chance* case, a 9/7/00 affidavit by BTCB president Requena, with copies of the “standard form agreements” used by BTCB in its “Managed Accounts” program, including a standard “Cooperative Venture Agreement, a Management Account Custody Agreement, a Specific Transaction Instructions Agreement and a Residual Distribution Instructions Agreement.” The Requena affidavit also provides copies of completed forms signed by a

the standard investment contract used by BTCB in its high yield program is its insistence on secrecy. BTCB's standard cooperative venture agreement¹³⁴ essentially prohibits participants in its high yield investment program from disclosing any information related to their dealings with BTCB. A section entitled, "Confidentiality," states in paragraph 4.1:

The **Parties** agree: that any and all information disclosed, or to be disclosed, by any other party hereto, or by legal counsel or other associate; and, that any and all documents and procedures transmitted to each other for and in execution of this **AGREEMENT** are privileged and confidential and are to be accorded the highest secrecy. . . . [T]he **Parties** specifically: A) . . . undertake . . . not to disclose to any third party, directly or indirectly, or to use any such information for any purpose other than for accomplishment of the objectives of the business undertaken herein without the express written prior consent of the party supplying that . . . information[; and] B) [a]cknowledge that any unauthorized . . . disclosures . . . shall constitute a breach of confidence and shall form the basis of an action for damages by the injured party. . . . [Emphasis in original text.]

A later paragraph 5.7 states:

No unauthorized communications by either party with any bank outside of these procedures is allowed without the prior written consent of the other party. Failure to observe this consideration will immediately cause this **AGREEMENT** to be deemed to have been breached. [Emphasis in original text.]

Together, documentation and interviews demonstrate that BTCB aggressively marketed its high yield investment program, induced its clients to establish investment structures under similar agreements including secrecy requirements, promised extravagant rates of return, and obtained millions of dollars. The evidence also demonstrates that BTCB repeatedly failed to return invested funds or pay promised profits and is the subject of client complaints and law suits.¹³⁵

Internet Gambling. BTCB's September 2000 submission to the Subcommittee omits a second major activity of the bank—its involvement in multiple aspects of Internet gambling.

Internet gambling is legal in Dominica, which began issuing Internet gambling licenses to offshore companies as early as 1996. Documentation establishes that BTCB has opened a number of accounts for companies providing Internet gambling services, handled millions of dollars in Internet gambling proceeds, and in the case of Vegas Book, Ltd., assumed an integral role in the day-to-day operations of an Internet gambling enterprise.

One of the first signs of BTCB's involvement in Internet gambling occurred in May 2000, when one of its U.S. correspondents, Security Bank N.A. in Miami, discovered that ten Internet gam-

particular BTCB client, Free Trade Bureau S.A. Similar forms appear in other civil proceedings, as explained in the appendix.

¹³⁴ See *Gold Chance*, Requena affidavit (9/7/00), Exhibit H.

¹³⁵ For more information on the many complaints associated with the BTCB high yield investment program, see the appendix.

bling websites were directing gamblers to transfer their funds to Security Bank, for further credit to BTCB.¹³⁶ Security Bank sent a May 16, 2000 letter to BTCB demanding removal of its name from the websites and announcing its intention to close the BTCB account. BTCB responded in a May 17th letter that it had been unaware of and had not authorized Online Commerce, Inc.—a South African corporation that BTCB described as the “owner” of the offending Internet gambling sites—to use Security Bank’s name. BTCB apologized and provided a copy of its letter to Online Commerce, at a Dominican address, requesting removal of the wire transfer information from the Internet gambling websites. U.S. bank records at Security Bank indicate that, from 1998 into 2000, hundreds of thousands of dollars in the BTCB correspondent account were transferred to persons and entities associated with Online Commerce.

U.S. bank records show numerous other BTCB transactions involving persons or entities associated with Internet gambling. For example, \$525,000 in deposits into BTCB’s account over 5 months in 1999 and 2000, were directed to Cyberbetz, Inc., a known Internet gambling company that is a Dominican subsidiary of another Internet gambling enterprise, Global Entertainment Inc.¹³⁷ In December 1999, Security Bank records show over \$100,000 was deposited into the BTCB account for International Gaming Ltd.

BTCB’s involvement with Internet gambling did not stop with opening accounts and handling gambling related proceeds. In the case of Vegas Book, Ltd., BTCB appears to have gone farther and become a direct participant in the day-to-day operations of an Internet gambling enterprise. Vegas Book is the only Internet gambling website that is directly referenced in BTCB websites and to which BTCB-related websites have provided a direct electronic link.¹³⁸ The Vegas Book website trumpets as a key selling point its “unique” arrangement with a bank, identified elsewhere as BTCB, which enables its gamblers to deposit their funds into a bank account (instead of a casino account); to gain instant access to their funds through a bank-issued credit card; and to place their bets through a Dominican international business corporation to circumvent U.S. prohibitions on Internet gambling.¹³⁹ The Vegas

¹³⁶The websites were www.astrobet.com; www.atlantisstar.com; www.aztegoldcasino.com; www.bingotops.com; www.fairplaycasino.com; www.magic-carpetcasino.com; www.casinooldglory.com; www.casinoorientexpress.com; www.casinoiceberg.com; and www.flyingdragoncasino.com.

¹³⁷See Survey of Electronic Cash, Electronic Banking and Internet Gaming, Financial Crimes Enforcement Network (FinCEN), U.S. Department of Treasury (2000) at 76, 88.

¹³⁸BTCB’s website, www.btc.com/group.html, on a screen entitled, “Worldwide Group,” lists “independent subsidiaries” that provide “related financial services” to BTCB clients. Included are “WorldWide Asset Protection” and “IBCNow.com,” which BTCB has disclosed to the Subcommittee are simply BTCB-controlled websites. Both provide direct electronic links to “Vegas Book.” See www.worldwideassets.com/membership.html; www.ibcnow.com/link.html and www.ibcnow.com/service.html.

¹³⁹The website, www.vegasbook.com/sportsbook/index2.html, explains:

“Dominica-based Vegas Book, a state-of-the-art Las Vegas-style sports book takes action via toll-free phones and the Internet, and trumps every other shop in the industry with its unique method of payment. . . . Proceeds from every winning wager are credited to your betting account within three minutes of the conclusion of the event. . . . Your account at Vegas Book is totally secure from all outside enquiries due to [Dominica’s] Off Shore Privacy Act of 1996. This statute sets sever[el] penalties for any release of information including identity, revenues and profits. . . . All Vegas Book members are given, or purchase . . . an International Business Corporation bank account. Acting on your wishes, the IBC wagers directly with Vegas Book, thus avoiding conflict with U.S. anti-gaming laws. Funds in the account . . . are available to the account holder 24 hours a day. Simply take the money

Book website helpfully points out that Vegas Book customers can use their Dominican bank “account for asset protection” as well as for gambling, directing them to BTCB’s WorldWide Asset Protection website.¹⁴⁰

The Vegas Book website provides a detailed form for opening a Vegas Book account. This form identifies BTCB as the bank opening the accounts for Vegas Book clients. The form also provides wire transfer instructions for Vegas Book gamblers wishing to deposit funds into their BTCB account. The instructions direct funds to be sent to the Bank of America, for further credit to St. Kitts-Nevis-Anguilla National Bank (“SKNANB”), for further credit to BTCB.¹⁴¹ Bank of America informed the investigation that it had been unaware that BTCB was using the SKNANB correspondent account and unaware that the SKNANB account was handling Internet gambling proceeds. A review of the SKNANB account records indicates that, during 2000, millions of dollars moving through the account each month were related to Internet gambling, including over \$115 million in August 2000 alone.¹⁴²

According to its website, Vegas Book, Ltd. is “a partnership between Virtual Gaming Enterprises, Casino del Sol, Ltd. and Chinnok West, Ltd.,”¹⁴³ and apparently operates under a 5/6/99 Dominican gaming license issued to Casino del Sol.¹⁴⁴ BTCB and U.S. bank records suggest the existence of additional ties among BTCB, Casino del Sol and Virtual Gaming Enterprises. For example, in addition to directing Internet gamblers to the Vegas Book website, BTCB-related websites encourage individuals to consider opening their own Internet gambling website using Casino del Sol software.¹⁴⁵ U.S. bank records also show over a million dollars in transactions involving Virtual Gaming Enterprises since 1999.

Virtual Gaming Enterprises is a publicly traded Nevada corporation that was incorporated in June 1998, and is the subject of an ongoing SEC investigation into possible stock fraud.¹⁴⁶ Brenda Williams and her husband Virgil Williams are the company’s control-

out of the account at any ATM, or use secured card wherever credit cards are accepted. Your money is protected because it remains in your control, escrowed in your account at the Bank—not at Vegas Book.”

¹⁴⁰ See www.vegasbook.com/sportsbook/help.html, answer to “Can I use my IBC to protect my house and car?”

¹⁴¹ The Vegas Book website also allows clients to send certified checks to deposit funds in their account. The checks are directed to be sent to BTCB. See “Sending Funds,” rule (1) at www.vegasbook.com/sportsbook/rule.html.

¹⁴² SKNANB’s monthly account statements do not indicate what percentage of the Internet gambling funds are attributable to SKNANB clients and what percentage to BTCB clients.

¹⁴³ See www.vegasbook.com/sportsbook/help.html, answer to “Who are we?”

¹⁴⁴ The Vegas Book website reproduces a copy of the license at www.vegasbook.com/sportsbook/lisc.html.

¹⁴⁵ The following pitch appears in the IBC Now website’s “representative marketing program”:

“Casino del Sol offers the savvy marketer the opportunity to open an Internet business with worldwide appeal. Daily, millions of dollars are wagered by gamblers hoping that lady luck will grant them a fortune. With our casino program you eliminate chance by becoming the house. It is easy . . . we host your custom designed site from a high speed, state of the art secure server in the Commonwealth of Dominica with proprietary casino software proven as the industry’s best. After designing the look for your casino, choose your games including Black Jack, Slots, Poker or Lil Baccarat. Each time one of your members logs in and plays, we track his/her winnings and losses and deposit the difference in your BTCB bank account.” See www.ibcnow.com/service.html.

¹⁴⁶ See Virtual Gaming Enterprises, Inc. 10-KSB report to the SEC (9/14/00), Item 3 on “Legal Proceedings”; *SEC v. Virtual Gaming Enterprises, Inc.* (USDC SDCA Civil Case No. 99-MC-336); “Gaming firm faces long odds in shaking shady ties,” *San Diego Union-Tribune* (9/19/99); “For Virtual Gaming, life is like a house of cards,” *San Diego Union-Tribune* (5/5/00).

ling stockholders and senior management.¹⁴⁷ In 1995, Virgil Williams was found liable for securities fraud and ordered to pay a \$27 million judgment. In 1997, he and Mrs. Williams filed for bankruptcy. The company's latest SEC filing states that Virtual Gaming Enterprises was "formed to purchase, manage, develop, market, and resell casino style Internet games that will allow players to wager," and operates out of Dominica.¹⁴⁸ The filings describe the company's involvement in several Internet gambling efforts, including holding a 20% interest in Vegas Book. Virtual Gaming Enterprises is apparently soliciting funds from small investors across the United States to buy its shares.¹⁴⁹ Security Bank records show a total of about \$1.2 million deposited into BTCB's account over a 6-month period, from August 1999 until March 2000, for "Brenda J. Williams DBA-Virtual Gambling Enterprises." When contacted, SEC staff indicated that they had been unaware that Virtual Gambling Enterprises had a BTCB account and was making these deposits.

Internet gambling, as explained earlier in this report,¹⁵⁰ is illegal in the United States. Evidence suggests that BTCB has attempted to conceal its role in Internet gambling, not only from the Minority Staff investigation, but also from its U.S. correspondent banks. For example, BTCB moved hundreds of thousands of dollars in Internet gambling related proceeds through its Security Bank account without informing the bank of this activity. After Security Bank found out, BTCB's president Requena wrote in a May 17, 2000 letter, "We are aware of the position that U.S. Banks maintain on this regards, and we do not encourage at all the use of your good bank for [these] matters." Betts sent a May 19, 2000 fax stating, "I have made arrangements with another of our correspondent banks to take their wire transfers. . . . The customer did not consult with us before using Security Bank's name. We certainly would not have allowed them to use it." It is unclear what correspondent bank BTCB turned to next and whether it informed that bank of its Internet gambling activities; Bank of America states that it never knew it was handling BTCB funds related to Internet gambling.

(7) Money Laundering and Fraud Involving BTCB

The Minority Staff investigation found evidence indicating the BTCB was involved in a number of financial frauds and suspicious transactions moving millions of dollars through its U.S. accounts. In each instance, the bank's U.S. correspondent relationships played a critical role in enabling BTCB to conduct its activities. BTCB's refusal to be interviewed prevented the Minority Staff from obtaining any clarification or explanation that the bank might have provided with respect to the following matters, which are summarized below and described in more detail in the appendix to this report.

¹⁴⁷ See Virtual Gaining Enterprises, Inc. 10-KSB report to the SEC (9/14/00), Item 9.

¹⁴⁸ *Id.*, Item 1.

¹⁴⁹ See, for example, www.penyprofits.com/profiles/vgain.shtml.

¹⁵⁰ See Chapter IV(D) of this report.

(a) Koop Fraud

William H. Koop, a U.S. citizen from New Jersey, pleaded guilty in February 2000 to conspiracy to commit money laundering in violation of 18 U.S.C. 1957.¹⁵¹ Using BTCB, two other offshore banks,¹⁵² and their U.S. correspondent accounts, Koop bilked hundreds of U.S. investors out of millions of dollars over a 2-year period by falsely promising high yield investment opportunities. In just 6 months during 1998, Koop moved almost \$4 million from his self-confessed frauds through BTCB's U.S. correspondent accounts.

In 1997, Koop began promoting "prime bank notes," which he admitted are fictitious financial instruments, as well as other fraudulent investments, promising rates of return as high as 489%. Koop falsely promoted the investments as secure and touted the fact that the investment profits would be reported to no one. Over 200 U.S. investors placed their funds with him; with few exceptions, none recovered either their principal or any profit.

Koop began his relationship with BTCB in mid-1998 after a chance meeting with Brazie who told him about BTCB's own high yield investment program and other services. Koop used BTCB to establish Dominican corporations and bank accounts for use in his fraudulent activities. Koop instructed his co-conspirators and some of the investors in his program to send funds to him at BTCB's U.S. accounts. He then laundered the funds by instructing BTCB to wire them to other bank accounts around the world or by using them for other purposes such as purchasing a house in New Jersey. Koop's largest single investor, for example, wire transferred \$2.5 million to BTCB's correspondent account at the Miami office of Banco Industrial de Venezuela for further credit to Koop's company. Koop used the money to pay his co-conspirators, open new accounts at BTCB, and advance his fraud. When the investor sued to recover the \$2.5 million, BTCB at first denied having any accounts for Koop or his company. It was only after Koop pleaded guilty, began cooperating with prosecutors, and directed BTCB in writing to disclose information about his accounts, that BTCB acknowledged having five Koop-related accounts.

The evidence reviewed by the Minority Staff indicates that BTCB did more than establish corporations, open bank accounts and transfer funds for Koop; it also convinced Koop to place \$1.3 million in fraud proceeds into BTCB's own high yield investment program. Koop indicated that BTCB repeatedly solicited him to place funds in various investments offered by the bank. Koop said he finally provided \$1.3 million to BTCB's subsidiary, Global Investment Fund. In an ironic twist, Global had promised to pay Koop a 100% return on the funds each week for 40 weeks. After 2 years, Koop said he had yet to receive a single payment or the return of his principal. If true, BTCB retains possession of over \$1 million in illicit proceeds taken from Koop's defrauded investors.

¹⁵¹ For more information, see the description of the Koop fraud in the appendix.

¹⁵² Koop's activities at the other two banks, Hanover Bank and Overseas Development Bank and Trust, are discussed in the case histories on those banks.

(b) Cook Fraud

Benjamin Franklin Cook III, a U.S. citizen from Arizona, was named in March 1999 pleadings filed by the Securities and Exchange Commission (SEC) as the central figure in a fraudulent high yield investment program which, in the course of less than one year, bilked over 300 investors out of more than \$40 million.¹⁵³ In August 2000, a criminal indictment in Arizona charged Cook with 37 counts of racketeering, fraud and theft. U.S. bank records indicate that at least \$4 million associated with this fraud passed through U.S. correspondent accounts belonging to BTCB, and BTCB was directly involved in investment activities undertaken by persons and companies associated with the Cook fraud.

An analysis of BTCB's U.S. correspondent bank records by Minority Staff investigators uncovered documentary evidence linking 100 wire transfers to defrauded investors or entities associated with the Cook fraud. These transactions, which made up a substantial portion of BTCB's account activity at the time, moved over \$4 million through the bank in a 2-year period, from 1998 to 2000, demonstrating that BTCB was an active conduit for illicit proceeds from the Cook fraud.

As in the Koop fraud, documentation and interviews indicate that BTCB did not stop at providing deposit accounts and wire transfers to persons and companies associated with the Cook fraud; the bank also worked with them to invest funds in its own high yield investment program. One Canadian investor told the Minority Staff that he invested \$30,000 in the BTCB high yield program on the advice of a friend associated with several companies involved in the Cook fraud. He also convinced other persons to invest their funds. He indicated that the funds were wire transferred to BTCB's U.S. correspondent account at Security Bank in several installments. He stated that, despite repeated inquiries, neither he nor his associates have recovered any of their investments, much less any of the promised returns. The documentation suggests that BTCB may still have possession of substantial funds taken from Cook's defrauded investors.

(c) Gold Chance Fraud

In April 2000, two brothers who are Canadian citizens filed suit in Ontario alleging that their company, Gold Chance International Ltd. ("Gold Chance") was the victim of a loan fraud involving \$3 million.¹⁵⁴ They alleged that Gold Chance had been fraudulently induced to deposit \$3 million as supposed loan collateral into an attorney trust account in Canada, waited months for a loan that never materialized, and then learned that the company's funds had been secretly transferred to an offshore account at BTCB.

An Ontario court granted them immediate emergency relief, including appointing a receiver to take control of the attorney trust account and ordering BTCB and others to cooperate with discovery requests. Although the court proceedings have yet to reach a conclusion, a preliminary court decision, pleadings in the case, bank records and other information indicate that the \$3 million was de-

¹⁵³ For more information, see the description of the Cook fraud in the appendix.

¹⁵⁴ For more information, see the description of the Gold Chance fraud in the appendix.

posited into BTCB's U.S. account at First Union on December 15, 1999, and within a week, the funds were divided up and wired to multiple bank accounts around the world. On the day the funds were deposited, BTCB's account balance at First Union was only about \$14,000. During December 1999, the \$3 million in Gold Chance funds were the primary source of funds in the BTCB account and were used to make payments to the bank's creditors, clients, and other correspondent accounts.

BTCB maintained in court pleadings that the \$3 million had been sent to the bank by a longtime bank client for immediate placement in its high yield investment program. The bank said that the money had been locked into a year-long program on December 15, 1999, and could not be removed before December 15, 2000. In a June 12, 2000 order, the Ontario court expressed skepticism regarding BTCB's claim that the \$3 million was still safely on deposit with the bank. The court wrote, "The prepared statement of [BTCB] that the funds are in BTCB is not to be believed, against either the tracing evidence or [BTCB's] failure to deliver the funds." BTCB later posted with the court a \$3 million letter of credit which matured on December 15, 2000. When that date came, BTCB failed to pay the court the required \$3 million. Gold Chance is still seeking recovery of its funds.

Other Troubling Incidents. The investigation obtained additional evidence of other suspicious transactions and questionable conduct at BTCB, most of which involved BTCB's high yield investment program. Discussed in more detail in the appendix, they include the following:

—A dispute over the ownership of a \$10 million certificate of deposit ("CD") issued by BTCB in bearer form resulted in extensive litigation in a New York court. In August 2000, the U.S. district court resolved the CD's ownership in favor of a wealthy Texan, while disclosing troubling information about BTCB's operations. The legal dispute and other information disclosed, for example, inconsistent and ambiguous documentation regarding the disputed CD and a Dominican corporation established at BTCB's direction; BTCB's questionable dealings with a small Bahamian bank having a poor reputation and limited assets, including BTCB's use of the Bahamian bank's correspondent account at Citibank without Citibank's knowledge; and BTCB's apparent representations that its high yield investment program could quickly turn a \$10 million investment into a \$50 million return. U.S. bank records also show that, as with the Gold Chance funds, BTCB may have used \$6 million of the CD funds to pay creditors and clients, rather than make investments as promised.

—An investor from Malaysia has complained to Dominican, U.K. and U.S. authorities about his continuing inability to recover a \$1 million investment which he wired to BTCB's U.S. account at Security Bank in September 1998, for placement in its high yield program. The investor claims he was induced to send the money by KPJ Trust, a BTCB client. Documents supplied by the investor contain repeated broken

promises by BTCB to return the funds. U.S. bank records show his incoming deposit to BTCB as well as several outgoing payments to persons associated with the KPJ Trust.

- Investors in Texas, California and Canada have made similar complaints about funds they invested in BTCB's high yield program allegedly at the direction of Scott Brett, a part owner of BTCB through his company Baillett International Ltd. U.S. bank records show incoming wire transfers to BTCB's U.S. accounts from these investors, as well as outgoing wires to companies associated with Brett. A criminal investigation of these complaints may be underway in the United States.
- U.S. bank records and other documents demonstrate BTCB's involvement with a company headed by an individual suspected of past securities fraud, including a BTCB payment of \$500,000 to the company followed over the next year by \$1 million in payments from the company. The company explained the \$1 million payment by saying it was repaying a BTCB "loan" and obtaining a release of BTCB's right to over 1 million in "unissued shares" in the company. Documents indicate that, during 1999 and 2000, the company obtained over \$16 million from hundreds of small investors across the United States. Civil and criminal investigations into the company's possible involvement in securities fraud may be underway.

BTCB has been in operation for only about 3 years. In that time, it has become entangled in three multi-million dollar financial fraud investigations in the United States and Canada, as well as numerous client complaints in multiple jurisdictions. The emergent picture is of a bank surrounded by mounting evidence of questionable transactions, deceptive practices and suspect funds related to Internet gambling, fraudulent investments, and criminal activity.

(8) Correspondent Accounts at U.S. Banks

BTCB stated in its September 2000 submission to the Subcommittee that virtually all of its deposits and fund transfers go through U.S. banks, and it is "very protective of its U.S. correspondent banking relations, since this is our only way to transfer and move funds."

The Minority Staff investigation subpoenaed documents and interviewed personnel at three U.S. banks that operated accounts for BTCB. The banks are: (1) the Miami office of Banco Industrial de Venezuela which operated a correspondent account for BTCB from October 1997 until June 1998; (2) Security Bank N.A. which operated a correspondent account for BTCB from June 1998 until July 2000; and (3) First Union National Bank, whose securities affiliate operated a money market account for BTCB from September 1998 until February 2000. While none of the banks was fully aware of BTCB's activities or the financial frauds that moved funds through BTCB accounts, all three indicated that BTCB had, at times, engaged in unusual or suspicious activity, had made unauthorized use of the U.S. bank's name in questionable transactions,

and had abused its relationship with the U.S. bank. All three initiated the closing of BTCB's accounts.

(a) Banco Industrial de Venezuela (Miami Office)

Banco Industrial de Venezuela (BIV) is a large, government-owned bank in Venezuela. BIV has two offices in the United States, one in New York and one in Miami, each with about 20 employees. The Miami office has about \$85 million in assets. BIV's Miami office opened BTCB's first U.S. correspondent account, one of only three correspondent bank accounts at that office. BIV closed the BTCB account 7 months later due to evidence of suspicious transactions that, in the words of the bank, involved possible "money laundering" and "self-dealing."

Interviews were conducted with BIV employees involved in the opening, administration and closing of the BTCB account and in BIV's anti-money laundering program. Some BIV personnel who made key decisions with respect to the BTCB account were not interviewed, because they are no longer with the bank. Documentation in BIV files, account statements, and other materials and information were collected and reviewed.

Due Diligence Prior to Opening the Account. Prior to opening an account for BTCB, BIV conducted a due diligence inquiry into the bank's ownership and operations. BIV documentation and interviews suggest, however, that because BTCB was newly licensed and not yet in operation, BIV relaxed some of its documentation requirements and collected only limited information about the bank.

According to the BIV account officer who helped open and administer the account, BTCB was referred to BIV by a former BIV client. It is possible that BTCB selected BIV because BTCB's president, Requena, was from Venezuela and was familiar with this Venezuelan bank's operations. Requena apparently telephoned BIV in 1997, and spoke with BIV's credit manager, Pierre Loubeau, who was then responsible for correspondent banking. BTCB followed with a letter dated July 28, 1997, providing initial information about the bank and requesting "a correspondent relationship." On September 15, 1997, BTCB provided another letter, signed by Requena, answering inquiries about the bank's ownership and main sources of income. The BTCB letter stated that the bank "was formed and is owned by Clarence Butler of Dominica, and Rodolfa Requena of Venezuela." The letter said that the bank's "main income" derived from "Trust related activities" and "investments in Financial instruments," and that it was developing "a Program for Insured Credit Cards." The letter also stated that, "as soon as we have a positive answer from your [fine] bank we are ready to transfer up to US \$40 million to open the account."

Because the BIV personnel currently at the bank did not have first hand information about the credit manager's due diligence efforts, the investigation was unable to determine whether he made inquiries in Venezuela about Requena or in Dominica about BTCB. The BIV account officer noted that BIV's comptroller at the time, Louis Robinson, was originally from Dominica, knew Dominican government officials, and was a distant relative of one of the BTCB owners, Clarence Butler, and may have made inquiries in the coun-

try at the time. There was no documentation recording such inquiries in the BIV file for BTCB. The BIV account officer stated that she personally checked the U.S. Office of Foreign Asset Control list of designated persons, and determined at the time that neither Requena nor Butler was designated as a person barred from holding assets in U.S. financial institutions. She also indicated that, because the bank was so new, she thought BIV had been unable to acquire much information about BTCB's reputation or past performance.

The BIV account officer said that the preliminary decision to open the BTCB account was made by two of her superiors, Loubeau, the credit manager, and Esperanza de Saad, the head of BIV's Miami office, neither of whom are still with BIV. She said their decision was made dependent upon BTCB's successfully submitting required account opening forms and documentation, which she requested in a letter dated September 19, 1997. The BIV account officer said that she was then responsible for collecting the required information for BTCB's client file.

Despite language in the BIV account opening application stating that the "following documents **MUST** be submitted" and a "new account **shall not** be opened without the receipt of these documents," the BIV account officer said that accounts were sometimes opened before all of the required documentation was obtained. She indicated that several exceptions had apparently been made for BTCB. For example, she said that BTCB was allowed to submit an unaudited financial statement in place of the required audited statement. She indicated that she thought BTCB had been allowed to submit an unaudited statement because it was still too new a bank to have undergone an audit. The BTCB financial statement on file at BIV indicated that, as of June 30, 1997, total BTCB assets were about \$7.2 million. The BIV account officer said that BTCB was also apparently allowed to submit one, instead of the required two, bank references. Although she could not recall whether someone had specifically waived the requirement for a second bank reference, she speculated that, because BTCB was so new, it may have had only one bank account at the time. She noted that the bank reference provided was for an account that had been opened only 2 months earlier at another Dominican bank, Banque Francaise Commerciale.

BIV's account opening documentation did not require and the BIV file did not contain a copy of any written anti-money laundering policies or procedures in place at BTCB. Nor was the issue of BTCB's anti-money laundering efforts discussed in any BIV documentation. There was also no documentation indicating the extent to which BIV may have inquired into Dominica's reputation for banking regulation or anti-money laundering controls.

In response to a question about a site visit,¹⁵⁵ the BIV account officer said that no visit was made to BTCB prior to opening the account, but one was made in the first few months after the account was opened. She indicated that BIV's comptroller, Louis Robinson, who was from Dominica, had traveled to the island on vaca-

¹⁵⁵ BIV's Customer Service Handbook in place at the time, in Chapter 6, required "[p]hysical inspections" of a client's domicile within a year of an account opening and issuance of a "written visitation report to be kept in Agency's customer file."

tion and, during his vacation, had visited the BTCB office, which was not yet open to the public. She said that he met with Butler and brought back additional information about the bank. While no report on his visit was in the client file as required by BIV procedures, the file did contain key due diligence information about the bank that was apparently obtained during this site visit.

BIV's account opening form, entitled "New Customer and Account Input Information Sheet," shows that BIV's senior official, Ms. de Saad, approved opening the BTCB account on September 29, 1997. Other documentation indicates that the official opening date for the BTCB account was October 1st. The three account signatories were Requena, Betts and Royer.

Monitoring the Account Activity. The evidence indicates that, once the BTCB account was opened, BIV failed adequately to monitor the account activity or inquire about unusual transactions, despite repeated signs of suspicious activity.

BIV provided primarily three services to BTCB: A deposit account, an overnight sweep account which increased the interest paid on BTCB deposits, and use of BIV's wire transfer services. BIV did not provide BTCB with any loans or extensions of credit.

BTCB's initial deposit was a wire transfer on October 20, 1997, for approximately \$1 million. On October 21, 1997, according to a BIV call report, the BIV account officer contacted BTCB to confirm the transfer. She was told that BTCB was holding its official "inauguration" on November 15, 1997, and BTCB would be transferring another \$25 million to the BIV account during the week.

The BIV account officer indicated that she did not recall inquiring into or being told the source of the initial \$1 million deposit. She said that she would have asked about the source of a \$25 million or \$40 million deposit by BTCB, but no such deposit was ever made. In fact, BIV account statements show that, after the initial deposit, the BTCB account experienced little activity for 4 months, with few deposits and a steady withdrawal of funds until the end of January 1998, when the closing account balance was about \$45,000.

The next 3 months, however, reversed course, and each month showed increased account activity.¹⁵⁶ The bulk of the funds in the final three months appear to have come from three sources: The Koop fraud, the Cook fraud, and BTCB itself.¹⁵⁷ Overall, about \$17

¹⁵⁶ For example, in February 1998, multiple deposits totaling in excess of \$1 million and multiple withdrawals totaling about \$650,000, led to a closing balance of about \$350,000. March saw more deposits and withdrawals, including a single deposit on 3/30/98 of about \$2 million and a closing account balance of about \$2.5 million. April account activity increased still further, with multiple transactions throughout the month including deposits of \$2.5 million, \$634,982, \$500,000 and \$406,000 that, together, increased the account balance to \$6.5 million. May witnessed similar account activity, including deposits of \$1 million; \$450,000; \$220,000; \$200,000; \$199,980; \$150,000; \$101,850; and \$100,000, followed by a \$5 million withdrawal on 5/27/98 to a BTCB securities account at PaineWebber's clearing firm, Correspondent Services Corporation. Even after the \$5 million withdrawal, the account held almost \$3.5 million. On June 5, 1998, BIV closed the account.

¹⁵⁷ Koop received deposits totaling about \$3.1 million during this period, including a \$2.5 million deposit from a defrauded investor. International Business Consultants, Ltd., named by the SEC as a key participant in the Cook fraud, received 34 deposits totaling about \$1.4 million. One deposit for \$2 million was made by "Inter Trade and Commerce Ltd.," a company otherwise unidentified. Transactions traceable to persons associated with BTCB provided two deposits totaling \$113,000, and numerous withdrawals totaling about \$700,000.

million moved through the account, most of it in the last 3 months the account was open.

When asked about the increased account activity in the spring of 1998, the BIV account officer indicated that she did not recall noticing it at the time but thought, if she had, she would have attributed it to the normal growth of a new bank. She also did not recall asking or being told about the source of funds for the three largest deposits of \$1 million, \$2 million and \$2.5 million. She indicated that she had assumed a correspondent bank account would include large transactions. However, another BIV employee told Minority Staff investigators that, when he reviewed the BTCB account in May, he immediately noticed and had concerns about the increased account activity, large transactions, and BTCB-related transactions, all of which contributed to BIV's decision in May to close the BTCB account.

By the spring of 1998, BTCB's account had become one of the largest accounts at the BIV Miami office. The BIV account officer indicated that she began to spend considerable time working with BTCB personnel on matters related to the account. She indicated that she spoke with the bank several times per week, usually dealing with BTCB's chief financial officer, Betts, and sent the bank weekly account statements, a service BIV provided upon request to large accounts.

The BIV account officer recalled three activities in particular that occupied her time on the BTCB account, involving letters, wire transfers and SWIFT telexes. She said that BTCB had made several requests for letters providing either a bank reference or confirmation of funds on deposit. She said these letters were intended for other financial institutions or for investors considering placing money with BTCB. BIV files contained four letters written on behalf of BTCB. The first was a letter of reference which BIV provided in March 1998, but which is undated, addressed "TO WHOM IT MAY CONCERN," and signed by the Miami office head, Esperanza de Saad. The BIV account officer said that similar reference letters had been prepared for other customers. BIV indicated that it had no knowledge of how BTCB had used this reference letter.

The BIV account officer recalled BTCB's engaging in lengthy negotiations over the wording of another letter requested in April 1998. She said that BTCB had asked BIV to provide a "proof of funds" letter, addressed to BTCB itself, confirming a certain amount of funds in the BTCB account. BTCB wanted the letter to confirm the "non-criminal origin" of the funds, and to state that BIV was prepared to block these funds . . . or to place these funds" upon BTCB's instruction. When asked what she thought of the requested wording, the BIV account officer said that she did not understand what BTCB wanted, but the requested language had made her superiors uncomfortable. She said that BIV had refused to provide the wording, despite BTCB's insistence. When asked why, she indicated that her superiors had made the final decision and she could not recall their reasoning. She indicated that she had no familiarity with fraud schemes using prime bank guarantees or U.S. bank confirmations, and had never thought that BTCB might be engaging in suspicious conduct. She said the letter finally

provided on May 5, 1998, did not contain any of the contested language.

The BIV account officer said that, on a number of occasions, BTCB's president, Requena, had instructed the BIV Miami office to wire transfer funds to a BIV branch in Caracas, Venezuela, which he would then pick up in cash. The BIV account officer explained that this arrangement, which BIV no longer allows, was used because Requena did not have a personal bank account at BIV to which the funds could be sent, so he was instead allowed to pick up the funds in cash. She said that the amount was typically \$6,000, which Requena had described as his salary payment. She said that, on one occasion in December 1998, Betts had telephoned from BTCB and indicated that Requena had not received the \$6,000 wired to him in Venezuela, and she had made inquiries about the funds transfer. She said that Requena later confirmed receipt of the funds "on 12/18/97 and Jan. 6/98."¹⁵⁸ The BIV account officer stated that similar cash payments may have been made to BTCB personnel other than Requena, although she was unable to state with certainty that they were. BIV account statements show numerous transactions with BTCB employees and other persons associated with the bank.¹⁵⁹ Some of these transactions may have involved cash; others were wire transfers to accounts. Together, they and the Requena transactions involved more than \$800,000 in deposits and withdrawals over a 7-month period.

The BIV account officer said that a third BTCB account activity requiring her attention had been the re-transmission of SWIFT telexes to and from BTCB. She explained that BTCB's staff had been unable to operate BTCB's telex equipment, and had instead routinely faxed telexes to BIV and asked BIV to re-transmit them.

¹⁵⁸ BIV bank records show 11 occasions in 7 months on which funds were wire transferred to Requena and may have been paid to him in cash. These payments included:

- 12/15/97 wire transfer for \$16,849.57;
- 12/16/97 wire transfer for \$6,000;
- 12/19/97 wire transfer for \$6,000;
- 2/17/98 wire transfer for \$6,000;
- 2/20/98 wire transfer for \$826;
- 3/25/98 wire transfer for \$6,000;
- 4/3/98 wire transfer for \$7,384;
- 4/27/98 wire transfer for \$6,000;
- 4/28/98 wire transfer for \$6,000; and
- 5/11/98 wire transfer for \$6,000.

In addition, \$10,000 was wire transferred to Requena on 5/26/98, to a U.S. office of Banco Venezuela, an unrelated bank. When shown these 11 transactions totaling \$77,000, the BIV account officer could not recall whether all of them resulted in cash payments to Requena, or just the ones involving \$6,000. She also could not recall the purpose of the wire transfers in amounts other than \$6,000, or why Requena occasionally received two "salary" payments in the same month. She was also unable to explain her handwritten notation that Requena had received funds on 1/6/98, a date not included in the BIV account statements. She therefore was unable to say whether other payments had also been made to Requena.

¹⁵⁹ These transactions included:

- \$470,000 in payments to John Long, his companies Republic Products Corporation and Templier Caisse S.A., and companies involved with constructing a new residence for the Long family in Antlers, Oklahoma, such as Nelson Brothers Construction;
- \$113,000 in payments to Mavis Betts, the wife of BTCB's chief financial officer George Betts, or to Lavern Erspan, a woman associated with Mrs. Betts;
- \$100,000 deposit to the credit of Bayfront Ltd., a company apparently associated with Pablo Urbano Torres who was a BTCB director, and \$16,800 in payments directed to him; and
- \$25,000 in payments to Mary Brazie, the wife of Charles Brazie, the BTCB vice president in charge of managed accounts.

The BIV account officer indicated that the only BTCB officials she knew at the time were Requena, Betts and Butler; and she was not aware that so many of the bank's transactions had involved persons affiliated with BTCB.

She said they had also directed their clients to send telexes to BIV for re-transmission to BTCB. The BIV account officer said the SWIFT traffic for BTCB had increased so rapidly that BIV's operations department had begun complaining about the additional work.

The BIV account officer described events related to one particular April 1998 telex involving a Mexican credit union called "Union de Credito de Formento Integral de Naucalpan SA." This telex had been sent to BIV, and the credit union had asked BIV to re-transmit the message to BTCB in Dominica. The text of the message, addressed to BTCB, stated that the credit union was going to send a telex to Metropolitan Bank and Trust Co. in Chicago confirming ten "letters of guarantee" at \$10 million apiece for a total of \$100 million, and promising to honor these letters of guarantee "irrevocably and unconditionally." The BIV officer said that, in this instance, BIV had refused to re-transmit the message. When asked why, the BIV account officer said her superiors had made that decision and she was unsure of the reason. She indicated that she was unfamiliar with "letters of guarantee" or their use in financial frauds, and it had never occurred to her that BTCB might have been attempting to include BIV's name on the telex to lend credibility to what may have been a fraudulent transaction. She could not provide any other information about the transaction. She said that, with hindsight, it was surprising that such a new bank, with only \$7 million in assets, would have been engaged in a \$100 million transaction.

BIV's anti-money laundering officer while the BTCB account was open was Louis Robinson, the comptroller who originated from Dominica. The investigation did not interview him since he had left the bank, so his efforts in reviewing the BTCB account while it was open are unclear. The BIV account officer recalled informing him on several occasions of troubling incidents involving BTCB, including the contested proof of funds letter and the \$100 million telex. She said that Mr. Robinson was one of her supervisors who had refused to go along with BTCB's requests. At the same time, he apparently never warned her about the account or instructed her to pay special attention to it. BIV's anti-money laundering procedures at the time, a copy of which were provided to the investigation, explicitly called for heightened scrutiny of accounts opened by foreign corporations domiciled in "an 'Offshore' Tax haven," stating that the corporation's "beneficial owner(s) must be identified and their source of wealth verified." While the section did not reference foreign banks or bank secrecy jurisdictions, the analogy could have been made to apply the heightened scrutiny standard to BTCB. There is no evidence, however, that Mr. Robinson or other BIV employees exercised heightened scrutiny of the BTCB account.

Closing the BTCB Account. The BIV account officer told Minority Staff investigators that she never suspected BTCB of wrongdoing and never recommended closing the account. The investigation learned that the closure decision was a consequence, instead, of the sudden arrest of the head of the Miami office, Esperanza de Saad, on May 15, 1998, for alleged misconduct in connection with a U.S. Customs money laundering sting known as Operation Casa-

blanca.¹⁶⁰ After de Saad's arrest, a team of senior bank officials flew in from BIV's New York office to assume control of the Miami office and review all accounts. The BTCB account was one of more than a dozen accounts closed during the review process.

The Minority Staff investigation interviewed the key BIV employee from New York involved in closing the BTCB account. He explained that, after de Saad's arrest, as a precautionary measure, BIV had placed the remaining three senior officers in the Miami office on leave, although none were accused of wrongdoing. He said that the New York BIV team then began reviewing all of the Miami accounts, looking for suspicious activity. He said that the New York team purposely conducted this review without consulting the Miami staff, due to uncertainty over the extent of the problems in the Miami office. He said that, due to the de Saad arrest, U.S. bank regulators and law enforcement personnel were also reviewing BIV records.

The BIV employee said that the BTCB account was one of the largest in the Miami office. He said that when he reviewed it, he immediately became concerned about wire transfers making payments to BTCB officers, which he considered signs of "self-dealing." He indicated that when he reviewed the BTCB file, he also became concerned about missing documentation, including the absence of an audited financial statement. He said his immediate reaction was, "I didn't like what I saw."

On May 28, 1998, BIV sent a letter to BTCB requesting additional due diligence documentation including picture identifications, reference letters, the bank's articles of incorporation, and a current financial statement. BIV sent another letter the next day requesting the name of BTCB's accountant and law firm. BTCB responded on the same day, May 29, 1998, providing most of the requested information.

After reviewing this information and additional account transactions, the decision was made by the New York BIV team, in consultation with legal counsel, to close the account. In interviews, BIV personnel indicated that the decision to close the account was made due to a number of concerns about the account, including the increased account activity, rapid turnover of funds, large transactions, transactions involving the same payer and payee, and the transactions involving BTCB officers and employees. A memorandum dated May 29, 1998 instructed BIV operational staff to close the BTCB account "[e]ffective immediately."¹⁶¹

The BIV employee said that at the time the closure decision was made, BTCB's president Rodolfo Requena was in Miami. He stated that, on June 1, 1998, BTCB had sent BIV a letter requesting that BIV prepare letters of reference for BTCB to be given to four U.S.

¹⁶⁰ *United States v. de Saad* (U.S. District Court for the Central District of California Criminal Case No. 98-504(B)). De Saad was convicted by a jury on ten counts of laundering narcotics proceeds, but a district court judge overturned the jury verdict and acquitted her on all counts. See "Opinion and Order Granting Defendant Esperanza de Saad's Motion for Judgment of Acquittal" by Judge Friedman (7/13/00). The United States is appealing the judge's decision.

¹⁶¹ BIV personnel indicated, when asked, that the bank had not been aware of the Koop fraud at the time the BTCB account was open, although bank documents were later requested in connection with a related civil lawsuit, *Schmidt v. Koop*. BIV was also unaware, until informed by Minority Staff, that a company frequently named in BTCB wire transfer documentation, International Business Consultants Ltd., had been named in SEC pleadings related to the Cook fraud.

banks, and that Requena would pick up the letters in person. The BIV employee said that none of these letters was prepared. Instead, he said, a meeting was held in the conference room of the BIV Miami office in which BIV discussed with Requena the bank's decision to close the BTCB account. He said that the reasons BIV gave for closing the account were the restructuring of the Miami office and the need to reduce the customer service portfolio, because BIV had no proof of misconduct, such as a criminal indictment against BTCB. He said that Requena became angry, claimed to know the president of BIV in Venezuela, and threatened to have him fired for improperly closing the BTCB account.

The following week, a two-page internal BIV memorandum, dated June 11, 1998, was sent by the BIV Miami office to BIV headquarters in Venezuela with information about the closing of the BTCB account. It is unclear whether this memorandum was prepared in response to a complaint by BTCB. One part of the memorandum described the surge in account activity in April, noting that it had increased the account balance to \$6 million, included wire transfers in large amounts, and included wire transfers in which the payer and payee were the same individual or corporation, such as International Business Consultants. In other documents, BIV described the transactions as indicative of "money laundering" and "self-dealing," and stated that BTCB appeared to have been using the account to provide "payment orders to its own officers" and "trying to use our institution as a pass through (window to USA) account."

On June 5, 1998, BIV formally closed the account and sent BTCB a check for about \$3.5 million. On June 8, 1998, BTCB opened a new account at Security Bank N.A. in Miami.

(b) Security Bank N.A.

Security Bank N.A. is a small Florida bank with several offices across the State and about \$90 million in assets. Its Miami office is located in the lobby of 444 Brickell, the same building occupied by First Equity Corporation of Florida (FECF), BTC Financial and related companies. Security Bank operated a correspondent account for BTCB for about 2 years, from June 1998 until July 2000. It closed the BTCB account after discovering that BTCB was handling Internet gambling proceeds and Security Bank was being referenced in Internet gambling websites.

Interviews were conducted with Security Bank employees involved in the opening, administration and closing of the BTCB account and in Security Bank's anti-money laundering program. Documentation in Security Bank files, account statements, and other materials and information were collected and reviewed.

Due Diligence Prior to Opening the Account. The evidence indicates that Security Bank opened a correspondent account for BTCB prior to conducting any due diligence on the bank, but on the understanding that the account would be closed if negative information surfaced. Security Bank followed the account opening with a due diligence effort that failed to uncover any problems with BTCB, which by then had been in operation for about 6 months.

According to Security Bank interviews and a June 10, 1998 memorandum describing the opening of the account, shortly after

FECF first moved into 444 Brickell Avenue, Security Bank approached FECF about opening an account, given the convenience of the bank's office in the lobby of the building. FECFs then owner, Steven Weil, introduced BTCB president Requena to Security Bank personnel, indicating that BTCB was then in the process of purchasing FECF. Requena expressed interest in opening an account at Security Bank for BTCB. Requena indicated that BTCB was then closing its "main account" at BIV's Miami office due to, in the words of the Security Bank memorandum, "bad publicity that [BIV] was receiving . . . as a result of laundering money charges against one of its principal officers." Security Bank agreed to open an account for BTCB immediately, on the understanding that it would conduct subsequent inquiries into the bank. The account was opened on June 8th, with a BIV cashiers check for \$3.5 million, which Security Bank personnel considered a very large deposit.¹⁶²

The head of Security Bank's international department, who assisted in the opening, administration and closing of the BTCB account, said that at the time the account was opened Security Bank had 25 to 30 foreign bank clients, primarily from Latin America. He said that it was not uncommon for Security Bank to open an account for a bank subject to later due diligence research. He said we "usually open and then investigate," due to the time required to obtain due diligence information and documentation.

The international department head described a number of steps that the bank took to investigate BTCB. First, BTCB supplied requested information about the bank's ownership, lines of business and financial status. Bank files included copies of BTCB's banking license, articles of incorporation, website information, a BTCB shareholder list, an unaudited financial statement, and other documentation about the bank. The international department head stated that, because Security Bank was not familiar with Dominica, it had decided not to initiate a credit relationship with BTCB and to provide only limited correspondent banking services such as a deposit account and wire transfer services. For that reason, he said, no financial analysis was performed of BTCB, nor did he or his staff take a detailed look at BTCB's major lines of business. He said that he did not recall even seeing BTCB's financial statement at the time and thought no one had examined it.

The international department head said that Security Bank undertook several efforts to check BTCB's reputation. He said the bank required BTCB to provide two written, personal references for each account signatory, copies of which were in the file. In addition, he said, inquiries were directed to banking personnel in Venezuela about Requena, who received favorable reports. He said another due diligence factor in BTCB's favor was its purchase of FECF, which was completed within a month of opening the account. He said the purchase had given Security Bank "comfort" because they knew the SEC investigated potential securities firm owners, and BTCB had apparently received SEC approval.

He said that Security Bank had also obtained two written bank references for BTCB, one from Banque Francaise Commerciale and

¹⁶² According to Security Bank, it was because this deposit was so large that it prepared a memorandum documenting the circumstances related to the opening of the account. It said that it did not normally prepare an account opening memorandum.

one from BIV's Miami office. Security Bank provided a copy of the BIV reference letter, which was undated and signed by Esperanza de Saad. The international department head indicated that the letter had been provided in July 1998. When told that, in July 1998, de Saad was in jail awaiting trial on money laundering charges and the BIV account officer who handled the BTCB account was absent from the bank on maternity leave, the Security Bank employee indicated he had been unaware of those facts. When told that it was actually BIV that had closed the BTCB account, he said that he had also been unaware, until informed by Minority Staff investigators, that BIV had initiated the closing of the BTCB account. He expressed surprise and concern at that information. When asked how the letter of reference was delivered to Security Bank, and shown the BTCB fax line at the top of the letter, he indicated that he could not recall whether the letter had come directly from BIV or whether it had been supplied by BTCB. When shown the BTCB reference letter prepared by de Saad in March 1998, he agreed that it looked like the same letter given to Security Bank in July 1998.

When asked about a site visit, the international department head said that, while Security Bank normally did visit its foreign bank clients, no on-site visit was made to BTCB. He said that BTCB was less than a year old when the account was opened and Dominica was unfamiliar territory, which meant that an on-site evaluation was unlikely to provide meaningful information. He said that he had met with BTCB senior personnel in Miami, including John Long, and was comfortable with the bank's leadership. He noted that BTCB had a limited correspondent relationship that imposed no credit risk to the bank. He said that, because BTCB was their only client on Dominica, he had made the decision that it was not "cost effective" to fly there.

The international department head said that he was unaware, in 1998, that Dominica had a reputation for weak banking regulation and anti-money laundering controls. He indicated that he had recently read press reports about Dominica's anti-money laundering deficiencies.¹⁶³ The documentation suggests that no inquiry was made into BTCB's anti-money laundering efforts either. The Security Bank file for BTCB did not contain copies of written anti-money laundering policies or procedures in place at BTCB nor is the issue of BTCB's anti-money laundering efforts ever mentioned or analyzed.

Security Bank's internal account opening documentation indicates that the BTCB account was opened in June 1998, with three account signatories, Requena, Betts and Royer. Over the next 2 years, Security Bank provided primarily three services to BTCB: a checking account, a "supernow account" which functioned as a savings account and increased the interest paid on BTCB deposits, and access to Security Bank's wire transfer services.

Monitoring the Account Activity. The evidence indicates that, once the BTCB account was opened, Security Bank failed ade-

¹⁶³ In June 2000, Dominica was named by the Financial Action Task Force on Money Laundering, the leading international anti-money laundering organization, as one of 15 countries that failed to cooperate with international anti-money laundering efforts.

quately to monitor the account activity and failed to provide effective responses to repeated signs of suspicious activity.

The international department head said that BTCB was “a very big account” for Security Bank, and BTCB was its largest foreign bank client. An analysis of the BTCB account transactions shows that, over the course of 2 years, more than \$50 million moved through its Security Bank account. The initial deposit of \$3.5 million was followed 2 days later by a wire transfer of \$3.6 million from BTCB’s account at PaineWebber’s clearing firm, Correspondent Services Corporation. Over the next two years, the account saw 16 transactions involving \$1 million or more, with the largest involving \$6.5 million. Many of the transactions appear associated with matters under civil or criminal investigation or otherwise open to question.¹⁶⁴ In addition, Security Bank account statements and wire transfer documentation show numerous transactions over two years involving persons or companies closely associated with BTCB and collectively involving more than \$3.5 million.¹⁶⁵ Although BIV personnel considered similar transactions signs of possible “self-dealing,” Security Bank personnel indicated that they had felt no concern nor asked any questions about BTCB transactions involving affiliated parties.

When asked about BTCB’s account activity, Security Bank personnel told Minority Staff investigators that they had never witnessed evidence of actual illegal activity in the account and had not been concerned about particular transactions. One Security Bank employee said that they had expected a correspondent account to show large movements of funds, particularly when, in the case of BTCB, the bank also owned a securities firm.

Security Bank personnel also described a number of troubling incidents over the 2 years the account was open, involving law enforcement inquiries, BTCB attempts to include Security Bank’s

¹⁶⁴ These transactions included the following:

- \$3.8 million in deposits and \$3 million in withdrawals involving the Koop fraud (see explanation of Koop fraud in the appendix);
- \$2.3 million in deposits and \$2 million in withdrawals involving companies or persons associated with the Cook fraud (see explanation of Cook fraud in the appendix);
- \$770,000 in deposits and \$10,000 in withdrawals involving Zhernakov, Chatterpaul or Free Trade (see explanation of the Gold Chance fraud in the appendix);
- \$10 million in deposits and withdrawals involving McKellar, Garner and possibly the JVV high yield investment funds (see explanation of the JVV interpleader action in the appendix);
- \$1 million deposit by Tiong, and \$30,000 in withdrawals and an attempted \$200,000 withdrawal involving companies or persons associated with the KPJ Trust (see explanation of the Tiong \$1 million investment in the appendix);
- \$443,000 in deposits and \$320,000 in withdrawals involving companies associated with Scott Brett (see explanation of Brett investors in the appendix); and
- \$600,000 in deposits and \$500,000 in transfers involving Global/Vector Medical Technology (see explanation in the appendix).

¹⁶⁵ These transactions included:

- \$2 million in deposits and withdrawals involving Global Investment Fund, S.A., a BTCB affiliate;
- \$1.3 million in payments to John Long or his companies Republic Products Corporation and Templier Caisse S.A.;
- \$950,000 in deposits and withdrawals involving FEC Financial Holdings;
- \$239,000 in payments to Requena, BTCB’s president;
- \$134,000 in payments to Mavis or Anthony Betts, relatives of George Betts, BTCB’s chief financial officer, or to Lavern Erspan, a woman associated with Mavis Betts;
- \$110,000 in payments to Mary Brazie, wife of Charles Brazie, a BTCB vice president; or to Brazie’s apparent landlord, Clifford Shillingford;
- \$105,000 in payments to Stuart K. Moss, a U.K. resident who works with BTCB; and
- \$56,000 in payments to Ralph Hines, who performed work for BTCB.

name on documents associated with multi-million dollar transactions, BTCB's high yield investment program, and BTCB's involvement with Internet gambling.

The first incident occurred in July 1998, 2 months after the account was opened, when the bank received inquiries from U.S. law enforcement about BTCB account transactions involving William Koop. In response, a July 27, 1998 Security Bank memorandum shows that the bank contacted two U.S. banking agencies, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, to request information about BTCB. The banking regulators advised Security Bank to be "cautious" due to concerns that BTCB was possibly involved with "bogus guarantee[s]" known as the "Grenada Guarantees," but "there were no prohibitions [on] doing business" with BTCB. The memorandum noted that a Secret Service agent had also checked but found "no adverse information" on BTCB.

A month later, Security Bank sent a letter dated August 27, 1998, to the Federal prosecutor handling indictments related to the Koop fraud and included the following request:

If there comes a time that your office feels that information should be given to us concerning British Trade and Commerce Bank that indicates that we should not do business with British Trade and Commerce Bank, it would be appreciated if you would so advise.

Security Bank personnel said that the prosecutor advised calling U.S. banking regulators, but never suggested closing the BTCB account. That Security Bank made inquiries to four different government agencies shows it had concerns about BTCB and made reasonable due diligence inquiries about the bank, but received no adverse information indicating the account should be closed.

Additional troubling incidents, however, followed. Security Bank memoranda describe three separate occasions, for example, on which it had to insist on BTCB's removing its name from documentation related to multi-million-dollar certificates of deposit ("CDs"). The incidents, which took place over a two month period in late 1998, involved BTCB-prepared CDs for \$1 million, \$6 million and \$20 million.¹⁶⁶

¹⁶⁶The three incidents were described in Security Bank documentation as follows:

- A 10/21/98 Security Bank memorandum stated that BTCB had telephoned to request the bank's approval of a \$6 million CD for "The Northfield Trust," which included language stating that the \$6 million "will be paid by the issuing Bank or at the counters of Security Bank." The memorandum stated that Security Bank would not honor the CD and its name "must not appear" on the paperwork.
- A 11/5/98 Security Bank memorandum stated that 2 weeks later, BTCB sought approval of a \$20 million draft CD for "Heller Securities" which an accompanying letter stated was "payable upon presentation at our counter as the Issuing Bank, or upon three (3) banking days advance notice . . . at the counter of our U.S. correspondent bank, Security Bank." The memorandum stated that Security Bank "will not make any commitment like that one, as . . . discussed before." Security Bank's international department head indicated that he considered this CD "very similar" to the rejected CD, and was "concerned" that BTCB was not familiar with or did not understand U.S. banking rules regarding CDs. He said that he personally spoke with Betts of BTCB and told him that the wording created a possible liability for Security Bank. He said that Betts told him that he was "wrong" and Security Bank would have "no responsibility" for the transaction. He said Security Bank had nevertheless insisted on removing its name from the letter.
- A Security Bank memorandum dated about 1 month later, on 12/10/98, stated that a draft \$1 million CD containing the same wording as the rejected CD from October, had been faxed by Banco Solidario de Costa Rica which was attempting to verify it. The memorandum said that Security Bank informed the Costa Rican bank that it "did not accept

Another troubling incident, in November 1998, involved a sudden influx of over 300 checks, primarily from U.S. residents in amounts ranging from \$100 to \$10,000, which BTCB presented to Security Bank for clearing. All of the checks were made out to LBM Accounting, a Bahamian firm that allegedly provided accounting services to international business corporations.¹⁶⁷ Security Bank personnel indicated to BTCB that the bank “didn’t like that type of deposit,” and would not clear similar checks in the future. The bank records contain no evidence that BTCB attempted to deposit those types of checks again.

Another incident, which began with a \$1 million wire transfer by an individual from Malaysia named Tiong to BTCB’s account in September 1998, escalated after a February 1999 letter from Tiong demanded that Security Bank return his funds.¹⁶⁸ The letter stated that the wire transfer documentation had instructed Security Bank not to accept the funds unless it agreed to return them a year later. The Tiong letter stated that, because Security Bank had not acknowledged that condition prior to accepting the \$1 million, he wanted his money back. Telephone conversations and correspondence followed involving Security Bank, BTCB and Tiong. Security Bank sent Tiong a letter denying any liability in the matter. Security Bank’s international department head indicated that this incident had raised concern that BTCB might be, again, misusing Security Bank’s name in dealing with its clients.

Still another incident took place during the summer of 1999, when Security Bank received a fax dated August 19, 1999, from a company called Actrade Capital asking it to confirm a \$1 million “Standby Letter of Credit.” The standby letter of credit by BTCB was accompanied by a document stating that the “Confirm and Paying Bank” was Security Bank. Security Bank sent a fax the next day to Actrade Capital stating that it “has not and will not confirm this letter of credit[.] [T]he name of Security Bank, N.A. has been used without our authorization and we do not have or accept any liability on this matter.” The international department head indicated that he personally told Betts at BTCB “don’t do this anymore,” because BTCB had no credit relationship with Security Bank and would not confirm its letters of credit. He said this incident had caused additional concern about BTCB.

Security Bank reported that it later received, on three occasions, civil subpoenas or law enforcement inquiries about these and other incidents involving BTCB clients.

In addition to these incidents, at some point during 1998 or 1999, according to the international department head, BTCB asked Security Bank to consider providing them with a line of credit. He said that Requena talked to him personally on several occasions about obtaining credit from Security Bank. He said that he did not support extending credit, however, because of the bank’s “unusual” activities. He indicated, for example, that BTCB was not engaged in the typical international trade or lending activities engaged in by

any responsibility and that the document had no validity for us.” The international department head said that he had, again, become worried. He said that he had thought BTCB either was acting in good faith but did not understand U.S. banking law, or that it was trying to take advantage of Security Bank.

¹⁶⁷ This company is also discussed in the case history on American International Bank.

¹⁶⁸ This matter is described in more detail in the appendix.

their other foreign bank clients. He said that Requena had explained that BTCB was instead an “investment bank” engaged in investing in “high yield paper.” He said that Requena had indicated BTCB would, for example, invest client funds, earn a 20% return, pay 15% to their clients, and keep 5% for the bank. Security Bank’s international department head said that he had “never heard” of investments with such high rates of return, and did not understand “how it is done.” He said that BTCB was also involved in unusually large credit transactions—involving \$1 million, \$6 million, even \$20 million—that Security Bank itself did not have the capital to handle. He said, “I couldn’t understand their activities.” He said that, because he could not understand BTCB’s high yield investment activities or its multi-million-dollar letters of credit, he had declined to recommend extending BTCB a credit relationship.

The international department head stated, however, that while he did not support extending BTCB credit, he did not support ending the relationship either. He said that, while some of the BTCB transactions were worrying, Security Bank had a “good relation” with BTCB, the BTCB account had “good balances,” and the transactions were ones that Security Bank felt it had “under control.” He said that the inquiries made about the bank with U.S. banking regulators and the Secret Service had also reassured them about BTCB, so the account was allowed to continue into 2000.

Anti-Money Laundering Controls and Oversight. Discussions with Security Bank’s anti-money laundering personnel and review of its anti-money laundering manual disclosed a number of deficiencies in Security Bank’s written materials and day-to-day monitoring of accounts for suspicious activity, which were illustrated by the bank’s failure to conduct adequate monitoring of the BTCB account.

One key deficiency was that Security Bank’s Bank Secrecy Act (“BSA”) Manual did not direct either the BSA officer for the bank or individual account officers to monitor accounts for suspicious activity. While the BSA Manual provided detailed guidance and procedures for identifying and reporting cash transactions, it contained virtually no guidance or procedures for identifying and reporting suspicious activity. No provisions directed bank employees to report suspicious activity to the BSA officer. No provisions required the BSA officer to examine bank transactions for suspicious activity. No provisions discussed the filing of Suspicious Activity Reports. No provisions even mentioned correspondent banking.

When Security Bank’s BSA officer was asked about his anti-money laundering duties, he did not mention monitoring accounts or transactions for suspicious activity. When asked whether he had ever reviewed the BTCB account, he indicated that he had not because the account had rarely involved cash transactions. He indicated that it was his responsibility to monitor cash transactions, while it was the responsibility of another Security Bank official to monitor wire transfer and other non-cash transactions. The Security Bank official responsible for monitoring non-cash transactions had not reviewed the BTCB account either. He explained that, because bank policy prohibited wire transactions by non-customers, and all customers underwent a due diligence review prior to open-

ing an account, bank policy did not require reviewing wire transfers for suspicious activity, beyond an automatic OFAC screening when a wire transfer was first recorded.¹⁶⁹

In short, Security Bank's policies failed to require any monitoring of wire transfers for suspicious activity and, even if it had required this monitoring, its software made anti-money laundering analysis difficult. The result was that no Security Bank employee, in 2 years, had reviewed or analyzed the nearly \$50 million in incoming and outgoing wire transfers in BTCB's account.

But even if Security Bank had adequate policies, procedures and automated systems in place and its BSA officer had reviewed the BTCB account, it is unclear whether the bank would have identified or reported any suspicious activity. In the words of one Security Bank official, correspondent bank accounts were expected to show "lots of money going in and out." The bank had no procedures calling for heightened scrutiny of correspondent accounts, offshore banks or transactions in bank secrecy jurisdictions.

Closing the Account. Security Bank personnel said the incident that "spilled the cup" with respect to the BTCB account and led to its closure occurred in May 2000, when it discovered BTCB was involving Security Bank in Internet gambling. One Security Bank employee explained that the bank simply did not want to be associated with gambling; another said that all of the other BTCB incidents causing concern had involved single transactions which Security Bank had felt could be controlled, but Internet gambling involved multiple transactions by multiple parties that were beyond its control. In a letter dated May 16, 2000, Security Bank informed BTCB that it objected to use of its name in gambling websites and advised that the BTCB account would be closed "within 30 days of this communication." The account was closed, in fact, about 60 days later in July 2000.

Security Bank personnel indicated that, overall, Security Bank had been careful not to go along with questionable transactions requested by BTCB and had closed the account once Internet gambling problems were uncovered. The personnel stressed that they felt they had never seen any direct evidence of illegal activity by the bank and were not convinced that the bank had been engaged in any wrongdoing. One pointed out that when all of the questionable events involving BTCB were discussed in the same interview, they conveyed a much stronger impression than when the account

¹⁶⁹The Security Bank monthly account statements also contained much less wire transfer information than other statements reviewed in the investigation. A bank official explained that, in 1999, due to increased wire traffic, the bank had purchased a new software system which identified individual wire transfers primarily by providing a unique identification number for each transaction. For example, an outgoing wire transfer might be designated on the monthly account statement as: "OT906020010," without any origination or beneficiary information. An incoming wire transfer might be designated "IN905060020." He said that this software had been selected because, among other features, it enabled the bank's electronic database to process wire transfers more quickly, in part by making more rapid OFAC checks. When the new system was implemented in May 2000, however, it also eliminated the names of wire transfer originators and beneficiaries from the monthly account statements, significantly increasing the difficulty of money laundering analysis. The analysis was more difficult because instead of analyzing wire traffic simply by looking at an account's monthly statement, a second set of documents—the original wire transfer documentation with origination and beneficiary information—would have to be collected and compared to the information in the account statement. Making the work even more difficult was the absence of any Security Bank software capable of analyzing wire traffic data for patterns or unusual transactions. These obstacles to effective anti-money laundering oversight continue today.

was open and each problem occurred and was resolved weeks apart. The international department head said that he felt that Security Bank could not be faulted in its handling of the BTCB account except for “maybe delaying the closing of the account.”

(c) First Union National Bank

First Union National Bank is a major U.S. bank, with over 72,000 employees, \$250 billion in assets, and one of the larger correspondent banking portfolios in the United States. Although First Union’s correspondent banking department rejected a BTCB request for a correspondent relationship, BTCB managed to open a money market account with First Union’s securities affiliate and used it as if it were a correspondent account for almost 18 months, from September 1998 until February 2000. During that period, BTCB moved more than \$18 million through the account. First Union closed the account due to concerns about suspicious activity and to stop BTCB from claiming a correspondent relationship. It subsequently discovered and closed several other First Union accounts associated with BTCB.

Interviews were conducted with First Union employees involved in the opening, administration and closing of the BTCB account and in First Union’s anti-money laundering program. Documentation in First Union files, account statements, and other materials and information were collected and reviewed.

Due Diligence Prior to Opening the Account. The evidence indicates that, in September 1998, BTCB opened a money market account with First Union’s securities affiliate without any due diligence review. BTCB then requested a formal correspondent relationship, but was turned down by First Union due to negative information about the bank.

According to First Union interviews and documentation, on September 17, 1998, First Union Brokerage Services, Inc. accepted a telephone call from BTCB and immediately opened a money market account for the bank, called a “CAP” account. First Union Brokerage Services, Inc., now First Union Securities, Inc., is a subsidiary of First Union Corporation and closely affiliated with First Union National Bank. It is a fully licensed and regulated broker-dealer.

A licensed broker at a First Union Brokerage Services “call center” opened the BTCB account. First Union indicated during interviews that rules in place at the time prohibited opening a CAP account for a bank, but those rules had not been spelled out and the broker was unaware of them. First Union said that research has since determined that no bank, other than BTCB, has ever opened a First Union CAP account, and its rules have since been clarified to prevent any bank from opening a CAP account in the future.

First Union said that the money market account was immediately opened, without any due diligence, on the understanding that the accountholder would subsequently provide a limited amount of account opening and corporate documentation. First Union indicated during interviews that the broker acted in accordance with accepted practice in 1998, although its money market account opening procedures have since been changed. First Union said that its brokers must now complete an initial due diligence

checklist over the telephone prior to opening a CAP account. It said that foreign nationals or nonresident aliens are no longer permitted to open CAP accounts over the telephone; their inquiries are instead directed to First Union's private bank. It said that, if a U.S. citizen or resident alien provided satisfactory oral information in response to the due diligence telephone checklist, a First Union broker could authorize the immediate opening of a money market account during the telephone conversation, subject to a subsequent review by compliance personnel and senior securities personnel.

It is unclear who from BTCB made the call to First Union's securities affiliate. First Union's "New Commercial CAP Account Application" lists two contacts for the account: Ralph Hines and George Betts. The application also provides a U.S. address for the account: "British Trade and Commerce Bank . . . c/o First Equity Group of [Florida], 444 Brickell Avenue." Later bank statements list the same 444 Brickell Avenue address, but send the statements in care of "FEC Financial Holdings, Inc." The CAP account application is signed by Betts.

Within a few months of opening the CAP account, BTCB asked First Union to issue a letter of credit to secure a BTCB credit card account with Mastercard. BTCB was initially directed to First Union's domestic corporate banking personnel. However, when told that BTCB was "chartered in Dominica and owned by Texans," a domestic corporate banker directed BTCB to First Union's international division. First Union records indicate that BTCB contacted three different international bankers at different First Union offices over several months in late 1998 and early 1999, in an attempt to open a formal correspondent relationship, but First Union personnel declined to issue a letter of credit or otherwise establish a correspondent relationship with BTCB.

First Union interviews indicate that its most detailed due diligence review of BTCB was conducted in late 1998, after Hines had contacted a Miami office that formerly belonged to Corestates Financial Corporation, a U.S. bank which had been purchased by First Union. BTCB submitted a large packet of information about its ownership, lines of business and financial status, and offered to deposit \$15 million with the bank. In response, several First Union employees in the international division made inquiries about the bank. One First Union correspondent banker indicated in an interview that he asked three other U.S. banks about BTCB which, by then, had been in operation for over a year. The First Union correspondent banker indicated that he had received uniformly negative reports about BTCB, including statements that the bank was "not reputable" and First Union should "stay away."

The First Union correspondent banker also reviewed the materials provided by BTCB. He said that BTCB had presented itself as having strong ties to the United States, stressing its ownership of First Equity Corporation of Florida, but he was not familiar with that securities firm. He indicated that BTCB's unaudited financial statement as of June 1998, had raised "red flags." He said it had indicated, unlike most banks, that BTCB was involved with investment, rather than lending activities. He noted that BTCB had claimed \$400 million in "securities held for investment and financing" and then listed three "unusual" securities. The first was \$130

million in "Government of Grenada Guarantees," which he said he had "never heard of and could not verify as having the value indicated. The second was \$76 million in "Bolivian Municipal Bonds." He said that Bolivian bonds represented a "very small market," and the large investment figure claimed in the financial statement did not "make sense" to him. He also questioned the value of the third investment, \$140 million in "Russian Government Guarantees." He said that, together, the listed securities were "beyond credibility."

He said the statement's claim that BTCB had \$9 million in retained earnings after just 9 months of operation was also "unusual" and "not credible." He said that Note 8's claim that BTCB had earned \$10 million from "primarily the financing of bonds from the Government of Venezuela" was also "not feasible" since Venezuela was then experiencing economic hardship. He also questioned the \$1 million Treasury stock entry, given BTCB's brief existence. He said that, overall, the financial statement was "not credible." He said that he did not question BTCB about its financial statement, however, since the negative reports on the bank's reputation had already led him to recommend against establishing a correspondent relationship.

Although BTCB's request for a correspondent relationship was rejected, BTCB began to use the CAP account at First Union's securities affiliate as if it were a correspondent account and began to claim a correspondent relationship with First Union. First Union personnel were adamant in rejecting BTCB's claim of a First Union correspondent relationship, calling that characterization of the relationship between the two banks "unfair" and "inaccurate."

Monitoring the CAP Account Activity. The evidence indicates that, about 6 months after BTCB opened the CAP account, First Union began receiving reports of unusual account activity, suspicious letter of credit transactions, and inaccurate claims by BTCB that it had a correspondent relationship with First Union. While First Union quickly detected and analyzed the transactions in the BTCB account, it was slow to take decisive action in response. After first asking BTCB to voluntarily close its account in May 1999, First Union unilaterally closed it 9 months later, in February 2000.

The CAP account opened by BTCB functioned in the same way as a checking account. BTCB made deposits and withdrawals, using wire transfers, deposit slips and checks drawn on the account. First Union paid interest on the deposits and imposed charges for wire transfers, overdrafts and other account activity. First Union sent BTCB monthly account statements. First Union also opened a brokerage account for BTCB, although this account was never used. BTCB used the CAP solely to move funds; it never used the account to purchase any securities.

BTCB opened the CAP account on September 17, 1998, with \$10,000. The account saw little activity for about 6 months.¹⁷⁰ The

¹⁷⁰ Transactions of note included a \$175,000 deposit by BTCB in November 1998, in connection with its requests seeking a letter of credit and correspondent relationship with First Union. In December 1998, BTCB deposited 200 small checks and increased the closing balance to \$252,000. January saw 185 small deposits, BTCB's withdrawal of the \$175,000, and a closing balance of \$187,000. February saw \$279,000 in small deposits, and a closing balance of

next 9 months saw a significant increase in account activity, as millions of dollars began moving through the CAP account. An analysis of the BTCB account transactions shows that, overall during its almost 18 months of existence, about \$18 million moved through the CAP account. Nine transactions involved \$1 million or more, with the largest involving \$6 million. Many of the transactions appear associated with matters under civil or criminal investigation or otherwise open to question.¹⁷¹

April 1999 was the first month of increased account activity, when a \$6 million deposit was made from a First Union attorney account belonging to Robert Garner.¹⁷² This \$6 million deposit was followed by almost \$4 million in withdrawals. The April closing balance was \$2.3 million, more than five times the previous largest balance in the account.

On April 15, 1999, a First Union representative in Brazil sent an email to First Union's international division describing a customer engaged in negotiating a credit arrangement with BTCB which claimed to "have [an] account with First Union National Bank." In response, another First Union employee sent an email stating that a corporate customer in Montreal had reported "expecting to receive a \$30 [million] standby letter of credit" from BTCB who had listed First Union "as a reference." These and other First Union emails in April 1999 expressed concerns about BTCB, Dominica, and whether the CAP account should be closed. One stated: "Dominica is about 20 sq. miles, with mountainous territory. Their business is banana exports. . . . Very dirty offshore banking center." Another said, "I think if we don't feel good about the client, we absolutely must close the account." First Union's international division asked its anti-money laundering personnel to research the activity in the CAP account.

On May 3, 1999, a First Union employee circulated an email about the BTCB account stating the following:

We have a multitude of problems here:

(1) International refused to open this acct originally for cause.

\$467,000. March saw a \$400,000 withdrawal by BTCB which sent the funds to its account at Security Bank. The closing balance in March was only \$16,000.

¹⁷¹These transactions included the following:

- \$2 million in withdrawals from April to October 1999, involving companies or persons associated with IBCL and the Cook fraud (see explanation of the Cook fraud in the appendix);
- \$6 million deposit on 4/26/99, involving McKellar, Garner and possibly the JYW high yield investment funds, followed by 101 outgoing wire transfers totaling \$5.7 million, including \$1 million to BTCB's account at Correspondent Services Corporation and \$1 million to BTCB's account at Security Bank (see explanation of the \$10 million CD interpleader action in the appendix);
- \$1 million deposit on 10/19/99 by Garner, possibly involving the JYW investment funds, followed by multiple outgoing wire transfers to bank accounts around the world;
- \$3 million Gold Chance deposit on 12/15/99, followed by multiple wire transfers to bank accounts around the world (see explanation of the Gold Chance fraud in the appendix);
- \$2.1 million in transfers from July 1999 to January 2000 involving Orphan Advocates, China Fund for the Handicapped, and "Corporation Project of the Rehabilitation of Disable Children" (see explanation of the Gold Chance fraud in the appendix);
- \$185,000 in transfers in November 1999 involving the KPJ Trust (see explanation of the \$1 million investment involving KPJ Trust in the appendix);
- \$220,000 transfer involving Aurora Investments S.A., a company associated with Scoff Brett, a part owner of BTCB (see explanation of Brett investors in appendix); and
- \$300,000 in deposits involving Global/Vector Medical Technology (see explanation in the appendix).

¹⁷²The \$6 million deposit is associated with the JYW interpleader action and is described in more detail in the appendix.

- (2) Customer established an acct via telephone thru CAP in Sept. of 98.
- (3) On 4/26/99, \$6MM rolled into the account, via wire, and half of that rolled out THE SAME DAY, via wire, and went all over the place. . . .
- (4) Customer is indicating that they are a correspondent of First Union (they're not); we need a cease and desist letter and we also need to close this account.
[Emphasis in original text.]

On May 5, another First Union employee forwarded a copy of a BTCB letter discussing a \$6 million letter of credit. The letter by BTCB, dated April 13, 1999, stated that the bank was "ready, willing and able to issue a Standby Letter of Credit in the favor of **US C&R HOLDINGS INC.** for the amount of . . . \$6,000,000." [Emphasis in original text.] An attached 1998 financial statement for BTCB referenced deposits of over \$800,000 at First Union, which apparently led to First Union's being asked to confirm the information.

On May 13, 1999, First Union sent BTCB a letter stating that, in a "written communication with third parties," BTCB had "implied that First Union will somehow act in concert with [BTCB] in a letter of credit arrangement. You are directed to immediately cease and desist from such unauthorized use of First Union National Bank's name, and from any express or implied indication that you have a correspondent or any other sort of relationship with First Union other than as a depositor."

The letter did not, however, ask BTCB to close the CAP account. Instead, explained a First Union correspondent banker in an interview, the decision had been made to make a verbal request to BTCB to close the CAP account. He said that he personally made this request in a May telephone conversation with Ralph Hines who responded with a "belligerent tone." He said they then waited to see whether BTCB would close the CAP account. When asked why First Union did not put the request to close the account in writing or unilaterally close it, the correspondent banker indicated that the bank was worried that it did not have sufficient proof of wrongdoing and BTCB might sue them, so they had decided to try to encourage BTCB to close the account on its own.

BTCB chose not to close the account. Instead, it used the next 4 months to move over \$5 million through the CAP account, including a \$900,000 wire transfer to International Business Consultants, Ltd., a company associated with the Cook fraud, and a \$3 million deposit by the China Fund for the Handicapped for BTCB's high yield investment program.¹⁷³ On August 27, 1999, a First Union representative in Argentina sent an email to the international division indicating that BankBoston had called to confirm a statement by BTCB that it was a correspondent of First Union. First Union's international division replied in an email of the same date:

They are not, but they continue to claim that they have a correspondent banking relationship with First Union. We have asked them to close an unauthorized CAP account that they

¹⁷³For more information, see the explanation of the Gold Chance fraud in the appendix.

opened last year. This is their only claim to a relationship with First Union. We have sent a legal advice to the bank's President, requesting that they stop promoting false facts, and to refrain from using First Union's name again. They are not a correspondent!

This email was "broadcast" to all First Union international offices as a warning about BTCB. Despite the email's exasperated tone, First Union took no further action to close BTCB's CAP account.

The next 4 months saw another \$5 million move through the CAP account, including a \$1 million deposit from the Robert Garner account and \$300,000 from the Vector Medical Technology account.¹⁷⁴ December witnessed the \$3 million Gold Chance deposit, followed by \$3 million in wire transfers to bank accounts around the world.

Closing the BTCB Account. In late December 1999, BTCB attempted to withdraw \$1 million on an account balance of about \$733,000. First Union refused to approve the overdraft and another round of internal emails raised questions about the account, including the risk of monetary loss to First Union. On December 28, 1999, the First Union correspondent banker then in charge of the Americas division decided the time had come for the bank to unilaterally close the account. He telephoned BTCB and informed it that the account was going to be closed and then sent an email to the legal division stating the following:

URGENT!! This account has significant wire and cash letter activity that is suspicious. We need to close account! I just spoke to the . . . accounts Manager at BT&C and I requested for the bank to close the account at once. He requested for me to send a letter to the bank's President. . . . This account was opened by the CAP department without International's authorization, and without any compliance requirements. I have reported this problem to Loss Prevention for over 1 year. It has turned out to be a headache for the bank, as this entity boasts to be a correspondent of First Union National Bank. . . . I need a letter as soon as possible.

In an interview, the First Union correspondent banker said that later the same day, he received a telephone call from Betts in Florida asking for the account to be kept open, at least to the end of the year, to allow completion of ongoing transactions. On December 29, 1999, First Union sent a letter to BTCB stating that the CAP account would allow fund transfers for 10 days and close in 30 days. No significant account transactions took place after that letter, aside from a final \$1 million transfer to Orphan Advocates LLC. First Union notified law enforcement about BTCB's actions, and, on February 7, 2000, First Union closed the CAP account.

But the BTCB story was not over. For 6 months, First Union continued to receive reports of suspicious activity and requests to confirm a First Union correspondent relationship. On January 13, 2000, for example, Huntington National Bank in Cleveland asked

¹⁷⁴For more information, see the appendix, in which the \$1 million Garner transfer is discussed in connection with the \$10 million CD interpleader action and the \$300,000 deposit is discussed in connection with Vector Medical Technology matter.

First Union to confirm a BTCB letter of credit for \$30,000. First Union personnel summed up their reaction with one word: “unbelievable.” First Union sent word that it had no correspondent relationship with BTCB and would not confirm a letter of credit.

On May 1, 2000, First Union received two telexes from BTCB about a \$100 million transaction. The two telexes, which contained the same message, began as follows:

Please advise First Union National Bank Jacksonville, Florida as follows. We British Trade and Commerce Bank confirm with full responsibility the authenticity of the issuance of promissory notes numbers 1–10 with a nominal value of ten million dollars each to in total equals 100 million United States dollars in favor of St. David’s Investment Trust and Bank Co., Ltd.

First Union personnel said their reaction to this \$100 million telex was twofold: “unbelievable” and “this is fraud.”

On May 4, 2000, First Union sent a second “broadcast” warning to all of its international personnel about BTCB. The email stated, “Please be advised that, **under no circumstances**, is business to be conducted with [BTCB] without first contacting me.” [Emphasis in original text.]

On May 8, 2000, First Union sent BTCB a letter stating:

[W]e have become aware of a Brokerage account . . . in the name of [BTCB]. We have also received two unauthenticated SWIFT messages from [BTCB] dated May 1, 2000 confirming the issuance of ten promissory notes in the amount of ten million dollars each. . . . Please be advised that it is our policy to work and maintain accounts only with foreign banking institutions that meet our internal compliance criteria and that fit our line of business criteria. [T]he Bank has ascertained that your company does not fit our requirements. . . . [E]ffective immediately, your above referenced account has been closed. Please refrain from attempting to use this account and from sending First Union National Bank or any subsidiaries thereof transaction related information or requests in the future. . . . [A]ny attempt to use First Union’s services or its name will invite First Union to consider other remedies it may have.

First Union reported the telexes to law enforcement, and placed BTCB on an internal “hotlist” to prevent BTCB from opening a new account.

In July 2000, First Union received an email indicating that a Costa Rican bank was discussing a standby letter of credit with BTCB who was, again, claiming a correspondent relationship with First Union. First Union also learned that BTCB had listed First Union as one of its correspondent banks in the widely-used Polk directory of correspondent banking relationships. One First Union correspondent banker wrote: “Too late . . . it is already in the Polks directory!! We are one of their correspondents listed . . . unbelievable.” But another First Union employee responded, “It’s never [too] late! . . . Polk’s is now going through the update process and has informed us that they will honor our written request to remove our name from BTC’s entry if BTC includes us.” First Union sent a letter regarding the Polks directory on July 21, 2000.

First Union personnel told Minority Staff investigators that the bank's experience with BTCB was an eye-opening lesson about how a foreign bank can misuse a U.S. correspondent relationship. They indicated that they felt BTCB had repeatedly mischaracterized its relationship with First Union, had repeatedly misused First Union's name to lend credibility to questionable transactions, and had moved suspect funds through First Union accounts.

Other BTCB-Related Accounts at First Union. In interviews, First Union personnel indicated that they had since learned of other First Union accounts with ties to BTCB.¹⁷⁵ They indicated that they had closed or were in the process of closing these accounts. First Union also learned from Minority Staff investigators that its correspondent account with Banque Francaise Commerciale ("BFC") in Dominica, had functioned as a conduit for BTCB banking transactions for over 2 years. An analysis of BFC monthly account statements showed transactions linked to BTCB from July 1997 until May 1999. First Union subsequently decided to close the BFC account as well.

(d) Other U.S. Banks

In addition to the bank accounts just examined, BTCB appears to have had access to a number of other U.S. based banks, including past or present accounts at Banco International de Costa Rica in Miami, Pacific National Bank in Miami, U.S. Bank, Bank of Nova Scotia in New York, the Suisse Security Bank and Trust account at Citibank, and the St. Kitts-Nevis-Antilles National Bank account at Bank of America. It may also be functioning through bank accounts opened by First Equity Corporation of Florida, FEC Financial Holdings, Inc., BTC Financial Services or other related entities. It has also carried on business through bank accounts belonging to securities firms, including PaineWebber's Correspondent Services Corporation account at the Bank of New York.

B. THE ISSUES

When it began operations in 1997, BTCB was an unknown, off-shore bank in a small bank secrecy jurisdiction known for weak banking and anti-money laundering controls. BTCB was nevertheless able, within 3 years, to open accounts at several U.S. banks and move more than \$85 million through the three accounts examined in this investigation. Evidence indicates that a significant portion of these funds involved illicit proceeds from financial frauds or Internet gambling. While the U.S. banks examined in this investigation closed their BTCB accounts in 7 months to 2 years, BTCB was able to replace each closed account with a new one, and con-

¹⁷⁵ See chart entitled, "BTCB Related Accounts at First Union National Bank." These accounts included:

- the Robert Garner attorney account, which was opened on 1/20/98, had only a few transactions over 3 years, almost all of which appeared to involve BTCB, and was scheduled for closure in October 2000;
- an FEC Financial Holdings, Inc. account, which was opened over the telephone, operated for about 19 months from 11/12/98 until 6/30/00, and appeared to involve primarily BTCB related transactions;
- a BTC Financial Services account, which was opened on 11/2/99, appeared to involve primarily BTCB related transactions, and was scheduled for closure in October 2000; and
- numerous accounts involving Global/Vector Medical Technology, Inc., described in the appendix.

tinues to operate in the United States today. BTCB's apparent case in opening and utilizing U.S. bank accounts demonstrates how vulnerable the U.S. international correspondent banking system is to a rogue foreign bank intent on infiltrating the U.S. financial system.

Lack of Due Diligence by U.S. Banks

The BTCB case history illustrates problems in the due diligence efforts at each of the three U.S. banks examined in this investigation.

When asked to open an account, all three of the U.S. banks worked to gather information about BTCB's ownership, finances and business activities. The efforts of BIV and Security Bank were made more difficult by the fact that BTCB was a new bank with a limited track record, while First Union was able to draw on reactions to the bank after more than a year of operation. Despite their good intent and initial work, the due diligence efforts of all three are open to criticism. BIV relaxed its requirements for audited financial statements and bank references, and opened the BTCB account prior to compiling a complete file. Security Bank failed to conduct even minimal research into Dominica, waived its usual on-site visit to the bank, and failed to analyze BTCB's financial statement. First Union obtained immediate negative information on BTCB and decided against establishing a correspondent relationship, but failed to close the CAP account which BTCB then used as if it were a correspondent account. None of the three banks appear to have asked BTCB anything about BTCB's own anti-money laundering efforts.

Once BTCB began using its U.S. accounts, new warning signals emerged. All three banks witnessed sudden surges in account activity, involving millions of dollars. All three received telexes or faxes about BTCB's participation in questionable credit transactions involving \$1 million, \$6 million, \$20 million, even \$100 million. BTCB tried to pressure BIV into signing a proof of funds letter containing unusual language. BTCB tried to convince Security Bank that its high yield investment program could earn returns of 20%. BTCB ignored First Union's demands to stop claiming a correspondent relationship.

The U.S. banks' response to these warning signs was indecisive and ineffective. The BIV account officer indicated that it never occurred to her that BTCB might be engaged in wrongdoing. She assumed the sudden increase in account activity was the normal growth of a new bank. She viewed in the best possible light BTCB's letter requests, telex difficulties, and involvement in letters of guarantee for \$100 million. She accepted BTCB's explanation that the repeated cash payments to its personnel involved salary payments. Neither she nor any of her superiors engaged in heightened scrutiny of an offshore bank that, despite its brief existence, remote location and limited assets, was moving millions of dollars through its BIV account. It was only after the BIV team from New York arrived that the BTCB account was reviewed with a skeptical eye, and signs of self-dealing and possible money laundering were followed by the account's immediate closure.

Security Bank personnel did not view BTCB through quite the same rose-tinted glasses as the BIV account officer, but they too gave BTCB the benefit of repeated doubts. Security Bank's international department head indicated that the bank repeatedly had concerns about BTCB's conduct, but felt they never witnessed actual wrongdoing by the bank. Security Bank knew about BTCB's high yield investment program, its lack of lending or trade activities typical of foreign banks, and its involvement in unusual, multi-million-dollar letter of credit transactions. It was aware that at least one financial fraud, committed by Koop, had utilized BTCB's account, and another depositor was fighting BTCB for the return of \$1 million. Security Bank had itself repeatedly warned BTCB against wrongfully involving it in credit transactions with third parties. But Security Bank personnel showed no skepticism or reticence in providing services to an offshore bank in a remote location. The international department head said that he thought he had stopped BTCB transactions misusing Security Bank's name, and had protected the bank against loss by refusing to extend BTCB any credit. The bank's anti-money laundering personnel had assumed a correspondent account would show multi-million-dollar movements of funds and made no attempt to understand the transactions, clients or origins of the funds. The only reason Security Bank closed the BTCB account was because its name began appearing on Internet gambling websites and it did not want to be associated with gambling.

First Union initially displayed a much tougher attitude than BIV or Security Bank toward BTCB. Its initial inquiries produced an immediate negative impression of BTCB, and First Union refused to establish a correspondent relationship. Nevertheless, First Union did not initially recommend or even seem to consider closing BTCB's CAP account. Later, when it began to receive information that BTCB was falsely claiming a correspondent relationship with First Union, misusing the bank's name in questionable transactions, and moving millions of dollars in suspect funds through its money market account, First Union responded with a weak verbal request that BTCB voluntarily close the account. When BTCB refused, First Union took another 9 months, replete with troubling incidents and additional millions of dollars, before it unilaterally closed the CAP account. The incident that finally produced decisive action was an attempted overdraft by BTCB that risked monetary loss to First Union.

Each of the U.S. banks examined in this investigation provided BTCB with access to the U.S. banking system. BIV opened the door to BTCB's U.S. activities, not only by providing BTCB's first correspondent relationship, but also by providing letters of reference for the bank, including the undated general letter relied upon, in part, by Security Bank. Security Bank personnel appeared oblivious to common signs of financial fraud, such as high yield investment programs offering double digit returns, standby letters of credit involving millions of dollars, and a small foreign bank with no lending or international trade portfolio but alleged access to tens of millions of dollars. First Union provided a major boost to BTCB's U.S. profile by allowing it to keep a money market account for 2 years despite mounting evidence of misconduct—a decision of

increasing significance in U.S. financial circles, given the consolidation of the U.S. banking and securities industries and the uneven anti-money laundering controls being applied to securities accounts.

None of the three U.S. banks appeared sufficiently aware of or alarmed by the potential damage that a single rogue foreign bank with a U.S. bank account could cause in the United States. The potential damage is illustrated by the facts of the BTCB case history, with all its suspect transactions, client complaints, correspondent abuses, law enforcement investigations, and prosecutions. Here, a single foreign bank accepted \$8 million in proceeds from the Koop and Cook frauds, facilitating the swindling of hundreds of U.S. investors, with their resulting criminal prosecutions and civil recovery proceedings. It accepted \$3 million in Gold Chance fraud proceeds leading to civil litigation in Canada and related discovery proceedings in the United States. It issued a \$10 million bearer-share CD, resulting in lengthy civil litigation in New York, and took \$1 million from a Malaysian investor who is still trying to recover his money through complaints to officials in Dominica and the United States. These and other BTCB-related investigations and proceedings continue to clog U.S. courts and consume U.S. law enforcement resources, while tarnishing the U.S. banking system with questions about its safety, integrity and money laundering risks. None of it would have happened if the U.S. banks had not opened their doors and their dollar accounts to BTCB, an offshore bank in a suspect jurisdiction.

Difficulties in Seizing Illicit Funds

The BTCB case history also illustrates the legal difficulties involved in seizing funds related to financial frauds from a U.S. correspondent account. The Koop, Cook, and Gold Chance proceedings involve fraud victims seeking the recovery of millions of dollars. In proceeding after proceeding, BTCB has contested jurisdiction and impeded discovery.

In *Schmidt v. Koop*, for example, a defrauded investor filed civil suit in a Federal court in New Jersey to recover \$2.5 million he wire transferred to BTCB. BTCB claimed that the U.S. court had no jurisdiction over it and responded to discovery requests with claims that it had no accounts for Koop or his company. It was only after Koop pleaded guilty to criminal charges and sent BTCB written authorization to disclose information about his accounts that BTCB admitted the existence of five Koop-related accounts and produced limited documents for them, in exchange for being dismissed from the suit. It has not returned any funds to the defrauded investor, even though it may have \$1.3 million in Koop-related funds. In the Gold Chance civil suit, the fraud victims have named BTCB a defendant and are actively seeking return of their funds. BTCB is contesting jurisdiction and has refused to return the disputed \$3 million. In the Cook case, a receiver appointed by the SEC to recover funds for defrauded investors was never told by BTCB that BTCB had invested funds for some of the fraud victims and may still retain possession of some of the money. The SEC receiver is still mulling his legal options for compelling discovery and seizing funds from this bank's U.S. accounts.

BTCB is contesting jurisdiction in the United States, despite its U.S. ownership, affiliation with U.S. firms, numerous U.S. clients and multiple U.S. accounts. It does not volunteer any information about its U.S. business activities, and litigants are not having an easy time investigating or proving them. Should jurisdiction be established, BTCB could then draw upon a body of U.S. law giving it added protections against seizing funds from its U.S. accounts.¹⁷⁶ BTCB's conduct in the legal proceedings suggests that it is well aware of the legal protections afforded to U.S. correspondent accounts and the difficulties involved in obtaining information or funds from an offshore bank in a bank secrecy jurisdiction.

**BTCB MONTHLY ACCOUNT ACTIVITY AT BANCO INDUSTRIAL
DE VENEZUELA (MIAMI OFFICE)**
October 1997–June 1998

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|---------------|--------------------|---------------------|---------------------|--------------------|
| October 1997 | \$0 | \$1,005,000 | \$25,020 | \$980,195 |
| November 1997 | \$980,195 | \$0 | \$25,020 | \$958,052 |
| December 1997 | \$958,052 | \$0 | \$953,473 | \$5,860 |
| January 1998 | \$5,860 | \$49,784 | \$9,413 | \$46,231 |
| February 1998 | \$46,231 | \$1,224,688 | \$820,886 | \$99,980 |
| March 1998 | \$99,980 | \$2,294,532 | \$181,742 | \$2,565,499 |
| April 1998 | \$2,565,499 | \$4,573,517 | \$474,375 | \$6,679,330 |
| May 1998 | \$6,679,330 | \$7,878,012 | \$11,095,470 | \$3,498,560 |
| June 1998 | \$3,498,560 | \$0 | \$3,498,560 | \$0 |
| TOTAL: | | \$17,025,533 | \$17,061,441 | |

Prepared by U.S. Senate Permanent Subcommittee on Investigations, Minority Staff, November 2000.

¹⁷⁶See Chapter V (G) of this report.

BTCB MONTHLY ACCOUNT ACTIVITY AT SECURITY BANK N.A.
June 1998–March 2000
E-Z Checking–01 and Supernow Account–02¹⁷⁷

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|-----------------|---------------------|-----------------------------|-----------------|
| June 1998 | \$0 | \$7,531,481 | \$2,843,531 | \$4,702,514 |
| July 1998 | \$4,702,514 | \$1,959,222 | \$4,311,023 | \$2,349,448 |
| August 1998 | \$2,349,448 | \$2,706,444 | \$4,076,552 | \$983,035 |
| September 1998 | \$983,035 | \$3,503,107 | \$1,362,231 | \$3,128,526 |
| October 1998 | \$3,128,526 | \$9,104,555 | ¹⁷⁸ \$11,525,055 | \$199,781 |
| November 1998 | \$199,781 | \$2,471,456 | \$1,142,509 | \$1,513,716 |
| December 1998 | \$1,513,716 | \$1,256,985 | \$2,436,698 | \$334,430 |
| January 1999 | \$334,430 | \$932,660 | \$1,075,860 | \$139,939 |
| February 1999 | \$139,939 | \$3,927,591 | \$3,346,225 | \$722,161 |
| March 1999 | \$722,161 | \$740,980 | \$1,914,233 | \$41,262 |
| April 1999 | \$41,262 | \$1,776,821 | \$698,192 | \$1,119,728 |
| May 1999 | \$1,119,728 | \$543,072 | \$0 | \$1,726,521 |
| June 1999 | \$1,726,521 | \$1,346,212 | ¹⁷⁹ \$2,603,353 | \$447,978 |
| July 1999 | \$447,978 | \$943,969 | \$885,209 | \$485,338 |
| August 1999 | \$485,338 | \$1,276,015 | \$1,497,505 | \$275,793 |
| September 1999 | \$275,793 | \$1,591,406 | \$1,764,662 | \$100,866 |
| October 1999 | \$100,866 | \$1,233,542 | \$718,733 | \$617,388 |
| November 1999 | \$617,388 | \$1,175,632 | \$1,326,191 | \$236,179 |
| December 1999 | \$236,179 | \$2,285,069 | \$1,907,943 | \$387,808 |
| January 2000 | \$387,808 | \$1,546,739 | \$1,460,796 | \$464,204 |
| February 2000 | \$464,204 | \$1,679,586 | ¹⁸⁰ \$2,187,400 | \$103,244 |
| March 2000 | \$103,244 | \$1,333,168 | \$1,439,092 | \$4,944 |
| TOTAL: | | \$50,865,712 | \$49,310,114 | |

Prepared by U.S. Senate Permanent Subcommittee on Investigations, Minority Staff, November 2000.

¹⁷⁷ Records were subpoenaed from June 1998 to March 2000. The account remained open until July 2000.

¹⁷⁸ Includes \$6 million withdrawal from Supernow Account-02.

¹⁷⁹ Includes \$1 million withdrawal from Supernow Account-02.

¹⁸⁰ Includes \$200,000 withdrawal from Supernow Account-02.

BTCB MONTHLY ACCOUNT ACTIVITY AT FIRST UNION
September 1998–February 2000

| MONTH | OPENING BALANCE | DEPOSITS ¹⁸¹ | WITHDRAWALS ¹⁸² | CLOSING BALANCE |
|----------------|--------------------|-------------------------|----------------------------|--------------------|
| September 1998 | \$0 | \$10,000 | \$0 | \$9,912 |
| October 1998 | \$9,912 | \$0 | \$0 | \$9,941 |
| November 1998 | \$9,941 | \$190,000 | \$0 | \$200,185 |
| December 1998 | \$200,185 | \$52,041 | \$0 | \$252,862 |
| January 1999 | \$252,862 | \$109,441 | \$175,000 | \$187,804 |
| February 1999 | \$187,804 | \$278,980 | \$0 | \$467,449 |
| March 1999 | \$467,449 | \$9,500 | \$462,000 | \$15,941 |
| April 1999 | \$15,941 | \$6,250,445 | \$3,929,780 | \$2,336,908 |
| May 1999 | \$2,336,908 | \$40,000 | \$1,755,818 | \$617,476 |
| June 1999 | \$617,476 | \$3,131,007 | \$1,665,228 | \$2,070,975 |
| July 1999 | \$2,070,975 | \$94,055 | \$2,162,187 | \$3,502 |
| August 1999 | \$3,502 | \$2,367,820 | \$732,900 | \$1,642,611 |
| September 1999 | \$1,642,611 | \$226,263 | \$1,837,721 | \$32,068 |
| October 1999 | \$32,068 | \$1,363,509 | \$806,375 | \$589,525 |
| November 1999 | \$589,525 | \$289,243 | \$804,275 | \$74,951 |
| December 1999 | \$74,951 | \$3,986,184 | \$3,051,363 | \$1,011,538 |
| January 2000 | \$1,011,538 | \$2,655 | \$1,014,175 | \$211 |
| February 2000 | \$211 | \$56 | \$229 | \$0 |
| TOTAL: | | \$18,401,199 | \$18,397,051 | |

Prepared by U.S. Senate Permanent Subcommittee on Investigations, Minority Staff, November 2000.

¹⁸¹ Does not include interest/dividend payments.

¹⁸² Does not include wire transfer or annual fees.

**BTCB RELATED ACCOUNTS
AT FIRST UNION**

| ACCOUNT HOLDER | TYPE OF ACCOUNT | ACCOUNT NUMBER | ACCOUNT STATUS | REMARKS |
|---|---|--|---|---|
| British Trade & Commerce Bank | CAP BRK | 998-387-1373 17624265 | Open 9/17/98-2/4/00 Open 9/17/98-2/4/00 | Key account Never used |
| Banque Francaise Commerciale | DDA-corporate IIDA IIDA | 209-000-140-8334 200-009-067-1052 200-009-060-0120 | Open 5/15/96-now Open 8/28/98-5/17/99 Open 5/14/99-now | |
| FEC Financial Holdings Inc. | DDA-corporate | 202-000-072-6184 | Open 11/12/98-6/30/00 | |
| BTC Financial Services Inc. | DDA-corporate | 200-000-282-1162 | Open 11/2/99-now | |
| Robert F. Garner Attorney At Law | DDA-corporate | 202-000-035-7100 | Open 1/30/98-now | |
| Global/Vector Medical Technologies Inc. | DDA-corporate CAP DDA-corporate DDA-corporate DDA-corporate BRK Money manager | 209-000-294-6659 998-324-6063 200-000-276-0469 200-000-276-0375 200-000-748-1837 24021271 4063000997 | Open 9/30/98-11/01/99 Open 1/6/99-now Open 8/30/99-now Open 9/8/99-now Open 5/10/00-now Open now Open now | Key account \$5-\$8 million \$6-\$7 million Possibly other accounts in First Union private bank |
| Michael H. Salit, M.D. | DDA-individual | 109-001-566-5656 | Open 4/28/98-now | |
| Signal Hill Media Grp | DDA-corporate | 200-000-677-7665 | Open 6/30/00-now | |

Prepared by U.S. Senate Permanent Subcommittee on Investigations, Minority Staff, December 2000

Case History No. 5

HANOVER BANK

Hanover Bank is an offshore shell bank licensed by the Government of Antigua and Barbuda (GOAB). This case history looks at how an offshore bank, operating well outside the parameters of normal banking practice with no physical presence, no staff, virtually no administrative controls, and erratic banking activities, transacted business in the United States by utilizing a U.S. correspondent account belonging to another foreign bank and became a conduit for millions of dollars in suspect funds.

The following information was obtained from documents provided by GOAB, Hanover Bank, and Harris Bank International; court pleadings; documents associated with regulatory proceedings in Jersey and the United Kingdom; interviews of persons in Antigua and Barbuda, Ireland, Jersey, the United Kingdom and the United States; and other materials. A key source of information was a June 26, 2000 interview of Hanover Bank's sole owner, Michael Anthony ("Tony") Fitzpatrick, an Irish citizen who voluntarily cooperated with the investigation. Another key bank official, Richard O'Dell Poulden, a British citizen no longer with the bank, refused to provide either an interview or answers to written questions. Two additional key interviews were conducted on March 30, 2000, with William H. Koop, a U.S. citizen who has pled guilty to laundering money from a financial fraud through Hanover Bank, and on July 23, 2000, with Terrence S. Wingrove, a British citizen fighting extradition to the United States to stand trial on criminal charges related to the Koop fraud.¹⁸³ Wingrove was interviewed at Wormwood Scrubs prison in London. The investigation also greatly benefited from assistance provided by the Antigua and Barbuda Government, the Jersey Financial Services Commission, and the Jersey Attorney General.

A. THE FACTS

(1) Hanover Bank Ownership and Management

The Hanover Bank, Ltd. ("Hanover Bank") was established as an international business corporation on August 12, 1992. According to one document, the bank received its offshore banking license the same day; according to another, the license was actually granted 4 months later on December 8, 1992. As of this writing, Hanover Bank remains a fully licensed offshore bank. Throughout its existence, the bank has had no physical office or permanent staff other than Fitzpatrick, the bank's sole owner, who operates the bank from his residence in Ireland.

Hanover Bank's Formation. When asked how Hanover Bank got started and how he ended up as its sole owner and chief executive despite a lack of banking experience, Fitzpatrick provided the following information. Fitzpatrick indicated that, in 1992, when he

¹⁸³ See *United States v. Koop* (U.S. District Court for the District of New Jersey Criminal Case No. 00-CR-68); *United States v. Wingrove* (U.S. District Court for the District of South Carolina Criminal Case No. 0:00-91); and *United States v. Cabe* (U.S. District Court for the District of South Carolina Criminal Case No. 0:00-301). See also the description of the Koop fraud in the appendix.

decided to try to open an offshore bank in Antigua and Barbuda, he realized he would need assistance from persons with banking experience. Fitzpatrick stated in his interview that he was “not a banker” and did not have any banking experience prior to his involvement with Hanover Bank. He said that his business background was in marketing, and later noted that he had never “gone to university.” A copy of his resume, which he submitted to GOAB in 1993 in connection with Hanover Bank, lists credentials in the field of journalism and public relations, including serving from 1981-82, as public relations advisor to the Honorable Charles Haughey, then Prime Minister of Ireland.

Fitzpatrick turned to two individuals with banking experience to help him establish Hanover Bank. The first was Richard O'Dell Poulden, a British citizen with whom Fitzpatrick had done business in the past. He said that he turned to Poulden, because Poulden's credentials, which include a London and Harvard Business School degree, an Oxford law degree, and work at a leading merchant bank and accounting firm, would impress GOAB authorities, and because Poulden's business connections would help attract deposits for the bank. He said that Poulden agreed in a telephone call to serve as the bank's nominal owner and chairman.

The second individual with banking experience who helped Fitzpatrick establish Hanover Bank was William W. Cooper.¹⁸⁴ Fitzpatrick said that he met Cooper through the Antiguan office of PriceWaterhouse (now PriceWaterhouseCoopers), an accounting firm he had contacted for assistance. Fitzpatrick said that he worked with one of the PriceWaterhouse partners, Don Ward, to set up the bank. He said that Ward introduced him to Cooper, an American who was an Antiguan resident with extensive banking experience and who owned Antigua Management and Trust, Ltd., which was experienced in obtaining bank licenses. He said that GOAB law required a local director for each of its banks, and Cooper had agreed to serve as Hanover Bank's local director. He said that Ward also introduced him to Justin L. Simon, an Antiguan citizen who was then legal counsel to PriceWaterhouse and who agreed to serve as the bank's local registered agent, another requirement under GOAB law. He indicated that PriceWaterhouse prepared the paperwork necessary to “set up the bank for me.”¹⁸⁵ Fitzpatrick said that he paid PriceWaterhouse a total of \$25,000, of which \$10,000 went for the bank's initial licensing fees.

GOAB documentation corroborates this description of Hanover Bank's formation. The August 1992 application to establish Hanover Bank Ltd., for example, lists Cooper and Simon as the company's original “incorporators,” as does the company's articles of incorporation. The company's by-laws state that the “initial Board of Directors shall consist of the following members: Justin Simon, Richard O'Dell Poulden and Antigua Management & Trust Ltd.” [Lower case letters added to original text.] The banking license application names the same three “proposed directors” for the bank. Although Fitzpatrick's name does not appear on any of the 1992 in-

¹⁸⁴ Cooper is also associated with American International Bank, another case history examined in this investigation.

¹⁸⁵ Fitzpatrick and Poulden also established Hanover Nominees Ltd., described in Fitzpatrick's resume as a “marketing subsidiary of The Hanover Bank.”

corporation or licensing documents, Simon confirmed that Fitzpatrick was the moving force behind the formation of the bank. Cooper also recalled Fitzpatrick's being associated with the bank from its inception.

When asked, Fitzpatrick indicated that although he was the initial organizer and financial backer of Hanover Bank, he did not undergo any due diligence review by GOAB authorities in 1992. He said that GOAB authorities instead focused on Poulden, who was then the bank's sole shareholder and chief executive. Because Poulden refused to respond to requests for information, he did not provide any description of his role in Hanover Bank's formation. Ward of PriceWaterhouseCoopers also declined to cooperate with the investigation and so was unavailable to answer questions about his role in the bank's formation.

In early 1993, Fitzpatrick was listed for the first time in filings submitted by the bank to GOAB as Hanover Bank's sole owner. Notice of his status is recorded in a Hanover Bank corporate resolution which was signed by Fitzpatrick, as sole shareholder, and submitted to GOAB on March 31, 1993. The resolution stated that Hanover Bank had replaced Antigua Management & Trust Ltd. with two new directors, Fitzpatrick and Cooper. The official form notifying the government of this change did not explain how Fitzpatrick had become the bank's sole shareholder, nor what happened to Poulden.

According to Fitzpatrick, Poulden had decided to resign from the bank after the Clerical Medical scandal, described below, and, in 1993, transferred all of his shares to Fitzpatrick, in return for about \$200,000 that was never paid. Simon also recalled a transfer of shares in 1993, and promised to look for the official notification to the government of the change in bank ownership. Although neither Fitzpatrick nor Simon produced documentation to substantiate this explanation of how Fitzpatrick assumed control of the bank, the investigation found no evidence to contradict it. It is undisputed that, from 1993 to the present, Fitzpatrick—a man without any banking experience—took control of Hanover Bank and served as its sole owner and chief executive.

Hanover Bank Management. Hanover Bank's chief executive, holding the titles of Chairman of the Board and Managing Director, has long been Fitzpatrick. The bank has no other paid staff, either on a management or clerical level, although Fitzpatrick indicated that the bank could hire employees on a part-time basis if needed and has paid commissions to individuals in the past for bringing in deposits or performing other services. Fitzpatrick said during his interview that it had always been his intent to hire professionals to manage Hanover Bank, but the persons he had dealt with had "never delivered," and he had essentially been operating the bank on his own "most of the time." He said that he believed his lack of banking experience and misjudgements had contributed to problems at the bank.

GOAB documentation does not identify Hanover Bank's management team other than Fitzpatrick, but does record 8 years of frequent changes in Hanover Bank's directors, including nine individ-

uals and one company.¹⁸⁶ The Bankers Almanac, a leading source of information about banks worldwide, states in a 1999 entry for Hanover Bank that the bank had five employees, including three executives besides Fitzpatrick: John Burgess, described as the bank's "general manager"; Brian Shipman, in the bank's "International Division"; and Jeffre St. James, in the bank's "Foreign Exchange & Documentary Credits" division. Older versions of the Bankers Almanac list Poulden as the general manager and Peter Coster as the head of correspondent banking. When asked about the Bankers Almanac information, Fitzpatrick said the named individuals had been bank employees or officers in the past, although never "full time." However, Burgess told a Minority staff investigator that, although he had received commissions from the bank and did "not want to embarrass Tony," he had never been a Hanover Bank employee. When told that the Bankers Almanac described him as Hanover Bank's general manager, Burgess laughed and said, "That's the first I've heard of it."

Proposed Bank Sale in 1998. Fitzpatrick indicated in his interview that he had attempted several times to sell Hanover Bank and was still interested in selling it. He said that one set of negotiations took place in 1998, when Poulden telephoned him unexpectedly and asked whether he would consider selling Hanover Bank to a group of Japanese stockbrokers looking to form a financial group. Fitzpatrick indicated that he would, and said it was unclear whether Poulden was representing the group as an attorney or as a business partner who might become one of the bank owners. He said that Poulden introduced him to Theoddor Tsuru and Takuma Abe, two Japanese businessmen who appeared to be part of the group negotiating to buy Hanover Bank, although Poulden never identified the specific individuals involved. Fitzpatrick said that Poulden engaged in detailed negotiations on behalf of the group, including settling on a \$1 million purchase price and proposing to structure the sale by using a company to purchase the bank. He said that the designated company was at first Cranest Capital S.A., a company that appeared to be associated with Tsuru, but it later changed to Societe Suisse S.A., a bearer share corporation then owned by Poulden. Societe Suisse S.A. made an initial payment of 20,000 towards the purchase price, and a second payment of \$100,000 was made from another source, before the deal fell through during the summer of 1998.

¹⁸⁶ Hanover Bank's directors included the following:

4/92 Initial directors: Simon, Poulden, and Antigua Management & Trust Ltd. (AMT), the company owned by Cooper.

3/93 AMT was removed as a director, and Fitzpatrick and Cooper were appointed. Although the status of Simon and Poulden is unclear from the documentation, it appears that Simon remained a director, while Poulden resigned during 1993.

Cooper resigned at some point.

C. Peter Crawshay appointed at some point.

10/97 Crawshay resigned on 10/7/97, and Peter Coster was appointed. Directors were: Fitzpatrick, Simon, Coster.

3/98 Poulden and Theoddor Tsuru appointed directors by bank resolution on 3/12/98, with notice provided to GOAB on 5/11/98, in Hanover Bank's annual report (item 5). Directors were: Fitzpatrick, Poulden, Tsuru, Simon and Coster. Tsuru appointment was later rescinded, and Poulden apparently resigned or his appointment was ended at some point in 1998.

4/99 Coster resigned.

11/99 Mohammad Jawad and Michael Gersten appointed. Directors were: Fitzpatrick, Simon, Jawad and Gersten.

Fitzpatrick said that as part of the purchase negotiations, Poulden had requested and he had agreed to immediately appoint Poulden as the chairman of the bank and to appoint Tsuru as a director. He said that Hanover Bank issued a corporate resolution in March 1998 appointing both men to the board of directors, but never filed formal notice of the change in directors with the government, as required by GOAB law, so the appointments never became final. When asked why the required papers were not filed, he said that he had been keeping them until closure of the deal and awaiting final paperwork from Poulden and Tsuru that never arrived. Fitzpatrick stated that he did not conduct any due diligence review of Tsuru prior to appointing him a bank director, but relied on Poulden's judgment as to Tsuru's reputation and suitability. He said when he later learned of Tsuru's possible involvement in the Casio fraud, described below, he rescinded the Tsuru appointment. He said the Poulden board appointment also ended after the bank purchase fell through.

Documentation obtained by the investigation indicates that, whether or not the Poulden and Tsuru appointments became final under GOAB law, during 1998, Poulden repeatedly represented himself as the bank's chairman. In addition, Hanover Bank's 1997 annual submission to the GOAB announced in Note 5, "two new appointments to the Board of Directors," naming Poulden and Tsuru. Poulden also exercised joint signatory authority over Hanover Bank's correspondent account at Standard Bank, which was opened in 1998. Fitzpatrick explained that he had agreed to make Poulden a signatory on the account, because Poulden had helped convince Standard Bank to open the correspondent account, he thought Poulden would attract new business to the bank, and his group would soon be the bank owner. He said that he did not give Poulden sole signatory authority over the account, because he had to protect the assets of the bank until the purchase was complete. He said that because the transfer of ownership over the bank was still "in transition," it had seemed appropriate for them to share control over the Hanover account and so became joint signatories.

Fitzpatrick indicated that, while serving as bank chairman in 1998, Poulden also became actively involved in the bank's management. He said that Poulden opened accounts, attracted new deposits, and approved all outgoing wire transfers. He said he had communicated with Poulden two or three times per week, usually by telephone or fax. He said that he had also traveled with Poulden to Antigua and introduced him to government officials and other business contacts. Fitzpatrick indicated that Poulden's management role at the bank had ended when the purchase agreement fell through in the latter half of 1998.

Fitzpatrick said that he had entertained other offers to buy Hanover Bank as well. He said that one of the bank clients, Terrence Wingrove, had repeatedly expressed interest in buying the bank in 1998, but never took any concrete action to do so. In 1999, he said, two British residents, Mohammad Jawad and Michael Gersten, had offered to buy the bank for \$500,000. He appointed them directors in November 1999, and notified GOAB authorities. As of December 2000, however, the bank had not yet changed hands.

(2) Hanover Bank Financial Information

GOAB law requires offshore banks to submit annual audited financial statements. Hanover Bank's financial statements for 3 years, 1997, 1998 and 1999, were audited by Vaghela Unadkat & Co., which the investigation has been told is a one-man firm operating out of the accountant's residence in Birmingham, England. These statements show, over a 3-year period, tremendous swings in Hanover Bank assets, liabilities and expenses, as well as significant payments to Fitzpatrick.

The 1997 statement depicted an active bank with rapidly growing earnings, and net profits of over \$1.3 million.¹⁸⁷ It indicated that customer deposits had skyrocketed over the prior year to almost \$14 million, almost all of which would turn out to be related to the Koop and Casio frauds, described below. The financial statement also showed a dividend payment to Fitzpatrick, the bank's sole shareholder, of \$350,000.

The 1998 statement presented a more mixed picture of the bank, but an even larger dividend payment to Fitzpatrick.¹⁸⁸ Net profits were about \$1 million. Customer deposits had fallen from \$14 million to \$650,000. The dividend payment to Fitzpatrick had climbed to \$1.9 million, twice the amount of net profits.

The 1999 statement depicted a much less active and profitable bank.¹⁸⁹ Net profits were 80% lower, at about \$211,000. Customer deposits had fallen another 10% to about \$563,000. No dividend payment was made to Fitzpatrick. This statement covers the period in which, according to Fitzpatrick, Hanover Bank had ceased operations and kept its funds in its solicitor's account in London.

The three financial statements show wild swings in the bank's assets and liabilities. In the space of a year, customer deposits plummeted from \$14 million to \$650,000; Hanover Bank's own deposits fell from \$1.2 million to \$150,000; commission payments dropped from \$344,000 to \$24,000; securities valued at \$5 million

¹⁸⁷ Assets included "[f]ee income" of over \$1.3 million, and "[i]nterest receivable" of over \$1.1 million, both of which showed a tenfold increase over the prior year. Expenses exceeded \$1 million, including "[m]anagement charges" of \$124,500; "[c]ommissions and consultancy fees" of almost \$276,000; travel expenses exceeding \$93,000; and interest charges exceeding \$562,000. The financial statement showed "[c]ash & inter bank deposits" of \$1.2 million; "Government securities" valued at about \$1 million; "[o]ther listed securities" valued at \$4.1 million; and "[b]ills of exchange" valued at \$6.4 million. "Loans and advances" were \$3.4 million. "Issued share capital" was \$1 million, the minimum required under GOAB law. Audit and accountancy fees were a bargain, just \$15,000.

¹⁸⁸ Assets showed fee income had dropped to about \$965,000, while interest receivables had increased to about \$1.4 million. Expenses again exceeded \$1 million, including management charges of \$82,000; commissions and consultancy fees of more than \$344,000; travel expenses exceeding \$71,000; and interest charges exceeding \$645,000. A new expense for "[f]oreign exchange trading losses" exceeded \$186,000. At the same time, "[c]ash and inter bank deposits" had fallen tenfold to about \$150,000. Assets represented by securities were zeroed out, while "[b]ills of exchange" had risen slightly to \$6.5 million. "Loans and advances" had increased significantly to \$5.6 million. "Issued share capital" increased fivefold, from \$1 million to \$5 million, in response to GOAB's new capital requirement for offshore banks. At the same time, the financial statement included a new entry for \$4 million in "[p]romissory notes," suggesting that the bank's \$4 million in additional capital might have been financed through a book entry loan. Audit and accountancy fees remained at \$15,000.

¹⁸⁹ Fee income had fallen to about \$119,000, and interest receivables were down to about \$283,000. Expenses had also fallen, with management charges down to \$60,000; commissions and consultancy fees down tenfold to \$24,000; travel expenses halved to about \$37,000; and both interest charges and foreign exchange losses zeroed out. "Cash & inter bank deposits" were down to about \$66,000. "Bills of exchange" were down tenfold to \$658,000. "Loans and advances" were down a similar amount to about \$630,000. A new category of liability appeared called "Directors loan accounts," for about \$84,000. The promissory note total had increased to about \$4.2 million. Audit and accountancy fees were halved to \$7,500.

disappeared; foreign exchange losses of \$186,000 appeared one year and disappeared the next; dividend payments swung from \$1.9 million to nothing. These financial statements suggest an offshore bank that was neither stable nor engaged in the prudent banking activities typical of a U.S. financial institution subject to safety and soundness regulation.

(3) Hanover Bank Correspondents

Fitzpatrick told the investigation that he kept 100% of Hanover Bank's client deposits in correspondent accounts. Although the Minority Staff investigation never discovered any U.S. bank that opened a correspondent account for Hanover Bank, Hanover Bank nevertheless gained access to the U.S. banking system by using U.S. correspondent accounts belonging to other foreign banks, such as American International Bank and Standard Bank.

American International Bank. Fitzpatrick indicated that when Hanover Bank began operation in 1992, he opened its first correspondent account at American International Bank (AIB), an offshore bank that was also licensed in Antigua and Barbuda. He said that he left this account open for years, despite making little use of it. He indicated that, in 1997, he received a letter from Overseas Development Bank and Trust (ODBT) indicating that AIB had gone into liquidation and ODBT would be opening an office in Antigua and taking over AIB's accounts. He said that he, again, left Hanover Bank's account open and, in a 1997 submission to GOAB, listed "Overseas Development Bank Ltd." in Antigua as Hanover Bank's "banker." He said that he later learned ODBT had closed its Antiguan office, but continued to operate in Dominica.

AIB and ODBT each opened a number of correspondent accounts in the United States, as explained in the AIB case history. By maintaining an account at AIB and then ODBT, Hanover Bank maintained access to their U.S. correspondent accounts as well. Fitzpatrick said that, in 2000, he had telephoned ODBT to see if he could deposit a client's funds in Hanover Bank's account at that bank. He said he was informed that ODBT had unilaterally closed the Hanover Bank account due to inactivity, and he took no steps at that time to re-open it.

Standard Bank/Harris Bank International. Fitzpatrick said that he soon discovered that clients in Europe did not want to deal with a bank whose only correspondent was another Antiguan offshore bank. He said that is why, in 1992, Hanover Bank opened a correspondent account at Standard Bank Jersey Ltd. According to the Bankers Almanac, Standard Bank Jersey Ltd. is a subsidiary of Standard Bank Offshore Group Ltd., and is related to The Standard Bank of South Africa Ltd., a major financial institution with over \$22 billion in assets, and subsidiaries and related companies worldwide. According to the Bankers Almanac, Standard Bank Jersey Ltd. alone has over 200 employees and more than \$600 million in assets.

When asked how Hanover Bank was able to open a correspondent account at Standard Bank Jersey Ltd. ("Standard Bank"), Fitzpatrick attributed it to Pouliden's business contacts. He said that, in 1992, Pouliden served on the boards of several companies, including a venture capital company whose board included

David J. Berkeley, then managing director of Standard Bank. He said that Poulden telephoned Berkeley directly to request a correspondent account for Hanover Bank. He said it was his understanding that Berkeley immediately agreed on the telephone, and the account opening forms were a mere formality. Because Standard Bank declined to respond to requests for information, it has not provided a description of or documentation related to the 1992 account opening.

Fitzpatrick stated that he knew in 1992, that Standard Bank had a U.S. dollar account with Harris Bank International in New York, and that by opening an account with Standard Bank in Jersey, Hanover Bank would be able to transact business through Standard Bank's account in the United States.

Fitzpatrick indicated that Standard Bank closed the Hanover account in 1993, after less than a year, due to the Clerical Medical scandal, described below. However, he said that 6 years later in 1998, Standard Bank opened a new account for Hanover Bank, again after Poulden contacted Berkeley, who was still at Standard Bank. Fitzpatrick explained that, to strengthen the bank in connection with the proposed 1998 sale, Poulden had, again, telephoned Berkeley and reached him at an airport. He said that Berkeley gave his approval for the correspondent account during the telephone call, instructed Poulden to wait 5 minutes to give him time to contact a Standard Bank employee, and then to call that employee who would provide him with an account number. He said that Berkeley told Poulden that he could complete the account opening documentation at a later time. He said that the Clerical Medical scandal was not discussed. He said that Poulden followed the instructions and immediately obtained an account number for Hanover Bank from a Standard Bank employee. He said they later met with Standard Bank employees in person and completed the account opening documentation. Fitzpatrick said that Standard Bank should not have opened the account in the way that it did, but it was instructive to him to see that large banks also sometimes broke the rules.

Because Standard Bank declined to respond to requests for information, it has not provided a description of or documentation related to the 1998 account opening. What is known, however, is that Jersey banking regulators subsequently investigated and censured Standard Bank for exercising inadequate due diligence in opening the Hanover Bank account. In a statement issued on July 13, 2000, the Jersey Financial Services Commission stated that, in opening the Hanover Bank account, "the senior officers [at Standard Bank] directly involved failed to follow proper procedures" and "[t]he conduct of the Bank fell well short of the standards expected by the Commission" with respect to due diligence. As a result of the investigation, Berkeley and another senior official left Standard Bank. The Commission's July statement observed: "The Commission is also satisfied that senior management changes in place, including the departure of the officers concerned, have strengthened the management of the Bank." When contacted by Minority Staff about this investigation, Jersey regulators indicated that the facts they uncovered did not match Fitzgerald's description of the 1998 account opening, but declined to provide the text of the report, a de-

scription of their findings or the underlying documentation, because the report had not been made public. The regulators indicated that, as a rule, such reports are not made public, although the Commission had yet to make a decision with respect to the Hanover Bank matter.

Fitzpatrick indicated that Hanover Bank actually used the Standard Bank correspondent account for only about 3 months, primarily from April to June 1998, after which the account was frozen amid questions regarding possibly suspicious activity. Fitzpatrick said the account was actually closed in December 1998 or January 1999.

Documents obtained by the investigation substantiate this description of the Hanover correspondent account at Standard Bank. In response to a Subcommittee subpoena, Harris Bank International provided copies of Standard Bank account statements for 1998 and 1999. These account statements and related wire transfer documentation show Hanover transactions taking place over approximately a 3-month period, with the first on March 30, and the last on June 16, 1998. Harris Bank International also provided a copy of a June 14, 2000 letter from Standard Bank attaching "a schedule detailing all items relating to Hanover Bank which were received and paid through Harris Bank for the whole period during which Hanover Bank maintained accounts with our client." The Standard Bank schedule shows a total of about \$17.4 million in deposits and \$13.9 million in withdrawals moving through the Harris Bank International over the 3-month period. Other documentation indicates that Hanover Bank made use of other Standard Bank correspondent accounts, for example, to transact business in British pounds or Australian dollars. Harris Bank did not have, and Standard Bank did not produce any records relating to the closing of the Hanover Bank account in late 1998 or early 1999.

Hanover Bank has had at least a few other correspondent accounts during its 8 years of existence, including a 1992 account at Lombard National Westminster Bank in Cyprus, and perhaps an account at a bank in Switzerland. The investigation did not attempt to document its non-U.S. correspondent accounts.

No Current Correspondent Bank. Fitzpatrick indicated that, as of his June 2000 interview, Hanover Bank had become inactive and had no correspondent account at any bank. According to Fitzpatrick, all remaining funds in the Hanover Bank account at Standard Bank had been transferred in late 1998 or early 1999 to an attorney trust account belonging to Finers in London, Hanover Bank's legal counsel. He indicated that funds remained in that account, although reduced, in part, by legal fees. The bank's 1998 financial statement shows that Hanover Bank also paid Fitzpatrick a 1998 "dividend" of \$1.9 million, twice the amount of the bank's net profits. It is unclear whether any client deposits were used for the dividend.

(4) Hanover Bank Operations and Anti-Money Laundering Controls

Because the investigation was interested in the day-to-day operations of a shell offshore bank, Minority Subcommittee investigators interviewed Fitzpatrick about how his bank actually conducted

business. His explanations and other information provide vivid details about a bank operating with few, if any, of the administrative procedures and internal controls in place at U.S. banks.

According to Fitzpatrick, Hanover Bank did not have a permanent office or a permanent staff other than himself, and he was not a banker or accountant by training. Fitzpatrick said that he generally kept records associated with Hanover Bank at his residence in Ireland, although Poulden also kept some records during the time he was associated with the bank. Fitzpatrick stated that he did not have “computerized” records for Hanover Bank in Ireland, nor did the bank have an electronic ledger.

Fitzpatrick indicated that, for about a 6-month period in 1997, the bank used the services of an Antiguan company called American International Management Services Ltd. (“AIMS”) to handle Hanover Bank’s back office operations, including administering its client accounts and keeping the bank’s books.¹⁹⁰ He said that he had visited the company in Antigua and found a “very professional” operation handling administrative matters for six or seven “small obscure banks like mine.” He said, however, that Hanover Bank could not afford the \$5,000 per month cost. He also described an unpleasant encounter with the head of AIMS, John Greaves, over what he described as improper disclosures of confidential information to a Hanover Bank client, which led him to sever relations with AIMS and return to operating the bank on his own.

Fitzpatrick said that Hanover Bank kept 100% of its client funds in its correspondent accounts. He said that the bank dealt mostly in U.S. dollars, but also occasionally in other major currencies such as sterling or yen. He said the bank usually had only a few client accounts open at a time, and he kept track of each client’s funds by analyzing the monthly account statements sent by the correspondent banks. He said the monthly statements showed all of the deposits, withdrawals and fees affecting the Hanover Bank accounts, and he would use this information to attribute deposits, withdrawals and fees to Hanover Bank’s individual client accounts.

Fitzpatrick said that Hanover Bank did not routinely prepare bank statements for its clients, nor did it pay interest on client funds. He said that most persons using a bank like his were concerned about confidentiality, and did not want monthly statements sent to them because they did not want others knowing they had an offshore bank account. He said the bank usually prepared account statements only upon request. He described one occasion in 1998, when he and Poulden together typed up statements for two client accounts, the Wingrove and Doi accounts, using Poulden’s computer in England. He said they prepared the statements without assistance from anyone else, using the information in correspondent banks’ monthly statements. His description indicated that it was an unusual and ad hoc effort.

One of Hanover Bank’s clients, Terrence Wingrove, who was interviewed by Minority Staff investigators, confirmed that the bank did not routinely prepare account statements. When asked how he felt about not receiving monthly account statements, Wingrove said, “You don’t go into a fish and chip shop and ask for

¹⁹⁰AIMS is also discussed in the case history for American International Bank.

filet mignon.” He said that he had trusted Fitzpatrick to handle his money properly, without worrying about the paperwork, and had told Fitzpatrick, “If my money goes walkabout, you go walkabout. That wasn’t a threat, it was a promise.” He said that, while Hanover Bank was not the most “efficient” bank, Fitzpatrick had acted as his “personal banker” and provided acceptable service, which was why he had maintained an account there.

When asked how Hanover Bank found clients, Fitzpatrick indicated that it was willing to pay commissions to individuals who brought deposits to the bank. He said the bank also had an entry in the Bankers Almanac, which helped demonstrate to clients that the bank was an established institution with an 8-year track record. He said that the bank did not engage in extensive marketing efforts, which was one reason it had so few accounts at a time.

Subsequent to the Fitzpatrick interview, another Hanover Bank client, John Burgess, voluntarily contacted a Minority Staff investigator and discussed his experience with the bank. Burgess said that for a period of time, from 1997 until early 1998, a Swiss company he controlled, The Trust and Agency Co. (“Tragenco”), had managed a portion of the bank’s business. He said Tragenco had operated under an agreement which authorized it to unilaterally open Hanover Bank accounts for Tragenco clients engaged in investment activities. He said these clients collectively made \$50–\$60 million in deposits and provided Hanover Bank with about \$2 million in earnings, until Tragenco ended its investment program. While the investigation did not attempt to confirm this activity, it suggests the existence of another roster of Hanover Bank clients functioning through another, unidentified correspondent account, perhaps in Switzerland, raising additional questions about Hanover Bank’s account opening procedures and internal controls.

When asked how the bank handled wire transfers, Fitzpatrick indicated that Hanover Bank did not have its own capability to send or receive wire transfers, but worked through its correspondent banks. He said that incoming wire transfers were handled entirely by the correspondent bank, which unilaterally decided whether to accept the incoming funds and credit them to Hanover Bank’s account. He said that he played no role in deciding whether the funds should be accepted. He said that he usually learned of an incoming wire transfer some days after the funds had come in, when he received and reviewed Hanover Bank’s monthly account statement from the correspondent bank. He said that the monthly statement would list all deposits into the Hanover Bank account, virtually all of which would have been made by wire transfer.

Fitzpatrick said that the monthly statements often provided little or no information about particular deposits, and he sometimes had to contact the correspondent bank to get additional information to determine which client account should be credited with the incoming funds. He said, for example, that the wire transfer documentation often failed to name a Hanover Bank account holder as the beneficiary of the funds, instead referencing individuals or companies who were not account holders at the bank. When asked how he knew to attribute these incoming funds to a particular client, Fitzpatrick said that the bank generally had only a few accounts

and he could figure it out. He said that Hanover Bank's clients also often contacted him to let him know funds were coming in and should be attributed to their account.

When asked about outgoing wire transfers, Fitzpatrick explained that he personally approved all outgoing wires. Fitzpatrick said that the outgoing wire transfers were actually made by correspondent bank personnel who would debit the funds from Hanover Bank's correspondent account. He said that the bank would complete an outgoing wire transfer only after receiving written "wire instructions" from Hanover Bank specifying the amount, the beneficiary and the beneficiary's bank, and signed by a person authorized to withdraw funds from the account. He said that he usually faxed the wire instructions from his residence in Ireland to the appropriate correspondent bank personnel.

Fitzpatrick described, for example, how Hanover Bank worked with Standard Bank in 1998 with respect to wire transfers. He said that incoming funds were typically in U.S. dollars and wired to Standard Bank's correspondent account at Harris Bank International in New York. He said that the accompanying wire transfer documentation, identifying the originator and intended recipient of the funds, went to Harris Bank International, and was not routinely forwarded to Hanover Bank. He said that what he received was Hanover Bank's monthly account statement from Standard Bank, which was sent to his address in Ireland. He said that he would review the monthly statement to determine what deposits had been made into the account. However, the monthly statements often listed an incoming amount without any origination or beneficiary information. He indicated that, even when information was provided, he was sometimes unable to determine who was the intended recipient of the funds at Hanover Bank and would have to contact his clients to ask about particular deposits.

With respect to outgoing wire transfers, Fitzpatrick explained that he and Poulden had joint signatory authority over the 1998 Hanover account at Standard Bank, and had to jointly approve all funding withdrawals. He said that, typically, if an outgoing wire transfer involved an account he had opened, such as the Wingrove account, he would initiate a fax with the desired wire transfer instructions and send it to Poulden; Poulden would sign the instructions with no questions asked; and Poulden would fax the instructions to Standard Bank. He said that if an outgoing wire transfer involved an account that had been opened by Poulden, Poulden would initiate the fax to him, he would sign it with no questions asked, and he would fax the instructions to Standard Bank. Standard Bank would then complete the transfer.

Fitzpatrick discussed one incident in May 1998, which suggested that the wire transfer approval process did not always work smoothly. He said that, on the day he was moving to a new residence in Ireland, he received a request from Wingrove for an outgoing wire transfer. He said that he approved the wire and sent the wire instructions to Poulden, without first checking Wingrove's account balance because the bank records were inaccessible during the move. Standard Bank completed the wire transfer, and Fitzgerald later discovered that there was a shortfall in the Wingrove account of more than \$800,000. That meant the outgoing wire

transfer had been paid for with funds deposited by another Hanover client. Both he and Wingrove stated that neither had been aware there were insufficient funds in Wingrove's account to cover the wire transfer. Both said that Wingrove quickly repaid about \$400,000 of the shortfall but, as of July 2000, 2 years later, about \$400,000 plus interest remained unpaid.

Hanover Bank's Anti-Money Laundering Controls. When asked about Hanover Bank's anti-money laundering efforts, Fitzpatrick provided a copy of a 1997, one-page "Policy Statement on the Opening and Conduct of Accounts." Fitzpatrick indicated that he had drafted the policy statement in response to efforts by the Antiguan government to strengthen their banks' anti-money laundering controls. The Hanover Bank policy statement set forth a number of due diligence requirements for opening new accounts, including the following:

- Customers must supply one reference from another banking institution covering the customer's banking history for at least 5 years.
- [A] customer must supply two professional references, by whom the customer has been known for at least 10 years.
- In respect of a corporation, the same references must be supplied for each director as well as for the corporation itself.
- Each and every signatory or proposed signatory of an account . . . must be personally interviewed by a Bank officer prior to the opening of the account.
- [T]he required account opening forms must be completed.
- [T]he original of each signatory's passport must be inspected and a copy taken for the Bank's file.
- [A] notarized statutory declaration, duly legalized, as to beneficial ownership of funds . . . must be completed.
- Cash transactions are prohibited.
- All transactions in excess of USD 50,000 have to be personally authorized by a bank director.

Fitzpatrick said that he was responsible for implementing these due diligence requirements, but admitted that he did not always comply with them. For example, he said that when he opened the Wingrove account in November 1997, a month after issuing the policy statement, he did not perform any due diligence review. He said that he had known Wingrove for several years and was convinced that Wingrove was an established art dealer with access to substantial funds. Fitzpatrick said that, contrary to Hanover Bank policy, he did not obtain any bank or professional references prior to opening the account. He said that he had actually asked Wingrove for these references, but he had not produced them, and Fitzpatrick had opened the account anyway. He acknowledged that there were only two pages of account opening documentation for the Wingrove account, a one-page application form and a 1-page copy of Wingrove's passport photograph. In his interview, Wingrove said that he had signed the account opening documentation while at an airport in England, and never saw or was asked to sign a signatory card for the account.

Fitzpatrick said that although he normally was the only person who opened accounts at Hanover Bank, in 1998 Poulden also

opened them. Fitzpatrick explained that, since Poulден was then chairman of the bank, he and Poulден had agreed that Poulден could open accounts on his own authority, without the prior approval of Fitzpatrick. He said that he had instructed Poulден on how to open an account, by completing certain paperwork and performing a due diligence review on the prospective client, as set out in Hanover Bank's policy statement. Fitzpatrick said that because Poulден was a "practicing barrister" and experienced businessman and seemed to want a successful Hanover Bank as much as he did, he had trusted Poulден to comply with the account opening requirements and never doublechecked his efforts. He said that Poulден had also often told him he had the paperwork for the accounts he had opened, so Fitzpatrick had not bothered to obtain a copy for his files.

Fitzpatrick said he later determined, however, that Poulден had opened some accounts without telling him and had failed to complete any account opening or due diligence documentation. Fitzpatrick was also unaware of what due diligence reviews Poulден had conducted, if any. According to Fitzpatrick and documentation obtained during the investigation, Poulден appears to have opened at least four accounts in 1998:

- (1) Account No. 930509—\$2.4 million deposit made on 4/1/98 for Yoshiki Doi;
- (2) Account No. 930510—opened for Cranest Capital S.A., but no apparent transactions;
- (3) Account No. 930511—\$190,000 deposit made on 4/24/98 for Ted Tsuru and Takuma Abe joint account; and
- (4) Account No. 930512—\$10 million deposit made on 6/2/98 for Morgan Steepleton Investment & Securities S.A.; funds withdrawn and wire transferred 2 weeks later on 6/15/98 to a Morgan Steepleton account at another bank.

Fitzpatrick said that, because there was no account opening or due diligence documentation, he could not say with certainty who the account signatories were or what the relationships were among the accounts. He said that he had no information about Doi other than an address in Japan, and had never met or spoken with him. He thought that Poulден, Tsuru and Abe had administered the Doi account but was not sure who had signatory authority over it. Fitzpatrick thought Cranest Capital and Morgan Steepleton Investment & Securities were companies associated with Tsufu, but was not sure and was unaware who had signatory authority over either of those accounts.

When asked about the \$2.4 million deposit to the Doi account, Fitzpatrick said that he first learned of that deposit when reviewing Hanover Bank's April 1998 account statement from Standard Bank. He said the amount "surprised" and "delighted" him, because he assumed it was the result of Poulден's efforts to bring new deposits to the bank and provided proof that Poulден had access to individuals with substantial funds. He said that after he saw the deposit, he telephoned Poulден who told him about opening the account for Doi. Fitzpatrick said that he did not know the purpose of the deposit or the source of the funds.

When asked what had happened to the \$2.4 million, Fitzpatrick said that a number of large outgoing wire transfers initiated by Poulден had utilized funds from the Doi account.¹⁹¹ Fitzpatrick thought these transfers were used, in part, to purchase an oil company in Texas and a securities firm in New York;¹⁹² to pay legal or consulting fees; and to help finance the purchase of Hanover Bank.¹⁹³ Fitzpatrick said that another \$400,000 was inadvertently withdrawn from the Doi account in connection with the Wingrove overdraft. He said that he wrote to Doi several times about the overdraft, but Doi had never responded or requested the return of his \$400,000, which Fitzpatrick said he found surprising and suspicious.

When asked about the \$10 million deposit in June and its withdrawal 2 weeks later, Fitzpatrick indicated that he did make inquiries about those wire transfers at the time. He said that Poulден had told him the \$10 million was going to be used to purchase "prime bank notes," and that Poulден was acting as a middleman in the transaction, between the sellers of the notes and the purchaser, Tsuru. Fitzpatrick said that Poulден had agreed with him that it was a scam, since prime bank notes are fictitious instruments with no tradeable market, but Poulден said he had been unable to convince Tsuru not to go forward with the purchase. Fitzpatrick thought, in the end, however, the purchase had not gone forward. Fitzpatrick said he did not know Tatsuya Omura, the person identified on the wire transfer documentation as the originator of the \$10 million deposit, nor did he know the source of the funds. He also had no information about the Morgan Steepleton account to which the \$10 million was transferred.

Fitzpatrick was also asked about Hanover Bank's lending activities. He said that Hanover Bank did not engage in regular lending, but occasionally issued a letter of credit, certificate of deposit or loan, which he would approve. The few credit transactions examined during the Minority Staff investigation presented additional evidence of questionable operations at the bank. For example, an April 3, 1998 letter signed by Fitzpatrick stated that Doi had \$16.5 million in his account, even though bank records indicate that the account never held more than \$2.4 million. When asked about the letter, Fitzpatrick said that Doi had asked for a "temporary loan," and Hanover Bank had engaged in a "book transaction" in which it loaned him the funds and he repaid them a few days later, re-

¹⁹¹ U.S. bank records show outgoing transfers totaling over \$1.3 million, including \$300,000 on 4/6/98; \$100,000 (in two \$50,000 payments) on 4/9/98; \$300,000 on 4/9/98; \$150,000 on 4/20/98; \$400,000 on 5/15/98; and \$100,000 on 6/19/98, that were apparently initiated by Poulден or associated with the accounts opened by Poulден. Other bank records show outgoing transfers of 135,000 (U.S. \$225,000) on 4/21/98; and 130 million Japanese yen (U.S. \$500,000) on 5/29/98.

¹⁹² The \$300,000 payment on 4/9/98 was made to an account at Texas Commerce Bank N.A. for "Anglo Gulf Energy Inc." Articles of incorporation for Anglo-Gulf Energy Inc., filed in Texas in October 1997, indicate that it is a Texas corporation and Poulден was one of its two initial directors. An article in *Private Equity Week*, dated 8/10/98, states: "Anglo-Gulf Energy Inc. of Spring, Texas, is raising \$3 million through a private placement of common stock. . . . Alden Capital Markets Inc. of New York is acting as agent for a sales commission of \$300,000." It is possible that Alden Capital Markets Inc. was the securities firm referred to by Fitzpatrick.

¹⁹³ With respect to purchasing Hanover Bank, Fitzpatrick indicated that he thought Poulден had obtained approval to transfer \$100,000 from the Doi account, in two \$50,000 payments on 4/9/98, to Fitzpatrick's personal bank accounts, in partial satisfaction of the bank's proposed \$1 million purchase price. When asked whether Doi was one of the Japanese stockbrokers buying the bank, Fitzpatrick said that was never made clear.

turning his account to its original status. When asked where Hanover Bank had obtained the capital to make a \$16.5 million loan, Fitzpatrick said that it was “just a book transaction” that took place on paper and did not involve actual funds. He said that Poulden had drafted and asked him to sign the letter. He said he had trusted Poulden “one hundred percent,” thought Poulden would not want to get him or the bank into trouble, and so had done as he asked in signing the letter. Fitzpatrick could not provide any other information about the transaction. A second questionable credit transaction, involving a \$1 million letter of credit issued to an individual seeking to launder criminal proceeds, is described below in connection with the criminal conviction of Eric Rawle Samuel who once worked for Hanover Bank.

Together, the information collected by the Minority Staff investigation about the day-to-day operations of Hanover Bank show a bank that operated with few formalities, few controls, few records, and few worries about client due diligence or money laundering.

(5) Regulatory Oversight of Hanover Bank

In 8 years of operation, Hanover Bank never underwent a bank examination by its primary regulator, the Government of Antigua and Barbuda. GOAB authorities did not conduct examinations of any of its licensed banks until 1999, previously relying on audited financial statements and other filings prepared by its banks to monitor their activities. In 1999, GOAB authorities initiated a new program for government-sponsored bank examinations and, in 2000, began its first examination of Hanover Bank.¹⁹⁴ The examination completed a review of the bank’s documents in Antigua over the summer and requested an on-site inspection in Ireland in late 2000.

Irish banking authorities have also never conducted an examination of Hanover Bank. Personnel from the Central Bank of Ireland indicated, when contacted by the Minority Staff investigation, that they had been unaware of Hanover Bank’s activities in Ireland. They indicated that they had not known that Fitzpatrick was involved in international banking, that he was the sole owner of Hanover Bank, or that he was keeping bank records and faxing wire transfer instructions from his residence in Ireland. They also indicated that Ireland does not exercise any regulatory authority over Hanover Bank, since it is licensed by GOAB and apparently does not solicit deposits in Ireland.

Although it has not been the subject of routine bank examinations, Hanover Bank has undergone three special reviews by bank regulators. The first took place in 1993, shortly after the bank was licensed, when it was alleged to be involved in the Clerical Medical fraud, described below. U.K. authorities conducted a lengthy investigation, but took no formal action against the bank. GOAB authorities apparently did not investigate or take any action against the bank in this matter.

A few years later, however, as part of a general offshore banking reform effort, GOAB issued a March 24, 1997 notice of its intent

¹⁹⁴ See 8/25/00 letter from the GOAB’s International Financial Sector Regulatory Authority to Elise Bean of Senator Levin’s office, at 2.

to revoke Hanover Bank's license. The specified grounds were the bank's failure to pay its 1996 registration fees and its failure in 1992 to commence banking operations within 6 months of receiving a license. GOAB actually revoked the bank's license 2 days later. Hanover Bank was one of over a dozen banks whose licenses were revoked in the 1997 GOAB reform effort, and it is included in a list of banks that GOAB told the U.S. State Department were closing their doors. But Hanover Bank refused to close. Justin Simon, the bank's local director and registered agent, filed suit in court to overturn the license revocation. According to Simon, the suit was heard by Justice Kenneth Allen in 1997. Although GOAB authorities thought the court had overturned the revocation as a result of that proceeding, Simon indicated that Justice Allen did not actually issue a decision on the merits. He said that, instead, Keith Hurst, then head of the GOAB's International Business Corporations (IBC) Unit, unilaterally reversed the government's position and re-issued the bank's license. The May 30, 1997 certificate reinstating Hanover Bank's license is signed by IBC Director Hurst.

In 1998, U.K. and Jersey banking authorities commenced a special investigation of Hanover Bank after receiving evidence that the bank was conducting illegal banking activities in both jurisdictions, as described below. In July 1998, the U.K. Financial Services Authority (FSA) obtained a court injunction prohibiting Hanover Bank from conducting banking activities in the United Kingdom. The FSA rescinded this injunction only after receiving Hanover Bank's assurance that it would not conduct business in the jurisdiction. Jersey banking authorities conducted a parallel investigation into Hanover Bank's activities in Jersey. This investigation led to its censuring Standard Bank Jersey Ltd. for opening a Hanover Bank correspondent account; alerting U.S. authorities to suspicious activity in Standard Bank's U.S. correspondent account at Harris Bank International related to Hanover Bank; and alerting GOAB authorities to their findings and concerns about Hanover Bank. These actions contributed to the unraveling, of the Koop fraud and the filing of multiple U.S. indictments,¹⁹⁵ as well as GOAB's subsequent decision to conduct an on-site examination of Hanover Bank in 2000.

(6) Money Laundering and Fraud Involving Hanover Bank

The Minority Staff investigation found evidence of fraudulent and criminal activities throughout Hanover Bank's 8 years of operation, involving millions of dollars lodged in various correspondent bank accounts. Three frauds in 1998, involving virtually all of Hanover Bank's clients and 100% of the funds it moved through a U.S. correspondent account, raise particular concerns. Together, they demonstrate that Hanover Bank's inadequate oversight of its few clients, associates and transactions contributed to fraudulent activity and multiple violations of banking, civil and criminal laws in the United States, United Kingdom, Jersey and elsewhere.

¹⁹⁵See appendix for a more detailed description of the Koop fraud.

(a) Clerical Medical Scandal

In 1993, soon after receiving its banking license, Hanover Bank became embroiled in a major financial scandal involving 20 million, a prominent British insurance company called Clerical Medical, and a fraudulent investment scheme involving prime bank notes. Prime bank notes are fictitious financial instruments which typically contain a false promise or “guarantee” by a well-known or “prime” bank to pay a specified amount of funds, and the notes are then fraudulently characterized as available for trade at a discounted price. Fitzpatrick said during his interview that he now knows that no trading market exists for prime bank notes and they are considered a warning sign of financial fraud, but said he did not have that information at the time. The 1993 scandal, highly visible at the time, is still cited on occasion as one of the earliest examples of prime bank note fraud.¹⁹⁶

Fitzpatrick explained that, soon after the bank began operations, Poulden and he began to negotiate a prime bank note investment with Managed Opportunities Ltd., an Isle of Man corporation that managed funds for the Clerical Medical Group. He said the negotiations led to an agreement among Hanover Bank, Managed Opportunities Ltd., and a Cyprus company called Kinitor Ltd., which essentially provided that Kinitor would provide certain prime bank notes in exchange for 20 million to be deposited into a Hanover Bank correspondent account at Lombard National Westminster Bank in Cyprus. Other companies, such as Bankhall Investment Management and Corporate Financial Investments were also involved.

Press reports indicate that after the 20 million was transferred to Hanover Bank’s account at the Cyprus bank in or around June 1993, Clerical Medical claimed the transfer was unauthorized and demanded return of the funds.¹⁹⁷ Legal injunctions and lawsuits followed, freezing the funds in the Hanover account in Cyprus for about a year. Inquiries were launched by two U.K. bodies, the Securities and Investments Board and the Financial Intermediaries, Managers and Brokers Regulatory Association, as well as by the fraud office of the International Chamber of Commerce. Fitzpatrick said that, in the end, Clerical Medical recovered the 20 million, and the lawsuits were settled. He said that none of the inquiries reached any conclusions regarding Hanover Bank’s knowing participation in a fraud. When the Minority Staff contacted the U.K. Financial Services Authority (FSA) for its evaluation of the Clerical Medical matter, the FSA declined to provide any information because, as the FSA stated in a letter, “the Financial Services Act of 1986 . . . does not provide for publication of any report . . . and use of, and/or disclosure to third parties, of information contained in any such report or otherwise obtained in the course of a Section 105 investigation is subject to statutory restrictions.”¹⁹⁸

¹⁹⁶ See, for example, “Primed for fraud,” *Accountancy* (4/95).

¹⁹⁷ See, for example, “Suspension lifted on fund managers,” *Financial Times* (London) (7/19/94); “Clerical Medical regains Pounds 20m,” *The Times* (7/11/94); “British Firm Sues Two Lebanese Men For Embezzlement,” *AP Worldstream* (4/28/94); “SIB investigates switch of Clerical Medical funds to Cyprus,” *The Times* (1/3/94); “Clerical Medical rejects demands over funds,” *The Times* (8/23/93); “Insurer sues over controls of Pounds 20m,” *The Times* (8/14/93).

¹⁹⁸ Letter dated 5/30/00 from FSA to Subcommittee.

The Clerical Medical scandal was the first indication that Hanover Bank was possibly engaging in questionable activity. Despite the lengthy investigations into its conduct, U.K. policies against releasing FSA reports meant that none of the FSA information was made available to the public or persons attempting to evaluate Hanover Bank's track record.

(b) Eric Rawle Samuel Criminal Conviction

In September 1993, just after the Clerical Medical scandal broke, Eric Rawle Samuel was arrested in the United States for offering to launder up to \$12 million through Hanover Bank.¹⁹⁹ In January 1994, Samuel pled guilty to one count of money laundering related to his actions and was sentenced to more than 5 years imprisonment in the United States.

Samuel had "represented himself to be an employee" of Hanover Bank, according to the indictment. Fitzpatrick said in his interview that Samuel was never an employee of the bank, although he had occasionally performed some services for it. According to the indictment, Samuel had traveled to the United States on two occasions, in August and September 1993, to negotiate the sale of letters of credit to be issued by Hanover Bank in exchange for drug proceeds and a \$100,000 fee for each \$1 million laundered through the bank. A publicly available affidavit filed by U.S. law enforcement noted that Samuel had specifically mentioned Hanover Bank's correspondent relationships with Standard Bank in Jersey and Harris Bank in New York in connection with the laundering scheme.²⁰⁰ The affidavit indicated that Samuel had also mentioned Hanover Bank's involvement with a "scam" involving "prime bank guarantees" and laundering funds "from Nigeria."²⁰¹ Samuel was arrested in Atlanta, Georgia, after exchanging a \$1,000,000 Hanover Bank letter of credit for "what he believed to be . . . \$100,000 in cash."²⁰²

In his interview, Fitzpatrick characterized the U.S. prosecution as a case of "clear entrapment." He said that it was his understanding that Samuel had received an unexpected telephone call from someone he knew in the United States, who was secretly participating in a law enforcement sting operation in an effort to reduce his own criminal sentence after an arrest. He said that the individual had apparently told Samuel that he had cash to invest, and wanted to buy a certificate of deposit or letter of credit from Hanover Bank with a face value of \$1 million, for which he would pay \$800,000 up-front and the rest later. He said that Samuel had told him about the proposal, which he had considered essentially a loan request, and he had approved going forward. Fitzpatrick said that he personally drafted the letter of credit Samuel used in the transaction. He said that Samuel then telephoned the person in the United States to inform him that the deal had been approved.

¹⁹⁹ See *United States v. Samuel* (U.S. District Court for the Northern District of Georgia Criminal Case No. 93-CR-420-ALL), indictment dated 10/5/93; "News Release" dated 1/19/94, by the U.S. Attorney for the Northern District of Georgia, announcing guilty plea; "Judgement in a Criminal Case" dated 3/30/94.

²⁰⁰ See *United States v. Samuel*, "Affidavit" dated 9/10/93, paragraph (3).

²⁰¹ *Id.*, paragraphs (19) and (25).

²⁰² *United States v. Samuel*, indictment, paragraph (17).

He said that the person had then told Samuel that he had “dirty money,” and Samuel “fell for it” and said he “didn’t mind” and would accept the cash. He said that Samuel flew to the United States with the letter of credit and met the person at a hotel, where their conversation was apparently recorded by the Federal Bureau of Investigation (FBI). He said that the person had apparently again told Samuel that he had “dirty money” and Samuel had again said he “didn’t mind” and would accept it. He said the FBI then arrested Samuel who spent 5 years in prison.²⁰³

GOAB authorities indicated, when asked about the Samuel money laundering conviction, that they had no knowledge or record of the indictment or Hanover Bank’s involvement. Hanover Bank’s local director and registered agent, Justin Simon, indicated that he thought the indictment had involved a different Hanover Bank and was surprised to hear that Fitzpatrick had acknowledged his bank’s involvement in the facts underlying that prosecution. The Samuel money laundering conviction provided a second strong, and early indication of Hanover Bank misconduct, but news of the conviction apparently never even reached the bank’s licensing authority.

(c) Koop Fraud

William H. Koop, a U.S. citizen from New Jersey, utilized Hanover Bank in a financial fraud in which, from 1997 to 1998, he bilked hundreds of U.S. investors out of millions of dollars through a high yield investment scam.²⁰⁴ In interviews with Minority Staff investigators, Fitzpatrick, Koop and Wingrove offered different and often conflicting views of what happened during the fraud, who was defrauding whom, and who knew what was going on when. Rather than attempt to evaluate their conflicting statements or assign culpability, the investigation focused on how Hanover Bank, whether knowingly or unknowingly, became a conduit for millions of dollars in illicit fraud proceeds.

The evidence indicates that Hanover Bank played a prominent role in the Koop fraud in two ways. First, Koop sent almost \$5 million in fraud proceeds to Hanover Bank, partly in response to claims by Wingrove that Koop could earn returns of 20% or more. Second, Hanover Bank became a featured element in Koop promotional materials. Koop urged potential investors in his fraudulent high yield program to wire their investment funds to his Hanover Bank account and offered, for a fee, to open a Hanover Bank account for any investor wanting an offshore account. Documentation suggests that Koop pretended to open over 200 Hanover Bank accounts for his defrauded clients, eventually charging over \$3,300 to open each new account.

Laundering \$5 Million in Fraud Proceeds. In his interview, Koop stated that he first learned of Hanover Bank in late 1997, during a London meeting in which he was introduced to Wingrove. In a sworn deposition, Koop said that Wingrove had claimed to be

²⁰³ Fitzpatrick said that after the arrest, a friend of Samuel had telephoned him and told him what had happened, and he had sent some money to help pay Samuel’s legal fees. He said that he was never questioned by anyone about the matter and was never asked to testify.

²⁰⁴ For more information about the Koop fraud, see the appendix and the case histories for British Trade and Commerce Bank and Overseas Development Bank and Trust.

a “majority stockholder of Hanover Bank”²⁰⁵ and an international trader who could produce significant returns on short term investments.²⁰⁶ Koop indicated that, after checking into the background of both Wingrove and Hanover Bank, he had decided to open an account and direct some of his illicit proceeds to Wingrove for investment.²⁰⁷

Koop said that he never spoke with anyone else at Hanover Bank, including Fitzpatrick, and did not find out for a number of months that Wingrove had no official position with the bank.²⁰⁸ He said that he thought Wingrove had opened a Hanover Bank account for him, under the name of IFS, for which Koop was the sole signatory, and which paid 20% interest on deposits.²⁰⁹ He said that he later discovered that no account had ever been opened, and all the funds he sent to Hanover Bank had actually been deposited into Wingrove’s account at the bank.²¹⁰

Koop maintained in his deposition that, of the nearly \$5 million that he and his associates directed to Hanover Bank, about \$3 million was supposed to have been deposited into his account, while the other \$2 million was intended for Wingrove, for international investments.²¹¹ Koop said that Wingrove actually took control of all \$5 million and has yet to return a single dollar of these funds. Koop indicated that Wingrove had led him to believe he was investing the funds in artwork and antiques, “currency trading” and “computer chips,” although he did not ask and was not informed about specific trades made with his funds.²¹²

Wingrove maintained in his interview that he never misrepresented his relationship to Hanover Bank and never agreed to make investments of any type other than in art and antiques, which were his specialty. He said that he did promise Koop to produce a 50% return over a 5-year period from the purchase and sale of art and antiques. Both Koop and Wingrove agreed, however, that this promise was never put in writing, and Koop sent Wingrove millions of dollars without any formal agreement.

Wingrove said that “within weeks” of their first meeting, Koop began sending him money to speculate in art. He said, at a later point, Koop arranged for him to meet his associate, Johnny Cabe, who was in London on a business trip. He said that Cabe also began to invest funds with him and introduced him to his London accountant, Winston Allen.

Both Koop and Wingrove indicated that the \$5 million sent to Hanover Bank was part of a larger sum, \$12 million, that Koop directed to Wingrove over the course of 6 months using accounts at several banks. According to Wingrove, the funds sent to Hanover Bank were at first deposited by Koop through his company IFS,²¹³ or by Cabe through his company Hisway International Ministries.

²⁰⁵ Koop deposition in *Schmidt v. Koop* (12/10/98) at 182.

²⁰⁶ *Id.* at 169, 232.

²⁰⁷ *Id.* at 169–71.

²⁰⁸ *Id.* at 225. See also Koop deposition in *Schmidt v. Koop* (3/2/99) at 369.

²⁰⁹ Koop deposition in *Schmidt v. Koop* (12/10/98) at 165–167.

²¹⁰ *Id.* at 165–66, 182–83.

²¹¹ Koop deposition in *Schmidt v. Koop* (12/10/98) at 166, 178–80.

²¹² *Id.* at 169, 227–232.

²¹³ As explained in the BTGB case history, “IFS” refers to several different corporations controlled by Koop, including International Financial Solutions, Ltd. and Info-Seek Asset Management S.A.

Later, Wingrove said, funds were sent to Hanover Bank by third parties in the United States with whom he had no direct contact. He said these third party deposits caused confusion and cash flow problems, because the timing and amounts of the deposits often conflicted with information provided by Koop or Cabe about incoming funds.

Standard Bank account statements at Harris Bank International and a Hanover Bank account statement prepared for the Wingrove account²¹⁴ show numerous deposits related to the Koop fraud, totaling almost \$5 million. Fitzpatrick confirmed that he attributed all of these funds to the Wingrove account. He explained that he had never met Koop or any of the other persons indicted in the Koop fraud and had never opened an account for any of them other than Wingrove. Fitzpatrick indicated that he had no idea that Koop and Cabe thought they had accounts at Hanover Bank and were directing funds into them. According to him, that was why it never occurred to him, when a \$240,000 deposit was made on April 6, 1998, to "International Financial Solutions," or a \$103,000 deposit was made on April 22, 1998, to "Hisway Inc.," that the funds might be intended for an account other than the Wingrove account.²¹⁵ Banking experts, however, have told the Minority Staff that a bank's casual acceptance of deposits earmarked for persons or accounts not associated with the bank is both unusual and improper bank procedure.

Fitzpatrick noted that Hanover Bank had only a handful of accounts in 1998, and the Wingrove account was the only one receiving numerous deposits at the time.²¹⁶ He said that he opened the Wingrove account in November 1997, but Wingrove did not begin using it until March 1998, when Hanover Bank opened its correspondent account at Standard Bank. Fitzpatrick stated, and bank records confirm, that from the day the account opened, Wingrove immediately began moving millions of dollars through it.

The bank records and other information indicate that Wingrove quickly transferred the deposits made into his Hanover Bank account to other bank accounts around the world. Fitzpatrick said that the quick passage of the funds through the Wingrove account did not strike him as suspicious, since he assumed Wingrove was receiving funds from clients and immediately using the funds to

²¹⁴ Fitzpatrick and Poulден prepared one account statement for the Wingrove account, covering the months of April and May 1998. This document was turned over by Hanover Bank in discovery proceedings associated with a U.S. civil suit filed by an investor attempting to recover his funds from Koop, *Schmidt v. Koop* (U.S. District Court for the District of New Jersey Civil Case No. 978-CIV-4305). This suit named Hanover Bank as a defendant, but voluntarily dismissed the bank from the suit after obtaining discovery documents.

²¹⁵ Virtually all of the deposits credited by Fitzpatrick to the Wingrove account were directed to be paid to someone other than Wingrove. For example, the very first deposit into the 1998 Hanover Bank account at Standard Bank was for \$250,000 on March 30, 1998. That deposit was made by wire transfer from the United States and directed the funds to be paid to "Financial Solutions Ltd." Three days later, on 4/2/98, \$1.2 million was deposited into the Hanover Bank account for further credit to "Acct A01001001 INT." Fitzpatrick acknowledged in his interview that Financial Solutions Ltd. was not a Hanover Bank account holder, nor would Hanover Bank's numbering system produce an account number like "A01001001." He said that many of the deposits into the Hanover Bank account referenced companies or individuals who were not account holders at the bank and were unfamiliar to him. When asked how he knew to credit such funds to the Wingrove account, Fitzpatrick said that Wingrove had sometimes called to alert him to expected incoming funds, while other times Wingrove had appeared surprised by particular deposits but agreed they should be attributed to his account.

²¹⁶ Fitzpatrick said that the only other active Hanover Bank accounts in 1998 had been opened by Poulден, who would tell him when incoming funds should be credited to one of his clients' accounts.

purchase artwork. Legal action on behalf of Koop fraud victims has since been taken to seize remaining funds from Wingrove-controlled accounts as well as some of the artwork purchased with the Koop funds.

Advertising Hanover Bank in the Fraud. In early 1998, promotional materials associated with the Koop fraud began to feature Hanover Bank. One example is a packet of information entitled, "The I.F.S. Monthly 'Prime' Program," which Koop gave to potential investors to convince them to place funds in his fraudulent investment program. Section 2 of the packet, entitled "Wire Transfer Instructions," directed all investors to send their funds to the IFS account at Hanover Bank.²¹⁷ The Koop packet also provided background information about Hanover Bank, describing the bank's establishment, services and correspondents, and claiming the bank had "one of the most extensive and complete list of correspondent banks in the entire banking business."

In an early version of the Koop packet, a document entitled "Banking Information" stated:

We have made arrangements with The Hanover Bank to open accounts for each of our clients . . . without any charge to you. If you are interested in doing so, please send a duplicate copy of your bank reference letter and a copy of your passport picture page. . . . IFS will then open an account for you in The Hanover Bank in the name of your trust. We are negotiating for the purchase of this bank at this time.

A later version of this document stated that, "[a]s of April 1st, 1998, IFS has . . . become the largest stockholder . . . of the Hanover Bank." A document entitled, "Trusts and Bank Accounts" offered to set up an offshore trust and bank account at Hanover Bank for \$3,375, with checks made payable to Koop. Both the early and late versions of the Koop packet provided blank copies of Hanover Bank's account opening forms for personal and corporate accounts.

Still another document, dated June 22, 1998, and entitled "A Personal Letter from the Desk of William H. Koop," described how Koop's company, IFS, had been experiencing problems with its prior bank, Overseas Development Bank, and decided to make a "changeover" to Hanover Bank. The document described plans to "re-structure" the bank and move its "operating office from Antigua to the Island of Jersey." The Koop letter promised "in the very near future" to "unveil the positive factors of the bank, showing you the opportunities that it will present to you personally [including]. . . . numbered accounts[,] . . . high interest rates on time deposit accounts[, and] . . . debit cards." The Koop letter remarked that, by June 1998, "[m]ost of you" already had Hanover Bank accounts. Documents collected in civil proceedings associated with the Koop

²¹⁷ These instructions stated in part:

"Deposit Funds To: Harris Bank International, New York, New York
For Credit To: Standard Bank Jersey, Limited, Isle of Jersey, Channel Islands
For Further Credit To: Hanover Bank, Limited
For Further Credit To: I.F.S. Account #A01-001-001."

fraud²¹⁸ included a specific list of investors who supposedly had Hanover Bank accounts. This list identified over 200 individuals by name, providing each with a fictitious account number at Hanover Bank.

Fitzpatrick indicated during his interview that he had no idea at the time that Koop was purporting to open Hanover Bank accounts. Fitzpatrick speculated, and Wingrove separately confirmed, that Koop had obtained copies of Hanover Bank's account opening forms and wire transfer instructions from Wingrove, who had that information. Wingrove stated in his interview that he had sent the Hanover Bank account opening forms to Koop, because Koop had been considering opening an account.

When asked about statements in the IFS promotional materials about purchasing Hanover Bank, Koop indicated during his interview that he and Wingrove had often spoken about buying the bank, but never completed the transaction. In a sworn deposition, Koop said Wingrove had told him he was "going to have a percentage of stock in [Hanover Bank, but] . . . never turned the stock over to me."²¹⁹

Koop created further confusion about his relationship to Hanover Bank and the bank's role in the Koop fraud by incorporating a Dominican company called "Hanover B Ltd." and opening an account at British Trade and Commerce Bank (BTCB) in the name of this corporation. Koop stated in a sworn deposition that he chose the company's name "to correspond to Hanover Bank."²²⁰ Wingrove indicated during his interview that he was well aware of the account at BTCB, thought Koop had opened it in a deliberate attempt to "mirror" the Hanover Bank account, and thought it had helped Koop appear to be opening Hanover Bank accounts for Koop investors. Fitzpatrick indicated that he knew nothing of "Hanover B Ltd.," had never had any contact with BTCB, and had never opened a correspondent account for Hanover Bank at BTCB.

The Koop fraud provides a detailed account of how criminals can use an offshore bank to launder funds and perpetuate financial frauds. It also demonstrates how loose bank controls and non-existent money laundering oversight contribute to the ability of criminals to carry out their activities. Fitzpatrick repeatedly said that he had no knowledge of Koop's misconduct, Wingrove's misrepresentations, or their joint misuse of the bank, yet he also failed to follow basic banking procedures that would have enhanced his awareness and understanding of the transactions taking place through his bank. When asked when he first got wind of possible wrongdoing, Fitzpatrick said that the first indications probably came in the summer of 1998, when he learned that the U.K. Financial Services Authority was investigating Hanover Bank for illegal banking activities in England and Jersey and asking about Wingrove's role at the bank.

²¹⁸ *Schmidt v. Koop*, (U.S. District Court for the District of New Jersey Civil Case No. 978-CIV-4305).

²¹⁹ Koop deposition in *Schmidt v. Koop*, (12/10/98) at 158.

²²⁰ Koop deposition in *Schmidt v. Koop* (3/2/99) at 431.

(d) Illegal Bank Activities in England and Jersey

In 1998, for the first time since the Clerical Medical scandal 5 years earlier, bank regulators in England and Jersey took a close look at Hanover Bank. They determined that the bank was not only operating illegally in both their countries, but was also moving millions of dollars in suspect funds. Their inquiry led to exposure of the Koop fraud, the censure of Standard Bank for providing correspondent services to Hanover Bank, and additional regulatory examination of this offshore shell bank's activities.

The 1998 inquiry began after an individual who was considering depositing funds with the bank asked Jersey banking authorities to confirm that Hanover Bank had a Jersey banking license and a London representative office.²²¹ The Jersey authorities contacted the U.K. Financial Services Authority (FSA) which obtained a search warrant, entered the alleged Hanover Bank office in London, and seized documents. The documents included Hanover Bank "brochures" stating that "[t]he bank holds a license to conduct international banking business on the Island of Jersey" and was "operating within the security of Jersey's stringent banking laws."²²² Another document described the London address as Hanover Bank's "Representative Office."²²³ FSA investigators then interviewed persons associated with the London office, including Terrence Wingrove, Winston Allen²²⁴ and Patrick Makosso-Jouvam.

On July 24, 1998, at the request of the FSA, the High Court in London issued an emergency injunction prohibiting Hanover Bank from conducting banking activities in the United Kingdom, since it was not licensed to accept deposits or operate a representative office.²²⁵ An affidavit filed in the case by an FSA official stated that Wingrove had allegedly represented himself to be Hanover Bank's chairman and promised to pay commissions to Allen and Jouvam if they located new deposits for the bank.

Fitzpatrick said that he first learned of the FSA injunction when, in July 1998, he received a letter from Standard Bank stating that it intended to close Hanover Bank's correspondent account due to

²²¹ See *FSA v. The Hanover Bank Ltd.*, "First Affidavit of Peter Geoffrey Brian Willsher," (7/23/98) at 4. See also FSA Press Release, "The FSA gains injunctions against Hanover Bank Limited, Winston Allen and Patrick Makosso-Jouvam" (7/24/98), reprinted at www.fsa.gov.uk/pubs/press/1998/050.html; and *Terry Wingrove, Winston Allen, Patrick Makosso-Jouvam* (CH 1998 Case No. F4107) before the High Court of Justice, Chancery Division. Neither the FSA nor Jersey authorities would provide copies of the pleadings. However, Fitzpatrick provided copies of certain pleadings to the plaintiff in *Schmidt v. Koop* pursuant to discovery in that case, and plaintiff provided copies to the Minority Staff investigation.

²²² *Id.* at 5.

²²³ *Id.* at 7-8.

²²⁴ Evidence obtained by the Minority Staff investigation indicates that Allen was also associated with the Koop fraud. For example, documentation and interviews establish that, in 1997 and 1998, Allen worked for Cabe, Hisway International Ministries, and related companies. In a sworn deposition, Koop described Allen as "a personal friend" to whom he loaned over \$140,000 to purchase and furnish an apartment in New York. See *Schmidt v. Koop*, Koop deposition (12/10/98) at 209, 211-14, 235-36, 243; and Koop deposition (3/2/99) at 393-95. A 10/1/98 fax sent by Koop to Leonard Bedneau at BTCB, asked the bank to establish a new Dominican corporation called Atlantic Marine Bancorp, Ltd. and "add Winston Allen as an organizer with William H. Koop." Wingrove indicated in his interview that Allen was also involved in Koop's establishment of the Hanover B account at BTCB.

²²⁵ The injunction also prohibited Wingrove, Allen, and Jouvam from "using the name Hanover Bank," describing themselves as bankers, or otherwise engaging in banking activities within the United Kingdom. A second FSA affidavit in *FSA v. The Hanover Bank Limited*, "Second Affidavit of Peter Geoffrey Brian Willsher (7/28/98), asked the court to restrain Wingrove from "making certain misleading, false or deceptive statements" regarding Hanover Bank.

its distribution of inaccurate literature. He said the letter was a “shock,” and he immediately began investigating the matter. Fitzpatrick said he eventually learned of the role of Wingrove, who denied misrepresenting his relationship with Hanover Bank and admitted only to describing Hanover Bank’s willingness to pay commissions for new deposits. Fitzpatrick said that Allen and Jouvam had used a computer to design new Hanover Bank “literature” to market the bank, included incorrect information about its license and ability to transact business in the U.K. and Jersey; and began prospecting for clients.²²⁶ Fitzpatrick indicated that he did not know how many clients had been contacted or how many accounts had been purportedly opened in the Allen-Jouvam marketing effort, but believed no deposits had actually been made to the bank in connection with the effort.²²⁷

On November 26, 1998, the High Court in London withdrew the injunction against Hanover Bank, with the consent of the FSA and on Hanover Bank’s representation that it would not transact any banking business in the U.K. Hanover Bank issued a press release claiming it had been cleared and including the Fitzpatrick statement, “I am delighted the FSA has accepted that the bank was not involved in any wrongdoing.”

But the FSA had not cleared Hanover Bank of wrongdoing. To the contrary, the inquiry led FSA and Jersey authorities to take a much closer look at Hanover Bank and its Standard Bank account. Jersey authorities alerted U.S. authorities to signs of suspicious activity in the Standard Bank account at Harris Bank International, which led to a U.S. law enforcement investigation of the Koop fraud, and the resulting guilty pleas and pending indictments, including the pending indictment of Wingrove. Jersey authorities not only cooperated with the U.S. investigation, but also launched an investigation of Standard Bank, resulting in the censure of the bank and the departure of the bank’s chairman.

Fitzpatrick was asked during his interview, what steps Hanover Bank had taken or could take in the future to prevent third parties like Koop, Wingrove, Allen and others from misusing the bank’s name and pretending to own it. Fitzpatrick responded that he was only one person, the bank was very small, and it was very difficult to guard against third parties misusing the name and reputation of the bank. He said that he had experienced repeated instances of strangers misrepresenting the ownership of Hanover Bank, and there was “nothing [he] can do to stop it” unless others demanded adequate proof of ownership.

He related an incident of several years ago in which his Antigua agent, Justin Simon, telephoned him from Antigua to say that a Brazilian businessman was on the island claiming to be the

²²⁶ In his interview, Wingrove essentially confirmed Fitzpatrick’s description of what happened, but maintained that Allen and Jouvam had prepared the false Hanover Bank literature without his knowledge or involvement.

²²⁷ An analysis of Hanover and Wingrove account statements by Minority investigators, however, found one \$50,000 deposit on May 20, 1998, described in wire transfer documentation as a transfer from “Metro Telecom Inc.” for further credit to “Ottershaw Consultancy Ltd.,” but which was credited to the Wingrove account and appeared to be associated with the Allen-Jouvam marketing effort. When asked about this deposit, Fitzpatrick said that he was unfamiliar with the names and could not recall the circumstances surrounding the deposit. He said it was possible that Wingrove had told him to credit the \$50,000 to his account and he did so without asking additional questions.

Brazilian representative of Hanover Bank and investigating the bona fides of the bank. He asked Simon to have the gentleman telephone him in Ireland. He said that the person called, and Fitzpatrick informed him of his ownership of Hanover Bank. He said the Brazilian told him that a U.S. citizen had shown him documents establishing his ownership of the bank and had asked him to become the bank's Brazilian representative to find new deposits for the bank. Fitzpatrick said that the Brazilian told him he had already raised \$15,000. Fitzpatrick said that when he asked for the name, address and telephone number of the U.S. person claiming ownership of the bank, the Brazilian said that he did not have that information. Fitzpatrick said this was not the only incident of this kind—it had happened a number of times over the years.

(e) Casio Fraud

227 An analysis of Hanover and Wingrove account statements by Minority investigators, however, found one \$50,000 deposit on May 20, 1998, described in wire transfer documentation as a transfer from “Metro Telecom Inc.” for further credit to “Ottershaw Consultancy Ltd.,” but which was credited to the Wingrove account and appeared to be associated with the Allen-Jouvam marketing effort. When asked about this deposit, Fitzpatrick said that he was unfamiliar with the names and could not recall the circumstances surrounding the deposit. He said it was possible that Wingrove had told him to credit the \$50,000 to his account and he did so without asking additional questions.

In 1998, banking authorities examined Hanover Bank for illegal banking activities in Jersey and the United Kingdom and launched an investigation into what would turn out to be the Koop fraud, but they apparently missed the bank's possible involvement in still another multi-million-dollar financial fraud, which began in Japan and led to legal proceedings in multiple jurisdictions. The fraud involved a major Japanese electronics company, Casio Computer Co. Ltd. (“Casio”), which filed suit in Japan, the United Kingdom and the United States, among other countries, claiming that a senior employee, Osamu Sayo, had defrauded the company out of \$100 million.²²⁸ The legal suits sought worldwide injunctions against Sayo and other individuals and corporate entities associated with the fraud, including Theoddor Tsuru, who had apparently been hired by Sayo to help hide and invest a portion of the stolen funds.

Casio alleged in its U.S. complaint that “the various conspirators lied to, and cheated, Casio and each other, generated fraudulent records to conceal the frauds, and engaged in an elaborate series of wire transfers in an effort to launder the stolen funds and conceal their racketeering activities.”²²⁹ Tsuru is described as a key conspirator who, beginning in February 1997, helped transfer Casio funds through numerous bank accounts and place them in various high yield investment schemes. The U.S. complaint alleged, among

²²⁸ See, for example, *Casio Computer Co. v. Sayo* (CH 1998–C No. 3241) before the High Court of Justice Chancery Division in London, including 6/10/98 “Injunction Prohibiting Disposal of Assets Worldwide” naming Tsuru, among other defendants; and *Casio Computer Co. v. Sayo* (U.S. District Court for the Southern District of New York, Civil Case No. 98–Civ–3772–WK), including 6/18/98 “Second Amended Complaint” naming Tsuru, among other defendants.

²²⁹ *Casio Computer Co. v. Sayo* (U.S. District Court for the Southern District of New York, Civil Case No. 98–Civ–3772–WK), Second Amended Complaint at 2.

other misconduct, that Tsuru personally misappropriated a portion of the missing money, stating: “All told, it appears that Tsuru stole at least \$8,000,000 of the Casio funds.”²³⁰

In June 1998, the London court issued a worldwide Mareva injunction freezing Tsuru’s assets, including a \$2 million house in Japan, a \$2 million house in Florida, a \$1.8 million apartment in New York, and a \$4 million yacht. It later issued a judgment against him and ordered him to repay \$3.3 million to Casio. Additional civil litigation in the United States involving Tsuru and the Casio funds is ongoing in Florida, Illinois and New York.

Based upon the Minority Staff investigation’s analysis of bank records and other evidence, it appears that three 1998 Hanover Bank deposits totaling about \$12.6 million are likely associated with the Casio fraud. The deposits were made on three occasions in 1998, using Standard Bank’s U.S. correspondent account at Harris Bank International.²³¹ The evidence linking the deposits to the Casio fraud includes the following:

- Both Fitzpatrick²³² and Wingrove²³³ indicated during their interviews that they thought the deposits were likely related to the Casio fraud.
- The funds were deposited into accounts opened at the direction of Poulден, who was then an associate and representative of Tsuru, a key figure in the Casio fraud.²³⁴

²³⁰ *Id.* at 15.

²³¹ The three deposits were:

- \$2.475 million deposited on 3/31/98, which Hanover Bank credited to the Doi account;
- \$190,000 deposited on 4/22/98, which Hanover Bank apparently credited to the Tsuru-Abe joint account; and
- \$10 million deposited on 5/29/98, which Hanover Bank apparently credited to the Morgan Steepleton account.

²³² When asked whether he thought Tsuru was using Hanover Bank in connection with the Casio fraud, Fitzpatrick said that he did not know, but “it looks like that.” He said he first found out about the Casio fraud through an article in *The Observer* that “had Tsuru’s name all over it.” He said he immediately wrote to Poulден expressing concern and the need to remove Tsuru from the bank’s board, and later rescinded Tsuru’s appointment. Fitzpatrick said that he also wrote to Doi asking him whether his account was associated with the Casio fraud, and received a letter denying any connection. He agreed to provide copies of that letter exchange, but did not do so. He noted, however, that Doi was from Japan, the source of funds in his account was unclear, and Doi allegedly allowed his funds to be used for various investments at the direction of Tsuru, Abe and Poulден. Fitzpatrick also noted that when \$400,000 was mistakenly withdrawn from the Doi account due to the Wingrove overdraft, Doi never complained or demanded return of the funds, which he found unlikely conduct with respect to legitimate funds.

²³³ Wingrove indicated that he also believed the funds deposited in Hanover Bank were associated with the Casio fraud. He indicated that he was first introduced to Tsuru and Poulден by Fitzpatrick in March of 1998, when Tsuru was attempting to recover funds from another individual associated with the Casio fraud, Joseph R. Kelso. (Kelso’s role in the Casio fraud is described, for example, in “Wanted—over there, but not over here,” *The Observer* (4/12/98); and “Casio admits to \$100m loss as executive goes into hiding,” *The Observer* (6/21/98).) Wingrove said that he met with Kelso on Tsuru’s behalf while Kelso was detained in England on alleged immigration violations and obtained some promising information. Wingrove indicated that, because he spoke fluent Japanese and was promised 10% of any funds he recovered, he also traveled to Japan on behalf of Tsuru and Poulден. He declined to provide specific information about the trip, other than to say he met with Doi among others, and when he returned in May 1998, warned Fitzpatrick about what he had found out. He said that, in the end, he never recovered any funds for Tsuru.

²³⁴ Poulден had introduced Tsuru and convinced Fitzpatrick to appoint Tsuru to Hanover Bank’s board in March 1998. Tsuru stated in pleadings before the London High Court that, from September 1997 until well into 1998, he had employed Poulден as a “barrister” to represent him in matters relating to unsuccessful investments made with the Casio funds. See *Casio Computer Co. v. Sayo* (CH 1998–C No. 3241), “Third Affirmation of Theoddor Tsuru” (1/12/99) at 63. Since, by Tsuru’s own admission, Poulден was representing him in 1997 and 1998, in matters involving investments made with Casio funds, it is logical to assume Poulден was continuing to do so in connection with their dealings with Hanover Bank.

- The deposits were made in 1998, when Tsuru was still handling Casio funds, and were deposited to accounts associated with Tsuru, including a joint Tsuru-Abe account, the Doi account and a corporate account for Morgan Steepleton, a company Fitzpatrick said was associated with Tsuru.
- The bulk of the funds were withdrawn through wire transfers authorized by Pouliden during the period he was associated with Tsuru.

While the evidence linking the \$12.6 million to the Casio fraud is far from conclusive, it is more than sufficient to raise concern. U.S. legal counsel for Casio indicated that they were spending considerable time trying to track down funds and assets related to the Casio fraud, had been wholly unaware of the Tsuru-related accounts at Hanover Bank, and were interested to learn of the deposits and withdrawals.

The fate of the Casio funds that were still on deposit with Hanover Bank when the bank became inactive in 1998 is also of interest. Fitzpatrick indicated that all remaining funds in its account at Standard Bank were transferred in December 1998 or January 1999, to an attorney trust account belonging to the bank's London solicitor, Finers. No documents were produced, however, showing exactly how much was transferred to the Finers account. Evidence obtained by the investigation indicates that, at the time, a dispute arose between Fitzpatrick and Pouliden over where the funds should be transferred, with each man insisting on a different attorney trust account. Fitzpatrick resolved the dispute by terminating Pouliden's relationship with Hanover Bank and instructing Standard Bank to transfer the funds to Finers. There is also some evidence that Tsuru may have asserted ownership of the funds, which Fitzpatrick declined to acknowledge in light of the Casio fraud and uncertainty over the funds' status.

Fitzpatrick indicated during his June 2000 interview, that the funds sent to Finers remain in the attorney trust account, although somewhat reduced by legal fees. The bank's 1998 financial statement shows that Hanover Bank also paid Fitzpatrick a 1998 "dividend" of \$1.9 million. The source of the funds used to pay the \$1.9 million dividend is unclear; if the funds were drawn from the Hanover Bank correspondent account at Standard Bank, they may have included illicit proceeds from the Casio fraud.

(7) Correspondent Account at Harris Bank International

In 1998, over a 3-month period, Hanover Bank accumulated deposits of more than \$17 million. Nearly \$5 million of these deposits came from the self-confessed Koop fraud; the remainder appears likely to have been associated with the Casio fraud. All \$17 million was deposited into and later transferred from Standard Bank's U.S. correspondent account at Harris Bank International in New York. The evidence indicates this U.S. account was the account Hanover Bank used most often during 1998, although Harris Bank International had no knowledge it was providing correspondent services to this offshore shell bank.

Information about Hanover Bank's use of the Harris Bank International account was obtained, in part, through interviews with

Harris Bank International personnel involved in the administration of the Standard Bank account. Standard Bank declined to provide either an interview or written response to a letter requesting information. Documentation in Harris Bank International files, account statements, and other materials and information were collected and reviewed.

Harris Bank International. Harris Bank International Corp. (“Harris Bank International”) is a wholly owned subsidiary of Harris Trust and Savings Bank, a major Midwestern bank with over 6,500 employees and over \$26 billion in assets.²³⁵ Harris Bank International, an Edge Act corporation with about 40 employees, is headquartered in New York City, with a representative office in London. Both banks are members of the Bank of Montreal Group of companies.

According to Harris Bank International personnel, its core business is international correspondent banking, particularly handling U.S. dollar “electronic funds transfers of international origin.”²³⁶ In the Bankers Almanac, about 40 foreign banks identify Harris Bank International as their U.S. correspondent. These 40 banks include a few large banks and many smaller banks, including banks in jurisdictions known for bank secrecy, weak anti-money laundering controls or high money laundering risks, such as Austria, Bosnia-Herzegovina, Costa Rica, Latvia, Luxembourg, and Turkey. One of the 40 is Standard Bank Jersey Ltd.

Standard Bank and Hanover Bank. Harris Bank International indicated that Standard Bank Jersey Ltd. was one of its larger clients. Harris Bank International account statements for Standard Bank Jersey Ltd. show numerous transactions involving millions of dollars each day, including large bank-to-bank and bank-to-broker transfers and smaller transfers involving individual clients. The transactions included significant sums transferred to or from foreign banks in the Standard Bank group. In 1998 and 1999, the Standard Bank account saw so many transactions each day that Harris Bank International issued daily account statements. Daily account totals during April 1998, for example, ranged from a low of \$3.4 million on April 10th to a high of \$134 million on April 28th. In just 3 months, from April to June 1998, when the Hanover Bank account was active, more than \$1.5 billion was deposited into the Standard Bank account at Harris Bank International, primarily through inter-bank transfers and the sale of large blocks of securities. Of that \$1.5 billion, only about \$17 million, or about 1% of the total, were deposits to Hanover Bank.

Harris Bank International stated in its letter to the Subcommittee that it has “never maintained an account relationship for Hanover Bank Ltd., Antigua and has acted only as an intermediary to transactions on behalf of Standard Bank, Jersey.” Harris Bank personnel indicated that the bank did not even know that it had been providing correspondent services to Hanover Bank in 1998. Fitzpatrick and Harris Bank personnel agreed that the two

²³⁵ See Harris Bank website at www.harrisbank.com/facts.html; and 6/15/00 letter from Harris Bank International to the Subcommittee.

²³⁶ Letter dated 6/15/00 from Harris Bank International to Subcommittee.

banks had never communicated directly with each other.²³⁷ Harris Bank International indicated that it had not known that Hanover Bank was an offshore shell bank, or that it was owned by a single individual and licensed by a secrecy jurisdiction. It indicated that, if Hanover Bank had applied directly for a correspondent relationship, Harris Bank International would likely have rejected the application.

Harris Bank International's lack of awareness of Hanover Bank is attributable, in part, to the relatively small number and dollar volume of transactions involving Hanover Bank, when compared to the other activity in the Standard Bank account. But it is also attributable to Harris Bank International's practice of not asking its correspondent banks about their bank clients.

Harris Bank International indicated, for example, that despite having a longstanding correspondent relationship with Standard Bank of Jersey, it had no information on Standard Bank's own correspondent practices. Harris Bank International did not know how many accounts Standard Bank had opened for foreign banks, nor did it know whether Standard Bank would readily accept offshore shell banks or banks in secrecy jurisdictions with weak anti-money laundering controls. Harris Bank International indicated that, even after the Hanover Bank incident, it had not collected information on what foreign banks may be utilizing Standard Bank's account, and had no immediate plans to find out.

Harris Bank International stated in its letter to the Subcommittee that it did conduct ongoing due diligence reviews of Standard Bank and its correspondent account. It indicated, for example, that it took steps to ensure that Standard Bank had an active anti-money laundering program in place, and provided a copy of Standard Bank's November 1999 "Anti-Money Laundering Handbook." Standard Bank's Handbook provides general information and specific bank procedures for combating money laundering. It specifies a Money Laundering Reporting Officer for the bank, emphasizes the bank's need to "know its customers," and provides useful guidance on how to recognize and respond to signs of possible money laundering. The Handbook provides employee instruction on account opening and monitoring procedures, conducting due diligence, and reporting suspicious activity. It does not provide any specific guidance or instruction on correspondent banking. Because Standard Bank did not respond to requests for information, it is not clear if the same due diligence procedures were in place in 1998, or how the bank applies its anti-money laundering policies and procedures to correspondent bank clients.

Harris Bank International said that it has correspondent relationship managers in New York and London who oversee the Standard Bank account. It indicated that it monitors all of its accounts, including the Standard Bank account, by "regularly review[ing] transaction volumes, value and payment content." Harris Bank International indicated that its monitoring efforts have relied on manual reviews of this information, but after a recent

²³⁷ Wingrove said in his interview that he frequently spoke with Harris Bank International customer service personnel in 1998, to find out whether certain wire transfers had been deposited into the Hanover Bank account, but the bank indicated that its customer service representatives had no recollection of Wingrove.

Federal Reserve audit recommended strengthening its monitoring program, it has allocated funds and is in the process of selecting an electronic monitoring system. It indicated that its manual monitoring program did not and could not have identified the Hanover Bank transactions as a problem, because the total dollar volume involved represented such a small portion of the Standard Bank account activity. As it stated in its letter to the Subcommittee, the Hanover transactions “were not and would not be considered suspicious from our intermediary bank perspective. These transaction types are typical of Standard Bank.”

Harris Bank International said that it had relied on Standard Bank to comply with its Anti-Money Laundering Handbook and exercise due diligence in opening and monitoring all of its accounts, including the Hanover Bank account. Harris Bank International indicated that, it was only after the Minority Staff inquiry about the account, that it learned Jersey regulators had censured Standard Bank for failing to conduct adequate due diligence in initiating a correspondent relationship with Hanover Bank.

As described earlier, in July 2000, the Jersey Financial Services Commission issued a statement finding that senior officials at Standard Bank had “failed to follow proper procedures,” and the bank had fallen “well short of the standards expected” with respect to due diligence. The statement commended the bank for making changes in its senior management, including dismissing the chairman of the bank, Berkeley. Because Jersey officials declined to provide copies of their investigative report or the supporting bank documentation, it is unclear whether they made assessments or issued findings regarding Standard Bank’s overall anti-money laundering efforts in correspondent banking.

B. THE ISSUES

Hanover Bank is a little known, offshore shell bank, licensed by a small bank secrecy jurisdiction. It is essentially a one-man operation, taking deposits, wiring funds and dabbling in credit transactions, with virtually no controls and minimal outside oversight. On two occasions it opened a correspondent account at Standard Bank in Jersey and conducted transactions through Standard Bank’s U.S. correspondent account at Harris Bank International in New York, unbeknownst to Harris Bank International. In 3 months in 1998, Hanover Bank moved over \$17 million through the New York account, virtually all of which were likely illicit proceeds from the Koop and Casio frauds. The U.S. bank responsible for accepting and wire transferring the \$17 million had no idea it was providing correspondent services to an offshore shell bank with no office, no trained staff, few operational controls, and past associations with fraud and criminal money laundering.

Offshore Shell Bank Operations

Because Hanover Bank’s owner, GOAB authorities, and Harris Bank International cooperated with the investigation, and supporting documents and interviews were obtained from several sources, the Hanover Bank case history provides a rare opportunity to take a close look at how one offshore shell bank operated on a day-to-day basis. The view is not an inspiring one.

Hanover Bank operated well outside the parameters of normal banking practice, without the most basic administrative controls that U.S. banks expect in a regulated financial institution. It did not have a single trained banker or accountant on staff. It had no full time staff at all. It had no electronic ledger, and stored its records at the bank owner's personal residence. It opened accounts with little or no account opening documentation. It drew up a one-page set of due diligence requirements for new accounts and then ignored them. It accepted incoming funds for persons who were not accountholders at the bank. It kept all of its funds in its correspondent accounts and tracked client deposits by reviewing monthly correspondent account bank statements. It authorized outgoing wire transfers, without documenting who had authority to withdraw funds from particular client accounts. It operated without compiling or issuing regular client account statements. It certified one client account as having \$16.5 million, when the account balance never exceeded \$2.4 million. It incurred an \$800,000 overdraft after failing to check a client's account balance before approving a requested wire transfer. It watched \$17 million move through its accounts without asking any hard questions about the source of the funds. It operated for 8 years without a single on-site visit from its primary government regulator.

Hanover Bank was able to avoid regulatory oversight in part because it was a shell operation without a permanent office or staff. GOAB authorities could not simply walk in the bank's doors, ask questions and inspect documents. The bank owner was literally thousands of miles away from routine oversight. At the same time, due to its low profile, the bank never drew the attention of bank regulators in Ireland. Even after learning of its existence in the jurisdiction, Irish regulators were hesitant to exercise oversight of a bank that was licensed in the Caribbean, accepted deposits in the Channel Islands, and limited its day-to-day activities in Ireland to making telephone calls and faxing wire instructions.

The result was a bank that experienced minimal oversight and accumulated a track record of operational problems and suspect conduct, including handling funds associated with money laundering and frauds that are the subject of ongoing criminal prosecutions and civil litigation in New Jersey, New York, South Carolina, Florida, and Illinois in the United States, as well as other countries around the world.

Interviews conducted with bankers and bank regulators in the United States and elsewhere indicate that the international banking community has little awareness and no specific information on how offshore shell banks conduct business. Many expressed surprise when told of the weak recordkeeping practices and loose operating procedures at Hanover Bank. Some expressed surprise that a small, offshore shell operation gained access to a U.S. bank. Some expressed surprise at the amount of trouble that this one-man bank caused in the United States alone, apparently becoming a magnet for financial fraud and suspect funds.

Lack of Due Diligence by U.S. Bank

Although Hanover Bank never opened its own U.S. correspondent account, it managed in 3 months to use Standard

Bank's U.S. account to move millions of dollars associated with financial fraud and money laundering. The Hanover Bank case history demonstrates the money laundering vulnerability of U.S. banks that fail to ask questions about the correspondent practices of their foreign bank clients.

Harris Bank International's core business is international correspondent banking and its primary activity is providing international wire transfer services to foreign banks. Yet Harris Bank International did not ask its respondent banks about their correspondent banking activities. It did not ask its foreign bank client whether they provided correspondent banking services to other banks. It did not ask how many banks might be using the foreign bank's U.S. correspondent account, what types of banks might be using it, or the names of those banks.

The practical result is that Harris Bank International never knew it was providing correspondent services to an offshore shell bank licensed by a bank secrecy jurisdiction. Because Hanover Bank's transactions comprised just 1% of Standard Bank's total account activity, Harris Bank International's monitoring systems could not reasonably be expected to isolate and evaluate these transactions. The result is that Hanover Bank got a free pass into the U.S. banking system and carried out its transactions without triggering any anti-money laundering oversight in the United States.

That free pass would not have been issued if Harris Bank International had required its respondent banks to identify their bank clients and to refuse to give offshore shell banks access to their U.S. correspondent accounts.

In December 2000, Harris Bank International personnel indicated that, in light of the Bank of New York scandal, the Minority Staff investigation, and a recent Federal Reserve Bank audit, the bank had decided to strengthen its anti-money laundering controls in the correspondent banking field. Harris Bank International personnel indicated that, among other measures, funds had been allocated to develop better risk assessments of its existing correspondent bank clients, better client profiles, and better monitoring systems, including the bank's first electronic monitoring software. Harris Bank International personnel also indicated that the bank had decided to ask new applicants to identify their bank clients and correspondent banking practices, although it had not yet been decided whether the bank would ask the same questions of its existing clients.

Harris Bank International's recent commitment to improving its anti-money laundering controls is welcome. But the bank's hesitancy to ask its existing bank clients about their correspondent practices—including whether they allow offshore shell banks to use their U.S. accounts—continues a limited due diligence approach that is easy to administer, but hard to justify in light of the money laundering risks illustrated by the Hanover Bank case history.

**HANOVER BANK TRANSACTIONS
USING STANDARD BANK'S U.S. CORRESPONDENT ACCOUNT
AT HARRIS BANK INTERNATIONAL
April-July 1998**

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|--------------|--------------------|---------------------|---------------------|--------------------|
| APRIL | \$0 | \$6,781,409 | \$3,265,545 | \$3,515,864 |
| MAY | \$3,515,864 | \$431,800 | \$525,000 | \$3,422,664 |
| JUNE | \$3,422,664 | \$10,180,635 | \$10,099,985 | \$3,503,314 |
| JULY | \$3,503,314 | \$30,925 | \$0 | \$3,534,239 |
| TOTAL | | \$17,424,769 | \$13,890,530 | |

Data based upon information provided by Standard Bank Jersey Ltd. and attached to 6/14/00 letter to Harris Bank International Corporation from Jonathan Speck of Mourant de Feu & Jeune.
Prepared by U.S. Senate Permanent Subcommittee of Investigations, Minority Staff, November 2000.

Case History No. 6

BRITISH BANK OF LATIN AMERICA

British Bank of Latin America, Ltd. (BBLA) is a small offshore bank that obtained a license in the Bahamas, sought clients in Colombia, kept its money in the United States, and closed its doors in 2000 after being named in two separate U.S. money laundering stings. This case history examines the failure of BBLA and its major U.S. correspondent bank, the Bank of New York, to guard against money laundering through the Colombian black market peso exchange, the largest money laundering system in the Western Hemisphere.

The following information was obtained from court pleadings; documents provided by BBLA, Lloyds TSB Bank (“Lloyds”), and the Bank of New York (“BNY”); interviews; and other materials. Key sources of information included a March 9, 2000 written submission by BBLA to the Subcommittee; a March 31, 2000 interview of BBLA and Lloyds personnel; and an August 17, 2000 interview of BNY personnel. All three banks voluntarily cooperated with the investigation.

A. THE FACTS

The British Bank of Latin America, Ltd. (“BBLA”) began operations in 1981. From its inception to its closure in 2000, BBLA maintained an administrative office in the Bahamas and a representative office in Colombia. In the Bahamas, the bank held an official offshore banking license; in Colombia, it held an official certificate, first issued in 1983, authorizing it to operate a representative office. All of BBLA’s clients were Colombian. At its height, BBLA had 8 employees, about 200 clients, and about \$135 million in assets. Throughout its existence, BBLA was affiliated with a large Colombian bank, Banco Anglo, and a major international bank based in London, Lloyds TSB Bank.

(1) BBLA Ownership

BBLA is a longtime Lloyds affiliate. Lloyds TSB Bank is a decades-old financial conglomerate with, according to the Bankers Almanac, about 77,000 employees and \$280 billion in assets worldwide. The Lloyds TSB Group includes not only Lloyds TSB Bank in London, with its 1,800 branches and numerous affiliated banks, securities firms and other companies, but it is also associated with one of the world’s most prominent insurance companies, Lloyd’s of London.

BBLA was first established and licensed in the Bahamas in 1981, under the name Banco Anglo Colombiano (Nassau) Ltd. It began its existence and continued for more than a decade, from 1981 until 1993, as a wholly owned subsidiary of a Colombian bank, originally called Banco Anglo Colombiano S.A., then renamed Banco Anglo S.A. (“Banco Anglo”). Banco Anglo is a well established Colombian bank with over 1,000 employees and 50 branches throughout the country. It, too, is a longtime Lloyds affiliate.²³⁸

²³⁸ Banco Anglo operated as a wholly owned subsidiary of Lloyds until 1976, when Colombian law changed to require local ownership of Colombian banks, and Lloyds sold 51% of Banco An-

In 1993, Colombian law was changed to prohibit Colombian banks from owning foreign bank subsidiaries, and Banco Anglo was required to sell its bank in the Bahamas. On June 29, 1993, it sold the bank to a newly-formed holding company, Sociedad Invercionista Anglo Colombiano S.A. ("SIAC"), which was incorporated in Colombia. SIAC's largest stockholder was a company in the Lloyds group, Lloyds Bank (BLSA) Ltd., which owned 49% of the shares.²³⁹ Because a Lloyds company was the largest stockholder of both Banco Anglo and SIAC, the transfer of BBLA from one to the other in 1993 essentially kept the bank within the Lloyds group. In 1994, SIAC changed the bank's name from Banco Anglo Colombiano (Nassau) Ltd. to British Bank of Latin America, presumably to stress the bank's affiliation with Lloyds, a leading British bank.²⁴⁰

Throughout its 19 years, despite multiple technical ownership changes to comply with changes in Colombian and Bahamian laws, BBLA remained a Lloyds affiliate, through either Banco Anglo or SIAC. BBLA continually advertised its Lloyds affiliation as a key aspect of its ownership, organization and operation.

(2) BBLA Principal Lines of Business

When asked about BBLA's major business activities, BBLA and Lloyds personnel explained that, because Colombian law used to severely restrict the ability of Colombian banks to offer U.S. dollar loans to their clients, many Colombian banks established offshore subsidiaries to provide the U.S. dollar loans they could not. According to them, BBLA was established by Banco Anglo for that purpose. As one BNY analysis put it, "BBLA exist[ed] to book dollar loans for [Banco Anglo] customers."²⁴¹

Over time, BBLA took on additional lines of business, but continued to work closely with Banco Anglo. In simplest terms, Banco Anglo provided banking services to its clients in Colombian pesos, and referred them to BBLA if they needed banking services in U.S. dollars.

BBLA stated, and the documentation substantiated, that the bank eventually had two basic groups of clients. The first consisted of Colombian companies that needed U.S. dollars to engage in foreign trade or other business transactions. BBLA provided these clients with U.S. dollar loans and trade financing, BNY stated in one memorandum, "[BBLA] takes dollar funds and makes dollar loans to Colombian borrowers to finance imports, working capital, and equipment."²⁴² BBLA explained that it financed its U.S. dollar loans primarily through credit lines granted to the bank by its U.S.

glo's shares to local Colombian investors. In 1991, after Colombian law reversed course to again permit foreign ownership of Colombian banks, Lloyds re-purchased Banco Anglo stock and eventually regained its position as the bank's majority shareholder.

²³⁹The remaining 51% of SIAC shares were held by a number of local Colombian investors.

²⁴⁰From 1993 to 2000, Lloyds steadily increased its ownership of the shares of both Banco Anglo and SIAC. By December 1999, Lloyds owned about 97% of Banco Anglo and about 98% of SIAC. Lloyds did not become a 100% owner of BBLA, because Bahamian law had long required its banks to have more than one shareholder. For example, when Bahamian law required its banks to have a minimum of five shareholders, BBLA's shareholders included SIAC and four Lloyds employees in the Bahamas, each of whom owned one share of BBLA. In 1997, when Bahamian law changed to permit a minimum of two bank shareholders, BBLA's shareholders became SIAC and Lloyds TSB Nominees Ltd., another company in the Lloyds group.

²⁴¹Internal credit analysis of BBLA by BNY Credit Division (10/17/95) at 4, BNYSEN 676.

²⁴²Internal BNY document by "BNY Credit Division" (10/18/95), BNYSEN 351.

correspondents or Lloyds affiliates. BBLA indicated that its company clients were not shell investment vehicles, but manufacturers, coffee growers and other Colombian businesses with tangible assets and active import and export sales.

BBLA's second category of clients consisted of wealthy Colombian individuals seeking private banking services in U.S. dollars. Among other services, BBLA accepted deposits from these clients and placed them in U.S. dollar investment funds and higher interest bearing accounts, primarily through accounts made available to BBLA by its U.S. correspondents or Lloyds affiliates. BBLA earned revenue from these placements, not only by assessing fees for its services, but also by sharing in the higher interest earnings paid on the deposits. BNY stated that BBLA was also used as a vehicle to allow its individual shareholders to "receive dividends offshore."²⁴³

During its interview, BBLA stated that, at its height, it had about 140 depositing clients and about 60 borrowing clients. The borrowing clients were all companies. Of the 140 depositors, BBLA estimated that 90% were individuals holding accounts in their own names, and about 10% were corporations. At its height, BBLA indicated that it had about \$50 million in client deposits, all of which were held in its correspondent accounts. Part of BBLA's attraction for Banco Anglo clients seeking private banking services included BBLA's location in a bank secrecy jurisdiction with no personal or corporate taxes, and its ready access through its correspondents to U.S. dollar time deposits, investment accounts and wire transfer capabilities.

In addition to serving its two groups of clients, BBLA's account statements show a constant stream of large money transfers among BBLA and a handful of Lloyds affiliates, including Lloyds banks in Belgium, Colombia, Panama, the United Kingdom and the United States. These transfers, involving millions of dollars moving on almost a daily basis among the Lloyds group, were the most significant category of transactions on BBLA's account statements. They depict an offshore affiliate well-integrated into the Lloyds banking network.

BBLA stated that it did not act as a correspondent for other banks or allow other foreign banks to transact business through its U.S. account. It indicated that it did not offer its clients foreign exchange services, instead offering them banking services solely in U.S. dollars. BBLA stated that it did not engage in high yield investment programs, Internet gambling, or other high risk activities described in some of the other case histories. BBLA also indicated that it did not establish shell corporations for its clients, although any clients needing such services would be able to obtain them through other Lloyds banks.

BBLA's financial statements were audited by KPMG Chartered Accountants in the Bahamas. The 1998 audited statement indicated that the bank was thinly capitalized but profitable, primarily due to an active lending portfolio exceeding \$120 million, and earnings from about \$70 million in client and bank deposits. BBLA indicated that it was highly reliant on Banco Anglo for virtually all

²⁴³ Internal BNY "Call Report" on BBLA (3/24/00) at 1, BNYSEN 333.

of its client referrals. BNY apparently agreed, stating in one credit analysis, “[BBLA] exists as a going concern only by virtue of its tie to [Banco Anglo].”²⁴⁴

(3) BBLA Correspondents

BBLA indicated that, because it specialized in offering U.S. dollar services to its clients, it kept virtually 100% of its funds in U.S. correspondent accounts and carried out almost all of its transactions in that currency. BBLA stated that its primary U.S. correspondent had long been the Bank of New York, where it opened an account in 1985, in part because Banco Anglo, already had a correspondent relationship there. BBLA indicated that it also had correspondent relationships with a number of other banks, including Bank of America, Bankers Trust, Barclays Bank, Chemical Bank, Citibank and Lloyds banks in Panama and the United States.

BBLA indicated that it had not encountered difficulty in obtaining U.S. correspondent accounts, because it had a good reputation, sound financial statements, and a close association with Lloyds. It said that, when applying to open a new account or to obtain a new credit line, it usually cited its Lloyds affiliation and indicated that it had the “backing of the Lloyds balance sheets.” It said that the correspondent services it used most often were deposits made to higher interest bearing accounts and wire transfer capabilities, while also using to a lesser extent checking clearing and trade financing or other credit arrangements.

(4) BBLA Management and Operations

BBLA Management. During the 1990s, BBLA’s senior officers were all employees of other Lloyds affiliated banks in the Bahamas and Colombia. BBLA also shared personnel, office space, and administrative operations with Lloyds affiliates.

In 1998 and 1999, the years focused on in the Minority Staff investigation, BBLA did not have a single senior executive who worked solely for BBLA; all of its senior management personnel also worked for other Lloyds banks. In the Bahamas, BBLA’s most senior executive was David Nicoll, who was the “managing director” and head of the bank. At the same time, Nicoll was the head of Lloyds’ flagship bank in the Caribbean, Lloyds TSB Bank & Trust (Bahamas) Ltd. (“Lloyds Bahamas”) and an “international executive” with the Lloyds TSB Group. Three other senior managers who provided services to BBLA also worked for Lloyds Bahamas.²⁴⁵ BBLA’s board of directors was also dominated by Lloyds employees.²⁴⁶ In Colombia, BBLA’s most senior executive was J. Scott Donald, who also worked for Lloyds TSB Bank and served as the president of Banco Anglo.

At its height, BBLA employed eight individuals who worked solely for BBLA. Four were clerical staff in the Bahamas, who performed back office and administrative operations for the bank. The other four worked in Colombia, serving as the bank’s sales representative, an account manager, secretary and assistant. All eight

²⁴⁴ BNY Credit Division’s internal credit analysis of BBLA (10/17/95) at 2, BNYSEN 674.

²⁴⁵ These senior bank officials were Abraham Butler, Peter Snell and Peter Bridgewater.

²⁴⁶ BBLA’s board members were Nicoll, Butler and Bridgewater.

BBLA employees worked closely with staff from other Lloyds affiliates, including Banco Anglo and Lloyds Bahamas.

BBLA also shared office space and equipment with Lloyds affiliates. In the Bahamas, BBLA occupied a single room on the second floor of Lloyds Bahamas. As Lloyds' flagship bank in the Caribbean, Lloyds Bahamas maintained a sizeable facility in Nassau, the Bahamas' capital city, with three floors of offices, bank teller services in a lobby open to the public, about 70 employees, and a large sign on the building announcing the presence of the bank. BBLA's name did not appear on the outside of the building. In Colombia, in compliance with requirements for separate office space, BBLA rented an office in the same building in Bogota as Banco Anglo, but on a different floor. BNY documents suggest that the Colombian office may have closed in October 1998, even though BBLA continued to offer client services in Colombia.

BBLA Operations. With respect to day-to-day operations, BBLA explained that its Colombian representative office acted as the bank's front office responsible for developing new business and servicing existing clients, while its Bahamas office acted as the bank's back office responsible for technical and administrative matters. BBLA said that the Colombian office received virtually all of its client referrals from Banco Anglo and worked closely with Banco Anglo to open new accounts, evaluate client needs, approve loans, provide investment advice, and resolve client problems. The Colombian office did not take deposits or handle cash transactions, since it was not licensed to conduct banking activities in Colombia. It would accept client requests for wire transfers, which the Colombian staff would then communicate to the appropriate banking personnel for completion.

BBLA said that its Bahamas office handled specific bank transactions and the bank's administrative needs, utilizing Lloyds Bahamas' equipment, electronic data systems, and staff under a management agreement that paid Lloyds Bahamas a large annual fee to manage the bank. For example, among other services, Lloyds Bahamas helped keep BBLA's books, track client account activity, maintain the bank's records, handle its correspondent accounts, file required forms in the Bahamas and Colombia, and pay BBLA's bills. BBLA said that it typically handled about 20 to 30 transactions per day, including deposits, loan payments and wire transfers.

BBLA was not the only Lloyds affiliate operating out of the Bahamas under a management agreement with Lloyds Bahamas. Another was Lloyds TSB Bank & Trust (Cayman) Ltd. ("Lloyds Cayman"). For many years, Lloyds Cayman had a physical presence in the Cayman Islands and held a banking license that permitted it to conduct onshore as well as offshore business. In 1995, however, Lloyds closed the Cayman office, surrendered the bank's onshore license, and obtained a less expensive offshore license that permitted the Cayman bank to conduct its banking operations outside the jurisdiction. Lloyds then moved the Cayman bank's operations to the Bahamas. Like BBLA, Lloyds Cayman operated under a management agreement with Lloyds Bahamas, utilizing Lloyds Bahamas equipment, electronic data systems and staff. Unlike BBLA, the Caymans bank did not have a single employee of its own. Still an-

other Lloyds affiliate operating out of the Bahamas location was Lloyds TSB Bank & Trust (British Virgin Islands) Ltd., a bank that Lloyds indicated was dormant but could be revived at a later time. In short, then, four Lloyds affiliated banks—two licensed by the Bahamas, one licensed by the Cayman Islands, and one licensed by the British Virgin Islands—were co-located at the same Bahamas location.

BBLA's Anti-Money Laundering Efforts. When asked about its anti-money laundering efforts, BBLA disclosed that it did not have one set of written procedures or one person responsible for overseeing anti-money laundering efforts at both its Colombian and Bahamian offices. Instead, each BBLA office had its own anti-money laundering approach.

BBLA's Colombian office produced a copy of written anti-money laundering procedures for that office which conformed with Colombian requirements, and said that its account manager and sales representative in Colombia were well versed in the due diligence requirements for opening new accounts. BBLA's Bahamian office, on the other hand, did not have any written anti-money laundering procedures, despite Bahamian requirements for them, but later produced a copy of the anti-money laundering procedures used by Lloyds Bahamas. A December 1997 anti-money laundering audit checklist provided by BBLA also indicated that BBLA was "going to" appoint a "money laundering reporting officer," another requirement under Bahamas law, but it apparently never did. Instead, BBLA indicated that in the Bahamas, under its management agreement, Lloyds Bahamas staff was responsible for managing its anti-money laundering efforts and provided the services of its own money laundering reporting officer.²⁴⁷ BBLA said it also used the services of Lloyds' "money laundering prevention officer," Peter Snell.²⁴⁸ Snell, a senior vice president of Lloyds Bahamas, was not assigned exclusively to anti-money laundering duties, but had many other responsibilities. The end result was that BBLA's Bahamas office had neither written procedures nor a particular person charged with reporting suspicious activity, as required by Bahamian law, but relied on Lloyds Bahamas procedures and personnel instead.

BBLA's anti-money laundering efforts were further disjointed by the geographical separation of its front and back office operations, which operated without the benefit of a bank-wide policy or an overall manager. BBLA's Colombian staff conducted the initial due diligence reviews for new customers and handled client requests for existing accounts, but did not otherwise monitor account activity, since all account paperwork and activity reports were generated in the Bahamas. In contrast, BBLA's Bahamian staff were not involved in the account opening process and were not familiar with BBLA's clients, but were expected to monitor day-to-day account transactions and overall account activity. It is unclear who, if anyone was reviewing client accounts statements or wire transactions

²⁴⁷ Under Bahamian law, every bank is required to have money laundering reporting officer whose duty is to report any suspicious activity to the Bahamas Government.

²⁴⁸ This position, which is recommended but not required under Bahamian law, is supposed to have overall responsibility for a bank's money laundering program.

for suspicious activity. It is also unclear how BBLA's staff coordinated their efforts with Lloyds Bahamas.

BBLA was asked, due to its provision of U.S. dollar services to its Colombian clientele, what steps the bank had taken to ensure that it was not a recipient of laundered funds from the black market peso exchange.²⁴⁹ BBLA and Lloyds personnel expressed unfamiliarity with both the term and the money laundering risks posed by that method of foreign currency exchange. BBLA said that it had no specific policies, procedures or systems in place to detect or deter money laundering through the black market peso exchange.

BBLA Oversight by Banking Regulators. Despite operating in two countries at high risk for money laundering, BBLA never underwent a bank examination or on-site visit by bank regulators in either jurisdiction and there is no evidence that any regulatory body ever took a close look at the bank's operations in 19 years of operation.

Both the Bahamas and Colombia have been identified as presenting higher than average money laundering risks. In June 2000, the Bahamas was one of 15 countries named by FATF for weak anti-money laundering controls and inadequate cooperation with international anti-money laundering efforts. The U.S. State Department's most recent International Narcotics Control Strategy Report ("INCSR 2000") describes the Bahamas as a country of "primary" money laundering concern, due to bank secrecy laws and [a] liberal international business company (IBC) regime [which] make[s] it vulnerable to money laundering and other financial crimes."²⁵⁰ While banking and money laundering experts interviewed by the Minority Staff described the Bahamas as having good intentions and making important improvements, during the 1990's, it provided weak oversight and inadequate resources to regulate its more than 400 offshore banks.

Colombia is considered an even greater money laundering risk than the Bahamas due to ongoing problems with narcotics trafficking. The INCSR 2000 report, which identifies Colombia as another country of "primary" money laundering concern, provides the following information:

Colombia produces and distributes more cocaine than any other country in the world and is also an important supplier of heroin. . . . Columbia is the center of the international cocaine trade, with drugs flowing out of the country at a stable and constant rate. . . . Recent statistics indicate that approximately 85 percent of the heroin seized by federal authorities in the northeastern United States is of Colombian origin. . . . Colombia has financial institutions which engage in currency transactions involving international narcotics proceeds that include significant amounts of U.S. dollars. . . . Colombia criminalized the laundering of the proceeds of all illegal activities in 1995 . . . but there still has not been a single money laundering conviction. . . . Even though progress has been made with respect to fighting money laundering, Colombia has

²⁴⁹ For a description of the black market peso exchange, see below.

²⁵⁰ *International Narcotics Control Strategy Report* (March 2000) ("INCSR 2000") at 637.

fallen short in its implementation of the money laundering and asset forfeiture laws.²⁵¹

One of the key money laundering systems in Colombian drug trafficking, the black market peso exchange, has been targeted by the United States as a top law enforcement priority for the last 2 years. The 1999 U.S. National Money Laundering Strategy stated:

The Black Market Peso Exchange is the largest known money laundering system for drug money in the Western Hemisphere. It may be responsible for the laundering of as much as \$5 billion of narcotics proceeds each year. . . . The Black Market Peso Exchange lets Colombian narcotics traffickers transform large quantities of drug dollars from the streets of American cities into pesos in their Colombian bank accounts.²⁵²

The 2000 U.S. National Money Laundering Strategy explains how the system launders funds:

First, a Colombian drug cartel arranges the shipment of drugs to the United States. The drugs are sold in the U.S. for U.S. currency which is then sold to a Colombian black market peso broker's agent in the United States. The U.S. currency is sold at a discount because the broker and his agent must assume the risk of . . . placing the U.S. dollars into the U.S. financial system. Once the dollars are delivered to the U.S.-based agent of the peso broker, the peso broker in Colombia deposits the agreed upon equivalent in Colombian pesos into the cartel's account in Colombia. At this point, the cartel has laundered its money because it has successfully converted its drug dollars into pesos, and the Colombian broker and his agent now assume the risk for integrating the laundered drug dollars into the U.S. banking system. . . . [T]he Colombian black market peso broker now has access to a pool of laundered U.S. dollars to sell to Colombian importers [who] use the dollars to purchase goods. . . .²⁵³

U.S. and Colombian law enforcement and banking authorities have spent significant resources tracking the black market peso exchange, educating U.S. and Colombian banks about it, and seizing laundered funds. Despite their joint efforts, the black market peso exchange continues to be the most prolific money laundering system in the United States, successfully using U.S. and Colombian banks to launder billions of dollars each year in cocaine and heroin drug proceeds.

Banking and money laundering experts indicated to Minority Staff investigators that, despite the magnitude of the money laundering problem in Colombia, Colombia's banking regulation is sound, with some of the better money laundering controls in Latin America. They indicated that Colombian authorities are actively engaged in bank oversight, including enforcing requirements for detecting and reporting suspicious transactions. The INCSR 2000 report noted: "Colombia's banks continue to comply with the reporting requirements designed to flag suspicious transactions and have

²⁵¹ INCSR 2000 at 115–16; 657–58.

²⁵² The National Money Laundering Strategy for 1999 (September 1999) at 21–22.

²⁵³ The National Money Laundering Strategy for 2000 (March 2000) at 24–25.

been very cooperative with U.S. efforts to curtail financial transactions by individuals and entities designated as involved with narcotics trafficking.”²⁵⁴ This bright spot in Colombian anti-money laundering efforts, however, did not apply to BBLA, which remained outside Colombian banking oversight and unfamiliar with Colombian and U.S. efforts to stop money laundering through the black market peso exchange.

No Bank Examination in 19 Years. In 1995, Banco Anglo sent a memorandum on behalf of BBLA to Barclays Bank which stated that, “BBLA is subject to the supervision in varying degrees of Bahamas, Colombia and the Bank of England.”²⁵⁵ A copy of this memorandum was provided to BNY which began to incorporate variations of that sentence in internal reports to indicate that BBLA was a well regulated bank.²⁵⁶ In 1997, a BNY memorandum indicated that BBLA had agreed in writing to “conform to all significant prudential regulations mandated by the Colombian Superintendent of Banks” and had given the Superintendent “full supervisory power” over the bank.²⁵⁷ In fact, however, BBLA disclosed to the Minority Staff investigation that it had never undergone a bank examination or even a site visit by bank regulators in Colombia or any other country.

BBLA explained that its primary regulator, the Central Bank of the Bahamas, did not conduct examinations of licensed banks, instead reviewing annual reports submitted by each bank.²⁵⁸ BBLA stated that it had submitted all required filings and had no history of problems with Bahamian bank regulators. BBLA noted that it was also not subject to examination in Colombia, since that country did not conduct bank examinations of representative offices that did not transact banking activities within the jurisdiction. BBLA noted that it had never taken deposits or handled cash transactions for its clients in Colombia, instead working with Banco Anglo, its Bahamas office, Lloyds Bahamas and its correspondent banks, to meet its clients’ banking needs. When asked if it had ever been examined by regulators from the Bank of England or the United Kingdom’s Financial Services Authority, BBLA indicated that it had not.

(5) Money Laundering Involving BBLA

In 1998 and 1999, U.S. civil forfeiture actions arising from two separate money laundering undercover operations, Operation Casablanca and Operation Juno, cited BBLA as a repository of illegal drug proceeds. In two separate court actions, the United States sought forfeiture of a total of about \$2.7 million in illegal drug proceeds deposited into BBLA’s correspondent account at BNY. A subsequent BBLA audit identified about 85 additional account trans-

²⁵⁴ INCSR 2000 at 657.

²⁵⁵ This memorandum has a bates designation of BNYSEN 648.

²⁵⁶ See, for example, internal BNY memorandum to the International Credit Committee (12/1/95) at 2, BNYSEN 657; internal BNY credit proposal for BBLA to International Credit Committee (4/21/97) at 1, BNYSEN 691.

²⁵⁷ Internal BNY credit proposal for BBLA to International Credit Committee (4/21/97) at 1–2, BNYSEN 691–92.

²⁵⁸ The INCSR 2000 report noted, at page 637, that offshore banks in the Bahamas “must submit annual statements that do not have to include financial statements,” and their “records can be maintained anywhere,” which makes regular bank oversight more difficult. In 2001, the Bahamas plans, for the first time, to begin conducting its own bank examinations.

actions in 1998 and 1999, that appeared to involved suspicious activity, and also fired an employee suspected of being involved in money laundering and other wrongdoing.

(a) Operation Casablanca

Operation Casablanca was a 3-year money laundering sting conducted from 1995 until 1998 by the U.S. Customs Service.²⁵⁹ A related money laundering undercover operation was code named Operation Check Mark. These undercover operations traced the laundering of more than \$84 million in illegal narcotics proceeds under the control of professional money launderers for the Cali drug cartel in Colombia, and the Juarez drug cartel in Mexico. A significant portion of the \$84 million consisted of illegal drug proceeds picked up in cash from various U.S. city locations by U.S. undercover agents acting at the direction of the alleged money launderers, deposited at a U.S. bank cooperating with U.S. law enforcement, and then transferred as part of the money laundering sting operation to still other bank accounts. Other funds identified or provided by the alleged money launderers were, at their direction, wire transferred by the U.S. undercover agents to other bank accounts in an attempt to launder the funds.

In February 1998, the U.S. Department of Justice seized and sought civil forfeiture under seal of funds in various bank accounts in the United States and foreign countries related to the money laundering stings. In May 1998, criminal indictments were unsealed against individuals and banks involved in the money laundering operations. Also in May, the United States filed an amended complaint in the civil forfeiture actions to correct errors and seek forfeiture of additional funds. A second amended complaint was filed in March 1999. Altogether, the United States sought forfeiture of funds from almost 100 bank accounts in the United States and 16 foreign countries.

The United States did not indict BBLA or allege that BBLA or its employees were directly engaged in narcotics trafficking or money laundering. However, the United States did name BBLA in the first and second amended forfeiture complaints as the recipient of about \$1.57 million in illegal drug proceeds that, during the sting operations, on the instruction of drug traffickers, had been wire transferred by U.S. undercover agents to BBLA's correspondent account at the Bank of New York (BNY).²⁶⁰ The wire transfers had directed the funds to be credited to specific clients or accounts at BBLA.²⁶¹

²⁵⁹See *United States v. Proceeds of Drug Trafficking Transferred to Certain Foreign Bank Accounts* (U.S. District Court for the District of Columbia Case No. 1:98-CV-0434 (NHJ)) (hereinafter "Casablanca forfeiture action"), memorandum order by the court (4/11/00), and first amended complaint for forfeiture (5/18/98).

²⁶⁰See Casablanca forfeiture action, motion to file second amended complaint (3/30/99).

²⁶¹The wire transfer instructions named the following clients and accounts at BBLA:

- \$800,000 transferred on 12/3/97 and 12/15/97 to BBLA's correspondent account for two related companies, Proenfar S.A. and Parowan Group, Inc.;
- \$350,000 transferred on 12/3/97 and 3/12/98 to BBLA's correspondent account for Jaime Trujillo;
- \$190,000 transferred on 12/4/95 to BBLA's correspondent account for a BBLA account numbered 0019107928;
- \$150,000 transferred on 12/3/97 to BBLA's correspondent account for Piedad de Hoyos; and

Continued

When asked for more information by the Minority Staff investigation, BBLA indicated that Bahamian bank secrecy laws and the pending litigation prevented it from discussing either the transfers, the bank's conduct, or the named accountholders. Pleadings filed by three of the accountholders provided the minimal additional information that Proenfar S.A. was a manufacturing company established in Colombia, Parowan Group was a Panamanian investment company, and Piedad de Hoyos was a wealthy woman who had placed \$130,000 in a certificate of deposit at BBLA.²⁶² BBLA accounts statements, subpoenaed from BNY, indicate that several of the wire transfer recipients conducted numerous transactions through BBLA's correspondent account in New York.

In 1999, BBLA filed legal pleadings opposing forfeiture of the \$1.57 million in drug proceeds to the United States.²⁶³ When asked why, among other reasons, BBLA stated that the bank "could be subject to double liability" because the suspect funds had been frozen in both the United States and the Bahamas and, if the courts ruled inconsistently, it could be required to pay the \$1.57 million twice—once to the U.S. Government and once to the accountholders.²⁶⁴ In its pleadings in the United States, the bank also seemed to be contending that, because the bank itself was innocent of any wrongdoing, funds could not be seized under U.S. law from its correspondent account, even in the event of misconduct by a BBLA client or by a third party.

In explaining its decision to accept the illegal drug proceeds in the first instance, BBLA stated: BBLA assumed that the U.S. institutions transferring the dollars would have conducted adequate investigations to ensure the legitimacy of the source of the funds that they held and transferred to BBLA. Thus, the deposits did not raise any suspicions at the time they were made."²⁶⁵ This explanation seems to suggest that BBLA considered any funds transferred by a U.S. bank to be beyond suspicion and in no need of anti-money laundering oversight, but when asked, BBLA stated that its anti-money laundering controls also applied to funds transferred from U.S. banks. In light of the pending litigation, however, BBLA declined to provide additional information about the actions it took with respect to the \$1.57 million.

The United States' position, in contrast, was that BBLA was not an innocent bank, should not have accepted the drug proceeds as deposits, and was not entitled to protection from forfeiture under U.S. law. When asked by the Minority Staff investigation to elaborate, the U.S. Department of Justice declined to provide further information. The Casablanca civil forfeiture proceedings are ongoing.

(b) Operation Juno

Operation Juno was a 3-year money laundering sting conducted from 1996 until 1999 by the U.S. Drug Enforcement Administration and Internal Revenue Service Criminal Investigation Divi-

—\$80,000 transferred on 12/15/97 to BBLA's correspondent account for two related companies, Amarey Ltd. and Nova Medical.

²⁶² See Casablanca forfeiture action, claim filed by Proenfar S.A. and Parowan Group, Inc. (7/29/99) and claim filed by Piedad de Hoyos (7/21/99).

²⁶³ See Casablanca forfeiture action, claim filed by BBLA (7/1/99).

²⁶⁴ See BBLA letter to the Subcommittee (3/9/00) at 8–9.

²⁶⁵ *Id.* at 8.

sion.²⁶⁶ The undercover operation laundered over \$26 million in drug proceeds, in part using a stock brokerage firm established by U.S. undercover agents. In December 1999, the United States indicted five Colombian nationals for narcotics trafficking and money laundering in connection with the sting operation, accusing them of being major players in the Colombian drug trade. The United States also seized and filed civil forfeiture actions involving \$26 million in over 340 bank accounts at 34 U.S. banks and 52 foreign banks.

Again, the United States indicted neither BBLA nor its employees for narcotics trafficking or money laundering. However, several of the Operation Juno indictments referred to drug proceeds being sent to BBLA.²⁶⁷ The United States also named BBLA in the related civil forfeiture action, this time seeking forfeiture of \$1.1 million in drug proceeds that, during the sting operation, at the direction of the alleged money launderers, had been wire transferred to BBLA's correspondent account at the Bank of New York (BNY).²⁶⁸ The \$1.1 million had been deposited over a 2-year period, from July 1997 until July 1999, in nine wire transfers. All were transfers to BBLA's U.S. account for further credit to Andes Trading, a BBLA client.²⁶⁹ BBLA account statements show numerous transactions through its BNY account on behalf of Andes Trading. When asked, BBLA declined to provide any additional information about these transfers, the bank's conduct, or Andes Trading.

BBLA opposes forfeiture of the \$1.1 million in drug proceeds to the United States, for many of the same reasons given in the Operation Casablanca matter. Although BBLA ceased to conduct business by mid 2000, its attorneys are continuing to press its claim to the \$1.1 million. The United States has taken the same position as it has in the Operation Casablanca matter, that BBLA is not an innocent bank, should not have accepted the drug proceeds, and should forfeit the funds to law enforcement. Like the Casablanca forfeiture action, the Juno forfeiture action is ongoing.

Together, the Casablanca and Juno civil forfeiture proceedings indicate that, over a 3-year period, BBLA became a repository for about \$2.7 million in drug proceeds. Both cases indicate that the funds were the product of money laundering through the Colombian black market peso exchange. For example, when asked about

²⁶⁶ See "'Operation Juno' Indictment Targets Five Major Traffickers and \$26 Million worth of Laundered Drug Proceeds," press release issued by the office of the U.S. Attorney for the Northern District of Georgia (12/9/99) (hereinafter "Juno press release").

²⁶⁷ See, for example, *United States v. Monto* (U.S. District Court for the Northern District of Georgia Case No. 1:99-CR-438), criminal indictment (8/25/99); and *United States v. Botero* (U.S. District Court for the Northern District of Georgia Case No. 1:99-CR-439), criminal indictment (8/25/99).

²⁶⁸ See *United States v. All Funds in Certain Foreign Bank Accounts Representing Proceeds of Narcotics Trafficking and Money Laundering* (USDC DC Case No. 1:99-CV-03112), verified complaint for forfeiture in rem (11/23/99). The complaint also seeks forfeiture of about \$295,000 in drug proceeds sent to Lloyds TSB Bank & Trust (Panama) Ltd.

²⁶⁹ The transfers took place, as follows:

- \$250,000 transferred to BBLA's correspondent account on 7/18/97.
- \$250,000 transferred to BBLA's correspondent account on 9/18/97;
- \$126,127 transferred to BBLA's correspondent account on 1/22/98;
- \$100,000 transferred to BBLA's correspondent account on 5/28/98;
- \$100,000 transferred to BBLA's correspondent account on 10/7/98;
- \$89,795 transferred to BBLA's correspondent account on 3/18/99;
- \$17,185 transferred to BBLA's correspondent account on 4/13/99;
- \$100,000 transferred to BBLA's correspondent account on 4/29/99; and
- \$143,245 transferred to BBLA's correspondent account on 7/7/99.

the Operation Casablanca deposits, BBLA described them as U.S. dollars transferred from a U.S. bank, and noted that Colombian law “permitted Colombian nationals to make those investments with foreign currency that had not been obtained through the country’s foreign exchange markets.”²⁷⁰ The Operation Juno deposits are explicitly linked to the black market peso exchange, and the indictments are characterized by the Drug Enforcement Agency as “a significant first step in striking out against the black market peso system that launders billions of drug dollars every year.”²⁷¹ The implied fact pattern in both instances seems to be that, in order to take advantage of a better exchange rate or perhaps to avoid Colombian legal restrictions, tariffs or taxes, BBLA clients provided Colombian pesos to a Colombian money broker who exchanged them for U.S. dollars that were, in fact, the illegal drug proceeds sent to BBLA’s U.S. account for the specified clients.

(c) Other Suspicious Activity

During the interview with Minority staff investigators, BBLA and Lloyds indicated that after the bank was named in the two U.S. forfeiture actions, Lloyds decided to have BBLA’s accounts and transactions audited to determine if there were other suspicious transactions. Although it declined to provide a copy of the audit report, BBLA and Lloyds indicated that approximately 85 additional suspicious transactions were identified during 1998 and 1999, which led the bank to file about a dozen additional reports with law enforcement. BBLA and Lloyds declined to provide additional information about the nature of these transactions, their reports, or other aspects of the BBLA audit.

A January 2000 memorandum produced under subpoena by the Bank of New York describes a BBLA employee who was allegedly engaged in money laundering and other misconduct from 1997 until her employment was terminated by the bank in 1999.²⁷² The BNY memorandum, prepared after a telephone conversation with BBLA personnel, stated in part:

It turns out that beginning in 1997, a BBLA employee began to experience personal financial difficulties. This led to her involvement in criminal activity for personal financial gain, including skimming profits and laundering money. Her activities were finally discovered in 1999 and she was immediately terminated.

BNY did not have any additional information about this matter, and BBLA declined to discuss it, so it is unclear how this employee’s misconduct related to the Casablanca and Juno deposits or the 85 suspicious transactions identified in the BBLA audit. The evidence suggests, however, that BBLA’s involvement with money

²⁷⁰ BBLA letter to the Subcommittee (3/9/00) at 8.

²⁷¹ See Operation Juno press release at pp. 3–4, citing involvement of “money exchanger in Colombia, who typically would sell the U.S. dollars for pesos on the Colombian Black Market [Peso Exchange].” The press release also quotes James T. Martin, Chief of the Drug Division of the U.S. Attorney’s Office stating that, in the Juno case, “the defendants took millions of dollars in drug money in the U.S., and millions in pesos in Colombia, and laundered them both with the money physically leaving either country.”

²⁷² Internal BNY “Call Report” on Banco Anglo (1/27/00), BNYSN 335.

laundering was not limited to the \$2.7 million identified in the two U.S. money laundering stings.

(6) Closure of BBLA

In late 1999 or early 2000, Lloyds made the decision to close BBLA, and most BBLA transactions ceased at the end of March 2000. Lloyds explained that, during 1998 and 1999, it had been able to buy out SIAC's other shareholders and evaluate whether the bank should be continued or folded into Lloyds' other banking operations. Lloyds decided to terminate BBLA as a going concern and re-distribute its clients, assets and loans to other Lloyds banks in the Bahamas, Colombia, Panama, and United States. Lloyds denied that the two money laundering forfeiture actions were the primary reason behind closing the bank, but indicated the litigation did not encourage the bank's continuation. Lloyds indicated that legal counsel would continue to press BBLA's claims in both the Casablanca and Juno forfeiture actions. Because Lloyds is not surrendering BBLA's license, but merely discontinuing its operations, it is possible the bank could be revived at a later time.

(7) Correspondent Account at Bank of New York

The Bank of New York (BNY) began its correspondent relationship with BBLA in 1985. While the Minority Staff investigation did not examine the bank's initial decision to open the BBLA correspondent account, it did examine BNY's due diligence efforts during the latter half of the 1990s with respect to the BBLA relationship. The evidence indicates that, while BNY was diligent in its efforts to monitor the BBLA account, its anti-money laundering efforts suffered several serious deficiencies. Perhaps the most significant deficiency was BNY's failure to exercise any anti-money laundering controls related to the Colombian black market peso exchange.

Bank of New York. The Bank of New York is a major financial institution in the United States with, according to the Bankers Almanac, over 17,000 employees and \$60 billion in assets. BNY has a substantial international correspondent banking portfolio, with over 2,000 international correspondent accounts and 150 correspondent banking relationship managers around the world. Its international correspondent accounts are handled primarily by its International Banking Sector which is organized into five geographic regions, including a Latin American Division that also handles banks in the Caribbean. BNY has a long history of correspondent banking in Latin America and the Caribbean, including more than a dozen relationships in Colombia and almost as many in the Bahamas.

In responding to the Minority Staff's survey of correspondent banking practices, BNY initially stated that, as a policy matter, it did not open correspondent accounts for offshore banks. When asked about its longstanding correspondent relationships with offshore banks like BBLA and Swiss American Bank, however, BNY submitted a revised form of its policy indicating that the bank did sometimes open correspondent accounts for offshore banks.²⁷³ The

²⁷³See BNY letter to the Subcommittee (10/13/00) at 4, response to question (7).

Minority Staff investigation indicated that BNY has, in fact, had numerous correspondent relationships with offshore banks. In deciding whether to initiate such relationships, BNY indicated that its policy was to “evaluate the ownership, management, and reputation of the bank in question, as well as the regulatory environment of the licensing country.”

When asked about its correspondent banking practices in Colombia, BNY indicated that while it was cognizant of the money laundering risks in Colombia and designated Colombia as a high risk area, the Latin American Division’s experience had been generally positive. As stated in several BNY memorandum on BBLA, “We are very comfortable with the country risk of Colombia due to very sound government management and the continuing positive trends in this country.”²⁷⁴ Another BNY memorandum states, “Colombia has one of the strictest and [most] vigilant bank regulatory systems in the developing world.”²⁷⁵

BNY also indicated, in response to questions, that it was not unusual for Colombian banks to have offshore subsidiaries and stated that BNY had correspondent relationships with several of them. BNY later identified six respondent relationships with offshore banks that were subsidiaries of Colombian banks, in addition to BBLA. BNY indicated that all six were licensed in Panama. It said that BBLA was the only Colombian offshore affiliate in BNY’s portfolio that was licensed in the Bahamas, rather than Panama.

When asked about the black market peso exchange, the head of BNY’s Latin American Division indicated that she had recently heard the term in an advanced money laundering training course, but was unfamiliar with the issue and had been unaware of its importance in U.S. law enforcement’s anti-money laundering efforts. BNY indicated that it had no specific policies, procedures or systems of any kind related to the Colombian black market peso exchange, even for its Colombian respondent banks or their offshore affiliates.

BBLA. BNY documentation indicates that BNY viewed BBLA as part of its correspondent relationships with Lloyds and Banco Anglo, two important BNY clients. BNY stated in a letter to the Subcommittee that, “The Bank viewed BBLA as part of its overall relationship with the Lloyds Bank group.”²⁷⁶ The documentation indicates that BNY took on BBLA when it was a subsidiary of Banco Anglo, one of BNY’s oldest and most profitable clients in Colombia; and BNY had considered the two banks in tandem ever since. BNY stated that it had often paid “[j]oint visits” to the two banks,²⁷⁷ and most of BNY’s internal memoranda discuss both banks jointly.

BNY provided a range of credit and non-credit correspondent services to BBLA, all in U.S. dollars. They included wire transfers, check clearing, placements of funds in higher interest bearing accounts, trade financing, and several lines of credit. BBLA made full use of these services and, despite its small size, moved tens of mil-

²⁷⁴ Internal BNY memorandum from Latin American Division to International Credit Committee (10/25/94) at 2; (5/5/95) at 2; (6/20/95) at 2.

²⁷⁵ Internal BNY credit proposal for Banco Anglo to International Credit Committee (12/8/95) at 2, BNYSN 697.

²⁷⁶ BNY letter to the Subcommittee (10/13/00) at 5, in answer to question (9).

²⁷⁷ *Id.* at 5, in answer to question (12).

lions of dollars through its BNY account each month. BBLA's dollar volume, in fact, far exceeds any other case history in the Minority Staff investigation. In 1998 and 1999 alone, BBLA's deposits and withdrawals from its U.S. correspondent account at BNY totaled more than \$1.5 billion.²⁷⁸

BNY said that, although BBLA held a Bahamian banking license, BNY classified it as a Colombian bank because it worked closely with Banco Anglo, had Colombian clients, and BNY's rating systems assigned Colombian banks a higher risk rating than Bahamian banks, which ensured a more conservative and careful approach to BBLA's monitoring.

The documentation indicates that BNY regularly monitored BBLA and, at times, compiled detailed credit analyses of BBLA's finances and business activities. For example, among other measures, BNY took the following steps:

- BNY correspondent bankers regularly traveled to Bogota to visit BBLA's offices and meet with the bank's senior management; these trips were combined with BNY visits to Banco Anglo. BNY staff also spoke regularly with BBLA staff in Bahamas and visited the Bahamas office occasionally.
- BNY staff regularly prepared memoranda summarizing contacts with the bank and information about its staff and operations.
- BNY obtained copies of BBLA's audited financial statements and other key bank documentation. It inquired about and analyzed BBLA's finances and primary lines of business, and developed detailed credit analyses of the bank. It also inquired about and analyzed BBLA's client base.
- BNY inquired about BBLA's reputation and operations with Banco Anglo and Lloyds, and placed great weight on representations that Lloyds and Banco Anglo controlled BBLA's management, exerted "quality control" over its procedures, and approved its extensions of credit to clients.²⁷⁹ BNY also inquired about BBLA's reputation in Colombian banking circles.
- On at least two occasions, BNY studied BBLA's transactions and clearing activities to identify suspicious transactions, and found nothing of concern. There was no evidence, however, that BNY regularly monitored BBLA's account activity for possible money laundering.

BNY's due diligence efforts, while significant, also had several serious deficiencies. For example, BNY apparently did not request a copy of BBLA's anti-money laundering procedures and never realized that the Bahamas office had none and there was no BBLA employee assigned to anti-money laundering duties. BNY also never realized that BBLA had never undergone a bank examination or site visit by any government bank regulator. BNY indicated, to the contrary, that it had believed BBLA was subject to more oversight

²⁷⁸ See chart, "British Bank of Latin America Monthly Account Activity at Bank of New York; January 1998-December 1999."

²⁷⁹ See, for example, BNY internal memorandum to International Credit Committee (12/1/95), BNYSEN 657-60.

than was usual for an offshore bank, with supervision provided by the Bahamas, Colombia and the United Kingdom. BNY's Latin American Division head indicated that she thought BBLA was, in fact, examined by Colombian bank regulators and was surprised and disturbed to learn that no such examination had ever actually taken place.

BNY indicated that a major factor in its analysis of BBLA was its affiliation with Lloyds and Banco Anglo, two established banks with good reputations, sophisticated banking operations, and a history of involvement with the offshore bank. Lloyds, in fact, exercised significant BBLA oversight, through its control of BBLA's board and senior management and day-to-day involvement with the bank's operations under the agreement assigning Lloyds Bahamas responsibility for managing BBLA's affairs. BNY indicated that it had assumed Lloyds would ensure that BBLA had adequate anti-money laundering policies and procedures in place, but there was no evidence that BNY had ever actually questioned either BBLA or Lloyds about BBLA's specific anti-money laundering efforts.

When asked about the Casablanca and Juno forfeiture actions, BNY indicated that it did not learn of the Casablanca forfeiture action, filed in May 1998, until more than a year later when, on June 25, 1999, U.S. law enforcement seized the disputed funds from BBLA's account in New York. BNY indicated that, until informed by Minority staff investigators, it had not known that the forfeiture action was filed in 1998. BNY was also unaware, until informed by Minority staff investigators, of the audit of BBLA's 1998 and 1999 transactions that identified 85 additional suspicious transactions. Nor did it have details about the BBLA employee who was fired in 1999 for 2 years of misconduct including possible money laundering.

After BNY learned of the Casablanca forfeiture action in June 1999, and the Juno forfeiture action 6 months later, BNY personnel met and spoke with BBLA, Lloyds and Banco Anglo personnel and completed several additional memoranda. But the written materials do not mention either of the U.S. law enforcement actions nor do they discuss any of the issues raised by the two seizures of illegal drug proceeds. When asked why not a single BNY analysis of BBLA ever mentions either matter or any money laundering concerns, the Latin American Division head stated that was "a good question" to which she did not have an answer.

B. THE ISSUES

Black Market Peso Exchange

The BBLA case history demonstrates how an offshore bank can increase the vulnerability of a U.S. correspondent bank to money laundering through the black market peso exchange, when neither takes any steps to minimize this money laundering risk.

The black market peso exchange risks posed by BBLA were clear. BBLA had \$50 million in client deposits, all in U.S. dollars, and regularly accepted U.S. dollar deposits from its clients. It did not provide foreign exchange services itself, but accepted U.S. dollars sent by its clients to its U.S. account. Its clients were all from

Colombia. As an offshore bank subject to strict secrecy laws and weak bank oversight, BBLA was attractive to money launderers. It took no steps to detect when a Colombian money broker might be exchanging a BBLA client's pesos for U.S. dollars obtained from drug trafficking. The result was that BBLA's U.S. account became a conduit for illegal drug money.

Despite a long history in Colombia and relationships with seven offshore banks affiliated with Colombian banks, BNY's most senior Latin American correspondent banker had received little training about the Colombian black market peso exchange. BNY used none of the strategies developed to combat this form of money laundering and had failed even to initiate discussions with its Colombian correspondent banks about the need to identify and refuse U.S. dollars coming from the Colombian black market.

Like most correspondent accounts for foreign banks, the majority of deposits to BBLA's U.S. account were made by wire transfer, which meant that electronic software had automatically accepted the funds and directed them to BBLA's account. No human intervention or anti-money laundering oversight took place until later. BNY was necessarily dependent upon BBLA to ensure the legitimacy of the funds sent to its U.S. account, yet BNY failed to acquire an accurate understanding of BBLA's anti-money laundering efforts.

BNY's experience is unlikely to be unique. The Minority Staff survey of just 20 U.S. banks found over 200 correspondent relationships with Colombian banks; these banks have additional relationships with Colombian offshore affiliates. The BBLA case history illustrates the money laundering risks associated with these relationships and the need for U.S. correspondent banks active in Colombia to focus on the black market peso exchange.

Offshore Affiliate Issues

A second set of issues in the BBLA case history involves how a U.S. correspondent bank should view an offshore bank that is affiliated with an established bank in another jurisdiction. BNY began the BBLA relationship in part as a courtesy to an existing customer and in part on the expectation that it could rely on the established bank to oversee its offshore affiliate. BBLA's affiliates, Lloyds and Banco Anglo, did exercise oversight of BBLA; and the evidence reviewed by the investigation suggests that an affiliated offshore bank often poses less of a money laundering risk than an unaffiliated offshore bank. At the same time, the BBLA case history suggests that an affiliated status is no guaranty against anti-money laundering deficiencies.

One issue involves the effectiveness of the oversight exercised by Lloyds. Lloyds was intimately involved with BBLA, through its control of BBLA's board, senior management, client referrals and management agreement. But BBLA was not an easy bank to oversee. It operated in two jurisdictions, with offices that had completely different functions, employees and regulatory environments. BBLA did not have a single employee overseeing both offices, and the senior Lloyds managers assigned to the bank had many other responsibilities. BBLA was, in fact, one of four offshore banks that Lloyds was operating from the same Bahamas location, and it is far

from clear how much attention Lloyds Bahamas actually paid to BBLA. For example, Lloyds never ensured that BBLA had a fully functioning anti-money laundering program that met the requirements of Bahamian law.

A second issue is whether BBLA's affiliated status lulled BNY's into paying less attention to the bank. The evidence indicates that BNY did actively monitor the BBLA account and evaluated both its operations and interactions with Lloyds and Banco Anglo. However, because it viewed the banks as working in tandem, BNY treated BBLA in the same way that it treated its affiliates, with little sensitivity to the fact that BBLA, as an offshore operation, posed increased anti-money laundering risks. For example, BNY failed to realize that BBLA's primary regulator remained the Bahamas, and the tougher oversight theoretically available in Colombia and the United Kingdom never actually took place. In the end, BNY failed to obtain an accurate understanding of BBLA's regulatory oversight.

A third issue is that, while BBLA's affiliation with Lloyds provided added oversight, the banks' close association may have also made Lloyds reluctant to disclose BBLA's deficiencies and problems. The evidence indicates, for example, that Lloyds failed to alert BNY to BBLA's involvement in the Operation Casablanca forfeiture or the Lloyds-ordered audit which found 85 additional suspicious transactions. No one wants to be associated with money laundering, and Lloyds' self-interest apparently dictated against its reporting BBLA's failings to BNY. The BBLA case history shows a U.S. correspondent bank cannot always rely on an affiliated bank for negative information about its offshore affiliate.

One lesson of the BBLA case history, then, is that while BBLA's affiliation with Lloyds and Banco Anglo was a positive factor which the Bank of New York reasonably relied on, it also had hidden drawbacks that contributed to BNY's missing important anti-money laundering deficiencies in BBLA's policies, procedures, personnel and regulatory oversight.

Difficulties in Seizing Illegal Drug Proceeds

Finally, the BBLA case history demonstrates the difficulties faced by U.S. law enforcement in confiscating known drug proceeds from a U.S. correspondent account belonging to an offshore bank.

Due to the Operation Casablanca and Operation Juno money laundering stings, it is undisputed that \$2.7 million in illegal drug proceeds were sent by wire transfer to BBLA's account in New York. Yet BBLA is opposing forfeiture of the funds, citing a variety of defenses. The ongoing litigation continues to consume U.S. law enforcement and prosecution resources, with the Casablanca forfeiture action exceeding 2½ years so far, and the Juno forfeiture action hitting the 1-year mark.

BBLA's argument that it was an innocent bystander to the drug deposits cannot be evaluated here, since neither BBLA nor the United States provided information about BBLA's role in accepting the \$2.7 million. On the other hand, BBLA's argument that it should not be forced to bear any loss in the event of inconsistent court decisions in the Bahamas and United States focuses attention on the legal issue of who, under U.S. law, bears the risk of loss in

this situation. BBLA was an offshore bank that, by design, operated in multiple jurisdictions. It chose to get its license in the Bahamas, obtain its clients in Colombia and keep its dollars in the United States. It profited from that arrangement. Yet it claims that it should be protected from any risk of loss when faced with forfeiture proceedings in two jurisdictions over the same illegal funds. But BBLA accepted the risk of inconsistent rulings when it chose to operate in both jurisdictions at once. Even more, as a policy matter, forcing an offshore bank like BBLA to bear some risk of loss would provide an incentive for it to screen its U.S. deposits more carefully in the future. At the moment, however, how U.S. courts will treat BBLA's legal argument remains unclear.

If BBLA were to prevail in court, the \$2.7 million in drug proceeds would be returned to the bank, which would presumably release the funds to the relevant accountholders. The accountholders would then be made whole and suffer no legal consequences for having exchanged currency on the black market peso exchange. Such a conclusion to the BBLA forfeiture actions would make it that much more difficult for U.S. and Colombian law enforcement to discourage use of a black market that is financing much of the illegal drug trade plaguing both our countries.

**BRITISH BANK OF LATIN AMERICA MONTHLY ACCOUNT
ACTIVITY AT BANK OF NEW YORK
January 1998-December 1999**

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|--------------------|------------------------|------------------------|--------------------|
| January 1998 | \$213,454 | \$40,133,745 | \$43,583,173 | \$283,057 |
| February 1998 | \$283,057 | \$78,285,586 | \$81,851,437 | \$223,083 |
| March 1998 | \$223,083 | \$67,867,385 | \$69,162,634 | \$330,289 |
| April 1998 | \$330,289 | \$87,244,132 | \$85,318,591 | \$263,158 |
| May 1998 | \$263,158 | \$59,968,296 | \$62,207,011 | \$428,085 |
| June 1998 | \$428,085 | \$61,986,395 | \$57,747,511 | \$467,901 |
| July 1998 | \$467,901 | \$24,912,043 | \$25,147,687 | \$636,209 |
| August 1998 | \$636,206 | \$57,963,111 | \$56,101,057 | \$501,208 |
| September 1998 | \$501,208 | \$109,213,034 | \$115,092,113 | \$222,904 |
| October 1998 | \$222,904 | \$93,251,230 | \$91,634,632 | \$340,490 |
| November 1998 | \$340,490 | \$66,367,458 | \$67,654,369 | \$355,848 |
| December 1998 | \$355,848 | \$52,557,413 | \$51,912,424 | \$201,892 |
| January 1999 | \$201,892 | \$25,841,407 | \$26,426,143 | \$417,358 |
| February 1999 | \$417,358 | \$21,556,062 | \$22,400,269 | \$783,988 |
| March 1999 | \$783,988 | \$77,097,833 | \$83,362,990 | \$270,128 |
| April 1999 | \$270,128 | \$48,230,657 | \$47,260,612 | \$243,138 |
| May 1999 | \$243,138 | \$42,193,127 | \$42,107,758 | \$128,750 |
| June 1999 | \$128,750 | \$101,889,005 | \$104,288,218 | \$234,941 |
| July 1999 | \$234,941 | \$48,646,448 | \$53,890,943 | \$190,446 |
| August 1999 | \$190,446 | \$20,524,495 | \$18,958,590 | \$356,352 |
| September 1999 | \$356,352 | \$71,930,300 | \$70,778,186 | \$209,060 |
| October 1999 | \$209,060 | \$61,404,775 | \$65,395,808 | \$219,542 |
| November 1999 | \$219,542 | \$151,528,274 | \$150,150,064 | \$204,778 |
| December 1999 | \$204,778 | \$41,043,494 | \$42,785,700 | \$265,607 |
| TOTAL | | \$1,511,635,705 | \$1,535,217,920 | |

Prepared by the U.S. Senate Permanent Subcommittee on Investigations, Minority Staff, January 2001.

Case History No. 7**EUROPEAN BANK**

European Bank is a small onshore bank licensed by the Government of Vanuatu, an island nation in the South Pacific. In 1999, European Bank opened an account and accepted \$7.5 million in deposits that turned out to be the proceeds of a massive credit card fraud in the United States. This case history looks at how this bank deposited the \$7.5 million in a U.S. correspondent account at Citibank and fought for over 1 year to prevent U.S. seizure of the funds. It also looks at the practical difficulties of Citibank's monitoring a correspondent account in a remote jurisdiction with a tradition of bank secrecy and weak banking and anti-money laundering controls.

The following information was obtained from documents provided by European Bank and Citibank; court pleadings; interviews of persons in Australia, the Cayman Islands, the United States and Vanuatu; and other materials. Key information came from interviews with two bank officials, an August 7, 2000 interview of Thomas Montgomery Bayer, chairman and part owner of European Bank; and a June 22, 2000 interview of Christopher Schofield Moore, a financial institutions group vice president at Citibank in Sydney, Australia. Both European Bank and Citibank voluntarily cooperated with the investigation. The investigation also benefited from assistance provided by the Australian, Cayman and Vanuatu Governments.

A. THE FACTS**(1) European Bank Ownership and Management**

European Bank is the only indigenous bank in Vanuatu that is privately owned. It is licensed to do business with both Vanuatu citizens and foreign clients. Its offices are located in Port Vila, Vanuatu's capital city. In 1999, European Bank had about \$29 million in total assets, handled about 90 clients with 250 accounts, and managed about \$62 million in client funds.

European Bank Formation. European Bank Ltd. was first established in 1972. By 1986, it was owned by a consortium of banks that included Bank of America, Union Bank of Switzerland, and others. In 1986, the consortium sold the bank to a Delaware corporation called European Capital Corporation, a holding company which is, in turn, owned by a trust beneficially owned by members of the Bayer family. The bank's name was changed in 1986 to European Bank because, according to Thomas Bayer, the bank hoped to attract European clients doing business in the South Pacific. Thomas Bayer became the bank's chairman. In his interview, Bayer said that, after changing hands, the bank went essentially dormant for 10 years, handling only a few investments. He indicated that, in 1995, a decision was made to revive the bank. The bank obtained its current license to service domestic and international clients in April 1995, hired experienced bankers, and in the last 5 years has become an active financial institution.

European Bank Management. European Bank's top executive is Bayer, who has held the title of executive chairman since 1986.

Documentation and interviews indicate he is actively involved in the management of the bank and serves as its most senior decision-maker.²⁸⁰ European Bank began hiring management personnel when the bank came out of its dormancy in 1995. European Bank's current president and chief executive officer is Robert Murray Bohn. The senior vice president in charge of operations is Brenton Terry whose predecessor, Douglas P.M. Peters, was instrumental in reviving the bank in 1995. The current operations manager is Kely Ihrig. The senior vice president in charge of the bank's data systems is Susan Phelps, who is also an officer of an affiliated company, European Trust Co. Ltd. The senior manager of the bank's corporate and trust services is David L. Outhred. Most of the bank's senior officers appear to have had solid banking credentials and experience.

(2) European Bank Financial Information and Primary Activities

European Bank Financial Statements. Vanuatu law requires its banks to submit annual audited financial statements. In response to a request by the investigation, European Bank voluntarily provided the Subcommittee with a copy of its 1999 financial statement, which had been audited by the Vanuatu office of KPMG Chartered Accountants.

The 1999 financial statement presented a mixed picture of the bank's finances. It indicated that, overall, European Bank's 1999 income of \$1.7 million was exceeded by operating expenses of \$1.8 million, resulting in an overall loss of about \$77,000 for the year. It valued European Bank's total assets at almost \$29 million. Customer deposits, which totaled \$112 million in 1998, had dropped by almost half to \$62 million. Note 15 stated that a "director related party has placed a deposit of US\$984,238 with the bank . . . as security to cover the overdrawn accounts of three clients." "Issued share capital" was \$750,000. Despite the overall loss on the year, the bank issued a dividend payment of \$116,000, double the 1998 dividend of \$83,000, which was paid on profits of more than \$291,000.

The financial statement suggests a small, thinly capitalized bank that, in 1999, suffered some unexpected overdrawn accounts, operating losses and a large drop in customer deposits, but nevertheless paid a sizeable dividend.

European Bank Affiliations. European Bank is part of a complex group of companies beneficially owned by the Bayer family. These companies are incorporated in Vanuatu, Canada, the United Kingdom, and the United States, with offices in other countries as well.²⁸¹ European Bank records reflect ongoing transactions with a

²⁸⁰ Bayer is a former U.S. citizen who worked for the U.S. Department of Defense, moved to Australia in 1967, lived in Singapore, and eventually settled in Vanuatu in 1974. After leaving the U.S. military, Bayer worked in international banking, trust activities and investments, including at offshore financial centers. When Vanuatu declared independence in 1980, and asked its leading citizens to take Vanuatu citizenship, Bayer became a citizen of Vanuatu in 1982, giving up his U.S. citizenship. Bayer indicated that he has a business degree from the Wharton School of Business in Pennsylvania, took law courses at a university in Singapore, and is a member of the International Bar Association.

²⁸¹ Key companies in the Bayer group include the following:

number of these related parties. These companies are also a source of new clients for the bank.

European Bank Primary Lines of Business. When asked to identify its major lines of business, European Bank described a number of different types of clients and banking activities, none of which appear to dominate the bank. Its activities included: (1) domestic banking for Vanuatu residents; (2) private banking primarily for foreign clients, involving funds management and investment activities for wealthy individuals; (3) banking activities for companies and trusts formed by the bank's affiliated trust companies, European Trust and PITCO; (4) banking activities for the bank's affiliates or their clients, including the PCGF mutual funds, Fidelity Pacific Insurance, and Vanuatu Maritime Services; (5) offshore banking activities for Asian clients, such as Hong Kong citizens seeking escape from estate duties; (6) merchant credit card accounts; and (7) niche banking services for mail order companies, telemarketers and lotteries. European Bank indicated that it did not engage in regular lending activities, although it had a small trade finance portfolio.

Bayer indicated that, when European Bank first came out of its 10-year dormancy in 1995, it concentrated on a banking specialty involving services to mail order companies, telemarketers and lotteries. These banking services consisted primarily of clearing thousands of small checks in various currencies from persons buying merchandise or lottery tickets, and issuing numerous small checks in various currencies to lottery winners or persons returning merchandise or seeking refunds. European Bank performed the labor-intensive work of gathering and batching the consumer checks, while using correspondent banks with international check clearing capabilities, such as Citibank, to help it process payments and issue checks as needed. Bayer indicated that, at its peak, European Bank was clearing about 100,000 checks per month. Both Bayer and Moore indicated that it was this check clearing business that led to the establishment of European Bank's correspondent relationship with Citibank in 1996.

—*European Investment Corp. Ltd.*, a Vanuatu company which is 100% owned by European Bank, functions as an investment holding company, and owns one subsidiary, European Trust Co. Ltd.;

—*European Trust Co. Ltd. ("European Trust")*, a Vanuatu company which is licensed to engage in company and trust formation activities in Vanuatu; is 100% owned by European Investment Corp.; shares employees and office facilities with European Bank; and operates in close cooperation with European Bank;

—*Pacific International Trust Company Ltd. ("PITCO")*, a Vanuatu company which is the only other trust company in Vanuatu aside from European Trust; is owned by PITCO Corp., a Delaware company; has offices in Hong Kong, Kuala Lumpur, London, New York and Port Vila; shares employees and office facilities with European Bank; and uses European Bank as one of its bankers;

—*Pacific Capital Growth Fund Ltd. (PCGF)*, a Canadian company which is wholly owned by PITCO; operates several award-winning mutual funds; requires its clients to establish Vanuatu entities; and uses European Bank as one of its bankers;

—*Fidelity Pacific Life Insurance Co. Ltd.*, a Canadian company which is one of only two registered life insurance companies in Vanuatu; holds preferred shares in European Bank; and uses European Bank as one of its bankers;

—*Asian Pacific Finance Ltd.*, a U.K. company which provides financial services and, like European Bank, is owned by European Capital Corporation; and

—*Vanuatu Maritime Services Ltd.*, a Vanuatu company which operates Vanuatu's extensive international shipping register, which is one of the largest in the world; has registered over 500 vessels; maintains ship registration offices in Greece, Hong Kong, Japan, Singapore, the United Kingdom, the United States, and Vanuatu; and uses European Bank as one of its bankers.

Another key activity at European Bank involving correspondent banks has been the bank's fiduciary placement of client funds in various money market or investment accounts at other banks to maximize interest earnings. European Bank typically makes these placements after a competitive bidding process in which its personnel contact the treasury departments at several of its correspondent banks and obtain interest rate quotations for depositing a specified amount of funds for a specified period of time. For example, European Bank might call Citibank, ANZ Bank, and Westpac Banking Corp. to find the best interest rate offered for a 30-day deposit of \$1 million. Once the placement terms are settled, European Bank would direct the wire transfer of the funds to the appropriate bank and, at the end of the agreed upon placement period, collect the promised interest payments.

According to Bayer, these placements are a good source of revenue for the bank, which shares in the higher interest rates paid on the deposits. For example, if European Bank was able to place \$1 million for 30 days at a 7% interest rate, it might pay its client 5% in interest and keep the remaining 2%. Documentation and interviews indicate that European Bank took a conservative approach to the placement of client funds, using major banks and low-risk investments such as money market accounts or U.S. treasury notes. The documentation also indicates that European Bank often made these placements in U.S. dollars. Documentation and interviews indicate that European Bank often made a fiduciary placement soon after receiving a substantial deposit from an individual client. Bayer indicated that European Bank typically tried to move any large deposit exceeding, for example, \$1 million, into a higher interest-bearing placement by the end of the day. Citibank account statements show repeated instances in which European Bank withdrew large client deposits later the same day for placement into a higher interest-bearing money market account either at Citibank or another bank.²⁸²

(3) European Bank Correspondents

European Bank told the Minority Staff investigation that correspondent banks play a critical role in the bank's operations:

The role that correspondent banks play in our bank's operation is . . . a critical one. All banks place deposits denominated in foreign currency either directly or indirectly with a correspondent that operates in the country of that currency. . . . As the Vatu [Vanuatu's domestic currency] is not an internationally used currency, virtually all of our bank's assets are on deposit with our correspondent banks. Even within Vanuatu, residents generally do not hold their investments in Vatu, so deposits we received from locally based depositors will invariably be denominated in a currency other than Vatu. For us to pay interest on that deposit, we must in turn deposit it

²⁸² According to Bayer, on some occasions, European Bank would combine funds from several client accounts into a single placement in order to take advantage of the higher interest rates paid on interbank deposits.

through the interbank system with one of our correspondent banks.²⁸³

In response to requests for information, European Bank provided a list of about a dozen banks with which it has had a correspondent relationship since 1998. These correspondent banks were licensed in Australia, Italy, the Netherlands, the United Kingdom, Vanuatu, and elsewhere.

Bayer indicated that, for 4 years beginning in 1996, European Bank's primary correspondent relationship was with Citibank. That correspondent relationship was managed by Citibank offices in Australia, but European Bank maintained seven Citibank accounts, each in a different currency, allowing it to transact business in Australia, Canada, Hong Kong, New Zealand, the United Kingdom and the United States, among other jurisdictions. Bayer indicated that European Bank's preferred currency was U.S. dollars and it carried out the bulk of its transactions through its U.S. dollar account at Citibank. European Bank also completed transactions in such currencies as Australian dollars, Canadian dollars, sterling and yen.

European Bank routinely transacts business in the United States, using a variety of U.S. correspondent accounts. While its most frequently used U.S. dollar account was at Citibank, European Bank also used U.S. dollar accounts belonging to its other correspondent banks, such as ANZ Bank (Vanuatu) Ltd. and Bank of Hawaii (Vanuatu), both of which have U.S. affiliates. ANZ Bank (Vanuatu) Ltd., for example, has a correspondent relationship and U.S. dollar account with ANZ Bank (United States) which maintains a small office in New York, and European Bank routinely transacted business through this U.S. account.²⁸⁴

While the Minority Staff investigation did not examine all of European Bank's U.S. correspondent activities, it did conduct an in-depth examination of the bank's primary correspondent relationship with Citibank. This correspondent relationship lasted 4 years, from May 1996 until May 2000, and ended only when Citibank made a decision to reduce its correspondent activity involving certain South Pacific island nations. Although European Bank's Citibank accounts are now closed, it continues to transact business in the United States through a variety of other U.S. correspondent accounts.

(4) European Bank Operations and Anti-Money Laundering Controls

European Bank operates out of offices in the capital city of Vanuatu, Port Vila. Its offices are open to the public, since the bank is authorized to take deposits from Vanuatu citizens as well as international clients. The bank shares its office space and staff with two affiliated companies, European Trust and PITCO. According to Bayer, the companies have a combined staff of about 60, of which only about 8 persons work solely for the bank.

²⁸³ Letter dated 5/22/00 from European Bank to the Subcommittee responding to requests for information ("European Bank letter") at 6.

²⁸⁴ Both ANZ Bank (Vanuatu) Ltd. and ANZ Bank (United States) are affiliated with the Australia and New Zealand Banking Group Ltd., a large financial services conglomerate with, according to the *Bankers Almanac*, over 30,000 employees and \$95 billion in assets worldwide.

From 1996 through mid 2000, the bank maintained an electronic ledger and had its own wire transfer capability using software provided by Citibank. Documentation indicates a well developed set of standard internal forms to track client accounts and bank transactions. Bank records are kept on site in Vanuatu.

The bank does not have a high volume of daily transactions nor does it routinely deal in million-dollar transactions, although it occasionally facilitates large transfers of funds. In his interview, Bayer estimated that the bank handles only about 5 to 10 transactions per day and an even smaller number of fiduciary placements. Citibank documentation indicates that over a 2-year period, 1998 and 1999, only a small number of European Bank's transactions exceeded \$2 million. During those 2 years, for example, only one transaction exceeded \$10 million; two transactions involved amounts between \$5 and \$10 million; and less than a dozen involved \$2 million or more. Nevertheless, European Bank moved significant amounts of funds through its Citibank accounts. For example, in 2 years, the least active month, at its Citibank U.S. dollar account experienced more than \$1 million in account activity, while the most active month saw \$50 million move into and out of the account. Overall, European Bank's deposits and withdrawals from its U.S. dollar account at Citibank in 1998 and 1999 totaled almost \$192 million.²⁸⁵

European Bank's Anti-Money Laundering Controls. European Bank provided the investigation with a copy of its July 1999 "Money Laundering Prevention Policy." In an interview, Bayer stated that it was the bank's first formal, written anti-money laundering policy statement, although the bank has long worked to prevent money laundering by getting to know its customers, monitoring accounts and reporting suspicious activities.

European Bank's policy statement includes sections on the definition of money laundering, how to prevent money laundering, "client acceptance criteria," and anti-money laundering procedures instructing bank employees to "know your customer," monitor transactions, and report suspicious transactions.²⁸⁶ The policy statement also provides standard forms for reporting cash transactions and suspicious activity.

The person charged with implementing the anti-money laundering policy is the bank's operations manager, who also serves as European Bank's compliance officer. Bayer indicated during his interview that, prior to July 1999, European Bank had not assigned anti-money laundering duties to a particular bank em-

²⁸⁵ See chart entitled, "European Bank Monthly Account Activity at Citibank."

²⁸⁶ Excerpts include the following:

- "The purpose of this policy is to ensure that . . . European Bank . . . has adequate policies, practices and procedures in place, including strict 'know your customer' rules that will encourage all staff of the Bank to promote high ethical and professional standards in the financial and banking sector and prevent the Bank being used, intentionally or otherwise, by criminal elements."
- "Transactions will only be undertaken for customers of the Bank, properly identified individuals or with authorized introductions from group associated entities."
- "It is *mandatory* that before an account is opened, the Bank Officer is satisfied that he/she 'knows the customer', and is satisfied with their bona fides. . . . The Bank requires to know . . . where appropriate, the 'beneficial owner' of the account."
- "The following bank documentation must be obtained/completed: Signature Card. Account Opening Questionnaire[.] Money Laundering Prevention Questionnaire[.] Acknowledgment and Agreement form. Statutory Declaration. Beneficial Ownership form. . . ."

ployee. He said that the policy also led to the appointment of the bank's first official compliance officer.

European Bank's 1999 adoption of a written anti-money laundering policy is an overdue, but important advance in its anti-money laundering efforts. While the policy has many positive features, it has at least two drawbacks. First, it assigns all anti-money laundering and compliance duties to the bank's operations manager, who already has substantial duties in the day-to-day operation of the bank. Bayer indicated in his interview that he thought Kely Ihrig, the current operations manager, spent a very small percentage of her time on anti-money laundering responsibilities. Second, while the policy statement requires "ongoing monitoring of transactions," it appears to limit this monitoring to cash transactions. The policy statement does not require, for example, any monitoring of wire transfer activity, even though the vast majority of European Bank transactions take place through wire transfers. The statement also fails to specify any monitoring procedures, whether manual or electronic, to be used in analyzing ongoing transactions and identifying suspicious activity.

(5) Regulatory Oversight of European Bank

Vanuatu has separate regulatory regimes for its onshore and offshore banks, with different statutory requirements and different regulatory agencies. Onshore, domestic banks are regulated by the Reserve Bank of Vanuatu, while offshore banks are regulated by the Vanuatu Financial Services Commission. European Bank is regulated by the Reserve Bank. Bayer is a long-serving member of the Vanuatu Financial Services Commission.

Vanuatu has a mixed reputation with respect to its banking and anti-money laundering controls. For example, the State Department's *International Narcotics Control Strategy Repo* ("INCSR 2000") identifies Vanuatu as a country of "concern" in terms of money laundering, and describes a number of deficiencies in its anti-money laundering laws. However, the United States has not issued a formal advisory on Vanuatu nor is Vanuatu named in FATF's June 2000 list of 15 countries found non-cooperative with international anti-money laundering efforts. On the other hand, Vanuatu is named in the June 2000 list of 35 unfair tax havens published by the Organization for the Economic Cooperation and Development's Forum on Harmful Tax Practices, and in the March 2000 list of offshore jurisdictions with relatively weak financial regulation issued by the Financial Stability Forum. In late 1999, several major banks, including the Bank of New York, Deutsche Bank and Republic National Bank of New York, stopped processing wire transfers involving certain South Pacific island nations, such as Nauru, Palau Niue and Vanuatu. However, in early 2000, Vanuatu was able to convince the banks to modify their wire transfer ban as applied to Vanuatu so that it was limited, essentially, to Vanuatu's offshore banks, while allowing wire transfers involving Vanuatu's domestic onshore banks. Later in 2000, when Vanuatu underwent its first evaluation by the Asia/Pacific Group on Money Laundering (APG), a FATF regional affiliate, the evaluation identified both positive and negative features of Vanuatu's anti-money laundering controls.

Vanuatu has five locally licensed, domestic banks which together make up the Bankers Association of Vanuatu.²⁸⁷ These banks are authorized to do business with Vanuatu's residents and any foreign citizen, and to complete transactions using the local currency, the Vatu, as well as any foreign currency.

Beginning in 1999, the Reserve Bank of Vanuatu was assigned responsibility for regulating these onshore banks. This regulation is carried out by the Reserve Bank's Bank Supervision Department. Bayer indicated in his interview that, to date, the Reserve Bank has not issued any bank regulations, because the industry has historically been self-regulated under rules issued by the Bankers Association of Vanuatu. Each onshore bank is required, however, to file monthly reports and an annual audited financial statement with the Reserve Bank. These filings contain information about the bank's capital, balances, major depositors, operations and other information. The Reserve Bank is charged with reviewing these reports as well as conducting bank examinations. Bayer indicated in his interview that European Bank had undergone a number of bank examinations over the years.

In addition to five onshore banks, Vanuatu has licensed over 60 "exempted" or offshore banks. Apparently, all are shell operations run by persons or companies outside of the jurisdiction. Bayer indicated during his interview that about six were affiliated with banks licensed elsewhere, while the remaining—more than 55—were offshore banks licensed only in Vanuatu. He indicated that most of the offshore banks operated under restricted banking licenses which permit the bank to accept deposits only from persons or entities specified on an approved list.

All of Vanuatu's offshore banks are regulated by the Vanuatu Financial Services Commission. The current chairman of the Commission is Bayer, who serves in an advisory capacity.²⁸⁸ The Commission participates in both the licensing and monitoring of these banks. The Commission also oversees much of the rest of Vanuatu's commercial sector, including the island's international business corporations, trust companies, insurance firms, realtors and other commercial enterprises. It used to oversee the island's domestic banks as well, until that responsibility was switched in 1999 to the Reserve Bank.

According to Bayer, compared to its other duties, the Commission has spent only a small fraction of its time on matters related to offshore banks. He indicated that, of the time spent on offshore bank matters, most of the Commission's efforts have involved obtaining required fees and reports from the offshore banks, and reviewing

²⁸⁷ Vanuatu's five onshore banks are: (1) European Bank, the island's only privately-owned, indigenous bank, not licensed in any other jurisdiction; (2) National Bank of Vanuatu, which is an indigenous bank owned by the Vanuatu Government; (3) ANZ Bank (Vanuatu) Ltd., which is part of the Australia, and New Zealand Banking Group Ltd., a large regional conglomerate; (4) Banque d'Hawaii (Vanuatu) Ltd., a wholly owned subsidiary of an established U.S. bank, Bank of Hawaii which operates throughout the South Pacific; and (5) Westpac Banking Corp., which is part of a large Australian financial conglomerate.

²⁸⁸ According to Bayer, the Commission operates with three members, one of whom is a government employee and serves as the official "Commissioner," while the other two serve as commission "advisors." Bayer indicated in his interview that he has been a member of the Commission since its inception in the 1980s and is the only member who has continuously served on the agency since it began. Bayer indicated in his interview that he perceived his role to be, in part, to represent the interests of the private sector. The official Commissioner for a number of years was Julian Ala, followed recently by Dudley Aru.

submitted filings. He said the Commission carried out its offshore banking duties through an "Offshore Banking Supervision Unit." He said the Commission did not, as a rule, conduct bank examinations. He indicated that offshore banks are not required to keep records in Vanuatu, and most do not, which means offshore bank examiners would have to travel to where the shell bank was operating or, alternatively, be limited to reviewing paperwork sent to Vanuatu. Bayer said that, due to requests made by the international banking community, the Commission recently agreed to examine six of its offshore banks suspected of having ties to Russian nationals and moving questionable funds. He indicated that those examinations were being conducted by a retired bank auditor from the U.K.'s Financial Services Authority, hired by Vanuatu to examine the six banks. He said that Vanuatu had made no commitment to examine its other offshore banks, which currently number more than 50. He indicated that there was an ongoing debate in Vanuatu about whether offshore bank examinations were needed and whether the cost of compliance would discourage bank applications in Vanuatu.

Bayer also said in his interview that, even though he is chairman of the Vanuatu Financial Services Commission, he plays only a limited role in the licensing process because he is not permitted to see bank ownership information. He said that, under Vanuatu law, only the official Commissioner, a government employee, has access to bank ownership information. He said that, because of this situation, he could not say with any certainty who owned Vanuatu's offshore banks—even though he is a key regulator of them. He said that it was his impression that most of the 60 offshore banks are "ego banks" owned by wealthy individuals or subsidiaries of private companies seeking to operate a bank on behalf of a related group of companies.

Bayer said that it is his impression from his Commission duties that Vanuatu's offshore banks are generally not very active. He thought that they are also generally small operations with few formal procedures. For example, he thought that few would have formal anti-money laundering procedures. He said that it was up to U.S. banks to investigate these banks prior to accepting funds or opening accounts for them. When told that U.S. banks thought that they should be able to rely on Vanuatu banking authorities to ensure the legitimacy of their licensed banks, Bayer disagreed and said U.S. banks have their own due diligence obligations they need to perform.

Although Bayer claimed there was no conflict of interest in his serving on a Commission that oversees only offshore banks, evidence indicates that European Bank operates a correspondent account for at least one Vanuatu offshore bank called Nest Bank. Nest Bank is one of the six Vanuatu offshore banks under examination for possible ties to Russian nationals. Citibank documents indicate that, beginning in January 1999 and continuing throughout the year, European Bank allowed Nest Bank to move more than \$6 million through European Bank's U.S. dollar correspondent account at Citibank. These funds suggest Nest Bank may be a sizeable client at European Bank. The 1999 transactions involved such entities as a fertilizer plant in Uzbekistan; a London

company that trades in oil, chemicals, and agricultural commodities in Russia; a company called Societe Generale S.A. in the Ukraine; a company called Rusomax Ltd.; and International Bank Astana, Ltd. which the investigation was unable to locate but appears to have ties to Moscow. While the investigation did not attempt to analyze European Bank's relationship with Nest Bank, the existence of this correspondent account raises possible conflict of interest issues, since it calls for a private banker, Bayer, to oversee an offshore bank that is also his bank's client. The potential for conflict is made even more clear by the Commission's ongoing examination of Nest Bank for alleged ties to Russia and possible money laundering, since Nest Bank moved over \$6 million in 1 year through European Bank's correspondent account at Citibank.

(6) Money Laundering and Fraud Involving European Bank

The Minority Staff investigation did not conduct an exhaustive review of European Bank's activities, but did conduct a detailed examination of two major accounts opened in 1999, which moved millions of dollars through European Bank's U.S. correspondent accounts. Both accounts raise serious questions about European Bank's client oversight and due diligence.

(a) Taves Fraud and the Benford Account

In 1999, European Bank opened a bank account and accepted \$7.5 million on behalf of a Vanuatu corporation, Benford Ltd., that was established by its affiliated trust company and about which the bank had virtually no due diligence information. After learning that the \$7.5 million consisted of proceeds from a credit card fraud, European Bank nevertheless fought for more than 1 year to prevent U.S. seizure of the funds from its correspondent account at Citibank.

In April 2000, in civil proceedings filed by the U.S. Federal Trade Commission to halt unfair and deceptive trade practices, a U.S. district court found that Kenneth H. Taves and his wife Teresa Calle Taves, both U.S. citizens, had committed a massive credit card fraud involving over \$49 million.²⁸⁹ Imprisoned on civil contempt charges for refusing to surrender certain assets related to the fraud, Taves was indicted in February 2000 in separate court proceedings in two countries. In the United States, Taves was charged with making false statements; in the Cayman Islands he was charged with money laundering.

The U.S. court also authorized an FTC-appointed receiver to track down and recover the fraud proceeds. The receiver found over \$25 million had been transferred to Taves-controlled accounts at Euro Bank, a small bank in the Cayman Islands.²⁹⁰ The Cayman Government charged three senior Euro Bank officials with laundering money from the Taves fraud and later ordered the bank closed. In July 1999, in exchange for releasing the bank from damage claims, Euro Bank's liquidators provided the FTC receiver with "information and documents in the Bank's possession" related to

²⁸⁹ For more information, see the description of the Taves fraud in the appendix.

²⁹⁰ Euro Bank is completely unrelated to European Bank in Vanuatu.

the Taves fraud. Using this information, the FTC receiver traced \$7.5 million in Taves fraud proceeds to a European Bank account opened in the name of a Vanuatu corporation, Benford Ltd.

Benford Ltd. was incorporated by European Trust, and its bank account was opened by European Bank. The company was established at the request of one of the Euro Bank employees later charged with money laundering, who said he was acting on behalf of an unnamed client. The incorporation and account paperwork was handled by a shared senior employee, Susan Phelps, who was working for both European Trust and European Bank. Phelps has stated in a sworn affidavit that, throughout the incorporation and account opening process, she never spoke with either the Euro Bank employee or Benford's beneficial owner, but relied entirely upon faxed information to establish the corporation and open the account.

Phelps incorporated Benford Ltd. within 24 hours of receiving an application form faxed from Euro Bank with minimal information about the company's beneficial owner. The application provided no more than the beneficial owner's name, Vanessa Phyllis Ann Clyde, a London address, a copy of her passport photograph, and a one-word description of her occupation as "business." On the same day Euro Bank wire transferred \$100,000 to European Bank's account at Citibank in New York, for deposit into the Benford account. European Bank opened the Benford bank account, without any additional due diligence research into Clyde, the source of her wealth, or the origin of the \$100,000. Bayer indicated that all of the forms were filled out in the usual way for bank accounts opened for companies formed by its affiliate, European Trust. In other words, it was typical practice for European Trust to incorporate a new company within 24 hours of a request and then for European Bank to open a bank account in the company's name.

It was only after the Benford account was opened, that the Euro, Bank employee and the company's beneficial owner, Clyde who had an American accent, actually telephoned Phelps to discuss the account. Clyde apparently indicated that she wished to keep the Benford funds in U.S. dollars in a secure but liquid investment. Over the next 2 months, the Benford account received additional millions of dollars in deposits. The first transfer, for \$2.8 million on March 17, 1999, prompted European Bank to ask some questions about their new client. After Euro Bank did not volunteer any additional information, European Bank's senior vice president asked someone he knew in the Cayman Islands about Euro Bank itself. He received the following negative information about Euro Bank:

Small locally incorporated bank, with a local banking licence, 20/30 people on the staff, corporate activities too, not a good reputation locally, has its door open to business when other doors are closed to it, very much lower end of the local banking business, dubious, 3 months ago there were rumors that they might fail, not well respected, advise caution when dealing with them. Barclays would not accept a reference from them and would certainly not do business with them.

Despite this negative portrayal of the sole reference for the Benford account, European Bank left open the account, accepted additional funds, and chose not to try to verify any information about Clyde or her assets.

By April 1999, the Benford account held about \$7.5 million. Bayer said that, by then, Benford was a “huge client,” whose deposits represented about 15% of the bank’s total deposit base of \$50 to \$60 million. In May, however, two incidents suddenly cast suspicion on the Benford funds. The first, on May 25, 1999, was a telephone call about the account from a Clyde who had an English accent, instead of an American accent. Bayer said it was the first time European Bank appeared to have two different persons claiming to be the beneficial owner of an account at the bank. Later the same week, European Bank received a fax stating that Euro Bank had been placed into receivership and the \$7.5 million previously sent to the Benford account were proceeds of the Taves credit card fraud.

In response, European Bank immediately froze the Benford account, transferred the funds internally into a new, non-interest bearing account from which client withdrawals were prohibited, and filed a report with the Vanuatu police. Despite moving the Benford deposits into a non-interest bearing account within the bank, European Bank decided to continue placing the \$7.5 million with the correspondent bank paying the highest interest rate on the funds, so that it could continue to earn revenue from this large deposit. European Bank did not, however, alert the correspondent bank holding the funds to their suspicious origin.

At the same time, European Bank made another attempt to learn more about the funds. In June 1999, Phelps asked the English-accented Clyde in a telephone conversation about the origin of the funds. She wrote this summary of the conversation:

[Clyde] said I should have got this info from [the Euro, Bank employee]. I said the funds had just arrived without supporting documentation. . . . English was asked to open the a/c. Doesn’t know when. . . . Doesn’t know how much. Wasn’t responsible for putting funds in. Not her personal funds. Extremely uncomfortable. . . . If somebody had taken funds she doesn’t want to be tarred.²⁹¹

The evidence indicates that, within months of the \$7.5 million being deposited, European Bank had notice and evidence of their suspect origin. Yet European Bank steadfastly opposed releasing the funds to the FTC receiver seeking recovery of the money on behalf of the Taves fraud victims.

Litigation over the funds began in the summer of 1999, when European Bank and the FTC receiver filed separate suits in Vanuatu to freeze the \$7.5 million. In September, Clyde asked the Vanuatu court to allow her to remit the Benford funds to the FTC receiver, but European Bank’s nominee companies contested her control of Benford Ltd. and opposed releasing the funds. The Vanuatu police launched a criminal investigation and, in November, charged Benford Ltd. with possession of property “suspected of being pro-

²⁹¹See Phelps affidavit and notes, CG 6509–11.

ceeds of crime.” The police also obtained a criminal freeze order preventing the funds’ release to the FTC or anyone else.

On December 10, 1999, after locating a document notifying Benford Ltd. that its funds had been placed in an interest bearing account at Citibank in Sydney, the FTC receiver filed suit in Australia, asking the Australian court to freeze the \$7.5 million on deposit with Citibank. Unknown to the FTC receiver at the time of its filing, European Bank had taken steps that same day to transfer the funds from Citibank to one of its correspondent banks in Vanuatu. Before any transfer took place, however, the Australian court froze the funds. Additional pleadings were filed by the Vanuatu Government, European Bank and FTC receiver, each seeking control over the \$7.5 million. European Bank, which had not told Citibank previously about the suspect origin of the Benford funds, sent a fax to Citibank explaining the situation and complaining that the FTC receiver was trying “every trick in the book” to “force the monies to be sent to the USA.” The Vanuatu and Australian litigation continued throughout 2000.

Almost 1 year later, on November 29, 2000, a third set of legal proceedings began in the United States. Acting at the request of the FTC, the U.S. Department of Justice filed a seizure warrant and took possession of the Benford funds from Citibank in New York. It was able to seize the funds in the United States because Citibank Sydney had always kept the Benford funds in U.S. dollars in a U.S. dollar account in New York. In December 2000, the Justice Department filed a civil forfeiture action seeking to eliminate any other claim to the funds. The complaint alleged that the funds were the proceeds of the Taves credit card fraud, and the FTC receiver had “tried to obtain the funds from European Bank through a Vanuatuan court proceeding, but failed to obtain relief in Vanuatu.” It is unclear whether European Bank will assert a claim to the funds.

During more than a year of litigation battles in three countries, Clyde has supported sending the Benford funds to the FTC, but European Bank has vigorously opposed it. When asked why, Bayer gave three reasons during his interview: (1) the ownership of the funds remained unclear, since Clyde had admitted in court that they were not her funds and she did not know their origin; (2) the allegation that the funds came from the Taves fraud should be established in Vanuatu court and, if true, the Vanuatu Attorney General could reimburse the fraud victims, rather than pay the monies to the FTC receiver who might exhaust the entire sum through fees and expenses;²⁹² and (3) European Bank had to defend itself from the risk of inconsistent court decisions which might order it to pay the \$7.5 million twice, once to the Vanuatu Government in connection with the Benford money laundering prosecution and once to the FTC receiver seeking funds for the Taves fraud victims. At times, Bayer also argued that the \$7.5 million deposit at Citibank represented European Bank’s own funds, unrelated to the Benford

²⁹² However, the INCSR 2000 report warns: “Case law in Vanuatu has shown that proving the criminal origins of proceeds, especially of offenses committed abroad, is extremely difficult. Linking criminal proceeds seized in Vanuatu with the offense committed abroad through a complex series of financial transactions conducted by related corporations operating in several offshore jurisdictions is all but impossible.” INCSR Report 2000 at 751.

matter, although at other times he acknowledged the Benford deposits made up the bulk of the Citibank placement.

The \$7.5 million, now swelled with interest earnings to \$8.1 million, is in the custody of the United States, while the litigation in Vanuatu, Australia and the United States continues.

(b) IPC Fraud

In February 1999, the same month it opened the Benford account, European Bank opened another ill-fated account under a credit card merchant agreement with a Florida corporation called Internet Processing Corporation ("IPC").²⁹³ As in the Benford matter, European Bank opened the account without a due diligence review of the prospective client. IPC used unauthorized credit card charges to obtain \$2 million in payments from European Bank and then absconded with the funds. By the time it learned of the fraud, European Bank was unable to locate IPC, the company's owner, or the missing \$2 million. It ultimately suffered a \$1.3 million loss which threatened the solvency of the bank.

According to Bayer, the IPC account was one of about a half a dozen new accounts that European Bank opened in 1999 in an effort to expand the bank's business into credit card clearing. It opened the IPC bank account within 1 week of being contacted for the first time by the company. As with the Benford account, the IPC account was opened based upon written materials and correspondence, without any telephone conversation or direct client contact.

Despite the credit risk involved in a merchant account, European Bank failed to conduct virtually any due diligence review of either IPC or Mosaddeo Hossain, the company's sole incorporator, registered agent, director and officer. IPC is a Florida corporation that had been created 2 weeks prior to the opening of the account. It claimed to sell travel packages on the Internet. Hossain was a Bangladeshi national allegedly living in Florida. European Bank did not inquire into the company's ownership, double check its references, ascertain its capital or bank account balances, or verify its physical address. With respect to Hossain, it did not inquire into his business background, obtain any personal or professional references, check his credit history, or verify any personal or professional information about him. The bank also failed to notice that the Bangladeshi passport he submitted as identification had expired 7 years earlier.

As soon as the account became operational in late March 1999, Hossain claimed that IPC needed to process a number of pre-sold travel packages and filed credit card charges totaling about \$13 million. About 85% of these charges would later be disputed by the cardholders who would refuse to pay them. In April 1999, European Bank processed about \$3.5 million of the filed charges and paid IPC over \$2 million in four separate payments. Each payment was made through European Bank's U.S. dollar account at Citibank and sent to IPC's U.S. dollar account at a Florida bank, called BankAtlantic.

²⁹³ For more information, see the description of the IPC fraud in the appendix.

On April 21, 1999, European Bank received an email from its credit card processing company about "a possible fraud of cardholders of your merchant: Internet Processing Corp." European Bank immediately stopped all credit card processing and attempted unsuccessfully to recall its latest payment to IPC of \$728,000. It later learned that, each time IPC had received a payment from European Bank, IPC had promptly directed BankAtlantic to wire transfer the funds across international lines to a bank in either Israel or Jordan. An account holder would then withdraw the funds from the bank, sometimes in cash. Despite urgent requests from European Bank and Citibank, BankAtlantic failed to return the \$728,000, failed to promptly alert the banks in Israel and Jordan to the IPC fraud, and failed to provide effective assistance in locating Hossain or IPC.

European Bank directly contacted the Israeli and Jordanian banks, but neither returned any funds or provided investigative leads. European Bank also alerted U.S. law enforcement, including the Secret Service. To date, it has been unable to find any trace of IPC, Hossain or the missing \$2 million. After taking into account IPC's security deposit and the limited credit card payments it received, European Bank determined that it actually lost about \$1.3 million from the IPC fraud.

Citibank's relationship manager for the European Bank account, Christopher Moore, determined that the loss was substantial given European Bank's thin capitalization and required the bank to keep \$1 million on deposit at Citibank until the IPC matter was fully resolved. Bayer described the loss as a "very serious matter" which could have resulted in bank failure, if the exposure had been greater. He said, however, that European Bank appears to have weathered the damage to its solvency.

(7) Correspondent Account at Citibank

Citibank's due diligence efforts with respect to opening and monitoring the European Bank account were among the most careful and conscientious witnessed during the investigation, but suffered from the practical difficulties inherent in overseeing a small foreign bank in a remote jurisdiction with weak banking and anti-money laundering controls and a tradition of bank secrecy.

Citibank. Citibank is one of the largest banks in the United States with over \$700 billion in assets and operations in more than 100 countries. According to Christopher Moore, the Citibank Sydney vice president interviewed by the investigation, Citibank holds two banking licenses in Australia, one for Citibank N.A. and one for Citibank Ltd., a Citibank N.A. subsidiary. Both make up what is referred to informally as "Citibank Sydney." Citibank Sydney also includes an entity variously called the "Citibank N.A. Sydney Branch Offshore," "Sydney Offshore Banking Unit," which transacts business with persons residing outside Australia.

Citibank Sydney has an active correspondent banking business. Most of its correspondent banking operations are handled by its "Financial Institutions Group," which operates out of Citibank's Global Corporate and Investment Bank." According to Moore, the Financial Institutions Group manages about 50 correspondent relationships with financial institutions in Australia, New Zealand and

the South Pacific region. The group also oversees Australian dollar accounts for another 200 financial institutions transacting business in that currency. Despite this large customer base, Moore said that the Financial Institutions Group operates with about four relationship managers. The relationship managers are supervised by Moore, who is a vice president and longstanding employee in the group, and its senior credit officer. Moore's direct supervisors are Citibank's Australia country head and country credit officer.

Moore indicated in his interview that most of the financial institutions that Citibank Sydney works with also have U.S. dollar accounts. He indicated that, because of the frequency of U.S. dollar transactions, the Financial Institutions Group was in regular contact with Citibank offices in New York. He indicated that all U.S. dollar transactions take place in the United States, through Citibank New York; U.S. dollars are not kept in Australia by Citibank Sydney.

Initiating European Bank Relationship. Citibank Sydney managed the correspondent relationship with European Bank. Moore explained that, although he did not normally become involved in the details of a correspondent relationship, he took it upon himself to act as the relationship manager for the European Bank account. He said it was Citibank's only account in Vanuatu, which is seen in Australia as a questionable jurisdiction, and he wanted to ensure that the initial due diligence and subsequent monitoring efforts for the account were adequate.

In deciding whether to commit Citibank to a correspondent relationship with European Bank, Moore conducted a thorough and painstaking due diligence effort.²⁹⁴ Among other measures, Citibank Sydney took the following steps:

- Citibank officials traveled to Vanuatu, visited European Bank's offices, inspected its operating systems, talked to the staff, and met with the bank's senior officers, including Bayer.
- Citibank obtained copies of the bank's incorporation papers, banking license, audited financial statements and other key documentation.
- Citibank asked Vanuatu banking regulators for their opinion of European Bank. It also analyzed Vanuatu's banking regulation and government.
- Citibank required European Bank to submit three written bank references and followed up with personal calls to each bank that provided a written reference. Citibank also spoke with European Bank's outside auditor
- Citibank inquired about and analyzed European Bank's finances and primary lines of business, and developed a detailed credit analysis of the bank.
- Citibank inquired about and analyzed European Bank's client base. Citibank made independent inquiries into several clients that raised due diligence concerns, such as an Aus-

²⁹⁴ See, for example, Citibank's first Basic Information Report on European Bank, CG 3852-61; first site visit report, CG 6155-57; and first credit analysis of the bank, CG 4203-07.

tralian lottery and certain mail order companies. In the case of the Australian lottery, Citibank checked with Australian officials who apparently provided the company with a clean bill of health, even though the company was then under criminal investigation in the United States and later pleaded guilty to illegal lottery solicitations.²⁹⁵ With respect to five clients, including the Australian lottery, Citibank required European Bank to submit a written declaration attesting to the client's reputation, competence and suitability.²⁹⁶ Moore indicated during his interview that Citibank eventually realized that it did not have the resources to evaluate all of European Bank's clients, and it would have to determine whether it could rely on European Bank to conduct its own client due diligence.

—Citibank directly and repeatedly discussed anti-money laundering issues with European Bank, including providing the bank with a 90-minute video on the topic and inquiring about the bank's due diligence procedures.²⁹⁷ In one memorandum, Moore expressed concern about the bank due diligence procedures stating, "It's clear to me that [European Bank] [doesn't] have a disciplined internal call file process. The customer acceptance testing is done by Tom [Bayer] and Robert [Bohn] and its apparently filed in their heads! I'm sure they know what they are doing, but is that good enough for us."²⁹⁸ In his interview, Moore could not recall whether European Bank then had written anti-money laundering procedures, but said he was "confident" the bank was aware of and sensitive to its due diligence and anti-money laundering obligations. European Bank's first written anti-money laundering procedures came, in fact, 3 years later in 1999.

Despite some deficiencies, the initial due diligence performed by Citibank was much more extensive than due diligence inquiries observed in the other correspondent bank case histories. The thoroughness of the effort may have been due, in part, to reservations about the relationship expressed by the person who was then head of Citibank Sydney and Moore's immediate supervisor. He wrote:

I have been thinking a lot about this proposed relationship and while I appreciate your diligence in developing indepth information . . . I continue to have reservations about entertaining this business. I am particularly concerned about the lack of institutional stability of the bank, the difficulty in monitoring events from Sydney and the overall image of Vanuatu. . . . [Y]ou should know that it will not be an easy sell.²⁹⁹

²⁹⁵ See *United States v. C-W Agencies Inc.* (U.S. District Court for the Western District of Washington Criminal Case No. CR99-454C), information (8/9/99) and plea agreement (8/24/99).

²⁹⁶ See "European Bank Ltd. Customers Information," (5/27/96), CG 3869-73.

²⁹⁷ See "Call Report European Bank" (5/2/96), CG 6155; and 11/26/96 letter from Citibank to European Bank, CG 6095.

²⁹⁸ The bates designation for this document is CG 6138.

²⁹⁹ 5/9/96 memorandum from William Ferguson to Moore, CG 6149. The memorandum's reference to the bank's "lack of institutional stability," according to Moore, was a reference to the bank's small size and thin capitalization. The reference to Vanuatu's "overall image," he said, was a reference to its image as a tax haven and an area that drew the attention of bank regulators.

In his interview, Moore said that he overcame these concerns by gathering detailed information about the bank and forming a consensus with his Citibank Sydney colleagues that the account was worth trying. Moore said that his meetings with the bank's management and staff impressed him with the bank's openness and willingness to provide information, Citibank's efforts to verify the bank's information were successful, and the regulators and other references all seemed to depict a solid bank under credible management. In an internal memorandum, Moore wrote, "[A]s we have step by step advanced this prospect with greatest caution and initial scepticism, we have been very impressed by the integrity and process we have seen in European Bank and its people."³⁰⁰

Monitoring the Account. Citibank Sydney began its correspondent relationship with European Bank on May 22, 1996. Over the next 4 years, Citibank provided European Bank with seven deposit accounts, each in a different currency; an electronic ledger and wire transfer software; check clearing services; check issuance capabilities allowing European Bank to issue checks in multiple currencies; foreign exchange services; limited credit lines for overdrafts and foreign currency transactions; access to Citibank's money market and other higher interest bearing accounts; and access to Citibank's bond and stock trading capabilities. The relationship expanded slowly, but steadily. Although Citibank indicated that it considered European Bank one of its smallest clients, the account statements show that, in 1998 and 1999 alone, European Bank moved \$192 million through its Citibank U.S. dollar account.

Moore personally supervised the monitoring of the European Bank account. In the first 6 months the account was open, he reviewed the bank's monthly account statements and cash letter reports. The documentation indicates that, while the account was open, Citibank personnel made regular site visits to the bank. Moore reviewed, and at times contributed to, Citibank "call reports" summarizing contacts with European Bank, and various annual reviews of the relationship. In addition, when problems arose over the Benford and IPC matters, Moore personally requested explanations and performed an independent analysis of the facts.

Citibank's documentation of the correspondent relationship contains numerous reports and analysis. Citibank Sydney's Financial Information Group uses a standard form for each correspondent relationship, entitled "Basic Information Reports" (BIRs), to present due diligence information, a risk analysis, transaction profile, overview of Citibank services and credit arrangements, account highlights, and an annual analysis for each relationship. The BIRs for European Bank were completed for 1997, 1998 and 1999, and approved by Moore.³⁰¹ While these reports failed to mention the Benford or IPC matters or other specific account problems, they provided a significant amount of information and evidence of Citibank's active, ongoing monitoring of the account. Citibank Sydney also prepared several call reports and credit analyses.³⁰²

³⁰⁰ 5/9/96 memorandum from Moore to Ferguson, CG 6150.

³⁰¹ The bates designation for these documents are CG 3852-61.

³⁰² See, for example, 4/30/97 memorandum by Moore, CG 6052-53.

In May 1999, Citibank Sydney prepared a detailed analysis of the entire correspondent relationship.³⁰³ Among other issues, the analysis looked at European Bank's "compliance risk," "country risk" and "financial risk." It identified risks in all three categories, but found them mitigated by the bank's strong management. The analysis stated, for example:

In light of Vanuatu's tax haven status, there is the risk that EB might be dealing with clients/funds involved in money laundering/other abnormal activity. . . . Vanuatu's no-exchange control and no-income tax environment makes it attractive to dubious individuals and businesses. . . . EB has a small asset . . . and capital . . . base, making it vulnerable to unexpected losses. . . . The relationship with EB is not critical to Citibank's franchise. However it has provided growing revenues for the minimal risk of the credit facilities. . . . [O]ur dealings with EB are based on our assessment of the integrity of the group and professionalism of its owners and management.

During his interview, based upon his personal experience, Moore expressed the view that European Bank was both reputable and competent. He also acknowledged that it had not produced the expected revenue for Citibank, and had experienced some unexpected losses and troubling incidents.

With respect to the Benford account, Moore indicated that he had never conducted a detailed review of the account opening documentation or process. After being shown the account opening documents and European Bank affidavits, he expressed surprise that the bank had opened the Benford account prior to speaking to the accountholder; he said that was "not the way Citibank would do it." He also expressed surprise at the bank's failure to obtain more due diligence information prior to opening the account; he said that did not comport with his understanding of European Bank's due diligence practices. When asked how Citibank would have reacted to the negative information provided about Euro Bank in March 1999, Moore said they probably would have placed the Benford account "in suspense" at that time and performed additional research into the origin of the funds. He also indicated that he had not been aware of the ongoing litigation in Vanuatu over whether Clyde was the true beneficial owner of Benford Ltd. Asked for his overall reaction to the Benford account opening process, Moore characterized it as "sloppy" and expressed surprise that the bank had handled it in the manner it did. He said it did not match his understanding of how European Bank operated.

Closing the Account. At the end of its May 1999 review of the European Bank account, Citibank had decided to continue the correspondent relationship. One year later, Citibank reversed course and closed the account.

Citibank's decision to close the European Bank account was not based on profitability concerns or bank misconduct, but on a broader policy decision to join an effort by other multinational banks to restrict correspondent banking activities in certain South Pacific is-

³⁰³ See "FI—Commercial Bank Individual Analysis" for European Bank (5/7/99), CG 4038–43 and 6063.

land nations, including Nauru, Palau and Vanuatu. This effort, which began in November 1999, was partly in response to the Bank of New York scandal which raised awareness of money laundering concerns in correspondent banking and partly in response to media reports of \$70 billion in Russian funds moving through shell banks licensed in Nauru.³⁰⁴ Among the banks restricting correspondent banking in the South Pacific were the Bank of New York, Deutsche Bank, and the Republic National Bank of New York. In a November 25, 1999 email, Moore notified European Bank that Citibank was considering adopting the same policy. On December 13, 1999, the Bank of New York rejected a European Bank wire transfer due to its association with Vanuatu. On December 17, 1999, Citibank sent a letter to European Bank announcing its decision to close the account.³⁰⁵ The account actually closed 5 months later in May 2000.

When asked about closing the European Bank account, Moore sent an email to other Citibank colleagues explaining the basis for the decision. He wrote:

We are exiting European Bank . . . a bank licensed and domiciled in Vanuatu, and owned by Vanuatu citizens, not because of any concerns about European Bank directly. Unfortunately, because of Australian Tax Office suspicions that Australian individuals use Vanuatu to evade taxes, Vanuatu attracts a lot of attention from here. On top of that, the BONY action has raised the profile of Vanuatu. . . . We just feel that the environmental risk, that something totally unexpected does bob up, is more than we wish to take. The icing on this decision was that our customer found itself with a deposit (from another bank) that was subject to action in the USA as possible proceeds of crime. They did all the right things, including obtaining a Vanuatu court injunction to freeze the funds with them. They also redeposited the USD with us, in the normal course of banking, and the US receivers found this out and obtained a freeze order on us. . . . [W]e are satisfied our customer is innocent of any complicity. . . . I have the highest regard for the individuals who own and operate European Bank, and we are exiting in [a] manner that causes least harm to their franchise.³⁰⁶

B. THE ISSUES

The European Bank case history raises at least two sets of issues. First, it raises fundamental questions about how a correspondent bank oversees a respondent bank in a remote, jurisdiction with a tradition of bank secrecy and weak banking and anti-money laundering controls. Second, it provides a vivid demonstration of how a foreign bank can delay seizure of funds from its U.S. correspondent account, even when the funds are clearly the product of attempted fraud and money laundering.

³⁰⁴ For more information, see the Bank of New York description in the appendix.

³⁰⁵ The bates designation for this document is CG 3945.

³⁰⁶ Moore email dated 1/24/00, CG 1053; see also Moore email dated 1/11/00, CG 1051.

Correspondent Bank Oversight

Citibank Sydney went the extra mile in its due diligence efforts with respect to European Bank. It assigned a senior bank official to oversee the relationship. It conducted site visits, meetings with management, financial analyses, and client evaluations. It monitored account activity and made inquiries into specific problems like the Benford and IPC matters. It maintained a high level of oversight for 4 years.

But in the end, it is far from clear that Citibank really knew how European Bank was operating on a day-to-day basis. The evidence is overwhelming that European Bank opened the Benford and IPC accounts with little or no due diligence, contrary to Citibank's understanding of the bank's procedures. In both instances, European Bank opened the account knowing little more than the name of the accountholder. It made no inquiries into the accountholder's background, source of wealth or origin of funds. When confronted, in one instance, by negative information concerning the party who referred the Benford account,, European Bank simply averted its eyes, left the account open, and hoped for the best. A more cynical interpretation is that European Bank deliberately accepted the large deposits without caring where they came from or about their association with a disreputable bank. In neither case, did European Bank undertake reasonable steps to know its customer.

The consequences for the bank have been serious. In the Benford matter, European Bank is battling legal proceedings in three countries. The collateral damage from this litigation includes negative media reports, diversion of bank resources, and ongoing legal expense. One case is litigating the basic issue of who is the true owner of Benford Ltd.—a fact that European Bank should have established with clarity when it created the corporation, opened a bank account for it, and accepted \$7.5 million in deposits. Benford Ltd. has itself been charged with possession of crime proceeds, and European Bank's reputation has been tarnished by its role in incorporating and managing this company. In the IPC matter, European Bank lost \$1.3 million. The bank's chairman and part owner, Bayer, had to cover the losses to prevent a bank failure. Citibank's confidence in the bank's management was badly shaken, and it required the bank to post \$1 million in deposits to secure Citibank against possible future losses. European Bank decided to abandon the credit card clearing business at least in the short term.

Yet there is no reason to believe that the Benford and IPC accounts were handled in anything but a routine manner. Both accounts were opened prior to any direct contact with the prospective client, a situation which Bayer said was typical given Vanuatu's remote location and time difference. Bayer indicated that the Benford account opening forms were completed in the same way the forms are completed for all clients referred by European Trust—providing minimal client information, signatures from European Trust employees, and no disclosure of the true owner of the Vanuatu corporation opening the account. European Trust has indicated that it routinely establishes new Vanuatu corporations within 24 hours of a request, a time period which necessarily restricts how much due diligence it can accomplish. The investigation found no evidence to

indicate that the Benford and IPC accounts represented anything but business as usual at European Bank.

Moreover, although the Minority Staff investigation did not conduct an extensive analysis of other accounts opened by European Bank, documentation and interviews contain warning signs of lax due diligence practices in other accounts as well. For example, for years, European Bank maintained an account for the Australian Lottery Federation International Ltd.³⁰⁷ At the same time the account was open, this company, its owner Randall Thiemer, and related companies were under criminal investigation in the United States and Canada, which resulted in a 1999 guilty plea to conspiracy to conduct illegal lottery solicitations.³⁰⁸ Both Bayer and Moore indicated they had been unaware of the U.S. proceedings. Another instance involves the correspondent account that European Bank opened for Nest Bank in 1999. Nest Bank is an offshore Vanuatu bank that, because of international concerns over suspect Russian funds moving through South Pacific shell banks, is now under review by Vanuatu authorities. Nest Bank moved more than \$6 million through its European Bank account in 1 year, most of it with ties to Russia or countries formerly part of the Soviet Union. Bayer indicated that he could not discuss the account due to Vanuatu's confidentiality requirements and the lack of publicly available court filings disclosing Nest Bank's ownership and activities. Moore indicated he had been unaware of the account.

In 1996, the head of Citibank's operations in Australia expressed concern about the European Bank account, in part due to "the difficulty in monitoring events from Sydney." Vanuatu's banks operate under a tradition of bank secrecy and weak banking regulation. European Bank is Vanuatu's only indigenous bank; no parent bank audits its operations. It is owned and directed by an individual who is a powerful player in Vanuatu's economy and government. It works closely with trust companies that have their own culture of nondisclosure. For the two accounts examined in detail, Citibank was given no negative information about the Benford account until a third party filed suit in Australia, and it had no warning of the IPC loss, even though Benford Ltd. and IPC were among European Bank's largest accounts.

The European Bank case history provides a powerful illustration of the money laundering risks inherent in international correspondent banking. It demonstrates that, when dealing with a small bank operating in a remote jurisdiction with weak bank oversight and uneven anti-money laundering controls, even a diligent correspondent bank may be left in the dark about missteps leading to money laundering charges, beneficial owner disputes, fraud, and substantial losses.

Seizing Suspect Funds

The European Bank case history raises a second set of issues as well. Through the twists and turns of litigation battles in three countries, it demonstrates how a small foreign bank can delay sei-

³⁰⁷ See "European Bank Ltd. Customers Information" (5/27/96), CG 3869.

³⁰⁸ See *United States v. C-W Agencies Inc.* (U.S. District Court for the Western District of Washington Criminal Case No. CR99-454C), information (8/9/99) and plea agreement (8/24/99).

zure of funds from a U.S. correspondent account, even when the funds are the product of fraud and money laundering.

Ample evidence links the \$7.5 million in the Benford account at European Bank to the Taves fraud. The players involved, the timing, the amounts, the wire transfers—all are consistent with the money coming from the unauthorized credit card billing scheme described in the U.S. court decision in the Taves case. Ample evidence also links the Benford account to Clyde, including her signature on the form asking to establish Benford Ltd., her passport photograph and London address which match the materials in European Trust's files, her possession of the Benford incorporation papers, and her past association with one of the individuals charged with participating in the Taves money laundering effort.

For more than a year, in her capacity as the beneficial owner of Benford Ltd., Clyde has supported remitting the Benford funds to the FTC receiver. Citibank has repeatedly expressed its willingness to transfer the funds in accordance with court order. But European Bank has not been willing to transfer the funds to the FTC receiver. It has fought legal battle after legal battle to try to keep control of the funds and ensure they were not "forced" to the United States, but sent instead to Vanuatu authorities. The reasons for the bank's actions are unclear.

Perhaps European Bank felt committed to defending Vanuatu sovereignty. Perhaps it hoped to ensure that Vanuatu received a portion of the seized funds, even though the Taves investigative work was performed elsewhere and the monies were intended for fraud victims. Perhaps European Bank wanted a portion of the seized funds to reimburse its legal fees, even though much of the legal wrangling followed its refusal to allow the transfer of the funds to the United States in 1999. Perhaps European Bank wanted the interest earnings on the \$7.5 million—exceeding \$600,000 at last count even though the bank would be profiting from illicit proceeds that it chose to move into a non-interest bearing account in May 1999. Perhaps European Bank worried about having to pay the \$7.5 million twice, although it is hard to believe Vanuatu authorities would force one of its leading citizens to pay a sum that, if already paid to the FTC receiver, would break the bank. Perhaps European Bank wanted simply to best the FTC receiver, which tried so many legal maneuvers to obtain the funds and, in the bank's eyes, would pay its own fees and expenses before reimbursing any fraud victims.

Whatever its motivations, European Bank mounted a resourceful campaign to stop the transfer of the Benford funds. In Vanuatu, it argued that no one really knew who owned the Benford money, since Clyde had admitted they were not her personal funds and the FTC had not proven in court they were from the Taves fraud. In Australia, it contended that the \$7.5 million on deposit with Citibank was not Benford's funds at all, but European Bank's own funds, placed in an investment account to earn higher interest. In making this argument, European Bank drew on the legal status of funds in a correspondent account. It claimed that the funds in the Citibank account were the property of the accountholder—European Bank—and not the property of the bank's clients, even if client funds were used to make the deposits.

The FTC receiver was equally resourceful in its litigation strategy. It began by filing suit in Vanuatu. When it found European Bank reluctant to release the \$7.5 million from the Benford account, it persuaded Clyde to file suit in Vanuatu seeking court approval to authorize her own company to remit the funds to the FTC receiver. When the Vanuatu police appeared to be as reluctant as European Bank to surrender custody of the \$7.5 million, the FTC receiver filed suit in Australia to try to obtain the funds directly from Citibank. While European Bank argued the funds were not actually in Australia, but remained in the Benford account at European Bank in Vanuatu, the fact is, when faced with the Australian court's freeze order, Citibank refused to transfer the funds at European Bank's instruction. Clearly, the \$7.5 million was under Citibank's control.

The FTC receiver's next legal effort came when it convinced the U.S. Department of Justice to seize the funds at Citibank in New York as money laundering proceeds. After all, the \$7.5 million had always been in U.S. dollars in a U.S. dollar account. Despite appearing to travel from California to the Cayman Islands to Vanuatu, the funds never actually left the United States—they just moved from one U.S. bank account to another. The proof is that, when confronted with the U.S. seizure warrant, Citibank delivered the funds to the U.S. Government.

The U.S. Government's seizure of the funds is not, however, equivalent to forfeiture of the funds. The U.S. Justice Department's civil forfeiture action provides all interested parties with an opportunity to assert a contrary claim to the funds. If European Bank were to assert ownership of some or all of the \$8.1 million, the United States might have to prove, under statutory provisions affording correspondent accounts special forfeiture protections,³⁰⁹ that European Bank "knowingly engaged" in the laundering of the funds or in other criminal misconduct justifying seizure of the bank's own money. One recent U.S. district court has interpreted this standard to mean that the United States has to demonstrate a bank's "knowing involvement" in or "willful blindness" to the criminal misconduct giving rise to the seizure action.³¹⁰ The questions in this matter would include what European Bank knew and when, and whether it was willfully blind to criminal misconduct associated with the Benford funds.

The larger policy issues come into view with the realization that European Bank keeps virtually 100% of its clients' funds in correspondent accounts and conducts 100% of its U.S. dollar transactions through U.S. correspondent accounts. That means that 100% of European Bank's funds in the United States benefit from greater forfeiture protections than suspect funds in other types of U.S. bank accounts. The same is true for all foreign banks choosing to deposit funds in U.S. correspondent accounts. And it is not just foreign banks who benefit, but also wrongdoers who ask the foreign banks to keep their deposits in U.S. dollars. Taves, for example, originally deposited his illicit proceeds in U.S. bank accounts in California. He then sent the funds from the United States, through

³⁰⁹ See 18 U.S.C. § 984(d). See also Chapter V(G) of this report.

³¹⁰ *United States v. \$15,270,885.69* (2000 U.S. Dist. LEXIS 12602, 2000 WL 1234593 SDNY 2000).

two bank secrecy jurisdictions, the Cayman Islands and Vanuatu, only to have the funds end up back in the United States, but in a Citibank account which requires U.S. law enforcement to surmount additional legal hurdles to sustain forfeiture.

The European Bank case history is a cautionary tale about how a small, determined foreign bank in a remote jurisdiction can delay and perhaps ultimately frustrate U.S. law enforcement efforts to seize illicit proceeds sent to the foreign bank as part of a money laundering effort, so long as the laundered funds are deposited into a U.S. correspondent account.

EUROPEAN BANK MONTHLY ACCOUNT ACTIVITY AT CITIBANK
January 1998-December 1999

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|--------------------|----------------------|----------------------|--------------------|
| January 1998 | \$51,600 | \$3,665,819 | \$3,696,455 | \$34,664 |
| February 1998 | \$31,664 | \$1,821,760 | \$1,711,361 | \$145,064 |
| March 1998 | \$145,064 | \$2,437,018 | \$2,415,062 | \$167,020 |
| April 1998 | \$167,020 | \$1,622,284 | \$1,568,763 | \$220,541 |
| May 1998 | \$220,541 | \$2,210,457 | \$2,102,815 | \$328,183 |
| June 1998 | \$328,183 | \$1,722,647 | \$1,678,084 | \$372,746 |
| July 1998 | \$372,746 | \$2,714,000 | \$1,412,137 | \$1,134,609 |
| August 1998 | \$1,134,609 | \$3,188,179 | \$3,888,629 | \$434,158 |
| September 1998 | \$434,158 | \$5,572,689 | \$5,069,024 | \$937,823 |
| October 1998 | \$937,823 | \$11,415,104 | \$11,938,224 | \$414,704 |
| November 1998 | \$414,704 | \$5,033,054 | \$5,305,670 | \$142,088 |
| December 1998 | \$142,088 | \$4,359,456 | \$3,987,909 | \$513,634 |
| January 1999 | \$513,634 | \$3,588,709 | \$3,916,399 | \$185,944 |
| February 1999 | \$185,944 | \$2,237,332 | \$2,320,974 | \$102,303 |
| March 1999 | \$102,303 | \$8,505,525 | \$7,117,827 | \$1,490,002 |
| April 1999 | \$1,490,002 | \$15,506,331 | \$10,170,361 | \$6,825,971 |
| May 1999 | \$6,825,971 | \$3,284,932 | \$9,904,192 | \$1,016,711 |
| June 1999 | \$1,016,711 | \$8,725,235 | \$7,472,331 | \$2,269,615 |
| July 1999 | \$2,269,615 | \$51,826,202 | \$53,009,742 | \$1,086,075 |
| August 1999 | \$1,086,075 | \$6,796,758 | \$6,937,332 | \$945,511 |
| September 1999 | \$945,511 | \$18,641,703 | \$17,862,655 | \$1,724,559 |
| October 1999 | \$1,724,559 | \$10,481,608 | \$11,783,867 | \$422,300 |
| November 1999 | \$422,300 | \$5,159,706 | \$5,474,264 | \$107,742 |
| December 1999 | \$107,742 | \$11,376,490 | \$10,907,139 | \$577,093 |
| TOTAL | | \$191,892,998 | \$191,651,216 | |

Prepared by the U.S. Senate Permanent Subcommittee of Investigations, Minority Staff, December 2000

Case History No. 8**SWISS AMERICAN BANK
SWISS AMERICAN NATIONAL BANK**

Swiss American Bank Ltd. (“SAB”) and Swiss American National Bank Ltd. (“SANB”) are two banks with the same ownership that were licensed in Antigua and Barbuda in the early 1980’s. Throughout their history, these banks have been troubled by controversial leadership, questionable practices by bank officials, and accounts that were repositories of funds from major financial frauds and other illegal activities. This case study shows how major U.S. banks that served as correspondents to these institutions were at times unaware of even high profile frauds and controversies associated with the banks and were slow to take action on the accounts, at times maintaining the accounts for years after they knew and were concerned about suspicious account activities and management problems that afflicted the SAB and SANB.

The following information was obtained from documents provided by the Government of Antigua and Barbuda, Bank of America, Bank of New York, Chase Manhattan Bank, court pleadings, interviews of government officials and other persons in Antigua and Barbuda, the United Kingdom, and the United States, and other materials. Key sources of information were interviews with John Greaves, former General Manager of Swiss American Banking Group (1988-1995), conducted on July 24 and 25, 2000; Brian Stuart-Young, Chairman and Managing Director of Swiss American Bank, conducted on October 11, 2000; relationship managers and other officials from Bank of America (conducted July 10, 11, 31, and October 24, 2000), Bank of New York (conducted August 10 and 30, 2000), and Chase Manhattan Bank (conducted August 2, 3, and 4, 2000). The investigation greatly benefitted from the cooperation and assistance provided by a number of officials of the Government of Antigua and Barbuda, particularly the Executive Director of the International Financial Sector Regulatory Authority and the Director of the Office of Drugs and Narcotics Control Policy.

A. THE FACTS**(1) Ownership and Management**

SAB and SANB were part of a financial group in Antigua and Barbuda called the Swiss American Banking Group. It included the two banks and a trust company, Antigua International Trust. SAB is an offshore bank with a physical presence in Antigua and Barbuda. It was licensed to do business as an offshore bank in April 1983; as an offshore bank it is prohibited from doing business with citizens of Antigua and Barbuda. SANB is a domestic Antiguan bank, licensed in May 1981 to do business with citizens of Antigua. All three entities had the same ownership, the same board, a common General Manager and for many years both banks shared the same facilities and the same staff.

When they were licensed, the owner of both SAB and SANB was listed as Swiss American Holding Company, a Panamanian company. The license application for SAB noted that Swiss American

Holding Company was wholly owned by Inter Maritime Bank of Geneva, Switzerland, and Home State Financial Services, Inc. of Cincinnati, Ohio. Each entity is listed as controlling a 50% share of the holding company and the banks.

Inter Maritime Bank in Geneva, founded in 1966, was part of a group of companies active in banking, shipping and the petroleum industry. It was initially created to serve as the in-house bank for shipping and other financial activities undertaken by its affiliates. The founder and owner of Inter Maritime Bank is Baruch ("Bruce") Rappaport.¹ Rappaport is an Israeli citizen who became very active in the economic and political life of Antigua. He also owned 50% of the West Indies Oil Company which owned a refinery in Antigua. In December 1997, Rappaport was named as Antiguan Ambassador to the Soviet Union. In 1989, the Bank of New York purchased 19.9% of Inter Maritime Bank. At that time, Inter Maritime's name was changed to Bank of New York-Inter Maritime Bank. In July 1996 Bank of New York increased its ownership of Inter Maritime to 27.9%. Bank of New York reported in February 2000 that Rappaport continued to hold the remaining shares Inter Maritime.² The remainder of this report, except when quoting material, will refer to Inter Maritime Bank by its current name, Bank of New York-Inter Maritime Bank ("BYN-IMB").

Home State Financial Services, Inc. was owned by Marvin Warner, who served as U.S. Ambassador to Switzerland in the mid-late 1970's. In 1986, Home State Financial Services, Inc. was placed in bankruptcy due to financial problems encountered by one of its subsidiaries, Home State Savings Bank. Warner pleaded guilty to misapplication of funds and securities violations for the role he played in the financial downfall of Home State Savings Bank. As part of the bankruptcy proceedings, the State of Ohio assumed control of Home State Financial Services, Inc. and, as a result, its holdings in the Swiss American entities. BYN-IMB subsequently purchased Home State's holdings in the Swiss American entities from the State of Ohio.

Documents made available to the Subcommittee suggest that BYN-IMB owned Swiss American Holding Company and controlled SAB and SANB at least until 1993.³ The current ownership of the

¹It is uncertain whether Rappaport was the sole owner of Inter Maritime when SAB and SANB were formed. In 1978, two internal memoranda of the Bank of New York, which established a relationship with Inter Maritime in 1969, reported that Inter Maritime officials stated that the Gokal brothers, Pakistani businessmen who later became heavily involved in the BCCI scandal, invested between \$6 million and \$8 million Swiss Francs in Inter Maritime for 20% of the bank. Subsequent memos about Inter Maritime and the Swiss American banks do not mention the Gokal brothers, and a memo in 1983 states that "almost all shares [of Inter Maritime] are owned or controlled by Bruce Rappaport."

²According to a 1983 internal Bank of New York memorandum, Rappaport held 7.5% of Bank of New York stock and increased that percentage of ownership through the purchase of additional shares in 1983.

³BYN-IMB's ownership interest in Swiss American Holding Company remains uncertain. Recently BYN-IMB was dismissed from a case brought against it, SAB, and SANB by the U.S. Government to recover drug/terrorist related assets that had been forfeited to the U.S. Government. BYN-IMB was dismissed due to lack of jurisdiction. BYN-IMB claimed it had divested itself of Swiss American Holdings in 1988:

"On December 28, 1987, BYN-IMB sold all of its shares of SAHC to an unrelated entity in which BYN-IMB had no interest or control, in a transaction in which all of the obligations of the parties were completed by December 15, 1988. . . . Since the end of 1988, BYN-IMB has not owned any shares or held any interest in SAHC." *USA v. Swiss American Bank, L., Swiss American Holding Company S.A. of Panama, and Inter Maritime Bank, Geneva* (U.S. District Court for the District of Massachusetts, C.A. No. 97-CV-12811 (RWZ)), Motion of

Swiss American entities is structured through a series of International Business Corporations (IBCs) and trusts. Swiss American Holding Company is currently owned by Carlsberg (or Carlsburg), S.A, a Bermuda corporation, which in turn is owned by a charitable trust controlled by Rappaport. Two of the U.S. correspondents of SAB and SANB that were interviewed by the Minority Staff did not know the name of the charitable trust, and the Bank of New York thought the name of the charitable trust is the Inter Maritime Foundation, but it was not certain. The Chairman and Managing Director of SAB was not able to tell the Minority Staff the name of the charitable trust, either. The lack of information by the correspondent U.S. banks with respect to the details of the ownership of SAB and SANB is troubling.

(2) Financial Information and Primary Activities

SAB has about 4,000 clients with 5,000 accounts and total assets of \$111 million (of which \$103 million are deposits). The bank's main function is private banking, providing wealth management services to its clients. According to SAB officials, approximately 4,500 of its 5,000 accounts currently have less than \$50,000 in value. Its customers are largely from Europe, and bank officials estimate that less than 15% of their customers are from the United States. Bank officials have told Minority Staff that they are attempting to phase out their business in the United States. Bank records indicate that in recent years a significant portion of SAB's business has been generated by Internet gambling companies or entities that provided cash transfer services for Internet gambling facilities. This issue is discussed in more detail later in the report.

SANB provides retail banking services to individuals and companies in Antigua and Barbuda and other Eastern Caribbean nations. It also provides international banking services such as foreign currency exchange and letters of credit. It was recently sold to Antigua Barbuda Investment Bank ("ABIB"), and will soon become part of ABIB. ABIB, another domestic bank licensed to do business in Antigua and Barbuda, is affiliated with Antigua Overseas Bank, an offshore bank.

(3) Correspondents

Correspondent banks of SAB in the United States have included Nations Bank, Bank of America and Chase Manhattan Bank. Correspondent banks of SANB in the United States have included Citizens Bank and Southern International Bank (which later merged with Sovran Corporation and then with NCNB National Bank to become Nations Bank), NCNB National Bank (which later merged with C&S/Sovran Corporation to become Nations Bank), Bank of America (which later took over Nations Bank), Irving Trust Com-

Bank of New York-Inter Maritime Bank, Geneva to Dismiss or, in the Alternative, for Summary Judgment, April 1, 1998.

Yet, in correspondence submitted to both Bank of America and Nations Bank in March of 1993, David McManus, the Deputy General Manager of the Swiss American Banking Group wrote that BYN-IMB controlled the Swiss American Banking Group, which directly contradicts what was reported in the BYN-IMB filing in April 1998: "Swiss American Banking Group consists of Swiss American Holdings, SA, a Panamanian company which owns 100% of Swiss American Bank Ltd., Swiss American National Bank of Antigua Ltd. and Antigua International Trust Ltd. Swiss American Holdings SA is wholly owned by the Inter Maritime Group in Geneva."

pany (which was later taken over by Bank of New York), Bank of New York (which inherited the account from Irving Trust), and Chase Manhattan Bank.

SAB and SANB currently have no correspondent relationships with U.S. banks; SAB has correspondent banking relationships with United Kingdom, Dutch and Canadian banks which presumably have correspondent relationships with U.S. banks. Through these nested correspondent relationships, SAB still maintains access to U.S. banks. As noted above, SANB has been sold to Antigua Barbuda Investment Bank.

(4) Operations and Anti-Money Laundering Controls

SAB officials told the Minority Staff that they have been making efforts to improve the bank's anti-money laundering controls. According to SAB materials provided the Minority Staff, the bank has established a series of account opening requirements for personal and corporate accounts. To open personal accounts, according to the materials, clients are required to provide verified signatures, proof of residence, proof of identity, a current bank reference, proposed average monthly deposit value and information on the anticipated source of funds. According to the SAB materials, applicants for corporate accounts are required to provide verified signatures, certificate of incorporation, memorandum and articles of association and a current certificate of good standing if the entity is more than a year old, proof of identity and at least one current bank reference on each shareholder/director and authorized signatory. Proof of the corporation's registered office, proposed account activity including anticipated average monthly deposit and anticipated source of funds is also required, according to the materials. In the case of bearer share companies, SAB says it requires an attestation by the directors to identify true beneficial ownership. SAB officials told the Minority Staff that in keeping with statutes enacted in Antigua in early 1999, the bank has not accepted deposits in cash or in bearer negotiable instruments since April 1999.

SAB officials told the Minority Staff that as part of its ongoing monitoring program, all staff receives anti-money laundering training and management attends anti-money laundering conferences in the United States. SAB officials said that the bank has invested in computer monitoring software to track transactional activity. According to officials, the program is designed to monitor for suspicious activity in a way that would be compliant with U.S. Government anti-money laundering controls.

The Chairman and Managing Director told the Minority Staff that they know the beneficial owners of 90% of the accounts and that they have not received enough information on the beneficial ownership of about 3% of the accounts.

(5) Regulatory Oversight

SAB is regulated by the Government of Antigua and Barbuda's International Financial Sector Regulatory Authority which was created in 1998. To date, no examination of the bank has been conducted. The bank is required to submit an annual audited financial statement to the International Financial Sector Regulatory Authority.

SANB is regulated by the Eastern Caribbean Central Bank, which includes an annual bank examination.

(6) Money Laundering and Fraud Involving SAB/SANB

SAB and SANB have been identified as repositories of illicit funds from several illegal operations. Such incidents were not isolated events. They have occurred on a continual basis throughout the life of the institutions. In addition, bank officials engaged in misdeeds and questionable activities. With respect to some frauds and questionable activities that occurred through the accounts at the banks, top officers knew or should have known what was occurring; yet they were slow to act to halt the activity or failed to act. This succession of problems and questionable leadership (in addition to SAB's offshore license and lack of any examination by regulatory authorities) qualifies SAB and SANB as high risk institutions. The following items illustrate these points.

(a) Controversial Leadership

The leadership of Swiss American Banking Group (the group that includes SAB and SANB) has a history of involvement in controversial and questionable financial dealings and banking activities.

First, the history of controversial dealings involving Baruch Rappaport, the beneficial owner of SAB and SANB, has been well chronicled. It includes a series of oil tanker deals with Indonesia's government-owned oil company, Pertamina, which contributed to the nation's economic problems in the mid-1970's; an oil deal with Gabon (completed after one of Rappaport's banks loaned money to the President of Gabon, Omar Bongo, and the Oil Minister) that had such highly favorable terms for Rappaport's company that the government won a subsequent arbitration award of \$25 million; his role as middleman in an effort to build an oil pipeline through Iraq; and business associations with some key figures associated with BCCI.⁴

Two members of the Board of Directors for SAB, Marvin Warner and Burton Bongard, were connected with Home State Financial Services, Inc. which initially was a 50% owner of SAB. Warner owned Home State Financial Services, Inc.; Bongard was President of Home State Savings Bank, a Cincinnati savings and loan that was owned by Home State Financial Services. In 1986, Home State Financial Services Inc. was placed in bankruptcy due to financial problems encountered by Home State Savings Bank. In March 1987, Warner was convicted of six State criminal charges of misapplication of funds and three securities violations for illegal activities that caused the collapse of Home State Savings Bank. He was sentenced to 3½ years in prison and ordered to pay \$22 million in restitution. Bongard was convicted of 41 counts of willful misapplication of funds and 41 counts of unauthorized acts. He was sentenced to 10 years in prison and ordered to pay \$114 million in

⁴"Seeking Testimony in Pipeline Case: Immunity Given to a Secretive Swiss" *New York Times* (March 6, 1988) Jeff Gerth and Stephen Engelberg; "Untangling what Pertamina owes—and to whom" *Business Week* (February 7, 1977); "Key Player in BCCI fraud loses appeal" *Guardian* (March 12, 1999) Dan Atkinson; "Pak millionaire appeals verdict in BCCI case" *Hindustan Times* (March 10, 1999).

restitution costs. In addition, he subsequently pleaded guilty to four Federal felony counts of misapplication of funds and was sentenced to 6 years in Federal prison.⁵

Another SAB board member, Steven Arky was a son-in-law of Warner, and counsel to ESM Government Securities. Clients of his law firm, Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, lost millions of dollars that they had invested in ESM. They subsequently sued the firm, contending that the firm knew that ESM was insolvent and that the clients' investment could be lost and yet failed to advise the clients of that fact.

William Cooper, discussed previously in this report, signed SAB's license application as the organizer of the corporation and as Vice-President of Swiss American Holding Company. Cooper was also listed as a member of the Board of Directors. Cooper served as General Manager of Swiss American Banking Group from approximately 1981 to 1984. In 1992, Cooper became owner of American International Bank which is discussed in another chapter of this report. Cooper is now under U.S. indictment for money laundering activities associated with the operations of Caribbean American Bank, a rogue bank that operated through American International Bank.

Another long time member of SAB's Board of Directors is Burton Kanter, a controversial tax attorney from Chicago. The current Chairman and Managing Director of Swiss American Bank estimated that Kanter has been a member of the Board for approximately 12 years. For the past 25 years, Kanter or his clients have been the subject of numerous criminal and civil investigations and complaints alleging tax evasion, money laundering, and securities fraud.⁶ All of these matters generally involved offshore banks and

⁵In 1985, the SEC closed ESM Government Securities Inc., of Fort Lauderdale, Florida, because it had an undisclosed debt of over \$300 million. The closure of ESM caused problems for Home State Savings Bank and American Savings and Loan Association of Miami, Florida. (Warner owned 28% of American Savings and Loan and served as its Chairman). Both Home State and American funneled millions of dollars worth of government securities into EMS, ostensibly as collateral for loans from ESM. However, the government securities were worth far more than what had been borrowed. ESM then raised cash by borrowing against the securities. At the time of ESM collapse, Home State Savings Bank had over-collateralized its loans by about \$144 million and American had over-collateralized its loans by approximately \$50 million. Those institutions lost money when ESM was closed, and that caused a run on Home State that led the Governor of Ohio to shut down the bank. The collapse of the bank also exhausted all of the funds in a thrift-owned insurance fund, causing a statewide crisis that resulted in a 3-day closure of all State-chartered savings and loans.

The owners of ESM pleaded guilty or were convicted in State and Federal courts on fraud charges. Warner was charged and pleaded guilty to misapplication of funds and securities violations for the role he played in the financial downfall of Home State Savings Bank.

As a result of these events, Warner declared bankruptcy. As part of the liquidation of Home State Financial's assets to repay the State of Ohio for bailing it out, the bank's 50% share in Swiss American Bank was sold back to BYN-IMB. See "Michigan Jury Clears Home State's Warner of 18 Federal Charges" *National Thrift News Inc.* (June 29, 1987) Sharon Moloney; "Early Warnings About Home State Pushed Aside" *Business First of Columbus Inc.* (August 5, 1985) Dick Kimmins; "Risky Business: The Story of Home State" *Business First of Columbus Inc.* (May 27, 1985) Mark Heschmeyer; "Final Suit Brings First Loss in ESM Fraud Case" *South Florida Business Journal, Inc.* (January 22, 1990) Melinda Sisser; "Warner, Two Guilty on ESM" *National Thrift News Inc.* (March 9, 1987) Sharon Moloney; "Jury Returns Verdict in Case Stemming from Ohio's Thrift Crisis" *Associated Press* (March 2, 1987) Bill Vale; "Securities Firm Boss Gets 30 Years in Fraud" *Chicago Tribune* (October 18, 1986) Associated Press.

⁶In December 1999, a special trial judge for the U.S. Tax Court determined that Kanter and a number of his clients had engaged in a scheme to hide kickback payments that the clients had received (some of which were paid to Kanter) and underpaid their taxes as a result. The court's 300 plus page decision contains a section entitled "Kanter's Fraud," which includes the following:

. . . Kanter was the architect who planned and executed the elaborate scheme with respect to the kickback income payments received . . . In our view, what we have here, purely and

offshore trusts structured to “avoid” U.S. taxes. Yet, as of 2000, SAB, in a communication to another bank, still designated Kanter as one of the “[i]ndividuals responsible for the bank.”⁷

The General Manager of the Swiss American Banking Group from 1984 to 1987 was Peter Herrington. Herrington established and personally serviced the accounts of John Fitzgerald (discussed below in this report). These accounts were seized by both the U.S. and Antiguan Governments because the accounts contained funds related to drug sales and the Irish Republican Army.

John Greaves, General Manger of Swiss American Banking Group from 1988 to 1995, was involved in a number of controversial matters during his tenure at Swiss American Banking Group and was in the leadership of two other banks and a management firm that were engaged in a number of controversial activities, described in other parts of this report.

(b) The Fitzgerald Case—Drugs and Terrorist Money

From 1985 to 1997, SAB and SANB were significantly involved in a money laundering case involving a man named John Fitzgerald. The involvement began when Fitzgerald, a money launderer acting on behalf of the Murray brothers, leaders of a drug organization in Boston, deposited, between 1985 and 1987, approximately \$7 million into accounts that had been established at SAB and SANB.⁸ Four of the accounts were in the name of bearer share IBCs, that is, corporations whose ownership was vested in the individuals who controlled the certificates of the shares of the corporation. Two of the accounts (one at SAB and the other at SANB) were in the name of Guardian Bank, a bank licensed in Anguilla in 1986. Those two Guardian Bank accounts eventually became the repository for most of the funds deposited by Fitzgerald and other members of the drug organization. Three bearer share IBCs were listed as the owners of that bank.

The General Manager of the Swiss American Banking Group at the time was Peter Herrington who assisted Fitzgerald with the formation of all of the IBCs and the management of the accounts at SAB and SANB. The formation of the accounts was handled by Antigua International Trust. Herrington served as Director of all

simply, is a concerted effort by an experienced tax lawyer and two corporate executives to defeat and evade the payment of taxes and to cover up their illegal acts so that the corporations, Prudential and Travelers, and the Federal Government would be unable to discover them.

. . . Kanter created a complex money laundering mechanism made up of sham corporations and entities . . . to receive, distribute, and conceal his income, as well as [the other defendants'] income . . . Kanter's use of the various sham entities made it difficult and sometimes impossible to trace the flow of the money and is substantial evidence of his intent to evade tax.

In addition, a number of trust arrangements structured by Kanter for his clients have been challenged by the IRS and have resulted in settlements, with the defendants paying millions of dollars to the IRS.

Kanter was also associated with an entity called Castle Bank and Trust Company, Inc., a Bahamian Bank that was the subject of a concentrated IRS investigation in the mid-70's as one of the early Caribbean-based offshore banks for criminal accounts and tax evasion activities. Castle Bank served as the trustee and repository for many of the entities established by Kanter for his clients.

⁷However, the Chairman and Managing Director of SAB told the Minority Staff that Kanter was a non-executive director, and that he didn't have any role in the day to day management of the bank.

⁸It has been reported to the Subcommittee staff that the Murray brothers and Fitzgerald were also involved in the sale of weapons to IRA terrorists and that some, or even all, of the funds deposited into the accounts at SAB and SANB were associated with the IRA.

of the IBCs and Guardian Bank and performed transactions in the SAB and SANB accounts.

Most of the funds were initially deposited into accounts at SAB and then transferred into other accounts at SAB and SANB. By mid-1987, the \$7 million Fitzgerald accounts in the name of Guardian Bank constituted approximately one third of all deposits at SAB. SAB owner Rappaport, concerned that an unknown party controlled one-third of Swiss American Banking Group's deposits, asked Herrington to identify the beneficial owner(s) of Guardian Bank. When Herrington refused to do so, he was immediately suspended and was dismissed from his position 1 month later (June 1987). Between the time of Herrington's suspension and his termination, he notified Fitzgerald of Rappaport's concerns.

At that time, Herrington resigned as the director of Guardian and the IBC. When efforts to resolve the matter failed, the attorney who claimed to be the new director of Guardian Bank filed a lawsuit in Antigua and Barbuda requesting the court to recognize him as the director of Guardian and to authorize the withdrawal of funds in the Guardian Bank accounts at SAB and SANB which held Fitzgerald's money. At that same time, Swiss American Banking Group officials began to investigate the accounts opened by Herrington and hired an auditor to review the accounts. The review identified a number of irregularities. In addition, the Group learned from law enforcement officials that the funds may be tied to drug and arms trafficking. They contacted the Antiguan Government, and in June 1990, the Minister of Finance for the Government of Antigua and Barbuda instructed Swiss American Banking Group to freeze the funds. In December 1990, the High Court of Antigua ruled that Guardian Bank's director did not have the proper corporate authority to file the suit, and the funds remained frozen at SAB/SANB.⁹

⁹This description is drawn from pleadings filed by the Department of Justice in association with *USA v. Swiss American Bank, LTD, et al.* (op. cit.) and documents and correspondence related to that matter.

An October 1989 report by the Special Branch of the Royal Bermuda Police Force and the U.S. grand jury indictment issued against Fitzgerald provide a description of the trail of the funds that is instructive as to how the international banking system is used to move and launder illicit funds. In early 1985, Fitzgerald established a St. Lucian corporation by the name of "Halcyon Days Investments, Ltd." and opened an account in that corporation's name at the Canadian Imperial Bank of Commerce in St. Lucia. Between January and March 1985, Fitzgerald and other members of the drug organization deposited \$3 million into the account. In May 1985, the account was closed and all of the funds (in excess of \$3 million), were transferred to the Guinness Marn and Company Bank in the Cayman Islands through a bank check issued to the Guinness Bank. The total in the account subsequently grew to \$5 million. In the Fall of 1985, the \$5 million in funds were wire transferred from the Guinness Bank account to Philadelphia to Manufacturers Hanover Bank in New York to the Bank of Bermuda and on to SAB. The wire transfer of \$5 million was divided equally between two accounts at SAB (Rosebud Investments and White Rose Investments). The funds were subsequently transferred into the accounts of Guardian Bank (one at SAB and one at SANB). According to the police report, "not only is this path murky, but subsequently Guinness Marn sold their subsidiary in Cayman because of their embarrassment at the management. Regrettably Guinness Marn have chosen not to reveal why they were embarrassed or the source of the money."

The Special Branch report also detailed the irregularities and lack of controls attendant to the accounts and the operations of SAB/SANB during Herrington's tenure:

One of the accounts (Rosebud Investments) received \$450,000 in cash from the Bank of Bermuda. The funds appear to have come from a safety deposit box at the Bank of Butterfield. In October 1985, Herrington used Swiss American's relationship with the Bank of Bermuda to influence the staff there to accept the cash deposit. When the funds were transferred to the account at Swiss American, they were "held" until Herrington made the book entries.

Another account (Jones Enterprises) was used as a "feeder" account for some of the other Fitzgerald accounts. According to the police report, "[l]arge cash deposits were made into the ac-

In May 1993, Fitzgerald was indicted for racketeering conspiracy and money laundering, and in August 1993, he pleaded guilty to the charges. As part of the agreement, he forfeited all of the proceeds of those illicit activities that had been deposited in the accounts at SAB and SANB. A final order of forfeiture was issued in May 1994. In early 1994, U.S. authorities approached Antiguan officials to seek their assistance in freezing the funds, providing public notice of the forfeiture action and to facilitate the return of the funds once the forfeiture notice was final. Negotiations lasted for nearly 2 years.¹⁰ Finally, in November 1995, Washington, D.C. counsel for the Antiguan Government informed U.S. authorities that nearly 1 year before—sometime between December 1994 and January 1995—approximately \$5 million of the Fitzgerald funds were transferred to the Antiguan Government by officials from the Swiss American Banking Group. Counsel informed the U.S. officials that the funds in the Fitzgerald accounts had been transferred to the Antiguan Government, which had spent the funds to pay pending debts and therefore the money was no longer available. At first, Antiguan officials maintained that the Swiss American Banking Group had unilaterally transferred the funds. In January 1998, Antigua wrote:

In 1994, prior to the payment, but after the U.S. Court order, the Banks and the Government discussed the appropriate disposition of these funds. While the Banks initiated these discussions, the Government understood all of the facts and circumstances regarding this account and acting in the public interest of Antigua and Barbuda released the freeze order on the funds and approved the disposition of the funds in a manner agreed by the Banks and approved by the Government.

Swiss American Banking Group officials claim the \$5 million were transferred on January 23, 1995. The Antiguan Government claimed the transfer occurred on December 28, 1994. The U.S. Government was later informed that the remaining \$2 million of Fitz-

count and later diverted to others but as the clients' statements are missing it is not possible at this stage to say where the cash originated."

Banks slips were written up as "cash" and "deposit" when money was being transferred from one account to another as a way to disguise its destination. Only by checking other banking records can the accountants identify whether true cash was handed over and frequently it was not.

Many of the loans made by the banks are to companies c/o AIT and no other details are available.

Documents related to the companies associated with the accounts were missing.

The source of many deposits was unknown, as was the ownership of the companies.

Over \$500,000 in cash was deposited directly into the accounts at Swiss American Bank. Another \$500,000 came through a cash deposit at the Bank of Bermuda.

The police report also captures what appears to have been a general lack of concern about illicit activities on the part of bank officials. The report notes that the Assistant Manager of the Swiss American Banking Group, MacAllister Abbott, who with Peter Herrington was a signator on the corporate accounts set up for Fitzgerald "thought Guardian was established to hide the profits skimmed from casino operations. He thought Jack Fitzgerald had a controlling interest and also thought that Herrington maintained a second set of books on behalf of the company. Abbott has been described as a person who would turn a blind eye to tax evasion but appears to have no knowledge of drug involvement." Mr. Abbott is currently General Manager of Antigua Overseas Bank.

¹⁰Although the U.S. had been asking Antigua to freeze the funds since early 1994, it wasn't until November 1996 that Antigua informed the U.S. that the funds had been frozen on its (Antigua and Barbuda) order in June of 1990.

gerald funds had been retained by the bank. It is unclear whether the funds were retained as a set off against outstanding Antiguan loans or whether they were retained to cover expenses incurred by the bank.

Moreover, the Minority Staff received a copy of a letter written in early 2000 that alleged that \$880,000 of the Fitzgerald funds were “transferred between January 22–25, 1995, to Inter Continental Bulk Traders S.A. account #4763751 at Bank of Bermuda, Hamilton.” The Minority Staff confirmed that the account does exist at Bank of Bermuda and that a transfer of \$880,000 did occur in the January 22–25, 1995 time period. It has been reported to the Minority Staff that those funds were paid upon a resolution of the Swiss American Banking Group board as payment against a series of invoices submitted by a number of people who, at the request of Rappaport, had engaged in a review of SAB. One explanation offered to the Minority Staff regarding the transfer was that Inter Continental Bulk Traders was an account controlled by Rappaport and the funds were transferred to that account rather than directly paying those who submitted the invoices, because Rappaport engaged the services of those people to provide an independent review of the accounts at Swiss American Banking Group, which he controls. However, the ownership of the Inter Continental Bulk Traders account has not been confirmed, and that does not explain why the payments would be made through the Inter Continental Bulk Traders account rather than directly to those who performed the services. Moreover, it has been reported to the Minority Staff that the funds were transferred out of the account at the Bank of Bermuda in two tranches, which seems inconsistent with the contention that payments were made to a number of individuals. Without confirmation from the Bank of Bermuda on the ownership of the account and what happened to the funds in question, the fate of the \$880,000 remains unclear.

For the next 2 years—November 1995 to December 1997—the U.S. Government continued to press for a detailed explanation and accounting of the transfer of the funds, and records relating to each of the Fitzgerald accounts. Although the Antiguan Government identified the source of the funds that were transferred from SAB and SANB, it informed the United States that the records of the accounts were not available because they had been destroyed in a hurricane.¹¹

¹¹It has been alleged that the funds transferred to the Antiguan Government were returned to the Swiss American Banking Group as repayment for outstanding debts that the Government of Antigua and Barbuda owed to SANB. This included millions of dollars of promissory notes that the Antiguan Government had issued to an enterprise called Roydan Ltd. Roydan Ltd. was the company that owned and operated a melon farm in Antigua called Roydan Farms, that used a high-technology tropical irrigation system. The operation was owned by an Israeli named Maurice Sarfati, and is discussed at length in a report, “Guns for Antigua” by the Commission of Inquiry established by the Governor-General of Antigua and Barbuda to look into the circumstances surrounding the shipment of arms from Israel to Antigua. The report was issued in 1990 by Louis Blom-Cooper QC, the appointed Commissioner. According to the report, Sarfati received governmental approval for his agricultural project in August 1984, and operation on the farm commenced in 1985. Throughout its inception and operation, the enterprise borrowed heavily for startup and operation costs. Sources of funds included the U.S. Overseas Private Investment Corporation and SANB and SAB. The Government of Antigua and Barbuda issued a series of promissory notes to Roydan Farms. In addition, SANB had extended an overdraft facility to Roydan Ltd., and has allowed it to escalate to over \$1 million without any board resolution or any collateral agreement. In March 1988, a receiver was placed in control of the venture at the insistence of OPIC and the two Swiss American banks. By July 1988, Roydan Ltd. was \$8

In December 1997, the U.S. Department of Justice filed a civil complaint alleging that SAB, SANB, Swiss American Holdings S.A. and BNY-IMB intentionally seized and converted the \$7 million in illicit proceeds located in accounts at SAB and SANB that had been forfeited to the U.S. Government.

In September 2000, the Federal District Court judge presiding over the case dismissed the U.S. Government's claim for lack of personal jurisdiction over the defendants. The government is going to appeal the matter.

(c) The Gherman Fraud

Henry Gherman served as a financial adviser to individuals and medical practice pension funds in the Miami area. Between 1982 and 1988, while claiming to make purchases of Certificates of Deposit for his clients, Gherman transferred client funds to his corporate accounts which he controlled. The funds were wired to other accounts or used for the benefit of Gherman and his family members.¹²

In February 1989, he pleaded guilty to the charges and received a 30 year sentence and was required to make payments of \$12.9 million in restitution to the victims of his fraud. Authorities testified that Gherman never accounted for approximately \$1 million of the funds he embezzled.

A private investigator hired by some of Gherman's victims discovered that Gherman had established an account at SAB. On August 31, 1988, two of Gherman's victims petitioned the High Court of Antigua and Barbuda and secured a freeze of all assets in any

million in debt. At the request of the Antiguan cabinet, the banks agreed to conditionally revoke the receivership for 90 days. By February 1989, Roydan Ltd. was no longer in existence.

However, its owner, Sarfati, was at the same time in the midst of brokering a deal for the shipment of Israeli arms through Antigua to the Medellin drug cartel. The linkage was discovered after a raid on the Columbian farm of Medellin Cartel leader Jose Ganzalo Rodriguez Gacha in December 1989. It was also discovered that one of the weapons included in the shipment was used to assassinate Colombian Presidential candidate Luis Carlos Galin.

The Commission of Inquiry was critical of Roydan's management and the influence Sarfati was able to exert within the Antiguan Government:

. . . [A] lucrative market around the world was quickly jeopardized by the management structure of Roydan to enable it to service its loans, especially from an agency of the U.S. Government, the Overseas Private Investment Corporation (OPIC).

. . . Throughout 1986 Roydan experienced continuous cash flow crises due to lack of management cost control systems and the use of antiquated accounting procedures. Financial statements were tardily produced and reflected a superficial financial picture.

. . . [A] report in 1987 to a U.S. Congressman stated that "because of its demonstrated helter-skelter system of spending, without any type of fixed controls, Roydan's credit history is devastating, both in the USA and in Antigua." (p. 51)

. . . The story of the melon farm trail, and other incidental events, discloses a tale of insinuation and influence of a man with a remarkable talent for getting from a vulnerable administration in Antigua almost anything he desired. (p. 121)

One of Commissioner Blom-Cooper's recommendations was:

"A judicial inquiry should be set up to investigate the dealings in 1985-1987 between Maurice Sarfati and the Government of Antigua. The enquiries currently being undertaken by a firm of U.S. Attorneys are welcome but do not meet the justifiable demands of an inquiring public in Antigua and abroad. This should include the administration of Roydan Ltd and the issue of promissory notes." (p. 132)

¹²On August 8, 1988, Gherman left the country leaving notes to his clients apologizing for his actions. Shortly before his departure, Gherman withdrew \$4.4 million in cash from his corporate accounts at Commerce bank in Miami. On August 10, 1988, 25 creditors (some of Gherman's victims) petitioned the Dade County Circuit Court and secured the appointment of a receiver and a freeze of Gherman's corporate assets and the assets of his family. On August 28, 1988, the Federal Government filed a criminal complaint against Gherman, charging him with wire fraud and the embezzlement of \$9.8 million. A warrant for Gherman's arrest was issued on August 29, 1988. In October 1988, Gherman was arrested in Japan after having been expelled from Taiwan.

accounts controlled by Gherman. The court-appointed receiver for Gherman's assets also filed an action before the High Court on November 4, 1988, requesting that he be recognized by the Court as the receiver for Gherman and to enjoin and require the turnover of all funds, related documents and other assets in the possession of SAB or its affiliates. However, because of Antigua's bank secrecy laws, when the victims filed with the High Court, they were unable to confirm how many accounts Gherman held, how much was in any account or even whether Gherman did hold accounts at the bank. At that time, SAB neither confirmed nor denied the existence of any accounts that belonged to Gherman. Cordell Sheppard, the counsel for SAB stated:

We are willing to do anything we can, if we can do it without breaking the law. If we do have any documents, and that is not to say we do, we are prohibited by law from disclosing them.

After his arrest in Japan, Gherman wrote to SAB on December 6, 1988, and requested that the bank release all records of all of the accounts at the bank that he controlled. He also requested that all funds in the bank that he controlled be forwarded to the court-appointed receiver in the United States.

The efforts by law enforcement officials, Gherman's victims and the receiver resulted in a review of Gherman's account at SAB. As part of his fraud, Gherman had established an Antiguan IBC called Chaska Trading and opened an account for the IBC at SAB, which was used to launder the funds that Gherman had stolen from his clients. Records and court testimony indicate that in a period of approximately 1 month—between July and August 1988—\$3.2 million in embezzled funds were deposited into the Chaska account at SAB. Gherman told law enforcement officials that all of the deposits into the Chaska account at SAB were made with cash that he or his brother personally carried to Antigua. Apparently, SAB had no concern that a client would deposit \$3.2 million into an account within a 1 month time period. About \$2.2 million of those funds were subsequently transferred into an account established in the name of Chaska Trading at Prudential Bache Securities.

At Gherman's sentencing hearing his brother, Warren Gherman testified that he (Warren Gherman) deposited funds into Henry Gherman's SAB account shortly before Henry Gherman left the country by delivering the funds to a bank officer at SAB:

Q. Now, Mr. Gherman, on August 5th of 1988 you made a trip to Antigua, did you not?

A. Yes, sir.

* * *

Q. Now, you didn't walk down there—I am sorry—you didn't travel down there with a cashier's check, did you?

A. No, sir.

Q. In fact, you had a suitcase full of money, is that correct?

A. I said this, yes.

Q. Could you describe how you made the deposit, who you met with down there?

A. A bank officer. I don't believe—I believe his name was Reeves (phonetic).

* * *

Q. Did you declare the money when you left?

A. No, sir.

Q. Why didn't you declare the money?

A. I didn't put any thing down. I just signed—I travel around the country and outside the country, and I just normally sign the document that I—where they ask you to sign on the paper.

Q. I am sorry. When you left the United States you didn't declare any Customs form that you were transporting \$500,000 in cash?

A. No, sir.

Q. Did you read the Customs form?

A. I said I didn't.

At the time of Gherman's deposit, John Greaves was General Manager of the Swiss American Banking Group. He informed Minority Staff that he did not recall any employee at SAB who had a name like "Reeves" or a name that sounded like "Reeves." And, although Greaves' name sounds like "Reeves," Greaves told the staff that he had no recollection of receiving \$500,000 in cash from Warren Gherman, noting that he would have remembered if he received such an amount. Greaves noted that at the time the deposit took place—August 5, 1988—it was legal to accept cash deposits in Antigua.

On April 28, 1989, the trustee received \$787,271.84 from SAB, representing the balance of unrecovered funds that Gherman had deposited in the bank, less amounts withheld by SAB as attorney fees and handling charges. The trustee recalled that SAB charged a rather large amount (\$50,000–\$100,000) as its costs.

(d) The DeBella Fraud

Between September 1986, and May 1990, Michael Anthony DeBella was President and Chairman of the Board of Directors of United Bank International ("UBI") and owner of 45,000 out of 50,000 shares of UBI stock. UBI was an offshore "Class B" bank located in The Valley, Anguilla. Its "Class B" license was an offshore license that allowed it to conduct banking business with customers other than citizens or temporary residents of Anguilla.

UBI was not a real bank. According to an attorney who investigated the bank on behalf of a client, it was nothing but a storefront office with one or two employees and a fax machine. The true purpose of UBI was to serve as a front for financial frauds. Through UBI, DeBella and his accomplices defrauded prospective borrowers by issuing fraudulent letters of credit, lines of credit and loans in return for the payment of advance fees. These advance fees ranged from 1 to 12 percent of the face value of the amount sought by the particular borrower. DeBella represented to various victims that UBI had assets of \$12,000,000 and deposits totaling \$16,000,000. Although pieces of paper purporting to be banking instruments were issued, UBI never produced any actual financing. Between 1986 and 1990, DeBella and his accomplices defrauded

victims of approximately \$2 million. At the sentencing hearing for one of DeBella's accomplices, an IRS investigator stated that he was not aware of any legitimate business whatsoever conducted by UBI. "I believe it was a front for a fraudulent enterprise," he stated. "I am not aware of any successful transaction." The presiding judge stated, in accordance with the investigator's statements, "This is not an example of a legitimate business that had one or two fraudulent acts, but the whole business from beginning to end is permeated with fraud. The business itself was the mechanism to perpetuate the fraud."¹³

To add to the legitimacy of UBI, DeBella and his accomplices claimed that UBI had correspondent relationships with other major banks. UBI had an account at SANB which had a correspondent account at Irving Trust Company. DeBella and his accomplices directed victims to wire transfer advance fees to the SANB correspondent account at Irving Trust Company (which was subsequently taken over by Bank of New York). These funds were then credited to UBI's account at SANB.

Testimony by the U.S. IRS agent who investigated the fraud provided a description of how criminals used offshore banks in secrecy jurisdictions to hide the trail of the funds they had stolen. According to the agent, the money "would be wired from the victim's bank account to the Bank of New York where Swiss American National Bank had an account. From there, the funds would be wired down to Swiss American National Bank and placed in the account of United Bank International." After the funds reached the UBI account in SANB, "within a short period, the funds would be wired back from Swiss American Bank up to the Bank of New York, and placed into one of the accounts controlled by Mr. DeBella."

DeBella established companies in the United States and elsewhere and held accounts in the names of those corporations in banks in Florida and Connecticut. Those accounts were used to move funds acquired through the frauds in and out of the United States and further hide the trail of those funds.¹⁴

In addition to the advance fee for loan frauds, DeBella also used UBI to commit a theft involving approximately \$800,000 worth of shrimp. DeBella represented that UBI would finance the shipment of shrimp from a company in China (China Foreign Trade, a company that was, at least in part, owned by the Chinese Government) to a company in the United States (Imported Meats, Inc.). As a result of this agreement, China Foreign Trade shipped the shrimp to the United States and Imported Meats, Inc. made seven wire transfers totaling \$873,762.54 to SANB's correspondent account at the Bank of New York for further credit to UBI between December 18,

¹³ *U.S. v. Michael A. DeBella, Jr., et al.* (U.S. District Court for the Southern District of Florida, Case No. 93-6081-CR-Hurley), Superceding Indictment and Transcript of Sentencing Hearing, 12/18/95.

¹⁴ For example DeBella was the president and director of Atlantic Capital Corporation, a corporation chartered in the State of Florida, and was also the director of Atlantic Capital Corporation, Ltd., a corporation chartered in St. Johns, Antigua, British West Indies. DeBella held an account at Commonwealth Savings and Loan Association of Florida under the name of "Atlantic Capital." DeBella also operated an unincorporated business known as Marlborough Village, a mobile home park located in Marlborough, Connecticut, and held an account People's Savings Bank, West Hartford, Connecticut, under the name of Marlborough Village.

1989, and February 23, 1990. DeBella sent only \$77,000 to China Foreign Trade.¹⁵

An attorney was retained by China Foreign Trade to recover the \$800,000 in funds owed to it by UBI. He discovered that UBI was nothing more than a storefront operation, as described above. He also discovered that UBI's banking license was revoked by Anguillan Ministry of Finance on May 29, 1990. In the Notice of Intended Revocation, issued on April 4, 1990, the Minister of Finance declared that the license was being revoked because UBI was "carrying on business in a manner detrimental to the public interest." The revocation notice identified nine separate frauds that had been perpetrated through UBI by its owners between 1987 and 1989.

After his discovery, the attorney contacted the General Manager of the SAB, John Greaves. The attorney told Greaves about the fraud that had been perpetrated against his client by UBI and DeBella. The attorney also informed Greaves that UBI's license had been revoked by the Government of Anguilla. The attorney followed up the phone conversation with a letter to Greaves at SAB and a letter to Rappaport at the headquarters of his Swiss Bank, BNY-IMB in Switzerland.

On June 25, 1990, Greaves responded to the attorney's letters. He wrote:

"In reply to your letter 22nd June, addressed to Mr. Bruce Rappaport, could you please take note that neither Mr. Bruce Rappaport nor the Inter Maritime Bank in Geneva has any connection with the Swiss American group, either as shareholders or directors and that future enquiries or correspondence should be addressed directly to the undersigned at the address below.

To now refer to your enquiry, the bank in question did have a small banking relationship with us, and during the course of this relationship, we, on occasions, effected transfers out through our correspondent banking network on their behalf and received payments in. The turn over on the accounts has never exceeded a low five-figure."

There were a number of misstatements and misleading information contained in the portions of Greaves' letter cited above. As noted in an earlier portion of this report, Rappaport was the owner of Swiss American Banking Group. However, the ownership chain was hidden through a series of offshore corporations and trusts. In

¹⁵The wire transfers totaled \$873,762.54. On November 21, 1989, DeBella prepared a UBI cashier's check in the amount of \$935,225.61, payable to China Foreign Trade. However, on December 18, 1989, UBI stopped payment on the cashier's check. On December 22, 1989, UBI wired only \$77,014.08 from the account of Swiss American National Bank at the Bank of New York to the account of China Foreign Trade at Citibank, Shenzhen, China. On December 27, 1989, China Foreign Trade transmitted a copy of a telex from Shenzhen, China to UBI refusing UBI's payment. After this date, UBI made no further payments to China Foreign Trade. However it continued to receive wire transfer payments from Imported Meats, Inc. through SANB's correspondent account at the Bank of New York. *U.S. v. Michael A. DeBella, Jr., et al.*, (U.S. District Court for the Southern District of Florida, Case No. 93-6081-CR-Hurley), Superceding Indictment.

addition, he was directly involved in the operations of the banks.¹⁶ The paragraph left the impression that Rappaport had no ownership or control of the Swiss American Banking Group when, in fact, he clearly did. Greaves told Minority Staff that Rappaport had directed that similar language be included in all letters addressing the issue of his relationship to the Swiss American Banking Group because Rappaport did not want his association with the group to be known.

In addition, records obtained by the U.S. Government show that Greaves' characterization of UBI's account at SANB was incorrect. The letter stated that UBI "did have a small banking relationship" with SANB. In fact, although the letter referred to the account in the past tense, the account was still active during and after the date of Greaves' letter.

Greaves also told the attorney that "the turnover on the accounts has never exceeded a low five-figure." The records obtained by the Subcommittee related to UBI's activity that took place through its account at SANB shows that between early 1987 and late 1990, UBI received deposits totaling over \$1.1 million, including some transfers that were greater than \$100,000. The record of UBI's activity through SANB's correspondent account at Irving Trust and Bank of New York shows that between April 1989 and September 1990 UBI had 25 outgoing wire transfers totaling over \$400,000, with 4 transactions of \$50,000 or more. These figures are more than the "low five figure" amount cited in Greaves' letter.

Even after Greaves and SANB had been advised of the fraud against China Trade and that UBI's license had been revoked by the Government of Anguilla, SANB allowed the UBI account to remain open, and processed transactions—including withdrawals—through it. Records show that SANB processed 11 transactions worth over \$160,000 involving UBI after June 22, 1990.

Moreover, officials at the Swiss American Bank Group allowed DeBella and one of his accomplices to open three additional accounts at SAB after receiving notification of the China Foreign Trade fraud and the revocation of UBI's license. One of the accounts was in the name of Commonwealth Investment Corporation. This account served a conduit through which DeBella defrauded additional victims after he abandoned the UBI scheme.

In one of the frauds run through the Commonwealth Investment Corporation account, DeBella defrauded one victim of \$600,000. In February 1993, a criminal complaint was sworn out against DeBella and his accomplices for their activities related to the frauds committed through UBI in the late 1980's and 1990. DeBella was taken into custody in February 1993. In April 1993, DeBella falsely represented to an English engineer by the name of Anthony Craddock that DeBella's company, Atlantic Capital Corporation, Ltd., had received, in its capacity as a fiduciary, \$120,000,000 from the Nigerian Government, which had been deposited into the Commonwealth Investment Corporation account at SAB. DeBella represented to Craddock that he could release the funds after a payment of \$600,000 in disbursement fees. On April

¹⁶Rappaport personally hired Greaves as Herrington's replacement. Greaves told Minority Staff that he would regularly fly to Geneva to meet with Rappaport and discuss the operations of the Swiss American Banking Group.

13, 1993 Craddock wire transferred \$600,000 into the Commonwealth Investment account at SAB.¹⁷ However, no funds were ever disbursed to Craddock, nor were the “fees” repaid to him. Between April 15 and April 20, 1993, DeBella withdrew most of the \$600,000.

On May 6, 1993, DeBella and two accomplices (Sandra Ann Siegel, also known as “Sandy DeBella,” and Joseph Macaluso) were indicted on a range of offenses related to the advance fee for loan fraud, including conspiracy, mail fraud, wire fraud, money laundering, bank fraud, and tax evasion. A superseding indictment was filed on January 6, 1994, to incorporate the Craddock fraud.

The Atlantic Capital and Commonwealth Investment accounts at SAB were closed between the months of July and September, 1993. DeBella was convicted of the charges in May 1995. In December 1995, he was sentenced to 51 months in prison and ordered to pay \$600,000 in restitution to Craddock and \$69,500 to the IRS.

In his continuing efforts to recover the \$600,000 he paid to DeBella, Craddock wrote to SAB seeking return of his funds and filed a claim against the bank in the Antigua High Court of Justice in 1996. Craddock also wrote to SAB’s correspondent bank, the Bank of New York, about the fraud. When the Bank of New York inquired about the matter in 1996, SAB provided the following response:

Michael DeBella, a U.S. citizen, has been jailed in the U.S. for, among other things, defrauding Craddock of \$600,000. It would appear that in a Nigerian-type scam, DeBella promised Craddock a handsome share of \$120 million from the Nigerian Ministry of Finance if he participated in whatever the deal was. This in itself does not speak well for Craddock.

In any event, Mr. Craddock has been bombarding our board members and management with numerous letters requesting the return of his funds (which we do not have) and, only yesterday, we sent copies of his correspondence to an attorney in the USA for him to examine and determine whether there is sufficient cause for a cease and desist order.

Unfortunately, because of local offshore banking legislation, we are not in a position to advise Mr. Craddock whether or not any part of the funds he is trying to trace is on deposit with us as that would probably put an end to the matter.

SANB’s reply to the Bank of New York did not mention the fact that SAB opened accounts and processed transactions for DeBella long after its General Manager, Greaves, had been made aware of frauds that DeBella perpetrated through UBI and that the license of DeBella’s bank, UBI, had been revoked for activity detrimental to the public interest.

¹⁷On April 13, 1993, the funds were incorrectly wired to SANB for credit to the account of Commonwealth Investments Corporation. Bank officials realized the account was actually at SAB and credited the account at that bank on April 14, 1993. Another \$50,000 from another fraud was wired into the SAB account in March 1993. *Anthony J. Craddock, Craddock (UK) Limited v. Michael A. DeBella, Jr., Atlantic Corporation Limited, Commonwealth Investment Corporation and Swiss American Bank Ltd.* (In the High Court of Justice, Antigua and Barbuda, Suit No. 213/1996), Affidavit of Brian Stuart Young, and Exhibits, March 18, 1997. *U.S. v. Michael A. DeBella, Jr., et al.*, (U.S. District Court for the Southern District of Florida, Case No. 93-6081-CR-Hurley), Superseding Indictment.

Minority Staff asked Greaves about the inconsistencies in his June 1990 letter and why SAB would open and service additional accounts for DeBella after learning of the frauds DeBella perpetrated through UBI and that UBI's license had been revoked for activity detrimental to the public interest. Greaves informed the staff that "mistakes had been made" at Swiss American, including mistakes at the senior management level and including mistakes by himself. He would not elaborate further on the case of DeBella and Swiss American's role in it.

(e) The Fortuna Alliance Fraud

The Fortuna Alliance was a Ponzi scheme that attracted its victims by marketing over the Internet.¹⁸ Labeled as a multi-level marketing plan, the scheme promised investors large returns on their initial investment as new members were recruited into the program. For example, promoters told investors that they would receive \$5,200 for a one-time investment of \$250. Higher investments would earn even higher monthly returns according to the promoters. The program operated between November 1995 and May 1996, when the Federal Trade Commission secured a court order halting the program. The FTC estimated that during its operation, the Fortuna Alliance scheme collected over \$7.5 million from victims. The FTC documented that the perpetrators of the fraud had established two accounts at SAB in Antigua in the name of two trusts—the Fortuna Alliance Trust and the Prosper Trust¹⁹—and had forwarded at least \$5.5 million of victims' funds into those accounts between March and May 1996, utilizing SAB's correspondent account at Chase Manhattan Bank.²⁰ The perpetrators of the fraud also used credit cards issued by SAB that drew from the Fortuna Alliance Trust account.

The FTC filed its complaint against the Fortuna Alliance and four perpetrators of the scheme—Augustine Delgado, Libby Gustine Welch, Donald R. Grant and Gail Oliver—in the U.S. District Court for the Western District of Washington on May 23,

¹⁸This fraud was examined as part of the Subcommittee's investigation into Internet fraud. See "Fraud on the Internet: Scams Affecting Consumers," Hearing before the Permanent Subcommittee on Investigations, February 10, 1998 (S. Hrg. 105-453).

¹⁹According to U.S. enforcement personnel, the Prosper Trust was a holding account for a number of clients that were trusts. Presumably the assets of each trust was held in a separate sub-account. In June 2000, the Minority Staff discovered a Web site for an entity called the Prosper International League Ltd. ("PILL"), a Bahamian entity offering Belize offshore trusts called Prosper Trusts, stressing the secrecy and the tax evasion potential of the trusts. The organization also markets a Ponzi investment scheme similar to that offered by the Fortuna Alliance. It is owned by individuals operating out of Florida. Material included on its web site indicates the organization has been in existence at least since 1994. The web site for PILL states that the trust funds are held by Swiss American Bank in Antigua. It may be the case that PILL controlled a large account at SAB, and the Prosper Trust account beneficially owned by the principles of the Fortuna Alliance was actually a sub-account of the larger Prosper Trust account.

²⁰The FTC's estimate was based on records obtained from wire transfer requests originating from Whatcom State Bank in Washington, where the Fortuna Alliance held an account. The Minority Staff reviewed the monthly statements of SAB and SANB's account at Chase Manhattan Bank. The staff identified \$5.3 million [This figure is a correction by Subcommittee staff of the figure that appears in the original publication of this report in February 2001.] that had been sent from the Whatcom State Bank, by order of the Fortuna Alliance, to Fortuna's two accounts at SAB during the March-May time period. Another \$1.65 million had been sent from the Whatcom State Bank, by order of the Fortuna Alliance, to a Prosper Trust account at SANB. During that same period, an additional \$24,000 [This figure is a correction by Subcommittee staff of the figure that appears in the original publication of this report in February 2001.] was wired into the SAB accounts at Chase for further credit to the Prosper Trust from other U.S. and foreign banks. SAB officials told Minority Staff that they eventually secured a cease and desist order against PILL.

1996. The court issued a temporary restraining order on May 24 and a preliminary injunction on June 12. Both orders prohibited further marketing of the scheme or any related program, froze Fortuna's assets, appointed a receiver for Fortuna and ordered the defendants to "direct that Swiss American Bank of Antigua transfer to Fortuna Alliances's bank account at Whatcom State Bank all funds previously transferred by or from Fortuna Alliance, Augustine Delgado or Libby Gustine Welch to that bank."

At the same time that the FTC sought to obtain a restraining order in Washington, the Department of Justice filed a claim in the High Court of Antigua to freeze the funds in the accounts controlled by the Fortuna Alliance and its principles. On May 29, 1996, the High Court issued an order freezing the two Fortuna Alliance accounts and all other related accounts.

The principals of the Fortuna Alliance failed to return the funds that they had forwarded to the two SAB accounts. On June 12, 1996, the U.S. District Court for the Western District of Washington issued a contempt citation against the defendants for failing to return the funds from SAB and refusing to provide an accounting of the funds. When they continued to defy the court's initial order in the preliminary injunction, the court issued civil arrest warrants against three of the defendants on June 27, 1996.

Although SAB officials told Minority Staff that they cooperated with the U.S. efforts to secure the return of the funds, the bank appears to have been less than cooperative. The U.S. Government had named SAB as a neutral party in the freeze petition. This is a normal occurrence in seizure actions in the United States, and the banks that are named in such suits generally cooperate with the court order. SAB, however, actively fought the United States in the recovery process. According to U.S. Government officials negotiating a return of the funds in the SAB accounts, SAB officials were initially uncooperative in negotiations. SAB officials would not tell U.S. representatives how much money was in the accounts, citing Antigua's bank secrecy laws. This made it difficult for the government to know the exact amount of money in the accounts because additional funds may have been wired into the account from different banks, and principals of the Fortuna Alliance had been drawing down against one of the accounts to pay credit card bills. SAB officials also demanded that the U.S. Government pay the bank \$1 million of the funds in compensation for the costs the bank had absorbed in dealing with the issue, the damage to its reputation caused by the suit, and the interest lost from the account because it was frozen.

On September 10, 1996, SAB joined with some of the principals of the Fortuna Alliance and asked the court to remove the freeze. In its filing, SAB claimed that it was an innocent third party; that if the freeze continued, it would affect SAB's normal course of business; that the U.S. Government had failed to provide any evidence that any of the funds in the Fortuna Alliance accounts were in fact those of the principals, that the principals were signatories of the account, or that the assets were at the disposal of the principals.

On October 22, 1996, Delgado, the owner of Fortuna Alliance, wrote to the manager of SAB and expressed his deep frustration with the continued freeze of his funds. In the letter, Delgado admit-

ted that he was a beneficiary of the accounts that had been frozen and claimed that SAB had accepted additional funds for the Fortuna Alliance accounts after the freeze was imposed by the High Court of Antigua and SAB was on notice of questionable activities by the beneficiaries of the account:

As you are aware I am a beneficial party for certain funds held in Fortuna Alliance Trust. . . . In addition to these there are other funds held in suspense that have come to your bank after the injunction (August 9th from the Netherlands).

I am formally requesting that you arrange a loan to me collateralized by these funds held by you that does not violate your banks policies or the injunctions.

The SAB manager's response included the following:

Management has given serious review to the circumstances related to your request, and guided by fiduciary responsibilities and relevant legalities, we are unable to register as security for a credit facility the funds held either in the Trust account or for the Trust account.

We appreciate the grave concerns raised in your letter to us, and have sought to identify legal means by which we could respond to your request. On the one part, we are bound by order of the Court and, on the other part, the fact that funds are held for a trust account carry further responsibility for the bank to ensure that there is no breach of trust. The only authority for the custody of the funds is the stated trust, and a Trustee has no implied power to borrow.

At this time we have no means to respond to your request, we will however continue to press for the legal resolution of this matter. We share your concerns over the length of time taken to address the matter and the adverse impact it has on your business. We are powerless to influence these events of the court, and can only act in compliance with its orders.

Please contact us if you wish to meet further on these matters.

Finally on February 24, 1997, the FTC and the Fortuna principals entered into a settlement agreement providing for the return of \$2.8 million from SAB and requiring the Fortuna principals to make additional funds available to pay all claims. According to U.S. officials, even after the principals of the Fortuna Alliance agreed to the settlement, SAB officials balked at sending the funds back to the United States, insisting that they be paid part of the funds. SAB eventually settled for \$50,000.

By May 1, 1998, the FTC had refunded approximately \$5.5 million to over 15,000 victims in 70 countries throughout the world.²¹ However there were still \$2.2 million in additional claims that were outstanding. Under the terms of the February 1997 settlement, Fortuna was obliged to pay those additional funds. However, the defendants refused to fulfill their obligations and did not supply additional funds. Instead, Delgado and other members of the

²¹The sources of the \$5.5 million are as follows: \$2.2 million in uncashed checks returned to investors; \$2.8 million returned from accounts at SAB; \$350,000 in assets frozen in U.S. banks.

original Fortuna Alliance opened another Ponzi operation similar to the first scheme, called Fortuna Alliance II. On June 5, 1998, the U.S. District Court for the Western District of Washington issued a civil contempt order against Fortuna Alliance and its owner, Delgado, for failure to make the payments as required under the settlement agreement and for failure to abide by the agreement not to engage in similar activities.

Bank records reviewed by the Minority Staff indicate the Fortuna Alliance wired at least \$6.9 million [This figure is a correction by Subcommittee staff of the figure that appears in the original publication of this report in February 2001.] into its SAB and SANB accounts, but the settlement agreement called for only \$2.8 million to be returned from SAB and SANB. After the \$2.8 million had been returned to the U.S. Government, it is likely that substantial sums still remained in the accounts and presumably were available to the principals of Fortuna Alliance, perhaps to perpetrate their second Ponzi scheme.

(f) Other Frauds/Questionable Accounts

In 1997 or 1998, Robert Burr, an accomplice in the Cook fraud (described in the appendix to this report), opened two accounts in the name of two foreign trusts (Right Hand Investments and Silver Search International) at SAB. Burr instructed SAB that all funds transferred into the Right Hand Investments account should be immediately transferred into the Silver Search International account. Given the bank secrecy laws of Antigua and Barbuda, the mechanism employed by Burr would effectively hide the trail of his funds. An investigator working with the SEC appointed receiver attempting to recover the funds stolen by Cook told the Minority Staff that it has been established that Burr attempted to use these trusts to prevent law enforcement officials from seizing assets he acquired through the fraud.

Peter Berney, a U.S. citizen who has been indicted in both New York and Nevada for stock fraud and money laundering apparently ran millions of dollars through an account at SAB during 1999.

The issues discussed above raise serious questions about the adequacy of the initial due diligence and ongoing monitoring conducted by both Swiss American banks. In some instances, these frauds evidence possible complicity of SAB and SANB bank employees or officials. SAB officials have told Minority Staff that they have recognized past problems and have made a concerted effort to improve their management and anti-money laundering policies. One law enforcement official also reported improved performance. However, over the past few years SAB has taken on accounts from entities involved with Internet gambling activities, which raise additional money laundering and legal concerns for correspondent banks.

(g) Internet Gambling/Sports Betting

Antigua is one of a number of countries that have legalized Internet gambling, and it has become one of the most popular locations for such enterprises. For a licensing fee between \$100,000 and \$75,000, an Internet gambling operation can purchase a license in Antigua and Barbuda. Approximately 100 Internet gambling licenses have been issued by Antigua and Barbuda. As noted in an-

other section of this report, Internet gambling is vulnerable to money laundering, and it is illegal in the United States. This has caused some U.S. banks to refuse accounts from Internet gambling clients and correspondent relationships with foreign banks that accept such clients. When offshore banks with Internet gambling clients open correspondent accounts with U.S. based banks, the money laundering vulnerability of the correspondent bank is increased, because it is not just dealing with unknown customers of the client bank, it is also handling the customers of the Internet gambling establishments who have access at the client bank. Moreover, the correspondent bank is in the position of facilitating a possible crime by accepting funds for activities that are illegal when carried out within the United States.

SAB services a large number of Internet gambling accounts. A brief search of the Internet disclosed hundreds of Internet gambling entities that advertised SAB as their bank and directed clients to wire funds to their SAB accounts through one of SAB's U.S. correspondent banks. In 1998 and 1999, wire transfers directed to Internet gambling entities flowing through SAB correspondent accounts grew to millions of dollars each month. The Internet gambling clients of SAB included World Sports Exchange, whose co-owner Jay Cohen was recently convicted and sentenced to 21 months in prison in the United States for violation of the Federal Wire Act, which prohibits interstate or foreign gambling via telephone or telegraph.

In addition to SAB's U.S. based correspondent accounts, SAB's correspondent accounts at non-U.S. based banks, such as Toronto Dominion in Canada and BNY-IMB in Geneva were also advertised as places where gamblers could send funds for SAB's gambling clients.

Moreover, the money laundering vulnerabilities of correspondent accounts that are compounded by the combination of correspondent banking and Internet gambling clients are further magnified through the proliferation of E-cash operations such as Totalnet, InterSafe Global, Ecashworld, Electronic Financial Services. E-cash operations are intermediaries for the transfer of funds between consumers and merchants. Many Internet gambling operations are using such services. Individual bettors are instructed to open accounts at, and send their funds to, the E-cash intermediary, which then deals with the gambling company. This further hides the origin of funds.

The Web sites of a number of on line casinos contained the exact same description of one of the E-cash companies, "InterSafe Global," and described how the casinos utilized its services:

InterSafe Global LLC is a Nevada based company that operates the E-cash service for Casino on Net. InterSafe specializes in secure Internet transaction processing. They provide a vital link between Internet customers and merchants. When our clients want to make a deposit to their casino bankroll, this is done through InterSafe. The credit card is charged to InterSafe Global LLC, and this is the name that will appear on your credit card statement.

The Internet casinos using InterSafe instruct clients who wish to make wire transfers into their casino account to forward the transfers to “InterSafe Global LLC, Account number 1641101, Swiss American Bank.”

These intermediaries further obscure the source and extent of Internet gaming that may be taking place through a bank that services such accounts, and makes it even more difficult for correspondent banks to know which and how many gambling entities may be using one of their client banks. The gambling entities are nested within the E-cash company account.

SAB recently announced it would no longer use its U.S.-based correspondent accounts for Internet gambling clients. However, it is not clear whether SAB will continue to service the accounts of, and accept wire transfers for, the E-cash companies that accept deposits for Internet gambling companies.

(7) Correspondent Accounts at U.S. Banks

(a) Bank of New York

SANB established a correspondent relationship with Irving Trust Company in December 1981. The relationship was continued by Bank of New York (“BNY”) when it acquired Irving Trust Company in 1988–1989 and was terminated in June 1999. Little information is available about the structure and operating procedures of Irving Trust’s correspondent banking department at that time. A December 1981 memo by the relationship manager indicates that Irving Trust was introduced to SANB through its courier in Antigua and Barbuda, who was the brother-in-law of SANB’s Assistant Manager, McAllister Abbott.

Minority Staff interviewed the BNY relationship manager who was responsible for the account from October 1993 through its termination in April 1999, and the head of the Latin American Division who has held that position since 1990.

The Correspondent Banking Department is located within the International Sector Division, headed by the Vice-Chairman of the bank. The International Sector is divided into four geographical regions—Europe, Asia, Middle East/Africa and Latin America. The Latin American Division is headed by a Division Head, a Senior Vice President of the bank. The Division is divided into two Districts. The Caribbean Region is located in District Two. District Two has two relationship managers and a District Manager. The Latin American Division has four representative offices in the region. The duty of the relationship managers is to sell products and services to clients. However, relationship managers are also responsible for following the activities of their clients and events in the countries in which they operate. The administrative, back office activities are handled by a group called deposit services. The Latin America Division has 200–225 correspondent banking relationships, with a total of 480 accounts. The relationship manager who handled the SANB account had 30–35 clients with 40–45 accounts.

Representatives of BNY told Minority Staff that to open a correspondent account at BNY, a bank must submit a request in writing; provide a letter from its regulatory authority that it is licensed to do business; three letters of reference including a letter from the

Central Bank of the country and if possible two from U.S. banks, and a list of all of the owners, directors and management; identify the type of products and services it would like to use; and indicate the expected volume of activity. Relationship managers are required to visit the site of the bank. The relationship manager, the District Manager and the Division Head review the application and make the decision whether to accept the account. If a potential client plans to conduct business with, or utilize services of, some other division of the bank, representatives of that division will also be in on the review process. The Compliance Division for the bank is a separate unit, but a compliance officer is assigned to the International Services Sector.

BNY representatives told Minority Staff that as part of BNY's ongoing monitoring program, relationship managers in the Caribbean Division have a goal of visiting clients at least once a year and in highly sensitive areas the District Manager is required to meet with the clients. After returning from a site visit, relationship managers are required to write a country report and a client visit report. Client banks are required to supply audited financials annually. Monthly statements are not reviewed. However, BNY has a monitoring system that can follow trends in account activity and produce monthly reports on unusual activity. Relationship managers are required to review the reports and provide a written explanation of the activity in question.

According to the client contact memos produced by BNY, which include Irving Trust memos from the beginning of the account, the relationship managers did not identify any serious problems or concerns with the SANB account until about 1995. Significant frauds that utilized SANB were not addressed by the relationship managers. For example, when Peter Herrington was dismissed in 1987 as General Manager of the Swiss American Banking Group for involvement in the Fitzgerald matter noted above, the reports from the relationship manager stated: "Peter Herrington has left and Andrew Barnes is the new G.M. (Apparently Herrington did not leave on very amiable terms)." The relationship manager apparently did not obtain any information regarding the Fitzgerald case. Similarly, although the SANB account at Irving Trust Company and then BNY were the conduit for the flow of funds involving the DeBella fraud in 1989 and 1990, there is no mention of the matter in any of the files provided to the Subcommittee. IRS agents had subpoenaed account records from BNY during its investigation, discussed the account with BNY representatives and addressed the matter in the trial and sentencing of DeBella, which lasted through 1995. There is no indication that BNY relationship managers were advised of this issue by other divisions within BNY, or that relationship managers made any inquiries of SANB to understand SANB's role in the matter. As noted in the review of the DeBella fraud contained above, documents and information made available to the Subcommittee indicate that the General Manager of the Swiss American Banking Group, John Greaves, continued to allow DeBella to utilize SANB accounts after he had been provided with information and documentation alleging DeBella's involvement in fraudulent activity. The Division Head and the Relationship man-

ager interviewed by Minority Staff indicated that the account was quiet until about 1995.

In 1995, BNY memos indicate that personnel began to notice questionable transactions occurring in the account. In 1993, SANB issued and BNY confirmed two standby letters of credit to Banco de la Union in Costa Rica.²² Ostensibly, the letters of credit guaranteed the capital reserves the bank was required to maintain. In April 1994, Banco de la Union authorized another bank to collect on the letters of credit. However, SANB instructed BNY not to pay. In late 1994, attorneys for Banco de la Union threatened to sue BNY. Yet, for a long period of time, SANB failed to respond to numerous requests by BNY for SANB to explain its position on the matter, and to provide the name of its legal counsel in New York.

Around the same time as BNY confirmed the letter of credit in 1993, Bank of America (BOA) (at that time, a correspondent for SAB) received a similar request to confirm a standby letter of credit that SAB wanted to issue to Banco de la Union. The stated purpose of the standby letter was the same as the letter of credit backed by BNY: To serve as a guarantee for the capital requirements that bank was required to possess in order to meet Costa Rican licensing requirements. Although BNY backed the standby letter, BOA refused. In an internal memo, the BOA credit manager expressed his concerns:

I am not in favor of our issuing this SBLC in support of a client establishing a bank in Costa Rica for the following reasons:

- We don't know the client or the type of bank we are guaranteeing.
- This is not trade related.
- This is not a specific transaction in the sense that client is going to have this SBLC as long as it continues business in Costa Rica and we are going to be asked to continually renew.
- The pricing of 50 BPS is not attractive.

The principle reason of those above is that we would be guaranteeing and support liquidity needs of a bank we don't even know and don't know that we would want our name associated with that entity or its principals. Therefore, from a policy perspective this is turned down.

Documents associated with SANB's correspondent account at Nations Bank also raise questions about Banco de la Union and the wisdom of approving a letter of credit for Banco de la Union.²³

²²A standby letter of credit is a financial guarantee against non-performance. It is similar to a surety bond. Generally when such an instrument issued by an offshore bank or a bank that is not internationally known, the party who is relying on the standby letter will demand that a larger, better known financial institution "commit to," or back, the letter. Often, the small bank will ask its correspondent bank to commit to the standby letter of credit. Committing to the letter places the bank at risk if the small bank does not honor the letter. Generally, to eliminate its exposure, the correspondent bank will require the respondent bank requesting the commitment to provide collateral equal to the value of the pledge that the correspondent bank is making. Thus, the correspondent bank has no risk of loss. This is what BNY did with its standby letter of credit arrangements with SANB.

²³Material obtained from the SANB correspondent account at Nations Bank indicate that in 1993 Nations Bank became involved in a controversy with the Deputy General Manager of the Swiss American Banking Group, David McManus, that revealed more information about Banco de la Union and raised questions about the bank and the individuals associated with it. A letter

Additionally, SANB reported to BNY that a number of forged checks totaling \$53,000 had been written against SANB's account at BNY. Nine months after the checks had been cleared, SANB informed BNY of the forgeries and asked that its account be credited \$53,000. The relationship manager discussed these matters with John Greaves, the General Manager of Swiss American Banking Group during a visit to SANB in April 1995. According to the relationship manager, SANB officials refused to tell him who it was that issued the checks and the circumstances surrounding their issuance. BNY did not press SANB on the matter. The relationship manager and the Division Head stated that these incidents raised concerns about the account.

By 1996, Swiss American Banking Group had replaced Greaves with a new General Manager and the SANB account was of such concern to the BNY Division Head that she discussed the matter with other BNY officials, including the head of credit policy. A decision was made to have a set of meetings with SANB to pursue the issues more aggressively. There was some discussion of closing the account, but the new Swiss American Banking Group General Manager made the representation that he had a mandate to improve operations at the bank and requested the help of BNY to do so. BNY made a decision to give him the opportunity to improve the condition of SANB.

In February 1996, the relationship manager addressed a number of frauds and suspicious transactions (including those addressed in the April 1995 meeting) with the new General Manager. These included \$90,000 in forged checks in 1993; a fraud involving the Bank of Scotland and a SANB client; efforts to wire cash deposits made at BNY to SANB; and the \$600,000 stolen by DeBella in 1993. The issues were discussed at the meeting and the Swiss American General Manager followed up with a letter to BNY addressing the matters.

Once again, the answers from SANB were incomplete and some, as the relationship manager described, were "total contradictions." For example, SANB acknowledged that the \$53,000 in forged checks involved the SANB employee who was responsible for reconciling the checks (i.e., confirming that the checks debited to the SANB account matched the record of disbursements in the SANB ledger), but would provide no additional information to BNY. SANB told BNY that the individual who controlled the account involved in the attempted fraud against the Bank of Scotland had been in-

and memorandum from a Nations Bank Vice President described the matter. Two foreign insurance companies that were clients of SANB were attempting to expand their businesses into the United States and were looking for a U.S. Trustee to hold funds to pay insurance claims filed by U.S. citizens. McManus recommended the companies to Nations Bank. Before Nations Bank ever made a decision about accepting the trust fund, McManus sent Nations Bank 2 million shares of a Nevada corporation to be used to fund one of the insurance companies. In performing due diligence on that company, Nations Bank discovered that the owner/recordholder of the stock was Banco de la Union; the company whose stock was sent to Nations Bank had its charter terminated nearly 6 months earlier; the stock was a restricted offering that under U.S. securities laws was required to be held outside the United States, and a Ronald Seale, who identified himself as a financial advisor to the insurance company, told Nations Bank that he was a shareholder of Banco de la Union and in that capacity had allowed the insurance company to use the name of the bank to hold title to the stock. Seale had eight separate complaints filed against him in Florida for selling discounted letters of credit related to oil business ventures. It turns out that the BNY documents on the Banco de la Union issue reveal that Seale had been a minority shareholder in Banco de la Union; became its President in August 1993; and was involved in the letter of credit controversy that involved BNY and the SANB correspondent account.

carcerated and the account number had been re-issued to another party. The re-issuance of the account number was described as “unusual” and “something I didn’t like” by the relationship manager. In discussing the DeBella fraud, SANB acknowledged that DeBella had been defrauding a number of people, but SANB made no mention of the long and extensive use that DeBella made of accounts at SANB to perpetrate his frauds even after SANB was on notice that DeBella was involved in questionable activities.²⁴ Regarding the attempt to wire transfer cash deposits to SANB, BNY asked SANB to confirm that the account no longer existed and provide the closure date. SANB officials refused to provide BNY with any details of the entity whose account was in question except to write that “we have no account, nor have we ever had an account in the name [of the account in question].” The General Manager of Swiss American Banking Group then proceeded to suggest that the matter involved an account at SAB, and was being handled by Bank of America, which was a correspondent for SAB. No additional information was provided. The relationship manager described this response as “total contradictions,” adding that it was one more factor in the process that led to the decision to eventually close the account.

When asked by Minority Staff why BNY did not press to receive more complete answers to these matters, the relationship manager noted that in the early 1990’s banks were more concerned with credit risk than anything else. There was not much of that type of business in the Caribbean. Security and money laundering were not the high priority because BNY was not involved with a lot of offshore banks. He noted that when banks talked of exposure and risk, they were more concerned with losing money. The relationship manager noted that the nature of banking is changing and the international efforts to battle money laundering has shifted the focus of the banks. Meanwhile, however, BNY’s relationship with SANB continued.

During this period of time, SANB had been BNY’s largest revenue producer in Antigua for a number of years. However, both the relationship manager and the Division Head stated that SANB was a relatively small account, and that its revenue position would not influence any decision whether to close the account. The relationship manager noted that BNY officials told him they would support a decision to close the account if that was his decision. He noted that in 1996, he wrote a memo recommending that BNY not accept additional accounts in some areas because of weak regulatory controls and it was approved by his superiors. The relationship manager reiterated that he wanted to give the new Swiss American General Manager an opportunity to improve operations at the bank.

²⁴In 1995, after DeBella was convicted in Federal Court, Craddock, the victim of a \$600,000 swindle perpetrated by DeBella in 1993, wrote to BNY, advised the bank of the conviction and asked for assistance in securing the return of his money. BNY wrote back to Craddock and informed him that the funds had been deposited through Barclays Bank and did not involve SANB’s relationship with BNY. However, there is no indication that BNY made any connection between this matter and the DeBella frauds that earlier used the SANB account at Irving Trust and BNY. Although BNY questioned SANB about the Craddock funds, it made no inquiries about the SANB relationship with DeBella.

In May 1996, the Division Head again met with senior officers of the bank to alert them to activities and issues related to SANB. She recognized the matter could be a sensitive issue because of the position of Rappaport as a major shareholder of BNY and the sole owner of Swiss American. According to the Division Head, upper management supported her approach and the relationship with Rappaport did not factor into the decisions affecting SANB. Rather, the decision was made to treat the SANB relationship at arms length and not give it any special treatment.

The Division Head asked the relationship manager to provide a summary of all of the cases involving SANB. The memo noted that "all the subpoenas and check forgeries are really concentrated between 1993 and 1995." After reviewing the cases, the relationship manager concluded by writing:

Clearly, all these cases at Swiss American occurred during the administration of Mr. John Greaves the former General Manager, who resigned last summer September and still resided on the island. . . . [T]he new GM, has been brought by the Board of Directors to clean the record of the institution.

Even though this relationship has been very frustrating during the past 3 years we should try to extend a grace period to Mr. Fisher and his new team.

He informed Minority Staff that he believed the new General Manager was making an effort to improve the situation at SANB. At that point, the Division Head instructed the relationship manager to continue to follow the situation and keep her informed.

In November 1996, the Division Head and the relationship manager again met with the General Manager of Swiss American Banking Group. The Division Head informed Minority Staff that she had a lot of issues she wanted to discuss and hear from the General Manager in detail on each of the items. The Division Head wanted to stress to the General Manager that these matters were receiving the attention of senior management at BNY and that "we have to get to the bottom of this." The Division Head also wanted to size up the General Manager and estimate the prospects of his ability to improve matters at SANB.

The report of the meeting prepared by the relationship manager underscored the serious tone of the meeting:

Taking in consideration all the problems the Bank of New York has been experiencing with this relationship, "our meeting went very well."

Ken told us that his priority was to review and clear the institution of all of its problems and finally bring back Swiss American to profitability. He mentioned that most of the problems were due to the mismanagement of the previous administration. Problems ranged from, as he said to [sic] "under-reported or mis-reported" non performing assets to the Board of Directors and the Eastern Caribbean Central Bank to suspicious offshore accounts at Swiss American National Bank.

. . . [The Division Head] strongly restated to Mr. Fisher that we would close the account if there was no improvement in the way Swiss American conducts its businesses. The Bank of New

York received five subpoenas regarding Swiss American from various U.S. agencies, during the past 16 months.

The memo concluded by noting, "We will keep monitor[ing] the account very closely."

When asked by Minority Staff why BNY continued to maintain the relationship in light of the concerns it had, the Division Head said it was due to a number of factors: The new General Manager appeared to be trying to turn things around and she felt BNY was having some success with him and that he was making progress; as a professional courtesy, BNY wanted to help him succeed; no one likes to terminate a client; and BNY faced some potential losses if the account was terminated and BNY wanted his help to mitigate those.

The Division Head informed the Minority Staff that around the same time as the November meeting, the SANB account was put on the "refer" list, meaning the wire transfer and cash letter transactions of the SANB received more monitoring and manual intervention, and credit activity (such as clearing large checks or wire transactions when funds may not be immediately available to cover the amount of the transaction) had to receive the approval of the relationship manager.

BNY was unable to locate any documents (other than monthly statements) that addressed the relationship during 1997. There are no documents to indicate any knowledge or inquiries by BNY of the Fortuna Alliance fraud that affected both SAB and SANB, despite the wide attention it received. However, in February 1998, BNY was notified that the U.S. Government had sued SAB, SANB and BNY-IMB for recovery of funds related to the Fitzgerald case. Both the Division Head and the relationship manager were surprised by the news of the civil action and concerned. The Division Head was upset that SANB had not advised BNY of what was a long term controversy. As the Division Head noted, it became a major topic during BNY's visit to SANB a few weeks later. According to the relationship manager, the BNY representatives received another surprise when they arrived at SANB. They learned that the General Manager of Swiss American Banking Group had left and SANB had a new General Manager. BNY had not been advised of the change. According to the relationship manager, the new General Manager "sounded the same" as the previous GM as he laid out his mandate for the BNY officials.

Regarding the lawsuit filed against the banks, the new General Manager told the BNY representatives that SAB was not at fault. He provided the history of the funds and noted that SAB and SANB were caught between conflicting demands of the Antiguan and the U.S. Government. According to the report of the meeting written by the relationship manager, the General Manager concluded his presentation of the Fitzgerald funds by saying "currently nobody knows where these funds are!! The Antiguan Government claims they do not have them anymore!!!" [emphasis included in original]

The Division Head offered a similar account to the Minority Staff and characterized the claim as "highly improbable." The Division Head was upset that SANB did not notify BNY of the lawsuit, but

noted that the General Manager explained that he thought BNY would have known of the suit because of its part ownership of BNY-IMB. Clearly, the BNY Correspondent Banking Department had not been notified by its own bank, either. The Division Head indicated that as a result of the matter and the way it was handled by SANB, she was seriously considering terminating the relationship.

Other information presented by the General Manager at the meeting raised additional concerns for the BNY representatives. The relationship manager's meeting report describes another controversial matter raised by the SANB General Manager:

10.) [The General Manager] see [sic] future growth in Antigua is in Internet Gambling. This new industry in Antigua works as follows:

1. When there is a sport event—boxing, football, soccer, etc. especially in the U.S.
2. People will place their bet through the Internet to an offshore company in Antigua.
3. Wire funds to Antigua via remittance company, Western Union, for example.
4. The company will mail checks to the winner—these checks issued by local banks are usually drawn on U.S. banks (BNY, Nations Bank, etc.).

Another offshore activity which will generate a lot of questions on the part of the U.S.²⁵

The Division Head told the Subcommittee staff that BNY had already been hearing a lot about Internet gambling, she wanted no involvement with Internet gambling proceeds being processed through the BNY account, and she made that very clear to the General Manager. Although the General Manager responded that the activities were being conducted through the offshore banks and not the domestic banks in Antigua and Barbuda, she was concerned that it would be difficult for the Swiss American Banking Group to limit the activity to its offshore bank because of the tie in ownership between SAB and SANB.

The relationship manager told the Minority Staff that when the General Manager spoke about Internet gambling, he made up his mind to recommend that the account be closed. Before he could process his recommendation, Swiss American Banking Group installed another General Manager, and then BNY identified a series of suspicious checks that had been written against the SANB account.

²⁵ Another issue raised by the General Manager also raised concerns. According to the relationship manager's report:

SANB is still lending to the Antiguan Government, financing its deficit. However, [the general manager] told us confidentially, all of these loans to the government are guaranteed by the West Indies Oil Company, the local company owned 50% by the government and the rest by SANB's principal shareholder. A percentage of the taxes paid by the consumers on each gallon is allocated to SANB [confidential].

According to the Division Head, this raised another question about Rappaport's involvement with the bank and the Antiguan Government. Although BNY officials had been told that Rappaport was distancing himself from Antigua, the information supplied by the SANB General Manager contradicted that. The information also raised concerns that Rappaport may be using financial institutions under his control to further his own interests.

When the Division Head returned from the February 1998 trip to SANB, she wrote up a memo and had a discussion with the Head of the International Banking sector and an Executive Vice President of the Bank. The Division Head's intention was to bring her concerns—including the lawsuit—to the attention of the Executive Vice President. Her inclination was to close the account. She wanted the Executive Vice President to discuss the matter with more senior members of the bank and the BNY Board members who also sat on the BNY-IMB Board. The Division Head and the relationship manager then waited for some response for senior management. In October 1998, the Swiss American Group hired another General Manager, the third in a 1-year period.

In December 1998, nearly 10 months after the meeting in Antigua at which the U.S. lawsuit and Internet gambling were discussed, the relationship manager reported to the BNY compliance department that SANB had issued six checks in series, two for \$9,900 and four for \$9,000 each. All of the checks were drawn on SANB's account with BNY. The relationship manager wrote:

Even though Swiss American authorized the payment, we believe, like California Bank and Trust, that these drafts are highly suspicious and must be reported to the proper authorities. We are almost sure the negotiating bank will do the same soon.

According to both the Division Head and the relationship manager, this was the event that triggered the closure of the account. In addition, SANB had again failed to notify BNY that a new General Manager had been hired. According to the Division Head, she discovered the change when SANB submitted a notice to the administrative office that it wanted to add the signature of the new General Manager to the authorized signature card for its account. At that point, the Division Head notified the Executive Vice President of her intention to close the account and also, as a courtesy, told the BNY Board member who sat on the BNY-IMB Board of her intentions.

In reviewing the account to determine how long the termination period should last, the relationship manager wrote the following:

I conducted a preliminary survey of SANB relationship with The Bank of New York, and I have to admit to you the relationship has been more extensive than we thought. BNY is subject's primary clearing bank in the U.S. It is going to take more than 60 days to close it down, especially SANB has currently two stand by letters for \$500,000 and \$300,000 assigned to Visa and Mastercard.

These slc's [standby letters of credit] guaranteed SANB's credit cards in the Caribbean Region. In addition, SANB has an average of 300 checks issued and drawn on BNY floating around the market, a monthly average of 250 payments going through the account and finally they send 3,000 cash letters every month.

On January 9, 1999, the relationship manager wrote the new General Manager and informed him that BNY would close SANB's correspondent account effective March 31, 1999. SANB did not

transfer out the balance of its account by the closing date of March 31. On April 8, the Division Head wrote the General Manager:

Even though a 3-month deadline to March 31, 1999, was extended for an orderly transition to another U.S. Commercial Bank, to date no actions have been taken by your staff to reduce the number of payments and checks in your account and the transfer of the Visa and Master Card standby letters of credit.

The Division Head told the General Manager that within 10 days BNY would cease clearing any checks; would not process any payment instructions; and would notify Master and Visa Cards that BNY would not renew the stand by letters of credit when they expire.

The Division Head instructed the General Manager to "Take all appropriate measures to transfer the balance of your account by Friday, April 23, 1999."

The account was closed on June 1, 1999. The memo closing out the account stated:

Latin America and The Caribbean Division closed the accounts of Swiss American National Bank as a result of a series of suspicious transactions and payments during 1997, 1998 and 1999. The division actually received five subpoenas during this period from the U.S. Government concerning different cases of money laundering and other illegal activities.

The Caribbean Desk decided to close the account at the end of 1998, when 50 [sic] checks were issued for \$9,900 each in favor of one individual.

Both the Division Head and the relationship manager told the Minority Staff that they should have closed the account sooner. When asked why no decision was made until December 1999, nearly a year after the meeting in Antigua, the relationship manager told the Staff that he didn't know what to say, that it was a lapse on his part. He said closure of the account was definitely something he should have done in 1998. The Division Head said that in hindsight, the account should have been closed down sooner, right after she returned from the February trip to SANB.

There were other aspects of the SANB operation that BNY did not pursue. In two of the meeting reports, the relationship manager wrote that the General Manager noted that Swiss American Banking Group board members were from New York and Chicago. When asked if they knew who the board members were, the relationship manager and the Division Head told the Minority Staff that the general managers never gave the names of the board members. Eventually, BNY learned the name of the board member in New York. When asked if they ever learned the name of the board member in Chicago, the Division Head told the Minority Staff that she and the relationship manager were never given the name of that board member. The relationship manager asked for the name a number of times and the Division Head kept telling the relationship manager to go back to SANB and get the name. She said that the situation was frustrating and that BNY should have known the name of the board member and SANB should have told

BNY when asked. The board member from Chicago is the controversial tax attorney Burton Kanter.

In addition, BNY was not sure of all of the entities in the ownership chain of SANB. Internal memos describe the ownership of SAB and SANB as: "Swiss American Holdings (Panama), which is owned by Carlsberg (Bahamas), which is owned by a private Trust controlled by Rappaport." BNY informed the Subcommittee that it believes the name of the private trust is the Inter Maritime Foundation, but it is not sure. Although BNY knew the true owner of the bank, it did not have a complete understanding of the entities that comprise the ownership chain.

BNY records related to the SANB correspondent relationship reveal a number of visits and exchanges, starting in mid-1995 and continuing through 1998, in which BNY representatives questioned SANB management about a number of specific suspicious transactions and other controversial incidents involving the bank. In some cases, SANB officials failed to share all of the information they had on a matter with the BNY representatives. In some instances, SANB did not provide an accurate description of the transactions. Both the relationship manager and the Division Head told Minority Staff that these events and SANB's response raised concerns about the bank and its management. Yet, for a prolonged period of time, even though BNY closely monitored the account and its problems, and was concerned about the relationship, it allowed SANB to continue to maintain a correspondent relationship.

(b) Bank of America

SANB established a correspondent relationship with Bank of America in April 1987. The account was terminated in June 1991 when it was replaced by an account in the name of SAB. The SAB account was closed in June 1999. This section focuses on SAB's correspondent relationship with BOA.

The structure of BOA's International Banking Department and its Caribbean division, and its due diligence policies and ongoing monitoring programs are detailed in the case study on American International Bank. Minority Staff interviewed the BOA relationship manager who was responsible for the SANB and the SAB accounts from 1990 through the termination of the SAB account in July 1999, and senior officials from the correspondent banking and compliance departments of BOA.

Prior to establishing a relationship with SAB, BOA records show that it had concerns about its correspondent relationship with SANB as far back as 1990. In August 1990, the relationship manager for the account wrote a call memo (a report on a visit with or call to the client bank) which stated: "This is a privately owned bank with poor financials and obvious operating problems. . . . Follow-up: . . . Nothing more until financials improve measurably." When asked why BOA kept the account if it had the problems described, the relationship manager stated that BOA only performed transactional business for SANB, and the memo only meant that BOA needed to keep an eye on the account, not that SANB had violated any laws.

In 1991, BOA established an automatic investment account for SANB, which allowed SANB to receive more interest on assets on

deposit in its account. In the memo establishing the account, the administrative officer who handled the account noted, "As per Tom Wulff watch this bank very carefully." The relationship manager explained that he was notifying the administrative officer that the bank was not well managed and should be watched, but that he did not believe that the bank was engaged in anything illegal. He believed that SANB was not sharp operationally and wanted the administrative officer to watch the account to make sure SANB did not do anything to hurt BOA.

A few months later, in June 1991, SANB wrote to the account's administrative officer in New York:

Confirming our recent conversation, we wish to close out the account of Swiss American National Bank of Antigua and initiate a new account in the name of Swiss American Bank Ltd. . . .

We are making this change because the time has come to better divide the activities of the two entities and as the transactions that have been handled through Bank of America traditionally have been more oriented towards Swiss American Bank Ltd., we feel that we should have the account in that name.

SANB included Articles of Association, financial statements and approved signatory lists for itself and SAB. No additional account opening material accompanied the letter and the relationship manager observed that it appears as if the SAB account was opened without anyone at BOA first making a determination if they wanted SAB to open an account. Yet, as an offshore bank, SAB potentially had a much different clientele and engaged in different banking activities than SANB, which was a domestic, commercial bank and it was regulated by a different authority. Domestic banks (such as SANB) are regulated by the Eastern Caribbean Central Bank. Offshore banks (such as SAB) are regulated by the jurisdiction licensing the bank. To the extent that the two institutions shared anything in common, it was the management and administration, about which BOA had already expressed concerns.

The 1989 audited financial statements for SAB contained the following auditor's comment:

A number of the Bank's depositors have given written instructions that correspondence should not be sent by the Bank. Consequently, we did not attempt to obtain confirmation of customer accounts totalling [sic] \$1,931,627 credit and \$71,972 debit.

A similar disclaimer was included in SAB's audited financial statement for 1990. A BOA senior official agreed those disclaimers should have raised questions, noting that the amount cited in the 1989 financial statements (\$1,931,627) represented approximately 20% of all deposits. There was no indication in the documents provided to the Subcommittee that the BOA relationship manager at the time noted or followed up on this matter.

Another cautionary call memo was written in July 1991:

The private ownership of this bank is known to be legitimate although General Manager David McManus was recently

linked to a minor bank scandal in Anguilla when he made calls there with clients of the bank later found to be of questionable reputation.

. . . [T]here is an ongoing investigation by the Gov. General's office in Anguilla concerning alleged questionable banking practices by their client. Reportedly, the issue relates to the unauthorized solicitation of funds. David understood and agreed that until these issues are officially resolved, it would not be prudent to explore further business opportunities between our banks.

The next day, the relationship manager sent a message to the account officer in New York, stating: "I am sending you a separate copy of my 7-18-91 call memo on this bank. We need to keep an eye on the activity in this account."

When asked by Minority Staff if he was concerned that BOA was getting involved in a banking relationship that it did not want to be in, the relationship manager noted that it was a long standing relationship, that it was not obvious that SAB was a different bank from SANB, and that the change in bank accounts was just a book-keeping matter.

Again in 1992, the relationship manager commented on the problems of SAB:

This remains an outwardly unimpressive, disorganized and cluttered operation, plagued by turnover and seemingly weak management.

The bank is nevertheless liquid, and frequently keeps very good CD balances with BINY [Bank of America International New York].

It remains to be seen, however, if they can generate sufficient volumes to attain profitability on what must have been an extremely expensive start-up operation.

When asked why BOA kept the account after recognizing ongoing problems at the bank for a number of years, the relationship manager replied: "Why not? It was not a problem for me. They needed someone to clear for them. We were set up to do that. We had been doing that since 1987. Those [problems addressed in the call reports] weren't aspects of the bank that we were concerned with." When asked if the problems identified in the memos could lead to other kinds of problems, the manager noted that is why he asked the administrative officer to keep an eye on the account—that the problems were not illegal activities, but operational difficulties.

In 1993, the relationship manager sought approval to establish a small revolving line of credit for SAB that would be used to issue commercial letters of credit and standby letters of credit on behalf of private banking customers. The credit line would be collateralized by certificate of deposits placed with BOA. The credit manager denied the request, noting:

—We know little about the parentage of this bank. The structure appears designed to isolate the real owners and to take advantage of tax and regulatory havens in Panama and Antigua.

—Our borrower is designed to serve an offshore market of private banking clientele.

—Who controls or monitors activities?

—We are being asked to issue SBLCs guaranteeing activities of their private banking clients. We don't know these clients. We don't know the beneficiaries. We don't even know at this point what kinds of loans or non payments we would be guaranteeing. Our standby's could be all over the place. . . .

The potential for being blind-sided is quite pronounced and I am not in favor of the presentation. If we knew more about the parentage, respectability, integrity of the bank I would be willing to consider trade finance but I would continue to believe we should not extend credit to service their private banking clients.

The relationship manager stated that although he disagreed with some of the comments made by the credit officer he did not file a reply because the issue was not worth fighting. He did confirm that BOA knew that the bank was owned by Rappaport.

In 1993 and 1994, the relationship manager's call memos indicate that SAB appeared to turn the corner financially (although not operationally) and maintained good balances with BOA. At the same time, BOA began to receive reports of questionable activities involving accounts at SAB. BOA records show that between 1993 and 1995, SAB accounts were associated with fraudulent bills of exchange, sports betting activities, and suspicious wire transfer activity. Then in March 1995, a member of BOA's control and compliance department sent the relationship manager a fax with the message: "This afternoon additional evidence of another scam where Swiss American Bank name is used in conjunction with their account at BINY." The information included in the fax related to a pyramid scheme operating through accounts established at SAB that encouraged victims to send funds to SAB's correspondent account at BOA. A notation on the fax cover sheet signed by the relationship manager states: "Discussed closure of account with John Greaves, i.e. ceasing of ck writing and cash letters. He agreeable will give progress ck tomorrow." In May 1995 the relationship manager reported to the Vice President of BOA's International Deposit Services that major services provided to the SAB account were being terminated:

I met with this bank [Swiss American] last week. They are well underway to replacing all of our facilities with Chase, and agreed that May 31 would be the deadline for the discontinuance of drafts drawn on us, cash letters to us, and Microwire and telex transfers outgoing.

Other than the documentation cited above, there was no documentation on the reasons for, or the processes that led to, the decision to terminate the services or close the account. The relationship manager told the Minority Staff that he believed that the basis for the action was the discovery of the pyramid scheme. A senior BOA official told the Minority Staff he believed that the decision was less related to money laundering and more related to sloppy banking, which, in his opinion, may explain why BOA moved more slow-

ly on completely closing the account. As a result of the actions taken, the account services offered to SAB were significantly reduced, as was the flow of funds through the account.

Less than 2 weeks later, the relationship manager authored another negative memo about SAB:

Since our decision a month ago to ask Swiss American to find another correspondent bank, their operation appears, if anything, to have worsened.

. . . This poorly managed bank which seemed to be especially lacking in controls on new relationships, was constantly preyed upon by con artists and during the visit, it was noted that their account balance was inflated by approx \$250M in checks apparently being returned unpaid, and this was rectified with BINY.

At the same time, another issue presented itself when representatives of an entity called European Union Bank, an Internet bank licensed in Antigua that subsequently defrauded depositors of millions of dollars, approached BOA about opening a correspondent account. The relationship manager's call memo reported:

This bank had written asking for an account relationship and during the visit, provided extensive documentation attesting to their status as a duly authorized offshore bank in Antigua. Ownership, however, was referred to as a group in the Bahamas on which they had no readily available information, quarters were new, unfinished and occupied mostly by computers and their customers are mostly "European investors" who they reach thru "International publications" and the Internet. This appears to be an example of what we do not want to get near.

The material presented to BOA by European Union Bank representatives indicated that it had a correspondent account with SAB. This apparently did not result in any further inquiries or cause any further reevaluation of BOA's relationship with SAB.²⁶ The account manager doesn't recall if it caused additional concerns, noting that he already had enough reason to terminate the relationship with SAB. A senior BOA official commented that BOA simply failed to make the connection between European Union Bank, its relationship with SAB and, as a result, its connection with BOA.

Approximately 1 year later, in July 1996, the SAB account was still with BOA and still the object of negative assessments by the relationship manager:

It has been a year since we requested Swiss American to find another correspondent as the result of their continued operational problems, and they have at least finally managed to redirect their cash letter and payments business, although they still maintain a sizeable demand balance and are the recipients of a considerable volume of in-transfers. We agreed to 90 days for them to notify remitters and close the account totally as we

²⁶The current Chairman and Managing Director of SAB told the Minority Staff that while European Union Bank had a corporate account at SAB, it never had a correspondent account at SAB.

clearly did the right thing in getting rid of this relationship although again, we cannot move too abruptly lest we be accused of damaging their business without apparent cause.

. . . [T]hey also admitted to problems with their ECCB [Eastern Caribbean Central Bank] audit which resulted in their petitioning that bank for some relief, citing their previous management problems and steps to clean up in the meantime. Problems apparently included mis-classification and hidden loans, complicated by inadequate followup.

The relationship manager noted the situation showed that with banks that have a high volume of activity, it is difficult to stop the flow of funds from clients. He noted that the termination of check clearing and wire transfer services stopped the potentially most harmful activities and that the volume of funds through the account was very low. However, the account remained open.

In August 1997, more than 2 years after BOA had asked SAB to find another correspondent, the relationship manager wrote a more favorable memorandum about the client:

Swiss American seems to have made great strides in getting their house in order with this, their offshore bank, now physically separated from the local bank and the previous management now long departed.

. . . At our insistence as a result of some past dubious transactions which passed through their account, they also long ago discontinued their cash letter and electronic payments business with us and have since maintained just a deposit account through which they receive approximately 50 incoming payments monthly, and for which they are very appreciative. This seems to be a reasonable compromise as I had been hesitant to force them to totally close their account as we really had no defensible grounds.

There is no evidence in the documentation related to the SAB account that BOA was aware of the major frauds involving accounts at Swiss American Bank, such as the Fortuna Alliance fraud, which was receiving a great deal of public attention at the time. The relationship manager told Minority Staff that in retrospect he had to admit some bad judgment at the time he wrote the memorandum cited above. He said he should not have been so easy on SAB and that it was not a sharp operation, but he never thought the bank had done anything that was illegal.

In February 1998, BOA learned of the complaint filed against SAB by the U.S. Government regarding the Fitzgerald account. At first, the relationship manager once again agreed to continue the relationship with SAB:

This is an old issue going back to the 1980's, also includes the Antiguan Government. As we have done in other cases, it was my intention to tell him to go find another correspondent bank, explaining that it would be in our mutual interest to avoid the possibility of later embarrassments should compliance issues, etc. arise. Also as before, it is difficult to be more forceful as no guilt has been proven, etc.

Stewart Young [the Manager of Swiss American Bank] was totally cooperative while describing this situation as something which occurred long ago before the bank purged its management, includes heavy involvement of the local government which largely initiated the problem and is an issue in which the current bank is cooperating fully and hopeful will be shortly resolved.

The bank has totally changed management and has managed its DF account with us in an entirely satisfactory manner for the past 2–3 years. It uses us only for limited transactions not including cash letter or funds transfers and has been totally cooperative with respect to the clean up of earlier processing problems. I therefore agreed to table this issue for now, while making it a matter of record.

The relationship manager said that it was the first illegality involving SAB that he encountered and sympathized with the position of SAB, seemingly caught between conflicting orders of two governments. A senior BOA official pointed out that at that time it was BOA practice to rely heavily on the judgment of the relationship manager. With an account for a small bank, such as SAB, BOA gave great discretion to the relationship manager, and there would not be a lot of other people looking at, or asking questions about, the account. He told the Minority Staff that is one reason why BOA was revamping its policies and practices.

In March 1998, the relationship manager received a memo from the BOA legal department detailing a number of inquiries that BOA had received about SAB and its clients. According to the relationship manager it was then that he realized that “we had a mess beyond operational problems.” At that point, he reported that he had asked SAB to close its account with BOA:

“I had long ago required Swiss American to discontinue their cashletter (clearings) and wire transfer (Microwire) activities with us as some transactions appeared suspect, although seemingly as the result of poor management. With a complete change of management and cessation of those activities, their DF account had remained open to facilitate in-transfers. We now have the 1/98 issue of Money Laundering Alert describing a possible precedent settling civil lawsuit by the U.S. authorities against Swiss American Bank and others, involving the Antiguan Government, and accusing collaboration with money launderers. As above, Mr. Stewart Young has today been asked to close their BA New York branch DF account.

The same day, the relationship manager sent a memo to the administrative officer in New York:

I have copied you on call memos noting that I today asked each of the banks above to close their accounts with us at their earliest convenience. Please monitor these balances accordingly and let me know if they do not close within 30 days. As per the memos, this is the result of continued money laundering related inquiries.

Yet, in July 1998 the relationship manager reported that the account was still open:

The last of our overseas bank relationships in Antigua, Swiss American will now be transferring the remainder of their deposit balances with us to their existing Chase account, as per my earlier request. Although a very bland US \$73MM balance sheet reflecting little more than the arbitrage of local deposits to offshore and a relationship otherwise satisfactory, the bank had been involved in some litigation between the U.S. Government and the local authorities concerning the ownership of funds in a situation which although not necessarily wrong, was typical of the offshore industry in Antigua and we had elected to terminate this account relationship. Stewart Young was understanding and admitted he had been slow to move as he had enjoyed the benefits of reciprocity.

In June 1999, the account was still open. The relationship manager, meanwhile had retired from BOA. He told Minority Staff that when he retired he thought the account had been closed. However, it had not been closed and the merger with Nations Bank brought in an account that SAB had with Nations Bank, so the size of the account had grown, although the limitations on account services remained in place.

Throughout the 1990's BOA appears to have been unaware of the frauds and controversies (such as those described at the beginning of this case study) that plagued the Swiss American Banking Group. The relationship manager noted that the history of the account does show that when he became aware of problems, he did try to stop them. A senior BOA official noted that the decision to completely terminate the relationship with SAB in 1999 did not involve the relationship manager and was more of a business decision and was not based on the problems previously discussed. According to the official, the account had little activity, was not generating much income for BOA and there was no reason to bear the time and expense of keeping it open. He indicated that it should have been closed a long time ago, and was not the type of account that BOA wanted.

On June 16, 1999, the account was finally terminated.

This is another example of a bank that was slow to terminate a correspondent relationship even when it had questions about the client. The records of BOA's relationship with SAB show that over many years, BOA representatives had ongoing concerns about the management and organization of the bank. Serious questions about the ownership and purpose of SAB were raised by the credit department early in the relationship. Yet even after being confronted with questionable account activity and other controversial incidents, BOA curtailed but did not terminate the relationship; instead, it was allowed to continue for another 4 years.

(c) Chase Manhattan Bank

SANB established a correspondent relationship with Chase Manhattan Bank ("Chase") in October 1981; however, BNY was the main correspondent for SANB. SAB established a correspondent relationship with Chase in April 1995. Chase was a major correspondent for SAB. This section focuses on Chase's correspondent relationship with SAB. Both accounts were terminated in 2000, during the Minority Staff's inquiry into the account.

The structure of Chase's International Banking Department and its Caribbean Division, and its due diligence policies and ongoing monitoring programs are detailed in the case study on American International Bank. Since the debt crisis that affected Latin America in the early 1980's, Chase did not pursue credit relationships in many Latin American and Caribbean nations. In those areas Chase often did not assign relationship managers to serve as point of contact for the financial institutions in those areas. Instead, the countries were served by sales teams that marketed non-credit, cash management products. Between 1994 and 1996, the unit assigned to cover Antigua as well as some other Caribbean and Latin American countries was headed by a credit risk management official who supervised one and then a second account officer. Two of the accounts handled by the unit were SAB and SANB. After 1996, the credit official left the unit and the account officers worked under the direction of a sales team leader. Sales representatives sell services and products to clients but do not act as a relationship manager for an account. As a result, there was no main contact who was responsible for coordinating all of the responsibilities associated with the SAB account. The credit risk manager continued to monitor the account and, for nearly 4 years, raised questions about the relationship. However, the vacuum created by the lack of a single relationship manager for the SAB account delayed a coordinated and informed assessment of the SAB relationship.

The account opening documentation for SAB contained little information on the institution other than the annual report supplied by SAB. Even though SAB was designed to be a completely different type of bank than SANB, with different clientele and a different regulatory authority (local Caribbean banks are regulated by the Eastern Caribbean Central Bank and offshore banks are regulated by the jurisdiction that licensed the bank), the sales representative relied on Chase's existing relationship with SANB to justify establishing a relationship with SAB. He wrote: "Given that there is a DDA already opened in our books in n/o Swiss American National Bank of Antigua (DDA #001-1-87985), no further account justification comments are included."²⁷

In September 1995, the credit risk manager asked one of the account administrators to initiate a daily item-by-item review of all debits and credits to the accounts of SAB and SANB, including all cash letters. By October, the review identified what the credit manager described as deposits that did not seem consistent with the business of a private offshore bank—deposits more appropriately deposited into SANB, the onshore bank. In October, the credit manager issued a memo that the Legal Department was considering filing a criminal referral with the U.S. Government on the matter.

As a result, the sales representative informed the Minority Staff that on his next visit to SAB in January 1996, he asked about the banks' anti-money laundering policies. He wrote:

²⁷The sales representative told the Minority Staff that the reason for so little justification in the memo may have been the fact that Chase had an existing relationship with SANB. He also speculated that there may be a missing call memo because SAB was an offshore bank and he usually would have questions on financials and fund flows and would have put the information in a memo. However his memo cited above indicates that he relied on the existing relationship.

During our meeting, I raised the subject of money laundering and asked what procedures SAB had in place to deter it. They said this matter was of utmost concern to them, and cited requirements embedded in account conditions delivered to every new customer (in fact, they provided me with a copy). They also said this subject is covered in internal guidelines to marketing officers. In general, I found that the threat of money laundering is explicitly recognized and guarded against by Antiguan bankers. They tend to put it in the context that it is not worth risking the legitimate offshore business; tax avoidance and asset protection, for the huge downside of taking on the illegitimate offshore business; drug-related.

The sales representative who managed the SAB and SANB accounts from 1995 through September 1996 and again from February 1999 through their closure in 2000, stated that issue was the only questionable activity he had heard of regarding the SAB accounts during the 1995–1996 period.

The sales representative told the Minority Staff that to him money laundering always had the connotation of money from drug trafficking. He viewed offshore activity as a means for individuals to set up entities (IBCs, trusts) and accounts that would enable them to deposit funds so that they would be immune to foreign exchange violations.

In March 1996, the credit officer wrote a memo to the sales representative regarding the owner of SAB:

My sources tell me that “international financier” Bruce Rappaport, the alleged owner of Swiss American, is an Israeli shipowner who established Maritime Bank in Switzerland, now BONY-Maritime with Rappaport still the Chairman. We once had credit lines to Maritime, but we became “uncomfortable” and canceled them (this all happened before BNY bought into the operation).

Rappaport is a controversial figure—his supporters would probably characterize him as aggressive, innovative and entrepreneurial. His detractors would probably choose far less kind words to describe him. As best as I can tell, however, he could be called a “Donald Trump type”, but not a “Robert Vesco type”, i.e. he’s a wheeler-dealer but has no known involvement with any truly nefarious activities (e.g., drugs). Obviously, our colleagues at BNY seem to consider him a respectable partner.

The sales representative stated that he probably knew that Rappaport was the owner of SAB when he called on the bank in 1995, but he would not have known the significance of the name. He stated that he probably noted in a call report who the owner was, but if no one reading the memo knew anything about Rappaport, it would have had no bearing on the decision to open the account. The sales representative who was responsible for the account from September 1996 through February 1999 said she learned of Rappaport’s ownership of SAB during a meeting with Business Development Manager of Swiss American Banking Group in October 1997.

In June 1997, Chase received a subpoena for documents and statements related to the SAB and SANB accounts. When the credit risk manager learned of the subpoenas in October of that year, he again raised questions about the client to the compliance officer and operation risk manager for cash management services:

You may remember that we recently closed the DDA of American International Bank, Antigua, and I was surprised that there was no concurrent government investigation of Swiss American (which was the inspiration for American Int'l).

Looks like somebody is interested.

Do you know if Swiss American ever comes up in your meetings with Legal re suspicious transactions?

The credit risk manager told the Minority Staff that he recalled that AIB was closed because of the general nature of its activities. He understood that AIB was started by former SAB people trying to replicate SAB and he thought SAB would also be investigated because of its size and similarity of marketing strategy. He noted that although he had no specific responsibility for the SAB accounts at that time, in addition to the subpoena, he had heard of some incidents over a period of years where SAB was mentioned as having been involved in situations where their customers were alleged to have been involved in questionable activities, and used SAB accounts as repositories for illicit funds. He said the incidents involved a fraud, an investment scheme, a theft of funds from a U.S. bank, and an incident involving German customs. The credit risk manager observed that he could not state whether the incidents were significant given SAB's size, but he was trying to be pro-active.

The sales representative who took over the SAB and SANB accounts in September 1996 was copied on the internal e-mail regarding the subpoenas, but did not recall the matter and did not perform any follow up on the issue. Other than the credit risk manager's memo cited above, there is no indication that the subpoenas occasioned any review of the SAB accounts or any follow up with the client.

In 1996 and 1997, the Fortuna Alliance fraud received national attention. Millions of dollars taken in the fraud moved through SAB's account at Chase. In fact, in the months of April and May 1996, the amount of funds wired by the Fortuna Alliance into the SAB account at Chase represented 31% and 18%, respectively, of all deposits into the SAB account (\$3.4 million of \$10.7 million in April and \$1.6 million of \$8.8 million in May). Yet, there is no indication in any of the documents provided to the Subcommittee by Chase that indicate that those responsible for the account were aware of the fraud or that anyone in Chase followed up with SAB on the matter.

In August 1998, a member of Chase's fraud prevention unit wrote to the sales representative to report that he was informed by another U.S. bank that a client of SAB had fraudulently transferred money out of the U.S. bank and into its account at SAB. The U.S. bank contacted Chase to see if Chase could assist in obtaining

a return of the funds from SAB. He concluded his message with the following:

Our records show that Swiss American has been suspected of money laundering. Can you tell me whether this is an account that Chase will continue to maintain.

The sales representative told Minority Staff that she was not aware of any records that showed that SAB had been suspected of money laundering and said there was no specific proof that SAB was involved in money laundering with respect to the funds that were transferred out of the U.S. bank and into SAB. The sales representative reported that SAB claimed the funds were already gone and had liability concerns about returning the funds to the U.S. bank. She also wrote to the credit risk manager:

I explained to [the member of the Fraud Prevention Unit] that SAB may not necessarily be consciously money laundering but was used as a conduit by their customer just as some Mexican banks recently involved in money laundering had used Chase as a conduit. In addition, I explained that the revenue from this account was at least \$100k per annum and we are not going to make a rush to judgment to close the account immediately.

The credit risk manager noted that revenue of \$100,000 is moderately attractive but not huge and that if someone had truly challenged and substantiated shortcomings in the integrity of a customer, he could not imagine that any of his colleagues would use revenue as a reason to keep the client if trust had been broken.

In October 1998, Chase officials initiated a follow up on the U.S. Government's legal action against SAB regarding the Fitzgerald case. The U.S. Government filed a complaint against SAB and some of its related entities in December 1997. By February 1998, the news of the case had been widely circulated and, as described above, BNY and BOA, began to follow up with SAB on the matter. Chase did not respond until later. The sales representative told the Minority Staff that SAB's business manager notified her of the matter in June 1998. She told the Subcommittee staff that she decided to wait for the outcome of the case and see what needed to be done at that time. She noted that the matter did not really involve Chase. As a result, she did not pass the matter on to legal investigations. The August 8 memo by a Fraud Prevention official alluding to allegations of money laundering (cited above) may reflect an awareness of SAB's connection to the Fitzgerald case, but it is not certain. However, there are no indications in the documents supplied to the Subcommittee that Chase had pursued the issue with SAB until October 1998, about 10 months after the legal action was initiated.

According to the sales representative, the credit risk manager called her in October, after a *Wall Street Journal* article announced the case had been dismissed. At that point, the credit risk manager began to look at the matter, and called the sales representative.

The credit risk manager recalled that he first became aware of the matter when he learned that the case against SAB had been

dismissed.²⁸ It also drew the attention of his superiors. He noted it was not clear whether SAB was unjustly accused or still under suspicion, and he asked the sales representative for some underlying information. According to the sales representative, this request coincided with one of her periodic trips to SAB and she questioned the Managing Director about the incident when she visited the bank in November 1998. She reported that the Managing Director told her that the United States tried to collect the funds from SAB after it had unsuccessfully tried to collect the money from the Antiguan Government. However, SAB turned the funds over to the Antiguan Government at the request of the government.²⁹ The sales representative reported that the Managing Director provided documentation to her and she forwarded it to risk management. According to the sales representative, there was no additional action taken by Chase after the information was received from the Managing Director.

Notes from the sales team leader, written in November 1998, state:

“Call 11/15/98 Ken Brown . . . his boss is furious about the news published in the *Wall Street J.* on the U.S. Gov’t losing the case against SAB for lack of merit . . . He wants to close the account. I tell him no unless we have a universal policy in the region, but it is up to them. . . . A couple of days later the boss reluctantly relented. For the time, at least, they are ok. . . . The pressure from the U.S. Gov’t is likely to keep increasing, so these kind of accounts are very likely to die anytime soon, anyway, because of the cost of complying with rules, if nothing else.”

The credit risk manager stated that he received SAB’s explanation from the sales representative, and it appeared to him as if SAB had stepped in and saved the funds and that the situation was another case of a fraud perpetrated by customers but nothing to suggest any complicity on the part of the SAB. When he conveyed that information to his superior, the account was allowed to remain open.

When asked if Chase should have known about this incident earlier than it did, the credit manager told the Minority Staff that if the relationship with SAB had been a credit relationship, or there was a relationship manager for the account, the information would have conveyed earlier and Chase would have expected SAB to pass the information on earlier. Since it was a non-credit relationship and there was no relationship manager, it was not a situation where Chase would expect SAB to give it news. Since there was no relationship manager, the sales representative was the logical contact point but it was not her job to be the focal point for the relationship.

²⁸The credit risk manager told the Subcommittee staff that he believed that the date when he first learned of the issue was in July 1998, when the case had been dismissed. However, the case was not dismissed until October, and this is when the sales representative recalls being contacted by the credit risk manager. So it may be that the credit risk manager did not learn of the issue until October 1998.

²⁹This account is not accurate. As described above, SAB initiated the transfer to the Government of Antigua and Barbuda. It was not ordered to do so.

In November 1998, the credit risk manager made a series of internal inquiries about the SAB account. He told Minority Staff that because there was no relationship manager for the account and he was the credit risk manager, he was receiving a lot of piecemeal information about the SAB account, some of which identified incidents involving SAB. He told the Minority Staff that concern about the relationship was growing because it had to be viewed from a big picture. The account had been solicited under circumstances and a marketing strategy that no longer existed at Chase. Chase solicited the client and SAB had terminated or reduced relationships with other U.S. banks because of the interest that the Chase sales force showed to it. According to the credit risk manager, because of that Chase could not in good conscience just terminate the account because of unease with the relationship if SAB was making reasonable efforts to make sure its clients were appropriate. The credit risk manager stated that when the account was opened, Chase knew that SAB would have to take extra precautions because of the nature of its business and the potential clients it would attract. Chase had been led to believe that SAB was extra cautious, but the growing number of incidents led him to question if SAB was taking the precautions. He decided to take the responsibility to coordinate the collection of information on SAB to pull together a more complete picture of the client and the relationship.

The credit risk manager made inquiries in a number of Chase departments about the account. One hand written note of a conversation with the fraud prevention and investigations unit reads:

“Generally bad rep. But not on anybody’s hit list.”

He also asked the fraud department to identify instances where the SAB account had caused some concern. The official in the fraud department who followed up on the credit risk manager’s request wrote the following memo:

Inquiry initiated upon request of [credit risk manager], Treasury Solutions, who was undertaking a review of our relationship with captioned bank in light of recent publicity regarding laundered money being turned over to the Government of Antigua and Barbuda by Swiss American. Inquiry revealed that captioned bank has come to official attention as a suspected repository of proceeds of con games; however, there is no present indication that the bank is currently considered a money laundering institution. We are aware that in several instances, phony wire transactions have designated customers of Swiss American as beneficiaries, and in at least one such instance, the beneficiary was suspected of operating a scam in the past. Considering the difficulties in determining actual ownership of the bank, its location, the operating environment of these off-shore banks, and the questions raised above, recommend that we exercise especial caution dealing with this entity if a decision is made to continue our relationship at all. [Credit risk manager] advised.

According to the credit risk manager, the response he received identified incidents that were small relative to other frauds, and not in the major league swindle category, that Chase has seen. Ac-

ording to the credit risk manager there was nothing to indicate that SAB had been anything but an innocent victim. He noted it did not have a perfect system to screen account holders, but no one did. Chase was aware that SAB was soliciting business broadly and that it had accepted a lot of clients who were not from Antigua and it was difficult to obtain references on such clients. The issue was whether SAB had been less than prudent in accepting clients. He concluded that nothing he saw suggested the bank had been less than honorable.

He stated that at the time he considered sending the results of his research to the sales representative with instructions to get all of the information on the relationship collected and out in the open so that an informed and coordinated decision could be made on the account. However, he said at the time it did not seem illogical to conclude that SAB met Chase's standards, so he did not go to the sales representative. Eventually, he did take that step.

However, the reports provided to the credit risk manager did not address some of the major controversies involving SAB, such as the involvement of SAB officers in money laundering and frauds such as the DeBella case. Nor did it mention the Fortuna Alliance fraud which did involve the Chase correspondent account.

Other issues began to arise with respect to SAB. During a site visit to SAB in November 1998 (when the U.S. legal action against SAB was discussed), the sales representative learned that SAB was serving Internet gambling accounts. She told Minority Staff that she had noticed that there was an increase in the volume of checks issued by SAB each month and when she inquired about the matter she learned of the gambling accounts. In her call memo, this issue was discussed as part of a proposal to supply SAB with a new service to speed the issuance of checks:

—CPS—Check Print—Proposal was sent prior to the visit. . . .
Check issue is now close to 2,000 per month and likely to double in 1999. Part of the volume is coming from checks issued to winners of the virtual casino players on the Internet; their customers instruct payee to be paid via fax and an indemnification is provided. Virtual casino is licensed in Antigua. An article from the Interactive Gaming Council titled "Congress Strips Internet Gaming Prohibition From Final Budget Bill" dated October 21, 1998 was given to us (dated October 21, 1998).

The sales team leader who accompanied the sale representative on the visit also noted SAB's Internet gambling accounts:

The reason behind the increase in transactions with us, mainly paper checks, is because they are conducting the payments for casinos in the island, especially those that use the Internet. They are very careful to send winners' checks immediately, via mail, directly from the island to the beneficiary, as soon as they are so requested, to avoid damaging the casino's image. The way this works is that the gaming occurs by debiting a credit card, and winners get a refund of winnings the same day as the original debt; any positive balance, or wins over current account, are sent via check.

As noted in a previous section that discusses Internet gambling, it is illegal in the United States to place wagers by the Internet. In addition to the questions of legality, there is an increased risk of money laundering. The sales representatives who handled the SAB accounts were not aware of these issues. The sales representatives who learned of SAB gambling-related accounts in 1998 told the Minority Staff that she did not know the activity was illegal, that it was based on licensed Antiguan entities, and she never received any feedback from her superiors that gambling-related accounts were a problem or a concern. She noted that the General Manager of SAB had provided her with notice that Congress had defeated attempts to make Internet gambling illegal. When asked if it raised concerns from a money laundering perspective, the sales representative said no because it was legal in Antigua and not illegal under U.S. law.

The sales representative who took over the SAB account in February 1999 learned that SAB was servicing gambling-related accounts when he took over the account and read the memo of the sales team leader. He told Minority Staff that he did not discuss the issue with SAB because he believed that everything Chase needed to know about the matter was already on record and he did not think Internet gambling was illicit. The sales representative said it did not cause any concerns for him, the information had been recorded by his boss (the sales team leader), and if it didn't cause his boss any concern he didn't see why it should raise a concern for him.

He also did not recall anyone raising a concern about Chase being a correspondent for a bank that serviced gambling-related accounts. He was unaware that Internet gambling companies were instructing their clients to forward their funds through SAB's correspondent account at Chase. However, he said that even if he was aware of that activity, it would not have caused a concern for him unless he had prior knowledge that the activity was illegal, and he did not know that.

The credit risk manager believed that he became aware that SAB was servicing gambling-related accounts in early 2000, when he assisted in answering an inquiry about why SAB was projecting that it would use 10,000 checks per month and it was determined that the increased volume was related to issuing checks to customers of gambling institutions.³⁰ He didn't receive or read the sales representative's November 1998 memo on the matter. He noted that he is still unaware if anything SAB did with respect to Internet gambling is illegal, and he presumed it to be legal. He did not recall discussing with anyone whether it was legal or not and doesn't know if anyone had made an inquiry on that matter. He did not recall discussing the issues of reputational risk or money laun-

³⁰It is possible that the credit risk manager first learned of the gambling connection in late 1999. In November 1999, Chase noticed a series of payments going to several Antiguan concerns that appeared to be gambling establishments. It was subsequently confirmed that the entities were gambling institutions. The credit risk manager was involved in the effort to identify the institutions. In March 2000, there was an inquiry regarding SAB's projections that it would need 10,000 checks per month. It was determined that the volume was due to gambling-related payments. The credit risk manager was also involved in that inquiry.

dering because so many of the checks were small and there didn't seem to be any substantial movement of money.

He noted that one of the duties of a relationship manager would have been to follow all customer activities and put all of the pieces of the puzzle together. Because the SAB account did not have a relationship manager, this did not happen.

From the responses of the Chase personnel and the lack of any attention to this matter in the account documents provided to the Subcommittee by Chase, it appears that the legal and money laundering issues associated with Internet gambling received little, if any attention. Yet, there was clear evidence that this activity represented a significant part of SAB's business and the SAB correspondent account at Chase was a major vehicle for the flow of those funds. As noted above, both the sales representative and the sales team leader identified Internet gambling as the reason behind SAB's increased transactions through the Chase account; inquiries about payments made through the SAB account identified Internet gambling activity and accounts at SAB in 1998; and in 1999, Chase was advised that SAB's monthly use of checks would expand significantly due to Internet gambling-related payments.

Beyond those items already noted, the size of the monthly statement for the SAB account at Chase suddenly expanded from approximately 50 pages per month to about 150 pages per month. By late 1998 the size of the monthly statements had grown to approximately 400–450 pages and over 500 pages long by the end of 1999. A significant portion of the increase appears due to the increased number of transactions related to collection and payments of funds related to Internet gambling activities. The Subcommittee staff reviewed five monthly account statements from 1998 and 1999. The amount of funds deposited into the SAB account for further credit to entities that were clearly identified as Internet gambling enterprises were \$1.5 million (January 1998); \$938,000 (May 1998); \$3.1 million (November 1998); \$6.3 million (May 1999); and \$6.9 million (September 1999).³¹ These figures represent 10%, 5%, 20%, 30% and 22%, respectively, of the total deposits into the SAB correspondent account at Chase during those months. In March 1998, the U.S. Attorney for the Southern District of New York indicted 21 owners, managers and employees of 11 Internet sports betting firms for collecting wagers from U.S. citizens over the Internet. One of those indicted was Jay Cohen, one of the owners of World Sports Exchange ("WSE"), an Internet sports betting operation. Cohen was tried and convicted in Federal District Court in New York in 1999 for criminal violation of the Federal wire act for engaging in gambling over the Internet. WSE was a client of SAB. Many transactions processed through the SAB account at Chase were for the WSE. Chase records were subpoenaed for the trial and a Chase employee provided testimony at the trial about check and wire transfer activity in the SAB account at Chase that involved WSE. In July and August 2000, the Minority Staff searched the

³¹ The credits totaled for each month were only the credits that were registered for, the benefit of entities that the Subcommittee could clearly identify as being related to Internet gambling. There may have been additional gambling-related deposits not included in these totals because the name of the beneficiary of the funds was not clearly identifiable as an Internet gambling entity. Monthly debits were more difficult to total because many of the pay outs were to the individual bettors, not to the gambling firms.

Internet and identified hundreds of Internet gambling sites that instructed clients to wire funds to the SAB account at Chase Manhattan Bank.

Yet, there is no evidence that any of these incidents caused any concerns or raised any questions within Chase or resulted in any question of SAB activity or clients until the account was finally terminated in August 2000.

In early August 2000, the Minority Staff informed Chase personnel of recent U.S. Federal and State court determinations that betting over the Internet is a violation of U.S. law, and that the staff had identified hundreds of Internet gambling web sites that instructed customers to forward funds through the SAB account at Chase. On August 18, 2000, the sales team leader wrote to the General Manager of the Swiss American Banking Group to reaffirm that the Swiss American accounts at Chase would be closed on September 14. In that letter he also wrote:

Moreover, it has come to our attention that customers of yours have created websites on the Internet, numbering in the hundreds, in which they advertise Internet gambling services, and in some instances plainly link these sites to sites offering pornographic materials, and include Chase's name and at times incorrectly identify Chase as your affiliate. This unauthorized use of Chase's name on public websites is unacceptable, and we insist that you inform your customers who operate such sites to remove Chase's name from them. More importantly, Chase has learned that at least one U.S. Federal court has recently determined that conducting Internet gambling operations within the United States is a criminal violation of U.S. law. I am sure that in light of this you agree with me that it would be inappropriate for your accounts with us to continue to be used by your customers who operate Internet gambling sites to either receive funds from or send funds to persons within the United States, and we expect that you will immediately advise your customers who conduct Internet gambling operations of that fact and that such transmissions will cease.

In September 1999, the credit risk manager learned that the Chase compliance department had been using the flow of the Fitzgerald funds through SAB and SANB as an illustration of a money laundering scheme in its training materials. The illustration involved SAB and SANB and noted the relationships between the two banks as well as Rappaport. When asked, if the fact that the banks were used as examples in Chase's anti-money laundering training raised additional concerns about the bank's correspondent relationship with Chase, the credit risk manager noted that the SAB had been cleared of the case used in the training illustration and no one in compliance had told him that SAB was doing something wrong and should not be a client.

In the Fall of 1999, two events occurred that caused the credit risk manager to conduct another review of the SAB and SANB relationships. SAB asked Chase to open foreign currency accounts for SAB and SANB in London.³² Because the accounts allowed with-

³²In addition to the request by SAB and SANB to open foreign exchange accounts in London, the credit risk manager saw newspaper accounts that reported on possible ties that Rappaport

drawals in different currencies, there was a possibility that the account could be overdrawn. This type of account required a credit rating and approval by a separate credit risk group. In an attempt to avoid writing up a new memo, the sales representative asked the credit risk manager to vouch for the account. The sales representative told Minority Staff that he realized that Chase was reaching a new juncture with the account and would have to make a decision whether to move ahead with it. He believed that if the credit risk manager signed off on the new account, the credit risk group would also approve it. He also believed that the credit risk manager wanted a strong recommendation from the sales team. If that was provided, the sales representative believed that the credit risk

and his bank, BNY-IMB, had with some of the individuals and companies associated with the flow of billions of dollars of Russian money through BNY, some of which may have passed through Rappaport's bank, BNY-IMB. The press attention also focused on past controversies involving Rappaport. As a result of such reports, the credit risk manager sent a memo to a Chase employee in Europe who followed the BNY-IMB correspondent account at Chase. He wrote asking what actions, if any, Chase might be taking with respect to the BNY-IMB account. He noted that Chase was reviewing the relationship with SAB/SANB:

It is rather crucial as Swiss American is seeking to open additional DDA's and expand business with CMB. We would obviously be "influenced" by CMB-Switzerland's perspective.

The credit risk manager later reported to colleagues that the employee in Switzerland reported that she expected the account to be closed. At the same time, the credit risk manager asked the sales representative to ask SAB about its ownership and relationship with BNY-IMB. When asked why Chase did not already possess such information about a client, the credit risk manager told Minority Staff that the information is something Chase would ask for when opening a relationship, but it is not something it would ask for during a relationship because there is no annual review of a non-credit relationship.

The sales representative reported back that SAB and SANB were owned by Swiss America Holdings Company and that Swiss America Holdings Company was owned by Carlsberg. However there was no mention of the charitable trust that owned Carlsberg.

The sales representative also reported some information on the relationship of Rappaport to BNY-IMB, but some of the information he reported was incorrect. He concluded his memo to the credit risk manager by writing:

My conclusion is that we MAY have some indirect, common ownership by Rappaport in Swiss American and Inter maritime. However, whereas his ownership of Swiss American is full and unquestionable, it is unclear whether he even has principal or controlling interest in Inter maritime Bank of New York. Brian Stuart Young can address the Swiss American ownership details, but it would be unreasonable for me to press him for details on the Inter maritime side of the ledger.

Thus, basic information about the ownership structure of its correspondents SAB and SANB, and important information about other banking interests of the owner of SAB/SANB were not fully known to Chase years after it established relationships with SAB and SANB, and the sales representative was reluctant to inquire about them.

Also in the Fall of 1999, the credit risk manager notified his colleagues that there were "numerous accounts of Caribbean and other non-U.S. banks" that had been established by Chase divisions, other than the division that normally handled correspondent banking relationships. He noted that two Antigua banks—Antigua Overseas Bank and Worldwide International Bank—had been opened by the United Nations Branch of Chase. In a follow up memo, he noted:

Just wanted everyone to be aware that there are DDA's residing elsewhere in CMB which are outside my Team's "jurisdiction" and thus not subject to our screening or monitoring. [emphasis in original]

One colleague replied:

Obviously, "know your customer" policies, presumably have been covered off and someone looks after them. Also, I believe that the SCO's [senior credit officers] should be aware of corporate and institutional names in their respective countries.

Another colleague wrote:

My own unscientific rating of certain geographic locations includes the presumption (biased, obviously) that anything from Antigua or Tortola is probably diseased and contagious and should be avoided like mosquitos in Queens. I hope that KYC criteria have been followed here—as the UN branch has dealt with int'l accounts for a long time, hopefully they were on the ball in these cases. Meanwhile, my head is going back into the sand on this one.

Chase officials told the Minority Staff that the individual who wrote the memo meant that because Antigua Overseas Bank and Worldwide International Bank were not in his department, they were not his responsibility and he didn't know anything about them.

manager would sign off on the expansion of the account. He wrote to his sales team manager seeking advice:

I spoke with the on-shore affiliate [SANB] [in the] morning, and they asked me to open FX accounts in London. Then, now in the afternoon, . . . the offshore [SAB] also asked me to open up the same. . . .

What I see coming at Chase is a situation similar to [another account], where we operate with no eventuality with what exists, but when it comes to open a new account[s], there are complications, since they require that Risk Management approve, etc. I don't know what the [credit risk manager in London] will ask, but he will certainly want something from the client manager (???), and whom will we ask to guarantee the name?

What should we do? [A Swiss American official] is going to be in Miami. . . . Is it time to tell him frankly that opening a new account would give us a lot of problems? . . . [W]hich makes me think . . . I just sent them a proposal [for a check disbursement account]. Now I'm asking myself if [the credit risk manager] will authorize that account? What do you recommend?

(Just recently [the credit risk manager and someone from compliance] have been asking about the nature of a client at SAB, because of a series of MO's [money orders] that had passed through the account and whose name they did not recognize).

The sales team manager responded:

Talk with [the credit manager] and suggest the theory that as long as Chase doesn't decide otherwise, they are a "client in good standing" and there's no reason to deny them service. I will speak with [another Chase official] on Tuesday if it's not going well. If [the credit risk manager] says no (I don't see why he would be more papist than the people) you and I will talk to him together on Tuesday, what do you think?

The sales representative told the Minority Staff that he realized that the account was at that time "wounded." It had been tainted because of some of the previous incidents and attention given to it. When asked if he wanted to keep the account open, the sales representative told the Minority Staff that the account was important to him "revenue wise". It was important for him to get clear direction from his boss to close it, and he said that he was getting the opposite—SAB was a citizen in good standing, so why close it. He then pressed the credit risk manager for a memo vouching for the account. In late December 1999, the credit risk manager responded:

PRIVATE/CONFIDENTIAL/OFF THE RECORD

SAB is getting too much bad press—it's even used as a Case Study in our Money Laundering Training. It must be rigorously examined without further delay. If Credit raises the issue, they're "under attack" from the outset. If you raise the issue ("the best defense is a good offense"), you may still have a shot. [And if we all do nothing, we will all look like idiots,

plus any request for new accounts/services will most probably be denied.]

Here's what I suggest:

- A) Lay out the background on SAB
- B) Describe what you want to do, and
- C) Describe how you propose to "police" them.
- D) Get Skea's support (since Ken Lay is lame duck at this point)
- E) Seek concurrence of John Stevens and Chris Carlin

By "background", I mean a succinct but honest listing of the pluses and minuses, such as (not necessarily complete):

PLUSES:

We solicited them, not them/us.

DDA has been conducted properly—no issue whatsoever.

Good revenue generator.

I've reviewed their Cash Letters—nothing suspicious.

To best of our knowledge, their strategy (soliciting PBI types via Frequent Flyer magazines and Website) is completely legal—probably no different from our own PBI activities.

Per their statement, customer base is about 80% US/Canadian; 20% European; only 2% Latin American (i.e., not the Medellin Cartel).

Only 15 customers have accounts > \$500M; only 4–5 > \$1MM (again, not exactly major drug dealer profile).

Management completely open with us.

They themselves have been quick to pull the plug on suspicious customers.

MINUSES:

Not a "strategic" customer.

Their domicile (Antigua) lax.

They've been drawn into several frauds/money laundering incidents but were cleared.

Their strategy undoubtedly attracts individuals evading taxes in their home countries.

Ownership (Bruce Rappaport) is controversial.

By "what you want to do" I mean:

Absolutely no credit facilities (I presume)

Maintain existing business plus accept new accounts (I presume)

By "how do you police them" I mean:

CMB visits

Other conditions, controls, informational requirements, etc. (for example, continuing to review Cash Letters, getting info on customer base, etc. on a periodic basis)

The credit risk manager told the Minority staff that there were individuals throughout the organization who were expressing concern about the relationship (and he would even include himself in that group). He told the sales representative that without a relationship manager to handle the account, the sales representative should assume the responsibility to pull all of the information about the account together have a comprehensive analysis of the

relationship. The credit risk manager felt if Chase officials could satisfy themselves that SAB was an innocent victim, then they might be convinced that it was still an acceptable client. The credit risk manager felt that it was necessary to achieve some consensus on the account.

The sales representative told the Minority Staff that after the credit risk manager's memo was issued, there was no need for the sales team manager to speak with the credit risk manager. Instead, he needed to speak to more senior officials in sales. It was clear that the credit risk manager wanted the sales team to sign off. The sales manager said he encouraged the sales team leader to speak to more senior sales officials, but the sales team never signed off.

In early January 2000, the sales representative spoke with an official of SAB and noted that he told the SAB official that,

“[W]e will not move to open FX accounts for them in London until we are able to re-position SAB internally as regards risk management.”

The sales representative told the Minority Staff that opening new accounts would require introducing a whole new set of people at Chase to SAB and the history of the account and would require a whole new initiative and the support to do that did not exist at the current time. He told the SAB official that they could revisit the issue in 6 months.

In March 2000, a new check disbursement account was opened for SAB. The sales representative told the Subcommittee staff that, unlike the new accounts discussed in December and January, the checking disbursement account was an offshoot of the existing DDA account that SAB held in New York. He told Subcommittee staff that he was not required to go through a new account opening process for that service (as he was with the foreign exchange accounts discussed above) and he was not sure that he was required to go through risk management. He noted that it appeared that the credit risk manager was not sure either. He said that the fact that news of the new service never got to the credit risk manager until after it was opened is a function of how custom service felt it had to route the program to get it into the system.

He said the credit risk manager never spoke to him about the issue, nor did he ever hear that the credit risk manager was concerned or frustrated that the account had been opened up.

The credit risk manager agreed that additional accounts for U.S. corporate names can be opened by the sales representatives without additional sign off from the risk management department. He noted that the sales representative had mentioned the new service a few months earlier and advised it would provide Chase with greater control over the disbursement of checks. The credit risk manager believed it was a logical explanation, but had advised the sales representative to complete the analysis he outlined in his December 21 memo before any new accounts were opened. When he learned that a new account had been opened, the credit risk manager told the Minority Staff that he felt he had asked that the future of the SAB account be discussed before any new accounts were opened. However, he did not feel that the sales representative was

trying to go around him, since he would inevitably receive notice that the new account was being established.

As noted above, however, the opening of the account did draw the attention of Chase officials when it was noted on the account form that SAB was projecting a monthly volume of 10,000 checks.³³

The credit risk manager told the Minority Staff that it was during 2000 that Chase officials from the credit, sales and compliance/risk divisions discussed the SAB and SANB accounts. The concern was that given the publicity around the account and the man hours that Chase had devoted to the relationship, it was no longer a good fit for Chase. The officials decided to terminate the relationship.

On April 28, 2000, the sales representative wrote to Swiss American Banking Group and informed it that Chase was going to terminate its accounts due to a "lack of strategic fit." The sales representative told the Minority Staff that he did not participate in any conversations that presumably led to the decision to terminate the accounts. He was asked to communicate the decision to the client and wrote the letter. He noted that he had a general conversation with the sales team leader about the terminations of the accounts and the leader noted that they could not defend the account any longer, the pressure was building.

Initially, Chase asked SAB to close the account within 30 days. According to the credit risk manager, SAB retained counsel who approached Chase and informed Chase that SAB was trying hard to find a new correspondent, but could not meet the 30-day deadline. The counsel suggested that if Chase shut down the account before SAB could locate elsewhere, SAB might sue Chase. The sales team leader told Chase officials that SAB was working to find a new correspondent and should be able to close the account within a matter of weeks. Chase told SAB that if it ceased all activity in the account, it would extend the account to clear outstanding checks.

In August 2000, the account was still open. On August 14, the sales team leader wrote to SAB and told bank officials that Chase would close the accounts by September 14 unless they were closed sooner by SAB. SAB requested a 30 day extension of the September 14 date. Chase refused and the accounts were closed on October 5, 2000.

Efforts were made by the credit risk manager to monitor the relationship with SAB. However, his efforts were hampered by a number of factors. Because of the non-credit nature of the relationship, there was not a single individual who served as the relationship manager or central point of contact for the account. SAB was slow to convey information to Chase. Sales representatives did not closely monitor the relationship and at times did not act on important information that they received. The bank was unaware of controversial activities that were associated with the account, and was slow to respond to the proliferating account activity related to Internet gambling. These factors precluded a complete and coordi-

³³The sales representative told the Minority Staff that he is not sure where the projected monthly volume of 10,000 checks originated. He was not sure that was the number he gave to the administrator. He said that based on earlier conversations with SAB, the number 10,000 would be a lot less and he questioned the validity of the 10,000 figure.

nated review of the relationship. As a result, the relationship was maintained until late in the summer of 2000.

B. THE ISSUES

SAB and SANB have had a long history of controversial leadership, questionable activity by corporate officers, accounts that served as repositories for funds from frauds and other illicit activities, and a reluctance to fully cooperate with efforts of enforcement officials to seize the proceeds of illicit activities that were in the bank. More recently, SAB has serviced accounts that are related to Internet gambling, an activity that is vulnerable to money laundering and illegal in the United States.

Despite this history, until recently SAB and SANB have been able to maintain correspondent accounts at some of the largest and most prestigious U.S. banks, including Bank of New York, Bank of America, and Chase Manhattan Bank. These relationships can be characterized by failure of the U.S. correspondents to respond more quickly and decisively to patterns of problems and questionable activities in the relationship and inadequate due diligence and ongoing monitoring.

Throughout their relationship with SAB and SANB, the U.S. banks were continually confronted with, or making inquiries about, problems and questionable activities associated with the SAB/SANB accounts. Yet, the relationships were allowed to continue for long periods of time—even years—after the problems began to surface. One bank—BNY—even experienced occasions when SANB was slow, or simply refused, to provide information relevant to important issues related to the correspondent banking relationship. The relationship managers for BOA and BNY stated that they should have terminated the relationships earlier than they did.

The banks' failure to act more quickly and decisively stemmed in part from what appears to have been a general convention throughout the correspondent banking field—a reluctance to sever a relationship once it is established. This reluctance stems from both a sense of customer loyalty and a concern about liability for damages that may result from severing a relationship. When a correspondent account is also a significant revenue generator, there is even more incentive to give the client an opportunity to correct its problems before terminating a relationship. While there is no indication that the banks in these relationships knowingly ignored illegal behavior, these factors will often cause correspondent banks to repeatedly give their client the benefit of the doubt and to continue relationships in the hope that clients will correct problems, or repeatedly extend termination dates to allow clients time to find new correspondents. While this practice may be changing as the nature of international finance and the business strategies of major banks shift, it was certainly a factor in the SAB and SANB relationships.

Chase was slow to address SAB about the large amount of Internet gambling proceeds that were flowing through SAB's correspondent account at its New York branch, even when numerous Internet gambling firms were indicted by U.S. Government officials and a Chase employee was called to testify at a criminal prosecution involving one of the Internet gambling establishments that used the SAB correspondent account.

BNY apparently did little or no follow up on illegal activities through the SANB correspondent accounts at its New York branch, even though their personnel were directly contacted by prosecutors involved in the DeBella case.

BOA made a determination to terminate its correspondent relationship with SAB in 1995. While it significantly reduced the services it offered to the bank at that time, the relationship continued for an additional 4 years after that decision was made.

BNY-IMB, a foreign affiliate of BNY, has been serving as a conduit for SAB's Internet gambling clients, even though BNY does not want to service Internet gambling business.

All three U.S. banks accepted SAB and SANB's account of their dispute with the U.S. Government regarding the Fitzgerald affair, with little or no effort to independently verify the facts.

The history of the relationships with SAB and SANB also reveal weaknesses in the due diligence and ongoing monitoring practices of the U.S. correspondents. Fundamental issues regarding the management and structure of the banks appear to have been unknown to the relationship managers. While all three banks reviewed in this case study followed up on matters that came to their attention and one bank attempted to be pro-active in reviewing the relationship, initial due diligence and ongoing monitoring failed to identify key issues and major problems and controversies that involving SAB and SANB, resulting in an incomplete information base from which to assess the relationship.

Chase and BOA initiated a correspondent relationship with SAB with little or no due diligence, relying on their previous connections with SANB. The banks failed to recognize the fact that SAB was an entirely different type of bank than SANB, with different clientele, different purposes and a different regulator. It presented a potentially different type of correspondent relationship from SANB and a different set of money laundering vulnerabilities.

Although the banks knew that Rappaport was the beneficial owner of SAB and SANB, they did not know the identity of all of the entities in the ownership chain, nor did any inquire why the ownership of the bank was structured through a series of trusts and IBCs that were formed in secrecy jurisdictions.

The banks apparently were unaware of the controversial history and activities of a number of board members of SAB and SANB, and made no inquiries about them.

Banks appear to have been unaware of many of the major frauds and other illegal activities that used SAB or SANB as repositories for illicit funds, even when their own institutions had been used as the conduit for the flow of funds from a particular fraud to SAB or SANB.

Chase was unaware that hundreds of web sites of Internet gambling clients of SAB were instructing customers to send

wagers through the correspondent account at its bank, even though Internet gambling in the United States is illegal under U.S. law.

Interviews with the correspondent banks related to the SAB and SANB relationships once again highlighted a pattern present in many of the case studies included in this report: non-credit foreign bank relationships do not receive the same level of attention and scrutiny as credit relationships, contributing to lapses and oversights in the due diligence and ongoing monitoring process.

For example, the credit risk manager at Chase stated that the monitoring of non-credit relationships is generally reactive. Even when an attempt was made to be pro-active in the monitoring of the SAB account, because of the non-credit nature of the relationship there was not a single person who served as the focal point for the relationship. The result was that Chase did not receive timely information from its client, questionable activities and frauds associated with the account were not identified and the effort to conduct a coordinated and fully informed review of the relationship was hindered.

The relationship manager at BNY explained that the bank did not press SANB to get more information about questionable account activity because in the early 1990's banks were more concerned with credit risk than vulnerability to money laundering.

The discrepancy in the level of scrutiny given to the different types of relationships is underscored by the memo written by a BOA credit manager in response to a request to extend a fully collateralized revolving line of credit to SAB. His memo raised questions about the ownership, structure and purpose of the bank and who controls and monitors its activities. This reflected a level of scrutiny and evaluation that was often missing in the non-credit relationships that existed between SAB and SANB and their U.S. correspondent banks.

Case Histories Nos. 9 and 10
M.A. BANK
FEDERAL BANK

M.A. Bank of the Cayman Islands and Federal Bank of the Bahamas are two offshore banks affiliated with larger commercial operations in Argentina. Federal Bank's license was suspended on February 13, 2001, by the Bahamian Government after 9 years of operation; M.A. Bank remains open for business after nearly 10 years of operation. Both banks were shell banks: they had no physical office for conducting banking business with customers, and they existed through their correspondent relationships. Neither bank had an Argentinian banking license despite cultivating an Argentinian clientele and Argentinian banking activities and neither ever underwent an examination by any banking regulator. Yet both offshore shell banks were able to open U.S. dollar accounts at Citibank New York, obtain Citibank automated systems for sending international U.S. dollar wire transfers, and move more than a billion dollars through their U.S. accounts. \$7.7 million of that was illegal drug money in the case of M.A. Bank and \$1 million was bribe money in the case of Federal Bank.

This case history examines the due diligence and monitoring failures of their U.S. correspondent bank, Citibank, which enabled these two high risk foreign banks to gain entry to the U.S. banking system. They include Citibank's failure to realize that both banks were essentially operating in Argentina without a license, its failure to realize that a \$7.7 million seizure order for M.A. Bank targeted illegal drug proceeds from a Mexican drug cartel, its failure to realize that M.A. Bank operated without basic fiscal controls and far outside the parameters of normal banking practice, its failure to learn that Federal Bank had no anti-money laundering program, and its failure to provide accurate and complete answers to Argentinian bank regulators' questions about the ownership and activities of Federal Bank.

Information pertaining to M.A. Bank was obtained from documents provided by the Government of the United States and Citibank, court pleadings, interviews of government officials and other persons in Argentina, Mexico, the United States and the Cayman Islands, and other materials. Key sources of information were interviews with an official from the U.S. Federal Reserve Board of Governors (March and November 2000), relationship managers and other officials from Citibank (May and October 2000), and copies of interviews of the principals of M.A. Bank conducted by agents of the U.S. Customs Service in June 1999. The U.S. Customs Service conducted an investigation of MAB and M.A. Casa de Cambio as a follow up to an undercover drug operation. The investigation included interviews, in June 1999, with the principals of MAB and regulators in Argentina. Much of the Minority Staff's understanding of the operations of MAB was gained from the records of those interviews. The investigation also sent written questions to MAB officials, but they declined to provide any information.

Information pertaining to Federal Bank was obtained from the bank records of Banco Republica, Federal Bank, and American Exchange Company, provided by Citibank pursuant to subpoena;

interviews with Citibank officials; interviews with two Members of the National Congress of the Argentine Republic, Elisa Carrio and Gustavo Gutierrez, and their staffs; and copies of audits of Banco Republica conducted by the Central Bank of Argentina, one commenced in 1996, concluded in 1997, and reported on in July 1998 and the other commenced in July 1998 and dated August 1998. The Minority Staff invited the owners of Federal Bank, both directly (by letter on September 15, 2000, to Jorge Maschwitz, attorney for the bank in Uruguay) and through their agents (by letter on January 8, 2001, to the bank's registered agent, Winterbotham Trust Company Ltd., of Nassau, Bahamas) to provide any information with respect to the bank and to answer Subcommittee questions. There has been no response. The Bahamas Central Bank revoked the license of Federal Bank Ltd. on February 13, 2001.

A. THE FACTS

M.A. BANK

M.A. Bank is a shell bank licensed by the Cayman Islands with no physical office anywhere. M.A. Bank has never been examined by a regulatory body of any jurisdiction. The owners and officers of M.A. Bank ("MAB") exploited the gaps in the regulation of offshore banks to structure a banking operation with poor controls and operating procedures that are an invitation for money laundering and tax evasion. This case study shows how inadequate due diligence and ongoing monitoring by M.A. Bank's correspondent bank enabled M.A. Bank to utilize its correspondent relationship to access the U.S. financial network and engage in highly suspicious financial transactions for more than 1½ years after assets in its account were seized for illegal activity.

(1) M.A. Bank Ownership and Management

M.A. Bank is part of a group of Argentine finance, investment and currency exchange entities, collectively known as Mercado Abierto Group ("the M.A. Group").³⁴ The M.A. Group is owned and managed by three individuals: Miguel Iribarne, Aldo Luis Ducler and Hector Scasserra. These individuals also hold positions as officers in other entities of the M.A. Group, including M.A. Bank. All three are former government officials. Iribarne worked in the Ministry of Economy for 14 years, attaining the position of Undersecretary for the Economy. Scasserra was the Director of the National Development Bank, Minister of the Interior and also worked in the Ministry of Economy. Ducler is a former Secretary of Finance.

³⁴ Entities that are part of the M.A. Group include: Mercado Abierto S.A., an over-the-counter securities broker-dealer that functions primarily as an asset management company, which is the major owner of all of the other entities in the M.A. Group; M.A. Casa de Cambio, a currency exchange house; M.A. Valores Sociedad de Bolsa, an entity that operates within the Buenos Aires stock market; M.A. Capital Markets, a merchant bank that deals with mergers and acquisitions. Mercado Abierto, S.A. owns the entities in the following proportions: MAB (60%); M.A. Casa de Cambio (97%); M.A. Valores Sociedad de Bolsa (97%); M.A. Capital Markets. [In the original publication of this report in February 2001, footnote read "M.A. Capital Markets (97%)." This percentage reported was an error. No percentage of ownership was reported in the documents cited.] Source: "Basic Information Report," supplied by Citibank, translated from Spanish by CRS; M.A. Bank Limited Financial Statements and Independent Auditors' Report for 1998; and Mercado Abierto, S.A., Annual Report and Financial Statements as of June 30, 1998.

According to its financial statements, MAB was registered in the Cayman Islands on September 23, 1991 as Petra Investments Bank, but one day later it changed its name to M.A. Bank. It was issued a Category "B" banking license (an offshore banking license) on October 22, 1991. M.A. Bank's main activities are listed as those related to securities trading and the administration of investment portfolios for its own accounts and its customers' accounts.

In its financial statements, M.A. Bank reports that it is owned by Mercado Abierto, S.A., one of the entities that is part of the Mercado Abierto group, and Sigma Financial Corporation. During interviews of Ducler, Scassera and Iribarne conducted by agents of the U.S. Customs Service in June 1999, a review of MAB's articles of incorporation showed that 60% of MAB is owned by Mercado Abierto, S.A. and the remaining 40% is owned by Sigma Financial Corporation. Upon questioning by a Customs agent, Iribarne revealed that Sigma Financial Corporation, a Cayman Islands company, was owned by Iribarne, Scasserra and Ducler. According to the Customs interview, Iribarne said that this structure was created for "tax purposes." Customs agent notes from the interview state:

Miguel Iribarne explained that the Cayman Islands have rules about the amount of capital M.A. Bank must have in relation to deposits. Over the years M.A. Bank has increased their amount of capital. This makes the profits subject to taxation in Argentina. So, they received authorization from the Cayman authorities to establish another corporation that owns 40% of M.A. Bank. This reduces their taxes in Argentina by 40%. Miguel Iribarne stated that Sigma Financial is only in the Caymans, so they do not have to pay the taxes in Argentina.

Minutes of a Sigma Board of Director's meeting lists a former Mercado Abierto employee as the sole director of Sigma. According to the Customs interviews, Iribarne told the Customs agent, "They did this for 'tax purposes' so none of their names would appear on the documents for Sigma Financial."

MAB's administrative agent in the Caymans is Coutts and Company; MAB has no physical presence and conducts no business from the Cayman Islands. MAB also has a representative in Uruguay, Elenberg-Guttfraind & Associates.

(2) Financial Information and Primary Activities

The stated primary purpose of MAB is to provide offshore banking and investment services to clients of Mercado Abierto. As described above, the main activities of MAB are trading securities and the management of investment portfolios. MAB offers clients access to international markets for the acquisition of bonds or other investments that they could not acquire through Argentine-regulated investment firms and provides a vehicle for depositing funds outside of Argentina. According to Citibank officials, because of Argentine financial regulations, financial institutions that are licensed in Argentina are limited in the securities and bonds they can offer to clients. Therefore, most financial institutions, in order to provide their clients with a full range of international investment opportunities, establish foreign banking entities that are li-

censed in a jurisdiction other than Argentina and are therefore able to offer clients a broader range of investment opportunities. The MAB's 1998 financial statement reported that it had \$37 million in assets and \$26 million in deposits at the end of 1998. The bank did not respond to a request for information about its primary activities and the number of clients and accounts it serviced.³⁵

(3) M.A. Bank's Correspondents

MAB had U.S. correspondent accounts with Swiss Bank Corporation (now Union Bank of Switzerland) from January 1992 to May 1995, and with Citibank from September 1994 to March 2000. MAB also had additional correspondent accounts in Europe and South America for payments, transfers and settlements involving foreign currencies and securities.

(4) M.A. Bank Operations and Anti-Money Laundering Controls

An MAB official told a U.S. Customs agent that MAB does not accept unknown clients. To open an account at MAB, MAB said an individual must be referred by an existing client, already have an investment with Mercado Abierto or be someone who is known to the officers of MAB. According to an MAB official, the bank has know-your-customer ("KYC") rules similar to those employed in banks in the U.S. The Minority Staff obtained a copy of a three-page MAB document titled "Policies and procedures to prevent money laundering activities." The document identifies the policies and procedures for establishing new relationships and servicing accounts. They are organized under four topics: "Know the Customer," "Forbidden Transactions," "Transactions to be closely monitored and reported to the management," and "Considerations to be taken when analyzing suspicious transactions." The policies and procedures included the following: the customer's true identity must be known; all suspicious transactions must be immediately reported to the management; cash deposits and withdrawals are forbidden. However, as revealed through the interviews of MAB officials by the U.S. Customs Service, top officials at MAB were aware that these policies and procedures were not followed at MAB.

(5) Regulatory Oversight

MAB is licensed as a Class B (offshore) bank in the Cayman Islands. Other than its registered agent, it has no physical presence

³⁵In March 2000, Senator Levin wrote to the counsel for MAB and requested that the bank provide a general description of its activities and information on, among other things, its assets and the number of its clients and accounts. He asked that the bank provide answers to his inquiries by April 26. MAB never provided any information or answers to Senator Levin. In April, Senator Levin received a copy of a letter sent to Chairman Collins by MAB's new attorney in the United States. The attorney referred to Senator Levin's letter to MAB and stated:

I am not in a position to address your inquiries at this time. I have just been retained on this case, which has been going on for several years. Obviously I am just now learning about the facts, and as I am sure you are aware this is a complex case which cannot be mastered in a moment's time. I will be meeting with my clients face to face in the very near future and I will continue in my efforts to review the extensive materials. I will write you again when I learn the facts of this case. Obviously I cannot comply with your April 26, 2000 deadline.

To date, MAB has not supplied any information to the Subcommittee.

in the Cayman Islands, and it is prohibited from doing business with residents of the Cayman Islands.³⁶ Offshore banks are required to submit annual audited financial statements to the Cayman Islands Monetary Authority ("CIMA"), the governmental entity that regulates banks in the country, but offshore banks are not required to keep their records in the Cayman Islands.

In 1991, when M.A. Bank first received its offshore banking license, the Cayman Islands still permitted the licensing of a bank which was not a branch or subsidiary of another bank, which planned to keep its employees and banking records outside of the Cayman Islands, and which planned to have no physical presence on the island other than a mailing address at a local registered agent. The Cayman Islands has since discontinued issuing such bank licenses, but has allowed its existing offshore shell banks to retain their Cayman licenses. In 2000, for the first time, Cayman banking authorities began a bank examination process which requires bank examiners, acting on behalf of the government, to conduct an independent inspection of the bank records and operations of Cayman licensed banks. Prior to this program, Cayman banking authorities oversaw Cayman banks primarily by analyzing information submitted by those licensed banks or their auditors. The new Cayman examination program requires an independent review of records and includes sending Cayman examiners to conduct on-site visits of Cayman banks that keep employees and records outside of the Cayman Islands.³⁷ However, M.A. Bank, despite nearly 10 years of operation, has yet to undergo any bank examination or site visit by any bank regulator, whether from the Cayman Islands, Argentina or any other country.

MAB is required to have an agent that represents it in the Cayman Islands, and is responsible for accepting notices from CIMA and providing information required or requested by the regulatory authorities. MAB is represented by Coutts and Company. The Coutts official who handles the MAB account told the Minority Staff that Coutts' only function is to serve as a point of contact for government officials. Coutts does not maintain any records, nor does it perform any activities with respect to MAB's banking activities.

Although the M.A. Group operates out of Argentina, MAB is not licensed to operate in Argentina and is not regulated by the Central Bank of Argentina. According to the Customs interviews, one of the principals told the U.S. Customs agent that:

. . . they [MAB] do not need a license [in Argentina] because [MAB] is an offshore bank. Miguel Iribarne told [the Customs agent] that the administrative offices for M.A. Bank are located in Montevideo, Uruguay . . . When [the Customs agent] asked, why do they do this? Miguel Iribarne responded that M.A. Bank is an offshore bank, if they had offices in Argentina they would be subject to regulation by the Central Bank.

³⁶ M.A. Bank's representative in Uruguay, Elenberg-Gotfraind & Assoc., informed the Minority Staff that MAB has a "physical and legal presence and address in Georgetown, Grand Cayman (Coutts & Co. Cayman Ltd)." However, this is nothing more than an agent's office. M.A. Bank has no office or staff in the Cayman Islands, and in interviews with the Customs Service, one of the owners of M.A. Bank stated that MAB had no offices in the Caymans.

³⁷ For a general description of the status of anti-money laundering efforts in Argentina, see the Regulatory Oversight section in the Federal Bank discussion.

MAB has an administrative office in Uruguay at an auditing/consulting firm called Elenberg-Gutfraind & Associates. According to the principals of Elenberg-Gutfraind, the firm is registered with the Central Bank of Uruguay as a representative of MAB. However, it does not appear that any type of administrative activities related to banking or customer services takes place at that office. In a letter to the Minority Staff, the principals of Elenberg-Gutfraind explained that their relationship with the M.A. Group (including MAB), included consulting advice and technical assistance related to audits of the bank. Essentially, the firm "received and sent documents and correspondence which are essential for the fulfillment of the audit." From the information provided, it appears as if MAB's administrative office in Uruguay is a representative or agent office that may maintain documents or records. Neither the principals of MAB nor the principals of Elenberg-Gutfraind made any suggestion or offered any information that MAB was licensed in, or regulated by, Uruguay.

A Special Examiner from the U.S. Federal Reserve Board of Governors who accompanied a U.S. Customs agent during their interviews of MAB owners and officials in June 1999 told the Minority Staff that the investigation established that MAB did not have a physical presence anywhere other than Argentina. According to the Special Examiner, "M.A. Bank is nothing more than an account holder at Citibank." The examiner noted that through that account, MAB can receive and make wire transfers, deposits and withdrawals. According to the examiner, its account is no different from any checking or savings account an individual would set up, and through that account MAB could process transactions for all of its customers.

(6) Money Laundering and Fraud Involving M.A. Bank

(a) Laundering of Drug Proceeds through M.A. Bank

In May 1998, the Department of Justice announced the conclusion of a 3-year undercover drug operation called "Casablanca." In the undercover operation, U.S. Customs agents infiltrated the Amado Carillo Fuentes drug organization ("the Juarez cartel"), posing as money launderers. As part of the operation, the agents laundered money for the cartel through a number of Mexican and Venezuelan banks. As an outgrowth of the original operation, the agents also collected cash from cartel drug operations in the region of Chicago and laundered the money back to foreign banks and money houses through correspondent accounts maintained at banks operating in the United States. Over a period of one year (May 1997-May 1998), \$43 million was wire transferred to specific accounts identified to the undercover agents by members of the Juarez cartel.³⁸

The U.S. Government filed seizure warrants for the drug-related funds in those accounts in May 1998. Among the affected accounts were two accounts in the New York branch office of Citibank, One

³⁸ Records obtained from the Customs Department indicate that Jose Alvarez Tostado, a lieutenant in the Juarez cartel, had telefaxed the undercover agents a list of banks and accounts that had been established to receive the transfer of the funds. The fax identified 10 different accounts, including two accounts at Citibank.

belonged to M.A. Bank; the other belonged to M.A. Casa de Cambio. According to a government undercover agent, \$7.7 million in drug proceeds had been deposited in the account of M.A. Bank and \$3.9 million had been transferred into the account of M.A. Casa de Cambio.

Between August 12, 1997, and January 7, 1998, a total of \$3.983 million was transferred into the M.A. Casa de Cambio account at Citibank New York in eight separate transactions by U.S. Customs undercover agents acting under instructions from representatives of the Juarez cartel. Between August 12, 1997, and April 1, 1998 a total of \$7.768 million was transferred into the M.A. Bank account at Citibank New York in 18 separate transactions by U.S. Customs undercover agents acting under instructions from representatives of the Juarez cartel. In seven of the eight transfers to the Citibank M.A. Casa de Cambio account and in nine of the 18 transfers to the Citibank M.A. Bank account, the wire instructed that the funds were for the benefit of Nicholas DiTullio. DiTullio is a real estate agent in Argentina and an account holder at M.A. Bank. His account was opened on July 10, 1997, approximately one month before the drug-related transfers started.³⁹

When the U.S. Government presented seizure warrants for the accounts in question, only \$1.569 million remained in the MAB account and \$234,000 remained in the M.A. Casa De Cambio account. The remainder of the drug deposits had been wired transferred out of the accounts to Argentina. After the seizure of the \$1.8 million remaining in the accounts on May 18, 1998, MAB sought return of this money, based on the defense that it was an innocent bank.⁴⁰

The U.S. Customs Service carried out an investigation of MAB and M.A. Casa de Cambio which included interviews, in June 1999, with the principals of MAB and regulators in Argentina. As a result of the investigation, on February 10, 2000, the U.S. Government filed a complaint to seize the funds in the accounts of MAB and M.A. Casa de Cambio on the grounds that the officials of the bank and the Casa de Cambio were aiding the laundering of funds. The complaint alleged in part:

. . . Ducler caused to be opened one or more accounts at M.A. Bank, M.A. Casa de Cambio and/or Mercado Abierto in the

³⁹ According to the Complaint for Forfeiture filed by the U.S. Government, the account was opened up after DiTullio was approached by two individuals, named Jorge Iniguez and Jaime Martinez-Aryon, who wanted assistance in acquiring real estate in Argentina. Iniguez is a former Group Supervisor of the Mexican Federal Judicial Police. While in that position, he became involved in the distribution of marijuana in Mexico. In 1991 he was arrested in California and eventually convicted on Federal charges of conspiracy to import 800 pounds of marijuana into the United States. In order to facilitate the transfer of funds for the purchase of properties, DiTullio offered to open an account through which Mr. Iniguez could transfer funds from the U.S. to Argentina. DiTullio recommended that an account be opened with MAB and/or M.A. Casa de Cambio and arranged a meeting between himself, Ducler and Iniguez. The account was opened in Mr. DiTullio's name because Ducler would not open an account in Mr. Iniguez' name because of the source of the funds to be laundered through the account. Instead, Ducler suggested that one or more accounts be opened in DiTullio's name, and that those accounts be used to transfer the funds to Argentina. *Complaint for Forfeiture* (U.S. District Court for the Central District of California, Western Division, No. cv 00-01493), 2/10/00.

⁴⁰ Under current law, the funds deposited into a correspondent bank account do not belong to the depositor but to the bank. Therefore, the government cannot seize the funds based on the wrongdoing of the depositor. In order to seize the money from the bank's correspondent account, the government must show that the bank was facilitating the laundering of illicit gains. Otherwise the bank has an "innocent bank" defense. The only way for the government to seize the illicit funds, without proving culpability by the bank, is to file a complaint in the jurisdiction where the depositor has his account, and this is often a foreign jurisdiction.

name of DiTullio. It was understood by Dueler, DiTullio and Iniguez that said accounts would be used to transfer drug proceeds from the United States to Argentina, and that said proceeds would then be paid out of the account(s) to DiTullio for delivery to Iniguez. The government is informed and believes and thereon alleges that the opening of the account(s) in DiTullio's name was designed to disguise the nature, source and ownership of the drug proceeds that were to be filtered through the account(s), and that Dueler was aware of the true nature and source of the funds, i.e., drugs. In opening the account(s), Dueler intentionally dispensed with virtually all of the standard internal controls and processes generally required to open accounts with M.A. Bank and/or M.A. Casa de Cambio.

. . . Drug proceeds belonging to the Juarez Cartel would be picked up in Chicago, as set forth in paragraph 16 above, and then wire transferred to the Citibank accounts of M.A. Casa de Cambio and M.A. Bank, as set forth in paragraphs 17 (a) and (b) above. The monies would then be credited and paid by M.A. Casa de Cambio and M.A. Bank to DiTullio.

. . . Despite the various names given as the beneficiaries of the money transfers listed above, all of the transferred funds were in fact paid by M.A. Bank and M.A. Casa de Cambio to Nicolas DiTullio ("DiTullio"), either in U.S. currency or by cashier's check. The government alleges that DiTullio, Dueler, Iniguez and Martinez-Ayon, among others, were participants in a money laundering conspiracy, the object of which was to convert drug proceeds from the Chicago pickups into currency and checks issued by M.A. Bank and M.A. Casa de Cambio in Argentina.

. . . Based upon the above facts, there is probable cause to believe that M.A. Bank and M.A. Casa de Cambio knowingly used the Citibank accounts referred to in paragraphs 17 (a) and (b) to launder money in violation of 18 U.S.C. §§ 1956 (a)(1), 1956 (b) and 1957. Accordingly, there is further probable cause to believe that funds contained in the above-referenced accounts are subject to seizure and forfeiture to the United States pursuant to 18 U.S.C. § 981(a) (1). Additionally, to the extent that the specific funds contained in the accounts are not the same monies that were involved in the money laundering transactions, there is probable cause to believe that those funds have merely replaced identical property previously on deposit in the accounts (which identical property was in fact involved in money laundering) and are therefore subject to seizure and forfeiture to the United States pursuant to 18 U.S.C. § 984.

On June 9, 2000, the U.S. Government and the owners of the M.A. Group reached a settlement on the disposition of \$1.8 million in seized funds. The U.S. Government retained \$1.2 million and the owners of the M.A. Group received \$600,000. Subsequent to the settlement, Aldo Ducler, one of the owners of the M.A. Group and MAB, placed a full page advertisement in the Argentine newspaper, *La Nacion*. The advertisement, entitled, "The Truth of the

Facts” portrayed the settlement agreement with the United States as a vindication of the actions of MAB and its owners.⁴¹

On December 26, 2000, the Acting Director of the Office of International Affairs of the U.S. Department of Justice sent a letter to Dr. Jose Nicasio Dibur of the Ministry of Justice in Argentina concerning the resolution of the action taken by the United States against MAB and its owners and refuting the claim of vindication by Ducler. In the letter, the Acting Director wrote:

It was agreed that the consent judgment did not constitute an admission of liability or wrongdoing on the part of the claimants. *Id.* At lines 3–6. At the same time, however, the consent judgment did not constitute an agreement by the United States that the claimants committed no illegal acts, or that the claimants lacked guilty knowledge of the illegal acts described in the complaint.

. . . The essential purpose of the consent judgment was to divide the seized funds while leaving open the question of whether the claimants committed or, were knowledgeable of, the illegal acts described in the complaint. This is not particularly unusual.

. . . In essence, the parties “agreed to disagree” concerning that question. That being said, it should be noted that this office would not have entered into the consent judgment unless it believed that there was a valid factual basis for the forfeiture of the funds.

. . . The consent judgment applied only to the civil forfeiture case in which it was entered. It did not provide for immunity for any party (corporate or individual) with respect to potential criminal conduct. The United States made no representations whatsoever about the further investigation or prosecution concerning the criminal conduct described in the complaint.

. . . However, the consent judgment is not evidence that the United States exonerated the M.A. entities or their principals

⁴¹ It, in part, stated:

The conclusions of this exhaustive investigation (by the U.S. Government) resulted in the signing of a bilateral agreement between the United States, the Department of Justice, and the Department of Treasury of the United States, and our entities and directors, signed June 9, 2000 and stamped (registered) in the judicial district of California June 18 by Judge Spencer. Under this agreement the Government of the United States desists of any judicial action, and expressly clarified that there was no culpability or fault by any side. More specifically it eliminates the possibility of any new legal claim in this case. In addition it implies the recognition and acceptance by the United States that:

- The director of M.A. at all times acted within compliance of all legal applicable laws and with absolute good faith.
- The lack of existence at all times of any knowledge or suspicion on our side about the alleged illicit origin of the funds, which came in all cases from first rate U.S. banking institutions operating within the territories of the United States.
- The collaboration we gave with our lawyers since the beginning of the investigations, collaboration that has been underscored and duly appreciated by the United States. This was shown in a letter that [Assistant U.S. Attorney] Steven Welk sent our lawyer, in which (naming us explicitly) he transmitted to us his appreciation for the attention received in Buenos Aires and our cooperation in the investigation. This language in a letter that has a letterhead of the U.S. Justice Department and with a signature of who is acting in the name of the [U.S. Attorney for the Central District of California] (Alejandro Mayorkas) would be unthinkable if the government of the United States did not have the conviction that it had been dealing with honorable people that don’t have anything to do with money laundering.

or that the government believed that the allegations or the complaint were not true.

(b) Unsound and Illegal Banking Practices

In June 1999, representatives of the U.S. Customs Service and the U.S. Federal Reserve Board of Governors traveled to Argentina and interviewed officials of the Argentine Central Bank (“BCRA”), MAB, and Nicolas DiTullio. MAB officials described to the Customs agent how MAB serviced its clients’ accounts and, in particular, how it handled transactions of DiTullio. The explanations offered by the MAB owners reveal banking practices that were highly vulnerable to money laundering and far outside the parameters of normal banking practice.

M.A. Group officials said that M.A. Bank had KYC procedures similar to those at U.S. banks and that individuals can only open accounts at MAB if they are referred from an existing client, are already an investment client of M.A. Group, or are known to the officers of MAB. DiTullio was not required to provide references or undergo a credit check because his name was well known in the real estate field, and he was a long-time acquaintance of Ducler, Iribarne and Scasserra.

Operation in violation of Argentine banking law. According to the Customs agent’s interviews, officials of the BCRA stated MAB is not licensed to operate as a bank in Argentina. They said it can operate as a client of another bank (an account holder like anyone else), but it is not allowed to conduct banking business in Argentina: It cannot take in deposits or dispense withdrawals. Yet, it appears that MAB did accept deposits and dispense withdrawals to its customers in Buenos Aires at the offices of the M.A. Group.

During a tour of the Mercado Abierto offices, a Customs agent asked Iribarne, one of the owners and the President of MAB, if the teller window and the vault in the M.A. Casa de Cambio section of the offices was the place he, as a customer of MAB, would bring funds and have MAB wire the money somewhere else. According to the Customs interviews:

Iribarne said yes that is correct. They, M.A. Bank, would keep the money in the vault until they could transport it to the bank, after which they would transport the money.

. . . [The Customs agent] also asked if he received money from the United States as a customer of M.A. Bank, would someone from Mercado Abierto pick up the cash at the bank in Argentina, bring it to Mercado Abierto and place the money in the vault, and would he receive the money at the windows right here. Iribarne said that is correct.

During the interviews, the Special Examiner from the Federal Reserve Board of Governors asked MAB officials how a customer could receive money in Argentina if MAB did not have a branch or an account in Argentina. According to the Customs record of the interview, Iribarne explained how the process worked:

1) For example, Nicolas DiTullio sends the M.A. Bank account at Citibank in the United States \$100,000.

2) If Mercado Abierto has the cash in their vault in Argentina, Nicolas DiTullio comes into the Mercado Abierto offices and they would give him the \$100,000 in cash at the teller window. Nicolas DiTullio signs the receipt and leaves.

3) If Mercado Abierto does not have the cash, they contact a licensed bank or Cambio in Argentina that has a branch in the U.S. (For example purposes, Bank Boston). They tell Bank Boston that they (M.A. Bank) are going to wire \$100,000 to the Bank Boston Branch in the U.S. Bank Boston receives the wire in the U.S. and holds the funds in a temporary account for M.A. Group Bank. Then someone from M.A. Bank officer [sic] goes into Bank Boston in Argentina. Bank Boston, Argentina, checks to make sure they have received the wire in the U.S. and then releases the \$100,000 in cash to the M.A. Bank officer. The officer takes the cash back to Mercado Abierto and places the money in the vault until Nicolas DuTullio arrives to receive the \$100,000.

An MAB officer and accountant told the Customs agent that there is no account for MAB in Argentina, so they always use other institutions. When a Customs agent asked if records are kept for all MAB transactions of \$10,000 or more, as required by the BCRA, Iribarne, according to the interview records, responded that:

They do not have to report any of the M.A. Bank transactions to the Central Bank or keep a record . . . because the money does not come into Argentina . . . if a bank is licensed in Argentina they would have to report the transaction and keep the log, but an offshore bank like M.A. Bank does not. This is because the wire transfer activity takes place offshore using "undeclared" funds. The report would be the responsibility of Bank Boston, if and when they transferred the \$100,000 to Argentina to cover the withdrawal.

The account officer told the U.S. Customs agent that the financial transactions of all of M.A. Group's subsidiaries were run through a central treasurer's office. All transactions for all of the entities in the M.A. Group are conducted in bulk during the day and one company can lend money to another company as needed to help it meet commitments. At the end of the day the treasurer records the transactions in the proper set of books.

The U.S. Government also obtained documentary evidence that M.A. Bank was conducting banking operations in Argentina. According to the Special Examiner from the Federal Reserve Board of Governors, the U.S. Government received material from MAB that included deposit and withdrawal tickets all signed by DiTullio. According to the examiner, when the examiner asked the MAB principals if they had a license to operate MAB in Argentina, they told the examiner that performing the transactions was a service they provided to their clients.

Pseudonym accounts. Many of the wire transfers made to DiTullio's account at MAB were sent to MAB's correspondent account at Citibank. The affidavit of a Custom's agent, submitted in support of the seizure warrant for funds in MAB's account at Citibank New York, disclosed that many of the wire transfers that

were credited to DiTullio's account at MAB identified entities other than MAB as the beneficiary of the transfer, and the entity identified in the "for the benefit of" column often was someone other than DiTullio. Oftentimes, the only correct information on the wire transfer documentation was MAB's correspondent account number. Despite these inaccuracies, Citibank did not reject the transfers or return the money to the originator but credited the funds to MAB's account. MAB then credited them to DiTullio's account.

When the Customs agent asked the owners of MAB how they knew to credit the transfers to DiTullio's account and not to someone else's, Iribarne said that DiTullio had advised them in advance of the amounts that would be sent. When asked again by the Customs agent how the bank knew to credit DiTullio's account when the name of the party to be credited on the wire was a different name from DiTullio's, Iribarne said they were able to match the date and time of the transfers with letters DiTullio sent to M.A. Bank notifying the bank of incoming funds. Yet, the report of the Customs agent noted that the letters notifying MAB of forthcoming wire transfers to be sent by DiTullio were provided several days before the undercover operation wired the funds, and the letters did not list a date when the transfers would occur. These omissions raise a question of how the M.A. Bank officials knew to credit the DiTullio account.

Moreover, MAB owners indicated that such transactions were regular occurrences at the bank. According to the Customs interviews, the owners of MAB stated that they regularly received "fantasy names" on wire transfers and used the amount and date to match them to client deposit notices:

Iribarne went on to explain that they (M.A. Bank) normally receive many "fantasy names" on the wire transfers they receive, so they just use the amount and date to match them to the proper client. When [the Customs agent] asked about these "fantasy names," Miguel Iribarne said clients do this so the funds are not "regulated." Miguel Iribarne also explained that it is also normal for clients to wire transfer money to M.A. Bank and leave the beneficiary information completely off the wire transfer instruction, and M.A. Bank still matches the money to the client.

According to the Special Examiner from the Federal Reserve Board of Governors, the practice described by the MAB owner violates normal banking practice. The examiner noted that if a bank received a wire transfer on which the name of the party to be credited was a different name from the name of the account holder who told the bank a wire transfer would be made to their account, the bank would generally call the account holder to confirm where the funds are to be credited. The bank would also ask the account holder why a third party would have money transferred into their account.


Servicing illicit funds. In discussing how they handled accounts of DiTullio and others when the wire transfer contained incorrect or no beneficiary information, the bank owners were very clear that they believed that the clients were doing this to avoid taxes. According to the Customs interviews:

[The Customs agent] asked, what if two clients claim the same amount of money, or some client claims that money had been sent and M.A. Bank could not find the transfer amid all the similar transfers? Miguel Iribarne said they have never had this problem. Miguel Iribarne stressed that their clients trust the bank, "especially the non-declared funds." [The Customs agent] inquired if the funds were non-declared for tax purposes, and Miguel Iribarne said yes.

At one point, Iribarne told the Customs agent that he believed that all offshore accounts belonged to people avoiding taxes and that the money may sometimes come from other illegal sources as well:

[The Customs agent] mentioned the offshore, unregulated funds. Miguel Iribarne told [the Customs agent] that he believes that all offshore accounts belonged to people avoiding taxes. Miguel Iribarne said maybe the money sometimes comes from other illegal activities as well. [The Customs agent] asked him if he thought M.A. Bank's clients were hiding money to avoid taxes? Miguel Iribarne said sure, most of the customers have overseas account [sic] so they do not have to report income. Miguel Iribarne said he does not care. The customers are the ones not reporting, not him.

Falsification of withdrawal records. One of the ways DiTullio withdrew money from M.A. Bank was in cash. According to Iribarne, DiTullio would call and tell M.A. Bank he would be coming in to withdraw money, and then he would show up and sign a withdrawal receipt when he withdrew the money. The owners of MAB provided the Customs agent with copies of the withdrawal slips that had been completed and signed by DiTullio. The Minority Staff received a copy of one of those slips. The form appeared as follows:

| | |
|--|---------------|
| October 29, 1987 | |
| We have RECEIVED today from M.A. Bank Ltd., Grand Cayman, the amount of | USD 10,100.00 |
| Ten Thousand One Hundred and 00/100 United States Dollars | |
| Please debit such amount from Account # | 25913 |
| In name of Nicolas A. Di Tullio with yourselves. | |
| by Account # 25913 | |
|  | |
| Nicolas A. Di Tullio APODERADO DE EURO-AMERICA FINANCE NV | |

As can be seen from the form, while MAB's name and address is included in the typewritten statement on the form, it is not imprinted on the form itself. The withdrawal slip is not a preprinted slip that banks generally produce and make available to all customers. Rather, it is a form that appears to have been produced on a typewriter or printer with places to insert the amount received and the name and account number of the client.

In reviewing the withdrawal receipts signed by DiTullio, the Customs agent asked why the receipts looked different from the M.A. Casa de Cambio receipts, which appeared more official. According to the Customs interviews:

Iribarne said that the M.A. Bank receipts are a private receipt. The transactions are not reportable to the government, so they can generate them any way they want. [The Customs agent] asked, why is Euro-American Finance printed on the receipts (it looks like a receipt Nicolas DiTullio generated)? Miguel Iribarne said the form is in the computer; Nicolas DiTullio can ask to have anything put on the receipt and they would do it, they did not care. [The Customs agent] asked about Euro-American Finance. Hector Scassera [one of the other owners of MAB] said Nicolas DiTullio did not want the local tax authorities to know about, and tax him on, the money coming from the United States. Euro-American is a company name Nicolas DiTullio uses to avoid the tax authorities.

According to the Special Examiner from the Federal Reserve Board of Governors, several aspects of the withdrawal process described by the owner of MAB were not in accordance with standard banking practices. According to the examiner, typically the institution's name, address and other information about the bank would be preprinted on a withdrawal form. No such information was on the withdrawal forms signed by DiTullio. The form was simply a typewritten note. Apparently, MAB had no withdrawal slips. The Minority Staff learned that the examiner asked someone at the teller window at M.A. Group's offices for some deposit/withdrawal tickets and was told that they did not have any. The examiner also noted that in the case of DiTullio, the form was printed in English, even though DiTullio spoke only Spanish.

The Special Examiner also noted that the forms were signed by DiTullio as if he were an individual authorized by the company, Euro-American Finance, to make withdrawals. This leaves the impression it is Euro-American Finance that has the account at MAB and is the entity making the withdrawal. However, the examiner pointed out and the owners of MAB acknowledged, that the funds were being withdrawn by DiTullio from his own account. The examiner stated that this was not typical banking practice, noting that in the United States, individuals do not sign withdrawal slips on behalf of an organization that does not have an account at the bank. The examiner said: "it just isn't done." The examiner said that DiTullio told the Customs agent that he had signed a number of the withdrawal forms in advance of any withdrawal.

(7) Correspondent Account at Citibank

MAB maintained an account with Citibank from September 1994 through March 2000. During that time period, \$1.8 billion moved through its account. Citibank had maintained a relationship with the M.A. Group since 1989. Over the years, various subsidiaries of the M.A. Group had established accounts at Citibank. In addition to MAB, other M.A. subsidiaries, including Mercado Abierto, M.A. Casa de Cambio and M.A. Valores, had accounts at Citibank New York. All of the accounts with the M.A. Group and its subsidiaries were terminated in March 2000. The MAB account with Citibank in New York was limited to non-credit, electronic banking services.

Citibank Organization for Correspondent Accounts in Argentina. Correspondent banking activities at Citibank are located in the Financial Institutions Group. Correspondent accounts in Argentina are located in the division covering Central and Eastern Europe, the Middle East, Africa, the Indian subcontinent and Latin America ("CEEMEA") which is responsible for overseeing and administering correspondent banking relationships including support services in connection with wire transfer operations. According to the marketing head for the Latin American Unit in the Financial Institutions Group in New York, in the 1980s Citibank instituted the Troika system for account management to improve coordination and communication. Under that approach, responsibility for an account opened in the United States by a financial institution in a foreign country was shared between (1) an account officer in the country where the client institution is located, (2) an account officer in the New York office and (3) a service account officer in New York.

The lead for the account is the country account officer in the country where the client is located. That officer is responsible for account opening, including due diligence and KYC information, and maintaining contact with the customer to ensure that the relationship is operating smoothly and to market new products and services. According to the marketing head, the New York officers focused on customer service, product information, and administration of account activities. In addition, it was the responsibility of the New York office to look at overdrafts and credit issues associated with the account. Such issues were supposed to be reported to the country account officer, who had the authority to approve overdrafts and credit. According to the marketing head, it was not the responsibility of the New York office to check monthly statements or verify transactions.

Monitoring for money laundering and suspicious activity was the responsibility of the anti-money laundering unit in Tampa. As with overdraft and credit issues, any money laundering or suspicious activity issues are communicated to the country account officer, and the Financial Institutions compliance officer in New York might be notified and brought into the matter; the New York service officers may not hear of such matters. The anti-money laundering unit in Tampa had systems to identify high risk countries and generic high risk institutions, but not specific clients. According to the marketing head, until about one year ago, Citibank did not have a system in place to determine if correspondent clients should be classified as high risk. Citibank is now developing account profiles to

identify high risk customers, who will be subjected to tighter monitoring and controls.

According to an investigator assigned to Citibank's anti-money laundering unit in Tampa, the unit reviews U.S. dollar based fund transfers that fall within parameters that Citibank establishes regarding dollar amounts, high risk countries and institutions that may be indicative of money laundering. All wire transfer activities falling within the parameters are sent to Tampa for review. The transactions are then sorted by different categories and reviewed for anomalous behavior. Tampa receives records of approximately 400,000 wire transfers per month that fall within the general parameters. They are then reviewed by two people for certain characteristics that would indicate anomalous behavior. When such behavior is identified and it is determined that further investigation is warranted, the unit will develop an investigative file. Investigative files may also be created if other events or activities cause the unit to decide to conduct a review of a client account.

The unit head for Financial Institutions in Argentina told the Minority Staff that the bank in Argentina is divided into products and relationships. The relationship manager team is responsible for the coordination of the sale of products and has the primary responsibility for marketing products. The relationship managers also have responsibility for credit and KYC issues. The relationship managers report to the unit head for Financial Institutions. The unit manages approximately 70 relationships with financial institutions whose main offices are located in Argentina. It also covers relationships with another 30 institutions located in Argentina whose main offices are in other foreign countries. (In those cases, the Citibank office in the country where the client's main office is located has the lead on the relationship). The largest number of relationships is with insurance companies and the second category of relationships is with banks.

Daily operations of the client correspondent accounts are handled by the cash management and customer service units in Argentina, with assistance from Citibank in New York. Marketing and decisions on accepting and expanding relationships are the responsibility of the Argentine relationship managers, with approval from the unit head and the compliance department.

According to the Financial Institutions unit head, the primary document reflecting the due diligence information for a client is the Basic Information Report ("BIR"), which contains information on the history and nature of the institution, its ownership and its financial condition. In addition, a client folder will contain a checklist of items or information that must be obtained. The Financial Institutions unit head said that Citibank also takes into consideration other, more qualitative factors that do not appear on any checklist and are not firm requirements, such as the institution's reputation, and expectation of a minimum of 5 years of operating history in the market, audited balance sheets, certain minimum amounts of equity and whether the institution is known to some senior Citibank officials.

Ongoing monitoring consists of annual updates of the BIR and visits with the client both over the telephone and in person. However, the Financial Institutions unit head told Minority Staff that

Citibank Argentina does not review monthly account statements of the clients, that Citibank New York monitored the accounts. The market head in Citibank New York disagreed with that observation. He told Minority Staff that Citibank New York only monitored the account for overdrafts and credit issues, and Citibank New York did not monitor the monthly accounts. He said the Citibank office in Tampa was responsible for money laundering oversight. The head of the Financial Institutions unit in Citibank Argentina told the Minority Staff that he estimated that the relationship manager for MAB may have met personally with MAB officials four times per year and spoken with them over the telephone many other times. He noted that the amount of attention given to a client was related to the size of the relationship. He indicated MAB was a rather small client because it had only one product, electronic banking services.

Citibank Policy on Shell and Offshore Correspondent Accounts. When Citibank was asked in the Minority Staff survey of correspondent banking whether Citibank would “as a policy matter, establish a correspondent relationship with a bank (a) that does not have a fixed physical presence in any location, such as a shell bank,” Citibank’s response was:

The GCIB [Global Corporate and Investment Bank] does not establish relationships with customer banks that have no fixed physical presence in a particular location or with banks whose licenses require them to operate exclusively outside the jurisdiction in which they are licensed.

When Citibank was asked in the survey whether Citibank would “establish a correspondent relationship with a bank (b) whose only license requires the bank to operate outside the licensing jurisdiction,” Citibank’s response was:

The GCIB does not open bank accounts for banks that have no fixed physical presence in a particular location or with banks whose licenses require them to operate exclusively outside the jurisdiction in which they are licensed. However the GCIB may open a bank account for an existing customer bank’s off-shore subsidiaries or affiliates.

When asked how Citibank Argentina could have accepted the correspondent account of MAB (which is not an affiliate or subsidiary of a bank but of a securities firm) in light of Citibank’s policies as expressed in its survey response prepared by its Vice President and Director of Compliance for the Global Corporate and Investment Bank, the Financial Institutions unit head said he did not know if what the Vice President reported as Citibank policy was correct. He noted that the opening of the MAB account was approved by the Citibank Compliance Department. Citibank representatives at the meeting also noted that as a subsidiary of M.A, MAB activities were included as part of M.A. Group’s report to its Argentine regulators. However, the Minority Staff pointed out that the regulatory agency for a securities firm is different from a regulatory agency for a bank, and such reporting cannot guarantee an

examination of the critical and potentially vulnerable areas of a banking operations.⁴²

Four months after this issue was discussed and Minority Staff had asked for a clarification of the policy, legal counsel for Citibank wrote to the Minority Staff on September 29, 2000, to re-state Citibank's policy. Legal counsel informed Minority Staff that the policy presented in Citibank's survey response was "incomplete and had created a misunderstanding about the circumstances under which Citibank has account relationships with offshore banks." Citibank's counsel went on to describe a modified policy with respect to offshore banks that have no physical presence in the off-shore jurisdiction:⁴³

I indicated that our response to question 11 (as well as question 10) should have made clear that Citibank would and does open accounts for off-shore subsidiaries or affiliates of existing customer financial institutions, not just existing customer banks as our response indicated, and that these off-shore relationships could be established without regard to whether the offshore entity had a fixed physical presence in the off-shore location. M.A. Bank fits this scenario, as Mercado Abierto, S.A., an Argentine financial institution that has had an account with Citibank since 1989, is the parent of M.A. Bank . . .

. . . We remain uncertain about whether attaching significance to physical presence is meaningful when one considers the nature of offshore banks.

. . . Offshore affiliates typically service the existing customers of the parent institution; they do not do business with residents of the offshore jurisdiction or transact business in the local offshore currency, or seek to establish an independent customer base. Their function is to serve as registries or booking vehicles for transactions arranged and managed from on-shore jurisdictions. Accordingly, there is little need for a staff or physical facility and there is nothing inherently suspicious about the failure of an offshore affiliate to have a physical presence in the offshore jurisdiction.

Of course these vehicles are to be distinguished from banks with offshore licenses that are not affiliated with an onshore financial institution. For such banks, physical presence may be an indicator of a legitimate operation (and the absence of a physical presence may suggest that further inquiry into the legitimacy of such a bank's operations is warranted).

In Citibank's view, the key to ensuring the viability and reputation of an offshore bank that is an affiliate of a financial institution is fulsome Know Your Customer due diligence with regard to the financial institution group. Regulatory oversight

⁴² Approximately one month after this interview with the head of the Financial Institutions unit, an employee at Citibank in Argentina wrote the Vice President of Financial Institutions in New York that the Argentina office was implementing a strategy for all of its Financial Institution customers. The letter stated that Citibank Argentina was beginning to close all accounts for offshore vehicles that were not consolidated under a local bank, and consequently not regulated by the Central Bank of Argentina.

⁴³ The concern expressed by the Minority Staff was with respect to banks that have no physical presence anywhere and are not branches or subsidiaries of another bank with a physical presence in another jurisdiction.

by offshore jurisdictions is uneven and cannot be relied on uniformly. Further, although financial institutions generally report the activities of their affiliates, including offshore affiliates, in consolidated financials that typically are presented to regulators, in cases where the parent financial institution is not a bank the oversight by the banking regulator in the onshore jurisdiction may not occur in these circumstances, although non-banking regulators may provide some limited oversight. For these reasons, careful review of the reputation and management of the parent or affiliated institution is likely to be the most important indicator of a legitimate offshore operation. And for these reasons it is Citibank's policy to avoid account relationships with offshore entities that are incorporated by an individual or entity that is unaffiliated with a larger, reputable bank or financial institution.

Offshore entities that are primarily booking entities requiring minimal personnel or physical operations often are managed from a location that is closer to the jurisdiction of the parent institution than the offshore jurisdiction. Your staff have indicated skepticism about the legitimacy of such "back offices" and inquired about the kinds of activity in which one might expect them to engage. Indeed, there seems to be some sense that a test of legitimacy might be whether a back office has the capacity to print and mail statements. The need to print and mail statements will depend on the customer base of the offshore and the nature of the business, and may defeat the purposes of offshore banking—confidentiality and tax planning. Mailing statements for activity in the private bank account of a customer, for example, risks breaches in the confidentiality as well as triggering a taxable event. Private bank customers often do not receive regular statements but rather rely on the personal relationship with the private banker for information about the status of their account.

In sum, local banks and financial institutions establish offshore affiliates for a number of legitimate purposes. Where the affiliate is a booking vehicle, the transactions may be managed from an onshore jurisdiction and there may be no need for a physical presence in the offshore jurisdiction. Thus, in Citibank's view, instead of looking to the existence or non-existence of a physical presence to determine the legitimacy of the offshore entity, it is more useful to look to the character and conduct of the larger institution with which it is affiliated.

Opening the M.A. Bank account. When the MAB account was opened in 1994, Citibank had an existing relationship with MAB's parent, M.A. Group, since 1989. The Financial Institutions unit head told the Minority Staff that because of the existing relationship with M.A. Group, Citibank had relied on the due diligence and existing knowledge of the parent company to substitute for some of the due diligence it would normally perform on a new account. For example, Citibank did not ask MAB for references for its previous correspondent bank. It did not enforce the 5 year operating requirement because, as the head of the Financial Institutions unit explained, the requirement is designed to ensure the potential client

has experience in the market place, and since MAB's parent had been in operation since 1983, that was fulfilled. The Financial Institutions unit head was not sure if Citibank received a copy of MAB's license. He explained that Citibank had received an audited financial statement that contained a note stating that MAB was incorporated in, and had a license from, the Cayman Islands.

It is unclear whether Citibank fully understood the nature of MAB's operations. The July 1994 Basic Information Report filled out for MAB contains the statement: "The entity appears in Mercado Abierto balance sheet as a subsidiary so it is regulated by Argentine Central Bank." However, an official of the Argentine Central Bank ("BCRA") told U.S. Customs agents that MAB was not licensed in Argentina, it was not regulated by the BCRA, and it was not authorized to operate in Argentina. MAB's President, Iribarne, told Customs agents the same thing. Moreover, as the unit head had explained to the Minority Staff, MAB was specifically created as an entity that was not regulated by the Argentine authorities so that it could sell international securities and bonds that it would be precluded from purchasing and selling if it were subject to Argentine regulations.

In light of Mr. Iribarne's statements to the Customs agents that indicated that MAB was operating out of M.A.'s headquarters in Buenos Aires, the Minority Staff asked the head of the Financial Institutions unit if Citibank believed that MAB had authority to operate in Argentina. The Financial Institutions unit head told the Minority Staff that he was not sure, that it was a legal matter. However he said he did not think that anyone at Citibank ever believed that MAB operated as a bank in Argentina.

When asked if he knew or believed that MAB operated as a bank somewhere else, the Financial Institutions unit head stated that MAB operated with Argentine clients, but not in Argentina. He said that since he was not involved in the detailed matters of accounts he really did not know, but he believed MAB had a back office operation in Uruguay. He noted that most Argentine financial institutions have back office operations in Uruguay for their Cayman Island facilities. He said the main reason for banks selecting Uruguay is that it would be too expensive to license a bank in Argentina if banking was not the principle purpose of the financial institution, and operating out of the Cayman Islands would be too far from the customers. He said it was a matter of cost and proximity that attracted banks to Uruguay.

The Financial Institutions unit head said he was not sure if anyone at Citibank had confirmed that MAB had a real operation in Uruguay. When asked, the Financial Institutions unit head stated that no one visited an MAB office in Uruguay as part of the initial due diligence on the bank. He said the decision makers of MAB were in Buenos Aires, so he did not think it made sense to look at a back office. Instead, Citibank had contact with the decision makers of the parent company.

When asked if anyone from Citibank had ever gone to Uruguay to confirm that MAB had a back office operation in that country, the Financial Institutions unit head said "no." The Minority Staff

asked that Citibank try to confirm the existence of such an office, but Citibank never did so.⁴⁴

Citibank's Response to Seizure Warrants. As noted above, in May 1998 the U.S. Customs Service presented Citibank New York with seizure warrants for funds in the accounts of MAB and M.A. Casa de Cambio. \$1.8 million was seized on May 18, 1998. The order was for the seizure of funds existing in the accounts at the time. There was no requirement or request for Citibank to freeze or close the accounts.

Citibank documents show that at the time of the seizure, Citibank New York informed Citibank Argentina of the seizure, and Citibank Argentina asked MAB about the matter. According to the Financial Institutions unit head in Argentina, Citibank did not connect the seizure warrant with illegal activity. When Citibank representatives in Argentina spoke to MAB officials at the time, the MAB officials indicated that they were surprised by the action and did not know why the funds were seized.⁴⁵

According to the marketing head in New York and the Financial Institutions unit head in Argentina, neither Citibank New York nor Citibank Argentina learned that illegal funds were the basis for the seizure until November 1999, nearly 1½ years after the seizure took place.

In August 1999, the Subcommittee subpoenaed Citibank records and statements of the MAB and M.A. Casa de Cambio accounts. As a result of the subpoena, the market head in New York called the Financial Institutions unit head in Argentina and reported that Citibank lawyers in New York were asking about the possibility of closing the MAB account because of the seizure in 1998. The market head in New York called Argentina to inquire about the account and why the Subcommittee would be subpoenaing its records. The Financial Institutions unit head in Argentina told the Minority Staff that as a result of the call from New York, he instructed the relationship manager of the MAB account to find out more about the seizure action. At that point both the market head in New York and the unit head in Buenos Aires were still unaware that the seizure was related to an undercover drug operation.

In late October, MAB presented Citibank Argentina with a two page letter report on activities associated with the seizure. In the letter, MAB stated: "Customs is investigating financial transactions within the United States which are thought to be related with illegal activities." MAB identified DiTullio as the client responsible for the transfers of the funds that were seized, but did not specifically mention that the activity was related to drug trafficking. MAB noted that it had met with and was cooperating with the U.S. Customs Service.

Subsequent to the receipt of the report from MAB, Citibank Argentina sent an e-mail to the market head in New York. The e-mail recounted the details of the seizure and passed on information that

⁴⁴The market head from New York told the Minority Staff that when Citibank installed computer equipment for MAB to enable MAB to use certain Citibank banking services, the equipment was installed in Argentina. This could be a further sign that there was no back office operation in Uruguay.

⁴⁵The marketing head in New York told the Minority Staff that although records indicate that he, along with personnel in Argentina, were informed of the seizure shortly after it occurred in 1998, he did not recall being advised of the seizure at that time.

apparently had been received from MAB—that it had cooperated with the Customs Service, the matter was at that time an administrative not a judicial proceeding, and that a resolution was expected soon. The memo concluded with an offer to close the account:

Notwithstanding this and even knowing that the shareholders are very well known in the market and the company has strict anti-money laundering control, we would be prepared to close the DDAs if you consider it necessary.

A decision was made not to close the accounts. According to the Financial Institutions unit head in Argentina, Citibank had a long relationship with M.A. Group and there were never any problems with the account or the entities involved, M.A. Group had a good reputation in Argentina, and Citibank did not believe that the organization or its officials would knowingly be involved in illegal activities.

The head of Financial Institutions in Argentina told the Subcommittee staff that he subsequently discussed the matter with two of his superiors in Argentina who instructed him to further investigate the matter and find out what the illegal activity was and what banks were involved. In November 1999, 18 months after the seizure warrant was served on Citibank, Citibank Argentina asked MAB for a copy of the wire transfers that were under investigation and asked MAB to prepare a copy of all of their documents relating to the entire matter. The head of the Financial Institutions unit in Argentina informed the Minority Staff that when Citibank Argentina received the copies of the transactions, he reviewed them and noticed that the names of the parties involved in the transactions seemed to him to be strange names for investors in Argentina. He told the Minority Staff that combined with the information he already had that illegal activity had been involved, he decided to inform the client that Citibank was going to close the MA accounts in mid-November. At that time, he still did not know that the transfers in question were related to drug trafficking.

Upon hearing that news, MAB and its attorneys asked to meet with Citibank officials. On the day of the meeting, Citibank Argentina finally received the information on the case from MAB, which revealed that the transactions in question were related to drug trafficking. At the meeting MAB requested Citibank to keep the account open and to keep the information confidential because closing the account or releasing the information to the public would harm their reputation and business. MAB officials also said that they were negotiating the sale of MAB to a European bank and any news on the closing of the correspondent account or the Customs investigation would damage the prospects for the sale. The Financial Institutions unit head asked for the name of the European bank, but MA officials would not provide it. MAB requested a meeting with Citibank New York. Citibank held off on closing the account. The Financial Institutions unit head responded that the issue was a compliance matter for the bank and he could not make a decision. Although initial efforts were made to arrange the meeting with Citibank New York, it never took place.

On December 2, 1999, a few days after Citibank received the materials from MAB and held the meeting with its principals, newspaper articles revealed that MAB accounts were frozen because of drug trafficking. According to the head of the Financial Institutions unit the action taken by Citibank Argentina at that time was to send the material to New York and place the matter in the hands of compliance in New York. Although the Financial Institutions unit head told the Minority Staff that he had previously made the decision to close the account, that action was not taken.

On December 2, 1999, the Financial Institutions unit head sent a memorandum to the head of compliance for Argentina. The memorandum recounted the history of the MAB case and the steps that had been taken by Citibank Argentina; it suggested that the closing of the account was delayed to allow public attention to dissipate. The memo included the following:

From the standpoint of process Citibank Buenos Aires cannot exercise control over accounts at Citi New York. The follow-up of that is the task of AML [anti-money laundering] and we have never received any communication in that regard. The amounts involved are not very significant because these are individual transfers of US 500,000, insignificant in the movements of the client.

The closing of the account is already decided but the present situation obliges us to wait a few days until the issue ceases to be public. The subject is being aired publicly because letters rotatory have come from the Mexican authorities seeking to recover properties purchased with these funds, since the funds apparently come from Mexican Banks.

This case can be used politically to pressure the Congress for prompt passage of laws on money laundering.

We still believe that MA acted in good faith in this case, but the public character it has taken on will mean hardship for that entity to the extent of having to close its operations.

On December 3, Citibank formally blocked the MA accounts and its legal staff conducted an investigation of all of the MA accounts. Also, on December 3, 1999, the MAB relationship manager in Argentina e-mailed the New York marketing officer who handled the MAB account. Her communication included the following:

As I anticipated yesterday, this issue has become public. We are in the middle of an ARR which will ask us about the following points:

1) What AML [anti-money laundering] control procedures does Citibank New York have? Do we know that there is an AML unit that controls the transactions, among others those sent under PUPID. At the appropriate time the BIR of the client in which the average movements of each of the accounts is shown was sent. Are there such controls? Is the AML unit in Tampa the one in charge of doing it or each division in New York?

The next day, Citibank New York responded:

I have placed a call to [the investigator], AML Unit, Florida for confirmation of what aspects of AML they monitor.

Citibank NY is currently in the process of establishing an AML procedure for your FI [Financial Institution] accounts located in New York. I will forward correspondence separately to you today to initiate this process.

According to the head of the Financial Institutions unit, Citibank Argentina was told to close the accounts in February 2000, nearly 21 months after the seizure took place. Between the time the seizure warrant was served on Citibank in 1998 and September 1999, MAB moved \$304 million through its correspondent banking account at Citibank.

Between the service of the seizure warrant in May 1998 and October 1999, Citibank did not follow up on information and communications available to it that would have revealed that the activities being investigated were related to drug trafficking. The seizure warrant served on Citibank in May 1998 indicated the seizure was related to money laundering. Citibank informed the Minority Staff that it did not notice that information when the warrant was served. The press gave widespread attention to the indictments and warrants served on numerous U.S. and foreign banks as a result of Operation Casablanca. Citibank was identified as a recipient of some warrants. Apparently, those reports did not result in any review or investigation inside of Citibank, otherwise the connection with the MAB seizure warrant would have been discovered. In June 1998, MAB wrote to Citibank and asked that Citibank:

Furnish us a report on the origin, cause [and] authority acting on the attachment order received, as well as all actions taken by you whose objective was to make disposition of Lloyds in our current account No. 361111386, as far as possible, providing us an exact copy of the documentary evidence attesting to the existence of such judicial order and of the transfers or other actions taken by you as a consequence thereof.

Citibank can find no communications that responded to MAB's inquiry. The preparation of a response to MAB would likely have informed Citibank that the seizure warrant was related to money laundering associated with drug trafficking.

In 1998 and early 1999, MAB raised the issue of the seizure several times in communications and meetings with Citibank. In May 1998, Scassera and Iribarne told the relationship manager that they did not know who ordered the transfers and were hiring an attorney in the United States to represent them in the investigations. In June Citibank received notice from MAB that the U.S. Customs Service would be requesting monthly statements and all related documentation from the MAB account. On four subsequent occasions (August, September and October 1998 and March 1999) MAB informed Citibank of its communications and contacts with the Customs Service. None of these contacts caused Citibank to make additional inquiries or learn what the nature of the action was and why the Customs Service was so interested in the account.

According to the Financial Institutions unit head, Citibank never made a connection that the involvement of the Customs Service

suggested that there might be illegal activity involved. Moreover, he told the Minority Staff that he had asked the relationship manager to find out what was involved in the situation, but the client never told her what was really going on. He noted that in March MAB officials informed the relationship manager that they expected the money to be returned soon.

When asked by the Minority Staff why Citibank did not threaten to close the account if MAB was not being responsive to its inquiries, the unit head remarked that the client was someone Citibank totally trusted and therefore never thought the seizure was related to anything illegal. Also, he told the Minority Staff that MAB told Citibank that the investigation involved one of its clients. He said under such circumstances he would have thought the warrant was related to a commercial matter.

After MAB told Citibank in October 1999 that the Customs investigation involved financial transactions related to illegal activities, it took Citibank nearly one additional month to get the information that provided details on the matter.

Additionally, Minority Staff informed Citibank counsel in late September or early October 1999 that the basis for the Minority Staff's interest in the matter was because the funds seized were the result of drug transactions related to Operation Casablanca. Apparently this information was not passed on to the market head in New York and the head of the Financial Institutions unit in Argentina, because in late October Citibank personnel in New York and Argentina still did not know the reason for the seizure.

In September 2000, legal counsel for Citibank wrote a letter to Minority Staff to explain the bank's response to the seizure warrant. In the letter Citibank informed the Minority Staff that:

Although there was nothing on the face of the warrants that linked the seizures to narcotics proceeds, the warrants did contain statutory references to 18 U.S.C. Secs. 981 and 984 and to 18 U.S.C. Secs. 1956 and 1957.

. . . The legal personnel who received the warrants apparently did not recognize that they were related to money laundering allegations and simply processed them without pursuing further inquiries.

. . . Neither did the business people in New York recognize the statutory citations in the warrants as related to money laundering. Without the benefit of the affidavit, they assumed these seizure warrants, like the vast majority of those received by Citibank, were related to a civil dispute, which would not trigger an in-depth account review.

. . . Citibank did not appreciate until late September 1999 that the seizure warrants were linked to narcotics trafficking.

. . . in response to this letter, members of the Minority Staff shared with Citibank counsel either a summary of the information contained in Agent Perino's affidavit or the affidavit itself.

. . . Citibank lawyers made inquiries to the business people about the status of the M.A. Bank account.

. . . However, . . . neither Mr. Norena or Mr. Lopez was informed that the inquiry related to allegations that the M.A. Bank account had been used to launder proceeds of narcotics trafficking. Mr. Lopez, who thought the seizure warrant was routine, did not understand the basis for the renewed interest in the seizure or the implication that the seizure should have triggered an account review.

. . . Mr. Lopez . . . initiated an inquiry with the principals of Mercado Abierto who informed him of the allegations that M.A. Bank had been used to launder drug money and, on November 19, 1999, provided him with Agent Perino's affidavit. Thereafter, Mr. Lopez recommended that Citibank terminate all of its relationships with the Mercado Abierto group, even though the Mercado Abierto principals appeared to be cooperating with the Customs Service investigation and believed that the allegations that had led to the seizure of the accounts would be quickly resolved in their favor.

. . . Citibank itself was not in a position to confirm that any suspicious account activity or pattern was in fact related to the laundering of drug money. The Mercado Abierto accounts were blocked on December 3, 1999, and were formally closed as of February 21, 2000.

. . . In deciding to open the correspondent banking accounts that were the subject of May 18, 1998 seizure warrant, Citibank was dealing with an established customer who enjoyed an excellent reputation as a long-established and significant member of the Argentine financial community.

. . . Mercado Abierto today manages an investment portfolio worth \$400 million and in April of this year ranked seventh among brokers in the Buenos Aires stock exchange. Further, in the course of performing its Know Your Customer due diligence, Citibank reviewed anti-money laundering policies that had been adopted by Mercado Abierto.

. . . But what may have happened here, as the Customs Service's Forfeiture Complaint speculates is that one of the principals "intentionally dispensed with virtually all of the standard internal controls and processes generally required to open accounts with M.A. Bank and/or M.A. Casa de Cambio."

. . . In circumstances like these, in which a principal is alleged to have subverted his own institutions internal controls the most careful scrutiny by Citibank may not be enough to prevent an unscrupulous principal from attempting to abuse the correspondent banking system once a correspondent account has been established.

. . . Although we believe that the opening of the M.A. Bank account was appropriate, Citibank's failure to undertake a complete account review in May 1998, when the seizure warrant was first received was not. As a result of the lessons learned from this episode, Citibank has adopted new procedures to process those seizure warrants that affect its relationships with correspondent banks in emerging markets, like the

seizure warrants that Citibank received for M.A. Bank and M.A. Casa de Cambio.

In March 2000, after the MA accounts had been closed, an investigator in Citibank's anti-money laundering unit conducted a self-initiated review of all of the MA Group accounts. The investigation was undertaken after the investigator saw an article about MAB in a local newspaper. In June he produced a report which included the following:

According to an article taken from *The Miami Herald* dated March 1, 2000, "Alejandro Ducler, [sic] a former vice minister of finance for Argentina, allegedly transferred \$1.8 million in drug cartel proceeds. Dulcer [sic] is one of the owners of the Argentine financial holding firm known as Mercado Abierto, which owns M.A. Casa de Cambio, M.A. Valores S.A. and M.A. Bank Limited. All four held accounts with Citibank. . . . After reviewing the funds transfer activity of the aforementioned from April 1997 through March 2000, a total of \$84,357,473.21 was transferred to the entities mentioned below. The consecutive whole dollar amounts transferred and the nature of the business contributed to the rise in suspicious activity and ongoing monitoring."

The entities identified in that report include some that were engaged in a significant amount of transactions with MAB. Citibank representatives informed Minority Staff that it was not accurate to conclude that the \$84 million in transactions identified in the AML review were suspicious. According to Citibank representatives, the review identified those transactions that involved dollar amounts and institutions that fell within parameters established by the anti-money laundering unit. Those parameters are based on information obtained through U.S. Government advisories and other expert opinion on where the bulk of money laundering occurs. According to Citibank representatives, the determination of whether the \$84 million worth of transactions falling within those parameters were anomalous or suspicious would require more investigation and analysis. That was not performed. The Minority Staff has since learned that Citibank did file a Suspicious Activity Report on the \$84 million in transactions.

FEDERAL BANK

(1) Grupo Moneta and Banco Republica

Grupo Moneta, an economic group in Argentina, was, according to Citibank records, established in December 20, 1977. According to Citibank documents,⁴⁶ Grupo Moneta was owned equally (33% each) by Argentinians Raul Moneta, Benito Lucini, and Monfina, S.A., an entity owned by the members⁴⁷ of the Moneta family. In October 1983, the Central Bank of Argentina approved the establishment of a wholesale bank in the group, Banco Republica. In March 1992, the Bahamas approved the establishment of an off-

⁴⁶ See organizational charts from 1997 and 1999 at the end of this chapter.

⁴⁷ Monfina S.A. according to Citibank records is owned equally by Raul Moneta, Fernando Moneta, Alejandra Moneta de Moim, and Alicia Moneta de French. Jorge Rivarola held a 1% interest in Grupo Moneta as well.

shore bank in the group, Federal Bank Ltd. Federal Bank was understood by Citibank officials to be an offshore vehicle for customers of Banco Republica, and its correspondent relationship was handled by Citibank in that context.

Grupo Moneta was described in a Citibank memorandum in November 1996 as “one of the most important groups in the country [of Argentina] with consolidated assets of approximately \$500 million.” According to Citibank documents, it owned at various times a number of financial entities in addition to Banco Republica and Federal Bank. These entities which were owned either directly or through other companies included Adamson Inc.; Republica Holdings,⁴⁸ which, along with Citibank, owned stock in CEI Citicorp Holdings, a company which owns stock in various telecommunications and media companies in Argentina; Citiconstrucciones, a construction company unrelated to Citibank; and International Investments Union, Ltd. Banco Republica also owned a percentage of CEI Citicorp Holdings and several other entities, including a controlling percentage in two consumer banks, Banco Mendoza and Banco de Prevision Social.

Citibank had a long-term relationship with Grupo Moneta and the families of its owners, Raul Moneta and Benito Lucini. This relationship had two primary components: Citibank’s correspondent relationship with Banco Republica, which included both cash management and credit services; and Citibank’s ownership interest, together with Grupo Moneta, in CEI Citicorp Holdings. Citibank also maintained accounts for other Grupo Moneta entities, including its correspondent account with Federal Bank. The financial institutions division of Citibank Argentina, which had responsibility for correspondent relationships in Argentina, treated its relationship with Banco Republica and its relationship with Grupo Moneta in tandem and almost interchangeably, often including an assessment of the Grupo Moneta relationship as a whole when addressing the status of Banco Republica. Federal Bank was analyzed by Citibank as a subset of the Grupo Moneta and Banco Republica relationship.

(2) Federal Bank Ownership

According to the Central Bank of the Bahamas, Federal Bank was licensed in July 1992 “to conduct unrestricted banking business from within The Commonwealth of the Bahamas.”⁴⁹ However the 1999 annual statement of Federal Bank says its license is restricted to “conduct banking and trust business with non-residents,” making it an offshore bank. This discrepancy was not explained, but the evidence is clear that Federal Bank did not act as a domestic bank in the Bahamas but confined itself to offshore banking activities. The Bahamas Central Bank said the registered office of the bank and the managing agents of the bank are the Winterbotham Trust Company, Limited, of Nassau.

The Central Bank of the Bahamas provided the Subcommittee with a document claiming to show the ownership of Federal Bank. The owners on the document were identified as Abraham Butler,

⁴⁸The name of Republica Holdings prior to January 28, 1998, was United Finance Company, or UFCO.

⁴⁹Letter dated September 7, 2000, from the Manager of the Bank Supervision Department of the Central Bank of the Bahamas to the Subcommittee.

George Knowles, and Philip Beneby, each listed as a banker in Nassau, Bahamas. Butler is shown as holding 50,000 shares; Knowles as holding 1,650,000 shares; and Beneby as holding 3,300,000 shares. When the Minority Staff inquired as to the identity of these three persons, the Central Bank said that each of the individuals is an employee of Lloyds TSP Bank in the Bahamas, which acted as Federal Bank's managing agent prior to the Winterbotham Trust Company. The Central Bank explained that Bahamas law used to allow individual officers of the registered agent to serve as nominee owners of the bank being managed. The Central Bank said that there was no good reason for this practice, it effectively disguised bank ownership, and the Bahamas no longer allows it. The Central Bank told the Minority Staff they expect that by the end of the year, the law will require bank records to reflect the names of the actual beneficial owners of all banks licensed in the Bahamas that conduct business with the public.⁵⁰

In a telephone conversation with the head of the Central Bank of the Bahamas, the Central Bank confirmed to the Minority Staff that the actual ownership of Federal Bank is similar to that reported by Citibank for Grupo Moneta, with 33% of the shares owned by Raul Moneta; 33% owned by the members of the Moneta family; 30% owned by Benito Jaime Lucini; 3% owned by Paulo Juan Lucini; and 1% owned by Jorge Rivarola. But for the 3% ownership by Paulo Lucini, this information comports with the ownership information contained in the Citibank documents for Grupo Moneta.⁵¹

In a claim directly contradicted by the information provided by Citibank and the Central Bank of the Bahamas to the Minority Staff, Raul Moneta is reported as having recently denied any ownership in Federal Bank in an interview with *The Miami Herald*.⁵²

(3) Financial Information and Primary Activities

In a December 1998 analysis of Banco Republica by Citibank, in a document entitled a "Commercial Bank Individual Analysis," the Resident Vice President of Citibank Argentina described the sources of Banco Republica's funding as follows:

The principal source of funding for BR is its base of deposits, which represents 55% of its funding. Within the composition of its deposits, we find that the principal type of BR deposit is CD's of individuals with substantial assets who trust Raul Moneta [one of the owners of Banco Republica]. This represents a change with respect to the past, since the number of deposits of institutional investors has decreased.

Second, 45%, is the lines of credit with foreign banks, which BR uses frequently for foreign trade transactions. In addition,

⁵⁰ When asked why Federal Bank's nominee owners had such a wide disparity in the number of shares each is recorded as owning, the Central Bank said it did not understand the reason for the records reflecting the differences in shares.

⁵¹ Banco Republica did not itself have any direct ownership interest in Federal Bank. Both banks were entities owned by Grupo Moneta.

⁵² "Miami Banks Used for International Money Laundering, Investigation Reveals," by Andres Oppenheimer, February 5, 2001.

BR has lines of credit with local banks such as Galicia, Deutsche, and Sudameris.⁵³

Martin Lopez, Citibank's relationship manager for Grupo Moneta entities from 1995 to 2000, told the Subcommittee that his understanding of Banco Republica was that it was a wholesale bank in Argentina that dealt with corporate customers and private bank customers in Argentina. He described Federal Bank as an offshore vehicle "to help private banking customers" of Banco Republica.⁵⁴ He added that Federal Bank was created to replace American Exchange Company, another offshore vehicle of Grupo Moneta incorporated in Panama with an office in Uruguay. American Exchange Company is discussed later in this chapter.

Lopez explained that the purpose of Federal Bank was to help private banking customers of Banco Republica who wanted to keep their deposits out of Argentina for fear of the country's economic instability. He said domestic banks like Banco Republica, in order to compete with international banks, set up these kind of offshore banks. Lopez described Federal Bank as a small offshore bank with not more than 200 or 250 customers. He said the deposits in Federal Bank belong to customers of Banco Republica and that Grupo Moneta used these deposits to provide loans through Federal Bank to another Grupo Moneta entity, Republica Holdings.⁵⁵

In a memo dated February 6, 1997, Lopez described the elements of the Federal Bank role in Grupo Moneta:

The existence of this vehicle is justified in the group's strategy because of the purpose it serves:

(a) To channel the private banking customers of Banco Republica to which they provide back-to-backs and a vehicle outside Argentina where they can channel their savings, which are then replaced in Banco Republica by Federal Bank, constituting one of the bank's most stable sources of funding (approximately US \$34 MM). (b) To channel the cash flow of the partners of Banco Republica and serve, with these deposits and the assets of Federal Bank, as a bridge, financing loans aimed at companies associated with CEI. (c) To finance UFCO⁵⁶ through swaps of their share positions giving it financing against the most liquid shares (Telefonica, Telecom) for US \$20 MM which, in turn, Federal matches with banks abroad.⁵⁷

The financial statement for Federal Bank for the year ending 1999 shows total assets in 1998 of almost \$252 million and in 1999 of almost \$133 million. The main liabilities included about \$50 million in deposits and \$40 million due to banks each year; \$64 million in 1998 and \$8 million in 1999 owed to creditors for purchases of securities; and \$66 million in 1998 and \$4 million in 1999 as "forward sales of securities." The 1999 financial statement describes

⁵³ Translated from Spanish by the Congressional Research Service.

⁵⁴ By private banking customers, Lopez meant wealthy individual seeking wealth management services from the bank.

⁵⁵ Republica Holdings, according to Lopez, has three holdings itself. Grupo Moneta's CEI shares, Telefonica Argentina shares, and Telecom shares. He added that sometimes when Republica Holdings has to pay interest on its money, it gives its shares in these entities to Federal Bank as collateral and Federal Bank loans Republica Holdings the money it requires.

⁵⁶ UFCO changed its name to Republica Holdings in January 1998.

⁵⁷ Translation from Spanish provided by the Congressional Research Service.

Federal Bank's "line of business" as "placing short-term deposits with members of the international banking community and making loans to customers either in currencies or securities and trading in securities."

The Minority Staff reviewed the monthly statements of Federal Bank for its correspondent account at Citibank and determined that during the course of Federal Bank's correspondent account at Citibank New York, from November 1992 through May 2000, over \$4.5 billion⁵⁸ moved through the account. This figure exceeds any other offshore bank examined by the Minority Staff for that period.

(4) CEI

Citibank was not only the correspondent bank for Banco Republica and Federal Bank, Citibank was also a partner with Grupo Moneta and Banco Republica, and—for a brief time—with Federal Bank, in a holding company called CEI Citicorp Holdings, S.A. (originally named Citicorp Equity Investments, S.A.), referred to hereafter as CEI. To understand the correspondent banking relationships, it is necessary to also be familiar with this business collaboration.⁵⁹

Citibank started CEI as a company to hold and manage the stock of companies in Argentina which Citibank came to own as a result of defaults on loans and conversion of its Argentinian bonds, using debt for equity swaps. Citibank owned its interest in CEI through a Delaware corporation Citibank established called International Equity Investments (IEI). Citibank's purchase of equity in Argentinian companies through its ownership of IEI and, in turn, CEI, was approved by the Office of the Comptroller of the Currency (OCC) in 1992,⁶⁰ with the condition that Citibank reduce its ownership of CEI over time. For example, the OCC said Citibank could hold no more than 40% of CEI's shares by the end of 1997, at which time CEI was to be managed by a third party, and Citibank would, by a certain time, have to completely divest itself of any ownership interest in the company. The OCC also imposed a number of other relevant conditions on Citicorp's activities relative to CEI.

In 1992, when Citibank was in need of capital and pursuant to its agreement with the OCC, it looked for a purchaser of some of its CEI stock. It found that purchaser in Raul Moneta and his financial organization Grupo Moneta. While it is difficult to piece together exactly how the Grupo Moneta's shares in CEI were purchased and distributed, it appears that in July 1992 Citibank sold approximately 10% of its CEI stock to Grupo Moneta through United Finance Company Limited (UFCO); UFCO purchased an

⁵⁸The Minority Staff calculated that the total amount of money deposited in the Federal Bank correspondent account at Citibank New York from November 1992 through May 2000 was \$4,317,646,934, excluding 5 months for which the monthly statements are missing. When estimated amounts for the missing 5 months are added to the total, the result exceeds \$4.5 billion.

⁵⁹See "Remarks Grupo Republica," dated 2/6/97, by Citibank, PS018310. "This association (CEI) means, both for Grupo Moneta and Citibank, a long-term strategic alliance which requires, because of the amount of the investment and the relative weight of Grupo Moneta therein, a very strong interrelationship between both and a commitment by both to maintain that relationship." (Translated from Spanish by the Congressional Research Service.) The Minority Staff's account of the ownership and operation of CEI is based on a briefing provided by Citibank attorneys.

⁶⁰Interpretive Letter No. 643, July 1, 1992, Frank Maguire, Acting Senior Deputy Comptroller.

additional percentage of CEI in December 1992.⁶¹ Out of its shares of CEI stock, UFCO sold a 4.27% interest in CEI to Banco Republica. Citibank loaned UFCO a substantial percentage of the funds it needed to purchase the CEI stock.

In 1998 Citibank sold additional shares of CEI stock to Grupo Moneta, and Grupo Moneta increased its overall ownership to 39.9%.⁶² Over time the ownership of CEI changed, and as of May 31, 2000, according to the June 30, 2000, annual report filed with U.S. Securities and Exchange Commission, the principal shareholders of CEI were Ami Tesa Holdings Ltd. (ATH) (67.7%) and Citibank New York (23%). Hicks, Muse, Tate and Furst, Inc. held approximately 40% of the ATH stock, and approximately 27% of the ATH stock was held in escrow by Citibank for Republica Holdings and ITC, both owned by Grupo Moneta.

In its June 2000 report, CEI described itself to the Securities and Exchange Commission as “a holding company primarily engaged through controlled companies and joint venture companies in the telecommunications business, the cable television business, and the media business in Argentina.”

(5) Correspondent Account at Citibank

Citibank opened its correspondent account for Banco Republica in 1989.⁶³ It opened a correspondent account for Federal Bank in 1992. The Banco Republica account stayed open until 1999, and the Federal Bank account stayed open until 2000, when both accounts were closed due to the collapse of Banco Republica because of a “run” on the bank in 1999. The “run,” according to Lopez was due to the publication in the Argentine press of information that Banco Republica had received a CAMEL rating of 4 from the Central Bank of Argentina. CAMEL ratings are used to grade the financial stability, safety and soundness of a banking institution. The ratings range from 1 to 5, with 5 being the worst. A CAMEL rating of 4 is considered very poor, and both Lopez and Carlos Fedrigotti, President of Citibank Argentina, told the Subcommittee they would not open an account for a bank with a CAMEL rating of 4.

The account opening documentation produced by Citibank for the Banco Republica account is limited. It consists of a Legal Agreement dated August 30, 1989, regarding use of Citibank’s Global Electronic Financial Network, the list of account numbers (there appear to be two), an account opening checklist that appears to be a reminder for sending information to various departments within Citibank, several apparently minor messages, an information sheet creating the accounts, and what appears to be a letter of request to Citibank Argentina to open an account signed by Jorge Maldera and Pablo Lucini, both directors of Banco Republica. The account opening documentation produced for the Federal Bank account is even less; it consists of a single signature card signed by Jorge

⁶¹Citibank’s attorney wrote to the Subcommittee on February 25, 2001, after reviewing a draft of this report and said that the sale to UFCO in December 1992 was an additional 10% of CEI. Documents in Citibank files, however, suggest that the 1992 sale was larger than 10%.

⁶²This increase in CEI shares for Grupo Moneta was accomplished through the purchase of the shares by Republica Holdings, formerly UFCO. It is uncertain when the Central Bank of Argentina became aware of the fact that UFCO or Republica Holdings was owned by Grupo Moneta.

⁶³It also opened an account for American Exchange Company at the same time. It appears Citibank used a common account opening document for both institutions.

Maschwitz as Director of Federal Bank. There is no documentation in the Citibank account opening records for either bank with respect to: Ownership, an audited financial statement, references from regulators or others about the bank's reputation, or a copy or discussion of anti-money laundering procedures.

Although Federal Bank is a shell bank with an offshore license, Citibank told the Subcommittee that it had a correspondent relationship with Federal Bank because Federal Bank was part of the larger financial enterprise of Grupo Moneta and was the offshore vehicle for Banco Republica, the owners of which Citibank said they knew very well. For example, one Citibank document written in March 1997 states: "There is a close relationship between our Senior Management and R. Moneta. This, added to the association that exists between this group and CEI, means that Citibank has profound knowledge of the corporate structure, details of its organization, and the operation of Grupo Moneta and Banco Republica." Another Citibank document states that Raul Moneta "has easy access to our Senior Management (John Reed, Bill Rhodes, Paul Collins, etc.)."⁶⁴

Although Federal Bank was an offshore shell bank licensed in a country known for weak banking and money laundering controls, Citibank documentation does not indicate any steps taken to ensure enhanced scrutiny of this bank. To the contrary, Citibank appeared to ignore even basic due diligence requirements it had in place for correspondent accounts. For example, although Citibank normally requires an on-site annual visit to its bank clients, Lopez said that as the relationship manager for Federal Bank, he never visited it and doesn't know anyone from Citibank who has. When asked where the bank is located, Lopez said he "has a feeling" it is in Uruguay in the offices of "some representative or attorney." When asked about the absence of a physical location for its customers, Lopez said it is like M.A. Bank; "they only need a booking unit that receives deposits and could make loans."

Lopez said that he knew Federal Bank was not permitted to conduct banking business in Argentina and that it did not have any other correspondent accounts other than Citibank, apart from its correspondent relationship with Banco Republica. Since Federal Bank is a shell bank and thus totally dependent upon its correspondent relationships, it appears that all of Federal Bank's transactions were conducted either through its correspondent account at Citibank or its correspondent account at Banco Republica.

(6) Regulatory Oversight

The regulatory authority for Banco Republica is the Central Bank of Argentina, also known as BCRA. According to Carlos Fedrigotti, the President of Citibank Argentina, the BCRA "gets

⁶⁴ Several Citibank reports on Grupo Moneta and Banco Republica note specifically the close relationship Citibank Argentina has with the owners of Grupo Moneta. A credit report from August 1997 states: "We have excellent contacts at the Senior level. . . . This close relationship gives us access to confidential internal Bank information." And a Commercial Bank Analysis of Banco Republica dated December 1998 states: "The bank's Senior Management has a strong relationship with Raul Moneta, who is No. 1 in this group. The relationship came about as a result of the 'shareholder' relationship Citibank has with Grupo Republica in CEI (Citicorp Equity Investment). Raul Moneta has easy access to our Senior Management (John Reed, Bill Rhodes, Paul Collins, etc.)." John Reed is the former Chairman of Citibank; Bill Rhodes is a Vice Chairman, and Paul Collins is a retired Vice Chairman.

good reviews” from both the banking industry in Argentina and outside parties such as the World Bank and the International Monetary Fund. Fedrigotti said the BCRA has “done a good job in cleaning up” the banking industry in Argentina and that the industry is far safer than it was 6 or 7 years ago. Fedrigotti said Citibank Argentina gets audited on an annual basis; and the Minority Staff learned that Banco Republica was subject to two audits that took place from 1996 through 1999.

The Financial Action Task Force on Money Laundering (“FATF”) and the U.S. State Department’s most recent International Narcotics Control Strategy Report (“NCSR 2000”) report indicate that Argentina’s anti-money laundering efforts are mixed. Argentina did not have a comprehensive anti-money laundering law until the year 2000.⁶⁵ Based upon passage of this new law, FATF recognized Argentina as a full member for the first time in 2000. However, FATF’s latest annual report (2000) states:

Recent high-profile investigations have shown evidence that drug cartels are active in Argentina, and underlined fears that it could become a growing international money laundering center. While there was no indication of other sources of illegal proceeds, it is believed that bribery and contraband could also contribute to the money laundering which occurs in Argentina.

The regulatory authority for Federal Bank is the Central Bank of the Bahamas. In June 2000, the Bahamas was one of 15 countries named by FATF for weak anti-money laundering controls and inadequate cooperation with international anti-money laundering efforts. The INCSR 2000 report describes the Bahamas as a country of “primary” money laundering concern due to “bank secrecy laws and [a] liberal international business company (IBC) regime [which] make[s] it vulnerable to money laundering and other financial crimes.” While banking and money laundering experts interviewed by the Minority Staff described the Bahamas as having good intentions and making important improvements, during the 1990’s it provided weak oversight and inadequate resources to regulate its more than 400 offshore banks.

Because Federal Bank and Banco Republica were both owned by Grupo Moneta, Federal Bank might also be expected to be subject to oversight by the Central Bank of Argentina as an affiliate of Banco Republica. As Citibank Argentina President Fedrigotti told the Subcommittee, if Federal Bank had been linked to Banco Republica, it would have been reviewed by BCRA. But that link was not made, however, because Banco Republica did not directly own Federal Bank, and, although Citibank knew that Federal Bank was owned by the same persons who owned Banco Republica (Grupo Moneta), the Central Bank of Argentina did not.

Ironically, in fact, Citibank officials expressed concern internally about the weak regulatory oversight of Federal Bank, because they knew the Central Bank of Argentina was not aware of the common ownership of Federal Bank and Banco Republica. In an internal

⁶⁵The Minority Staff has been advised that the effective date of the new anti-money laundering law (law 25.246) was actually February 7, 2001, because it was awaiting the approval of the President of Argentina before it could be implemented.

memo,⁶⁶ Lopez, the relationship manager for Grupo Moneta entities, wrote, “Its [Federal Bank’s] existence is not reported as linked to BCRA despite being a banking vehicle (offshore category D in our policy), which makes it a risky vehicle per se because of having only the control of the Central Bank of the Bahamas.” Yet, as discussed later, when the Central Bank asked Citibank about Federal Bank’s ownership, Citibank chose to keep silent about the offshore bank’s links to Banco Republica and Grupo Moneta. In addition, Citibank failed to give any heightened scrutiny to what its own relationship manager characterized as “a risky vehicle per se.”

(7) Central Bank of Argentina Concerns

Resolution No. 395/96. The Central Bank of Argentina has established limits with respect to the amount of stock a bank can hold in a company to which it is related and the amount of loans a bank can make to related companies. In 1996 the Central Bank became concerned about the extent of Banco Republica’s ownership (4.27%) in CEI. That amount represented more than 15% of Banco Republica’s computable equity, which is the limit previously established by the Central Bank. Banco Republica asked the Central Bank for a waiver of the 15% limit for 3 years. The Central Bank granted that waiver on the condition that Banco Republica “refrain from carrying out any transaction that involves, even temporarily, directly or indirectly increasing the financing of CEI or assuming any risk connected with said company.” It went on to require that Banco Republica not “increase its stake in other companies, except those that may eventually be associated with Banco de Mendoza S.A.,” a retail bank Banco Republica was in the process of purchasing.⁶⁷

During the 1996/7 audit, the Central Bank expressed concern that Banco Republica had increased its shares of CEI. The auditors referred to a conflict between what it was being told by Banco Republica, that the bank owned 4.27% of CEI, and what it had learned from the media and another inspection, that Banco Republica owned 33–35% of CEI. The references in the news media to a larger share of CEI are likely the ownership interest of UFCO (discussed above), also owned by Grupo Moneta. It is uncertain whether the Central Bank at the time of the 1996/7 audit knew that UFCO was owned by Grupo Moneta. The Central Bank appears to suggest that another entity linked to Banco Republica may hold the CEI shares, but it does not mention UFCO in that context. The Central Bank apparently tried to resolve the discrepancy by asking CEI for the ownership information directly, but it appears that at the time of the audit, it did not have a response from CEI. The Central Bank put as its first item for its next inspection, “Fulfillment of Resolution No. 395/96”.

In August 1998, according to Citibank documents,⁶⁸ Grupo Moneta “increased its stake in CEI to 39.9% . . . and at the same time Raul Moneta was named president of CEI. . . .” The 1998 in-

⁶⁶ See “Remarks on Grupo Republica” dated 2/6/97, PS018309. “Federal Bank Ltd.: Located in the Bahamas with US \$25 MM in capital. Its existence is not reported as linked to BCRA [Central Bank] despite being a banking vehicle (offshore category D in our policy), which makes it a risky vehicle per se because of having only the control of the Central Bank of the Bahamas.”

⁶⁷ See Resolution No. 395, Buenos Aires, August 28, 1996, Central Bank of Argentina.

⁶⁸ See FITS Argentina memo dated April 1997.

crease in shares in CEI was, it appears, in the name of Republica Holdings (formerly UFCO). If the Central Bank were to treat affiliated ownership as subject to the restrictions of Resolution 395/96, then, this increase in CEI ownership by Grupo Moneta would be a violation of the Central Bank's Resolution 395/96.

In addition, under the Resolution it appears Banco Republica was prohibited from lending money to CEI related entities. Yet in the Citibank internal documents assessing the activities of Federal Bank, Citibank notes that one of the purposes of Federal Bank is "(t)o channel the cash flow of the partners of Banco Republica and serve, with these deposits and the assets of Federal Bank, as a bridge, financing loans aimed at companies associated with CEI." This activity appears to be an end-run around the conditions imposed on Banco Republica by the Central Bank Resolution. Since Banco Republica is apparently prohibited from loaning money to companies associated with CEI, it appears Grupo Moneta was using Federal Bank to do what Banco Republica could not do. But because the Resolution prohibits Banco Republica loans "directly or indirectly" to CEI related companies, it may reach the activity of Federal Bank, as an affiliated entity, as well.

Audits. In 1996/7 and 1998, the Central Bank of Argentina conducted audits of Banco Republica, and copies of these audits were made available to the Subcommittee. These audits identify numerous concerns by the Central Bank about the management and operations of Banco Republica, and both resulted in a CAMEL rating of 4 for the bank. Although Citibank had, according to its records, "access to confidential internal bank information" about Banco Republica and had "profound knowledge" of its structure, organization and operation, Citibank said it was unaware until 1999 that Banco Republica had been given a CAMEL 4 rating by the Argentine Central Bank. A comparison of the information obtained by the Central Bank during these audits with the information Citibank Argentina had as a result of its correspondent relationship raises additional serious discrepancies and questions about the effectiveness of Citibank's due diligence and ongoing monitoring.

a. Operations and Anti-Money Laundering Controls. Citibank Argentina repeatedly notes in its analyses of Banco Republica that the bank has an anti-money laundering program. In a FITS memo (a brief financial analysis of a bank with which Citibank Argentina has a credit relationship) of April 1997, Citibank notes: "BR has internal procedures to prevent money laundering, including KYC policies. This matter is overseen by Banco Central de la Republica Argentina. We have no evidence or information from third parties that BR was or is carrying out illicit money laundering transactions with the knowledge of its management or shareholders." But in the BCRA audit of 1998, the BCRA notes with concern: "The entity under examination [Banco Republica] does not have a manual containing the programs against laundering money from illicit activities," despite early requirements that it do so and "despite the fact that the internal Auditor, in his report on the work performed between July 1997 and June 1998, pointed out that 'It is necessary to set up a manual

of rules and procedures regarding precautionary measures with respect to laundering. . .”

The Subcommittee asked Lopez whether he had obtained from Banco Republica a copy or documentation of Banco Republica’s anti-money laundering program. Lopez said he discussed the anti-money laundering program with Banco Republica management during his annual reviews and was told by the management that Banco Republica had such a program. He said he was satisfied with that response and assumed the same program would apply to Federal Bank. Lopez said he had not seen the BCRA report prior to his preparation for the Subcommittee interview, that it “was disturbing” and “shocking” to see the BCRA finding that no written procedures existed and that Banco Republica “never disclosed” to Citibank Argentina that they had a problem with the BCRA. Lopez said that sometimes his office asks to see a bank’s anti-money laundering manual and sometimes they “trust the customer.” He noted Citibank had a 20 year relationship with Grupo Moneta, and that “now I see a customer of 20 years can lie to you.”

When asked about the extent to which Citibank Argentina reviewed the anti-money laundering policies of Federal Bank, Lopez said that because Federal Bank had the same management as Banco Republica, Citibank assumed they had the same procedures. When asked whether Citibank had ever asked Federal Bank about its anti-money laundering procedures, Lopez said he did and that is reflected, he said, in the comments in the annual reviews when discussing Grupo Moneta as a whole. The Subcommittee was not able to find any reference in the Citibank documents to the anti-money laundering program or procedures of Federal Bank.

b. Federal Bank Transactions with CEI Related Companies. Resolution 395/96 appears to prohibit Banco Republica not only from increasing its ownership in CEI, but also from loaning money to CEI related entities. From Citibank documents, however, it appears that Banco Republica used Federal Bank as a way to get around that limitation and that Citibank was aware of this effort. An October 23, 1995, call memorandum from Lopez describes the utility of Federal Bank to Banco Republica. It says, “Strategically, the group needs a vehicle to which to channel its private banking and to create for it a nexus between its investment in CEI booked in UFCO and Banco Republica’s financial activity.” In describing the assets of Federal Bank, Lopez writes that \$30 million of Federal Bank’s assets are “deposits of the Banco Republica members themselves, which are lent to target-name customers of Banco Republica and to businesses linked to CEI whose loans cannot be processed through Banco Republica.”

In a September 1996 memo on Banco Republica Lopez writes that the significance of Federal Bank to Banco Republica is to, “[c]hannel the liquidity of the shareholders of Banco Republica and, with these deposits and the assets of Federal Bank, support the acquisitions or grant loans to CEI companies. . .”

The Minority Staff was not able to determine whether the BCRA regulations prohibit a bank from using an entity with common ownership as a vehicle to do what BCRA has prohibited the regulated bank from doing, but such an activity appears to be at odds

with the import of BCRA's restrictions on Banco Republica in Resolution 395/96.

c. Withholding Information from the Central Bank. The Central Bank also made several observations in the 1998 audit that information requested of Banco Republica about certain issues regarding Federal Bank was not provided despite repeated requests. The Central Bank said in the 1998 audit: ". . . everything related to the Federal Bank Limited, Republica Propiedades S.A., CEI Citicorp holdings S.A., among others, had to be claimed several times via memos or directly to the officers in several meetings held during the inspection and afterwards. It must be stated that the information given in those cases was contradictory or kept back and had to be requested over again."⁶⁹

d. Misleading the Central Bank as to the Ownership of Federal Bank. The 1998 audit suggests that the Central Bank was not aware at the time that Federal Bank was actually owned by Grupo Moneta, which also owned Banco Republica. The Central Bank's discussion of Banco Republica's operations with Federal Bank does not mention the common ownership, and in fact in its closing paragraph⁷⁰ of that discussion it seems to indicate that it was told by Banco Republica officials that "Federal Bank Limited had discontinued its operations with Banco Republica S.A."

In 1997 and 1998 according to the audit documents, Federal Bank applied to the Central Bank for the opportunity to open an office in Argentina. The Central Bank appeared to be very concerned about the fact that Federal Bank was licensed in the Bahamas and was without any consolidated banking supervision system. Again, the Minority Staff could find no mention of the bank's common ownership with Banco Republica. The Central Bank, in the end, denied the request by Federal Bank.

In the 1998 audit, the Central Bank investigators reported, "At a meeting on November 17, 1998, with Pablo Lucini, [one of Citibank's principal contacts at Banco Republica] he denied any 'economic group' relationship between BR [Banco Republica] and Federal B.L. [Bank Limited]."

This apparent misinformation by Pablo Lucini to the Central Bank of Argentina was compounded when the Central Bank specifically asked Citibank Argentina in April 1999 to provide the Central Bank with any information Citibank Argentina had with respect to the ownership of Federal Bank.⁷¹ Despite repeated references in their own documents and records to the fact that Federal Bank was 100% owned by Grupo Moneta,⁷² and that it knew Grupo Moneta so well, Citibank Argentina responded to the Central Bank that their "records contain no information that would enable us to determine the identity of the shareholders of the referenced bank."⁷³

The Subcommittee asked relationship manager Martin Lopez to explain Citibank's response to the Central Bank. Lopez said he did not see the letter before it went out, but he knew the Central Bank

⁶⁹ Annex I of 1996 Audit, Folio 28.

⁷⁰ 1996 Audit, Folio 133.

⁷¹ See the exchange of letters on this subject at the back of this chapter.

⁷² See, for example, Citibank Basic Information Reports for November 1996, August 1997, and May 1999, report Federal Bank as owned 100% by Grupo Moneta.

⁷³ May 1999 letter from Carlos Fedrigotti, CEO of Citibank Argentina to the Central Bank.

was looking for information about Federal Bank. He said he had the impression that the Central Bank “was trying to play some kind of game,” that it was “trying to get some legal proof of ownership.” When the Subcommittee asked why he thought the request for information about Federal Bank’s owners from the Central Bank was a “game,” Lopez said because one of the signers of the letter had previously been a relationship manager or unit head of financial institutions in Bank of Boston, and he must have known the owners of Federal Bank. Lopez said he thought maybe the Central Bank was put in an “awkward position” and was “looking for legal proof.” At one point he said, “We [Citibank Argentina] don’t have information in Argentina; it’s in New York.” However, the Subcommittee was later told that the annual reports on Banco Republica containing the organizational structure and ownership were, in fact, maintained in Citibank Argentina. Lopez also said he had a conversation with the counsel for Citibank Argentina and with the Chief of Staff to Fedrigotti about how to respond to the letter. Lopez said he told them he did not think Citibank should respond. He said following the conversation, Fedrigotti wrote the letter and sent it. He said Fedrigotti definitely knew at the time that Federal Bank was owned by Grupo Moneta. At the same time, Lopez argued that the letter is “technically true,” because Citibank Argentina did not have any “legal” documents showing the ownership of Federal Bank and that any such information would have been kept in Citibank New York. When asked whether he called Citibank New York to ask them or let them know of the request, he said he did not and he did not know if anyone else did.

The Minority Staff also asked Citibank Argentina President Carlos Fedrigotti about Citibank’s response. Fedrigotti said he got the letter from the Central Bank in April 1999 and that the letter was “within the context of what I knew was going on out in the market,” referring to the restructuring of Banco Republica and Grupo Moneta at that point in time. He said he read it, understood the gist of what was being requested, and handed it to his deputy. He said he told his deputy to consult with Citibank Argentina General Counsel and to prepare a response. He said a few days later a response was prepared for his signature; he said he looked at it quickly, and he did not consult the original letter. He said he saw the first paragraph, asked if it was accurate, and was told it was. He said he looked at the second paragraph that referred BCRA to Citibank in New York because that “is where the Federal Bank account was domiciled.” He said he was satisfied with the content, approved it, and spent no more than 15 seconds on it.

Apparently nothing occurred with respect to the BCRA request and Citibank Argentina’s response for more than a year, according to Fedrigotti. Then in July 2000, when the Subcommittee requested information with respect to Federal Bank from Citibank, “another review of the documents and papers was made.” Fedrigotti said the question was asked, “how is this letter (Citibank’s response to BCRA) consistent with information in Citibank files.” He said it was brought to his attention, and he got involved. He said he was told the response to BCRA was in keeping with the policy at the bank that if information is requested for an account in another jurisdiction, the person making the request should be referred to that

jurisdiction. In this case, Fedrigotti said, although Citibank Argentina handled all of the due diligence and day-to-day relationships with Federal Bank, the actual account was held at Citibank New York. Fedrigotti said that it was also true that the ownership information sought by the BCRA that Citibank Argentina had was “rebuttable”—that is, it “wasn’t information that could legally demonstrate the ownership” of Federal Bank and so the “letter was legally correct.”

Lopez said that he now knows Citibank should have answered the letter “in a different way,” that Citibank “should have done more.” He said in July 2000 when Citibank New York learned about the letter as a result of the Subcommittee’s investigation, the “compliance people were very upset” with the answer provided in the letter. Once Citibank New York decided the first response was “a mistake,” Lopez said, then a second letter was drafted and sent telling the Central Bank that Citibank has “information prepared internally by our [Citibank] institution regarding Federal Bank Limited [that] includes references to the identify of its [Federal Bank’s] shareholders.” The second letter is dated July 27, 2000.

Fedrigotti said that during his review of the matter in July 2000, “having myself been exposed more deeply to the type of information that was contained and nature of informal working papers that reflected our understanding of the connection between these entities, and keeping with our policy with being fully open with our regulators, I took the step to give information to the regulators.” Fedrigotti added that he wanted to make clear that in doing so, he was not “invalidating the legality” of the first letter. He said, “We were supplementing the [earlier] information.” But even in this second letter, Citibank Argentina does not provide complete and accurate information. For example, the Citibank letter does not acknowledge to the Central Bank that Citibank New York has a correspondent account with Federal Bank that was initiated and managed by Citibank Argentina, and it tells the Central Bank that Citibank Argentina has no account with Federal Bank.

When asked whether he remembered any conversation with Citibank officials with respect to the BCRA request about “playing games,” Fedrigotti said he did not. He added that it was “not a fair assumption” to say the BCRA was “playing games.”

After receiving information about Federal Bank’s ownership from Citibank Argentina, Fedrigotti said that BCRA recently (February 7, 2001) asked Citibank Argentina to “justify the apparent discrepancy” between Citibank Argentina’s first letter and its second letter, and Fedrigotti did so.

e. Other Central Bank Concerns. The Central Bank audits identify other concerns about the operation and management of Banco Republica. The Central Bank claimed that Banco Republica was providing financing with preferential conditions for “their linked clients” both with respect to interest rates and terms. The Central Bank was concerned that there was no organization manual for Banco Republica and that the procedure manuals for the bank had not been approved by the Board of Directors. It questioned a 10-year rental contract with Citibank for office property that it said was possibly prohibited by Argentine law. It said the work done by the external auditors of Delloite & Touche for Banco

Republica was “insufficient” regarding both the depth of the developed procedures and the level of the conclusions which do not accord with the observations and verifications determine in the inspection.” It said the controls put in place from the bank’s internal audit “are not totally appropriate” because “the procedures implemented lack the necessary depth.” In the 1998 audit, the Central Bank said, “To sum up, the present structure of the business is impossible.” As a result of its audits, the Central Bank in the 1996/7 audit and in the 1998 audit assigned a CAMEL rating to Banco Republica of 4.

During this same time, Citibank Argentina analyzed Banco Republica quite differently. Citibank gave Banco Republica an internal rating of “IA.” “I” is the highest rating a bank in a credit relationship can get from Citibank and “IV” is the worst. “IA,” according to Lopez, means Citibank recognizes some potential risk in the customer which requires more frequent follow ups. But Lopez and the Citibank Argentina team saw Banco Republica as a normal banking operation with apparently limited matters of concern. In a 1996 Basic Information Report, Lopez noted that Banco Republica was a “leading wholesale bank,” that it had “shareholders’ financial soundness,” and that it was “managed with recognized record and experience.”

Citibank New York closed its correspondent account with Banco Republica on September 27, 1999, after Banco Republica’s collapse. Citibank closed its correspondent account with Federal Bank in June 2000. When asked why there was a lengthy delay between the closing of the two accounts, Lopez told the Subcommittee that Federal Bank had requested the extended opening in order to clear out its account.

(8) American Exchange Company

American Exchange Company, according to Martin Lopez and Citibank documents, was created by Grupo Moneta prior to Federal Bank and was the first offshore vehicle of Grupo Moneta. Its account with Citibank was opened at the same time the correspondent accounts with Banco Republica were opened. At that time, Lopez said, Grupo Moneta did not need an offshore bank, because the intended activity was only to trade securities and conduct foreign exchange for customers; the offshore entity, according to Lopez did not need to hold deposits. Most of the activities of American Exchange, Lopez told the Subcommittee, were absorbed by Federal Bank over the years. He said it was his understanding that American Exchange continued after Federal Bank came into existence but with little activity.

American Exchange Company, although referred to in Citibank documents several times as an offshore bank, is not a bank, according to Lopez, but “more like an asset management and brokerage house.” It is, according to Lopez, incorporated in Panama, with a representative in Uruguay and owned by Grupo Moneta. Citibank’s monthly statements for American Exchange show its address to be in Punta Del Este, Uruguay. Lopez said he does not know how many employees American Exchange has but that maybe the company needs “one person to administer the book entries.” He said the same people he worked with from Grupo Moneta represented

American Exchange to Citibank Argentina. Lopez did not know whether American Exchange is licensed to do business in Argentina.

When asked who regulates American Exchange, Lopez said no one does, because American Exchange does not hold deposits. He said the money placed with the company does not stay in American Exchange for more than 1 or 2 days.

With respect to the extent of an anti-money laundering program at American Exchange, Lopez said Citibank Argentina believed American Exchange had the same program and procedures as the other entities in the Moneta Group. The Subcommittee has learned from reviewing the Central Bank audits, however, that Banco Republica, and other entities owned by Grupo Moneta, did not have any anti-money laundering program.

The Subcommittee subpoenaed Citibank for its documents with respect to American Exchange. The results were limited. One account opening document appears to be a signature card with the name Jorge Videla. Lopez said he did not know the identity of Videla and there was no due diligence information on him in the file. A second document appears to assign an account number to American Exchange. A third document appears to provide basic data on American Exchange, such as country of location and provides several codes apparently internal to Citibank. The investigation was unable to locate any customer profile or substantive information on American Exchange in the Citibank records.

The American Exchange account was closed on June 30, 2000. The closing appears to be part of a policy established by Citibank in the Spring of 2000 to close all demand deposit accounts for offshore vehicles of Argentinian financial entities "that are not consolidating under a local bank, and consequently regulated by the Local Central Bank."⁷⁴

(9) Suspicious Activity at Federal Bank

Money Laundering and the IBM Scandal. In January 1994, IBM Argentina made a successful bid on a contract in Argentina to install software and provide training for Banco Nacion, a government owned bank. The amount of the bid was \$300 million. It turned out that \$37 million of that amount was for a nonexistent subcontractor, Computacion y Capacitacion Rural S.A. or CCR, for the purpose of providing kickbacks to Argentine public officials involved in the contract. To date it appears IBM paid approximately \$21 million of the \$37 million, half of which has been traced to Swiss bank accounts of Argentine officials. The scandal has been called "one of the biggest political-financial scandals" in Argentina's history.⁷⁵ Part of that bribe money moved through Federal Bank. On May 10, 1994, Compania General De Negocios, a bank in Uruguay, ordered \$1 million to be taken from its Credit Suisse account and deposited in Federal Bank's correspondent account at Citibank. The \$1 million proved to be part of the \$21 million payoff from the IBM kickback scandal.

⁷⁴ E-mail dated 6/16/2000 from Martin Ubiema to James A. Forde, *et al.* CA001371.

⁷⁵ "IBM Scandal That Rocked Argentina Far From Resolved," *The Miami Herald*, May 16, 1999, by Andres Oppenheimer.

Movement of Money. In its 1998 audit, the Central Bank expressed concern about the volume of the transactions taking place between Banco Republica and Federal Bank. In the 1998 audit, the Central Bank noted that “the operation carried out by [Banco Republica] with the Federal Bank Ltd. presents peculiar characteristics due to its close relationship to the companies linked to the bank. . . .” The 1996/7 audit noted that “during November and December 1996, 8.88% and 13.53% respectively” of the money moving through Banco Republica’s correspondent account in Citibank New York “were accredited by the Federal Bank Limited.” The Central Bank said that while the amounts were not significant, it was worth noting that the majority of such money was “related to operations with companies linked with Banco Republica. . . .” The 1998 audit concluded with the suggestion that the next inspection do an “analysis of the operations with Federal Bank Limited.”

The Central Bank also noted transactions through Banco Republica and Federal Bank with respect to four offshore companies created in the Bahamas on the same date, March 18, 1997. The Central Bank noted that these companies have the same representative, and they have the same address in Uruguay as Federal Bank. These four companies are: Ludgate Investments Ltd., South Wark Asset Management Ltd., Lolland Stocks Ltd., and Scott & Chandler Ltd. The Banco Republica monthly statements from the Citibank New York correspondent account show the movement of millions of dollars each month between the accounts of these entities at Federal Bank and the accounts at Banco Republica. Out of its concern for the transactions involving these four companies, the Central Bank auditors apparently recommended obtaining more information about them from the Central Banks of the Bahamas and Uruguay.

The Minority Staff reviewed the monthly statements of Banco Republica, Federal Bank and American Exchange Company. In many instances large sums of money moved on the same day from Banco Republica’s correspondent account at Citibank New York to American Exchange’s correspondent account at Citibank New York, and then to Federal Bank’s correspondent account at Citibank New York. Other amounts moved in the reverse direction, from Federal Bank to American Exchange to Banco Republica. All of the accounts through which the money moved were U.S. dollar accounts in Citibank New York. The first chart, below, shows just a few of the many instances of the movement of such sums in these accounts. It summarizes some of the activity in 1995 and in January and February 1996. The second chart shows a similar movement of money in 2000 after Banco Republica had collapsed. In lieu of Banco Republica it appears the money began moving to or through Eurobanco.

**MOVEMENT OF MONEY THROUGH BANCO REPUBLICA, AMERICAN EXCHANGE,
AND FEDERAL BANK
1995 and 1996**

| DATE | AMOUNT | FROM | TO | TO |
|-------------------|-------------|-----------------|-------------------|-----------------|
| January 31, 1995 | \$3,000,000 | Banco Republica | American Exchange | Federal Bank |
| October 12, 1995 | \$5,000,000 | Banco Republica | American Exchange | Federal Bank |
| December 14, 1995 | \$500,000 | Banco Republica | American Exchange | Federal Bank |
| December 18, 1995 | \$1,000,000 | Banco Republica | American Exchange | Federal Bank |
| December 20, 1995 | \$700,000 | Banco Republica | American Exchange | Federal Bank |
| January 23, 1996 | \$500,000 | Banco Republica | American Exchange | Federal Bank |
| January 25, 1996 | \$300,000 | Federal Bank | American Exchange | Banco Republica |
| January 31, 1996 | \$600,000 | Banco Republica | American Exchange | Federal Bank |
| February 1, 1996 | \$200,000 | Federal Bank | American Exchange | Banco Republica |
| February 6, 1996 | \$200,000 | Federal Bank | American Exchange | Banco Republica |
| February 7, 1996 | \$200,000 | Federal Bank | American Exchange | Banco Republica |
| February 26, 1996 | \$549,778 | Verwaltungs | American Exchange | Key West Ltd. |
| February 28, 1996 | \$600,000 | Federal Bank | American Exchange | Banco Republica |
| February 29, 1996 | \$200,000 | Federal Bank | American Exchange | Banco Republica |

Prepared by the Minority Staff of the Permanent Subcommittee on Investigations, February 2001.

**MOVEMENT OF MONEY THROUGH FEDERAL BANK, AMERICAN EXCHANGE,
AND EUROBANCO
2000**

| DATE | AMOUNT | FROM | TO | TO |
|-------------------|-----------|--------------|-------------------|-----------|
| January 27, 2000 | \$300,000 | Federal Bank | American Exchange | Eurobanco |
| February 9, 2000 | \$300,000 | Federal Bank | American Exchange | Eurobanco |
| February 29, 2000 | \$300,000 | Federal Bank | American Exchange | Eurobanco |
| March 3, 2000 | \$300,000 | Federal Bank | American Exchange | Eurobanco |
| March 15, 2000 | \$200,000 | Federal Bank | American Exchange | Eurobanco |
| March 27, 2000 | \$200,000 | Federal Bank | American Exchange | Eurobanco |
| April 3, 2000 | \$200,000 | Federal Bank | American Exchange | Eurobanco |
| May 23, 2000 | \$292,343 | Federal Bank | American Exchange | Eurobanco |
| May 23, 2000 | \$50,250 | Federal Bank | American Exchange | Eurobanco |

Prepared by the Minority Staff of the Permanent Subcommittee on Investigations, February 2001.

As the 1995/1996 chart shows, for example, on January 31, 1995, \$3 million was wired from Banco Republica's correspondent account in Citibank New York to the account in Citibank New York of American Exchange Company. It was then, on that same day, wired from the Citibank New York account of American Exchange to the Citibank New York correspondent account of Federal Bank. On October 12, 1995, \$5 million was wired following the same route.

These same-day transactions appeared to be at their height in 1996. For example, it happened some 17 times in the first 2 months of 1996. The Minority Staff consulted several experts with respect to wire transfers and money laundering and not one of the five persons consulted could explain a reasonable business justification for this pattern of transfers. All five suggested that the only reason for the transactions going through American Exchange was to layer the transactions, since all of the accounts involved were dollar accounts in the United States.

Contrary to Lopez' description of Federal Bank taking the place or business of American Exchange Company for Grupo Moneta, the monthly statements of Federal Bank and American Exchange Company show years of activity involving tens of millions of dollars going back and forth between the two entities.

Lopez told the Subcommittee that Citibank Argentina in general, and he as relationship manager in particular, never saw the monthly statements of Federal Bank or Banco Republica. He said the monthly statements were handled by Citibank New York which held the correspondent account. Lopez said it would be Citibank New York's responsibility to monitor the movement of money through the Banco Republica and Federal Bank accounts. Yet Citibank New York told the Subcommittee it did not have that responsibility. The market head in New York told Minority Staff that Citibank New York only monitored the account for overdrafts and credit issues, and New York did not monitor the monthly accounts. He said the Citibank office in Tampa was responsible for money laundering oversight.

While the Central Bank of Argentina was concerned about the movement of money between Federal Bank and Banco Republica, and the movement of money involving the four Bahamian companies established in 1997, the Subcommittee found no written evidence in the materials subpoenaed from Citibank that Citibank New York or any Citibank office noticed or expressed any concern with respect to either issue. Nor was there any documentation expressing any concern about or observation of the same-day movement of money through the three accounts of Banco Republica, American Exchange, and Federal Bank.

Citibank's failure to question the transactions and unusual movements of money through the Federal Bank, American Exchange, and Banco Republica accounts is even more troubling in light of the large sums involved. Movements of \$200,000, \$500,000, even \$3 million in even sums were routine. In one exceptional transaction occurring on April 29, 1994, one transfer of \$28 million occurred. This was four to five times the size of even the larger transactions among these accounts.

In the 9 years of monthly statements reviewed by the Minority Staff, deposits of hundreds of thousands of dollars were common; the largest month saw total deposits of over \$173 million. The magnitude of these monthly statements far exceeds any other offshore bank reviewed by the Minority Staff investigation. Yet Citibank asked few questions why a shell offshore bank in the Bahamas would have access to such sums and chose to move its funds in the patterns it did.

B. THE ISSUES

M.A. Bank and Federal Bank are shell offshore banks, licensed in jurisdictions that have had weak anti-money laundering controls. Citibank accepted both banks as correspondent clients because they were affiliated with large commercial operations in Argentina. In the case of M.A. Bank, Mercado Abierto was a large financial institution that was a customer of Citibank; with Federal Bank, the relationship was even stronger. Citibank was a business partner with Grupo Moneta and had been doing business with Grupo Moneta entities for a number of years. Citibank reported in its internal analysis of these entities that the principals of both groups were persons with excellent reputations.

What Citibank overlooked or failed to see was that no past or current relationship with, and no level of confidence in the reputations of, these financial groups can replace the need for independent regulatory oversight. And as shell offshore banks, neither of these banks was subject to that oversight. With respect to M.A. Bank, Citibank failed to address the fact that the financial entity of which M.A. Bank was a part was not subject to any bank regulatory authority. Mercado Abierto, because it was a securities firm and not a bank, was not subject to oversight by the Central Bank of Argentina, and hence, M.A. Bank, as an affiliate, was never brought within the Central Bank's purview. In the case of Federal Bank, Citibank's conduct is more disturbing, because it was both aware of and concerned about the fact that the Central Bank of Argentina did not know Federal Bank was owned by Grupo Moneta, and yet it misled the Central Bank about Federal Bank's ownership when it was asked for information. Had the Central Bank known that Federal Bank was also owned by Grupo Moneta, Federal Bank, as an affiliate, might have come under the purview of the Central Bank.

These shell offshore banks appear to have achieved exactly what they set out to do—avoid independent regulatory oversight, and the structure they used to do so should have set off alarm bells at Citibank. In fact, M.A. Bank's owners acknowledged as much when they said that M.A. Bank set up administrative operations in Uruguay to avoid regulation. At least two banking experts have indicated to Minority Staff that any institution set up in a manner similar to M.A. Bank would raise red flags, and they would expect that the bank would be reviewed very closely before a correspondent relationship was established.

M.A. Bank. MAB employed banking practices that were characterized by a Special Examiner for the Federal Reserve Board of Governors as inconsistent with typical banking operations and not indicative of safe and sound banking practice. These practices were

highly vulnerable to money laundering and, as revealed by the investigation by the U.S. Customs Service, facilitated the concealment and movement of illicit funds. These practices included accepting deposits and dispensing withdrawals in Argentina, in violation of Argentine banking law; accepting deposits from unidentified sources for unknown destinations; and using withdrawal forms that did not contain the name of the bank.

The practices implemented by MAB—with the full knowledge of the owners of the bank—appear to have violated Argentine banking law, violated anti-money laundering principles and created an environment that facilitated money laundering and tax evasion. In restating its policy regarding opening accounts for shell banks, Citibank noted that “the character of the institution” is “key.” The description of MAB’s structure and banking practices that Iribarne provided to the U.S. Customs agent shows the questionable character and conduct of both MAB and the larger financial institution with which it is affiliated. Yet, there were no examinations and reviews of MAB’s practices and policies, and the due diligence and ongoing monitoring by Citibank in the case of MAB was poor.

* There was confusion at Citibank over the appropriate roles of the account managers that created a lack of coordination with respect to ongoing monitoring and lack of attention to activities in the MAB account. The Financial Institutions unit head in Argentina told the Minority Staff that New York was responsible for monitoring the account. The market head in New York said that the New York office only monitored for credit and overdraft issues. As of December 1999, the account officers in both New York and Argentina were uncertain about what, if any, review of the account was being conducted by the anti-money laundering unit in Florida. It appears that Citibank did not have in place account profiles to identify high risk customers that should be subjected to tighter monitoring. One was established for the Argentina financial institution accounts only after the bank learned that the assets seized in the MAB account were related to drug trafficking. The anti-money laundering unit in Tampa did not initiate a review of the M.A. entities until late 1999 or early 2000, more than 1½ years after the assets in the account were seized. At that point, it discovered a series of possible suspicious transactions that spanned nearly 3 years of account activity.

* Citibank was slow to follow up on the seizure warrant and did not firmly press its client for answers to obvious issues related to the seizure of the accounts’ assets. Customs issued a seizure warrant on the M.A. Bank correspondent account at Citibank for the Casablanca drug money in August 1998. Citibank, however, never took any action to review the account in light of the seizure, nor did it require its client to explain the reason for the seizure. Consequently, it was nearly 16 months before Citibank learned the reason for the seizure and began to take action. During that time period—June 1998 through September 1999—over \$300 million moved through the M.A. Bank correspondent account at Citibank.

Federal Bank. With respect to Federal Bank, Citibank remained acutely aware throughout the correspondent relationship of the fact that Grupo Moneta was a partner with Citibank in CEI. The extent to which this colored Citibank's judgment in opening and monitoring the three correspondent accounts discussed in this case history cannot be isolated, but it clearly had some effect. Citibank Argentina, which had responsibility for the due diligence in opening correspondent accounts in Argentina and in maintaining the correspondent relationships, accepted Grupo Moneta's oral assurances that it had an anti-money laundering program in place. It did not attempt to confirm that by requesting a copy of the program or the anti-money laundering requirements. No one at Citibank apparently identified any of the activity in the accounts or among the accounts as suspicious or worthy of further review, despite the many same-day transaction among Federal Bank, Banco Republica, and American Exchange Company.

But most troubling is Citibank's participation in keeping from the Central Bank information on the ownership of Federal Bank. Citibank's files are replete with references to Grupo Moneta's ownership of Federal Bank. In fact, Citibank's stated rationale for opening the account with Federal Bank, which is an offshore shell bank, and therefore an exception to Citibank's policy, is specifically because Federal Bank was part of a larger financial group with what Citibank thought was a good reputation. Citibank has told the Subcommittee that it would avoid any correspondent account with an offshore shell bank not connected with a larger financial institution with which Citibank already had a relationship. So, Federal Bank's ownership was not only something with which Citibank was totally familiar; it was central to Citibank's relationship with Federal Bank.

At the time Citibank received the request from the Central Bank for "all information" Citibank Argentina "may have about Federal Bank Limited, especially the identify of its shareholders," Citibank knew the Central Bank did not know Federal Bank was connected to Grupo Moneta and Banco Republica. If it had known, the Central Bank might have included the Federal Bank in its audits, perhaps due to its common ownership with Banco Republica. The fact that such audits were not taking place was noted by Martin Lopez, the relationship manager, in 1996 as making Federal Bank "a risky vehicle per se because it is controlled only by the Central Bank of the Bahamas." Yet in 1999 when the Central Bank of Argentina specifically asked the President of Citibank Argentina, Carlos Fedrigotti, for "all information" about Federal Bank, Fedrigotti said "our records contain no information that would enable us to determine" who owns Federal Bank.

Because of this unusual response, the question arises as to why Citibank would be less than forthright in answering the Central Bank's inquiry. One answer may be it was responding to a request from Grupo Moneta to maintain confidentiality about its activities. Another answer may be that since, according to Citibank internal documents Federal Bank was being used by Grupo Moneta to loan money to CEI related entities, it was helping Grupo Moneta avoid sanction from the Central Bank for violating the Central Bank's limitations on lending to related entities. A third answer may be

that Citibank did not want to trigger Central Bank oversight of Federal Bank. The reason for Citibank's misleading response to the Central Bank of Argentina remains a troubling mystery.

For both of these banks, perhaps the biggest failing for Citibank was that Citibank did not believe the nature of these banks—an offshore bank with no physical presence and no regulation—was an important factor. Therefore it did not give the banks heightened scrutiny or attention, where more timely and thorough reviews of their operations and transactions may have identified the unsound practices and suspicious transactions that occurred in the accounts, much earlier than when they were finally discovered.

M.A. BANK MONTHLY ACCOUNT ACTIVITY AT CITIBANK
February 1995–December 1996

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|-------------------|--------------------|----------------------|----------------------|--------------------|
| February 1995 | (\$681) | \$162,283 | \$148,296 | \$13,304 |
| March 1995 | \$13,304 | \$4,187,984 | \$4,151,288 | \$50,000 |
| April 1995 | \$50,000 | \$5,080,782 | \$5,001,453 | \$129,328 |
| May 1995 | \$129,328 | \$4,387,155 | \$4,466,484 | \$50,000 |
| June 1995 | \$50,000 | \$8,113,597 | \$8,113,597 | \$50,000 |
| July 1995 | \$50,000 | \$11,998,916 | \$11,998,016 | \$50,000 |
| August 1995 | \$50,000 | \$17,161,739 | \$17,132,380 | \$79,359 |
| September 1995 | | | | |
| October 1995 | \$50,000 | \$10,536,298 | \$10,536,298 | \$50,000 |
| November 1995 | \$50,000 | \$12,374,605 | \$12,324,187 | \$100,418 |
| December 1995 | \$100,418 | \$31,905,451 | \$31,955,869 | \$50,000 |
| Total 1995 | | \$105,908,810 | \$105,828,768 | |
| January 1996 | \$50,000 | \$15,435,676 | \$15,435,676 | \$50,000 |
| February 1996 | \$50,000 | \$18,288,394 | \$18,244,033 | \$94,361 |
| March 1996 | \$94,361 | \$29,737,386 | \$29,781,747 | \$50,000 |
| April 1996 | \$50,000 | \$27,652,732 | \$27,652,732 | \$50,000 |
| May 1996 | \$50,000 | \$70,351,181 | \$70,351,181 | \$50,000 |
| June 1996 | \$50,000 | \$113,705,149 | \$113,690,140 | \$65,008 |
| July 1996 | \$65,008 | \$56,838,539 | \$56,861,922 | \$41,625 |
| August 1996 | \$41,625 | \$77,623,351 | \$77,804,976 | (\$140,000) |
| September 1996 | (\$140,000) | \$67,787,876 | \$67,597,876 | \$50,000 |
| October 1996 | \$50,000 | \$74,085,484 | \$74,085,484 | \$50,000 |
| November 1996 | | | | |
| December 1996 | \$50,000 | \$59,039,012 | \$59,059,759 | \$29,252 |
| Total 1996 | | \$610,544,780 | \$610,565,526 | |

Prepared by the Minority Staff, U.S. Senate Permanent Subcommittee on Investigations, February 2001.
Blanks indicate missing or illegible statements.

M.A. BANK MONTHLY ACCOUNT ACTIVITY AT CITIBANK
January 1997–December 1998

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|-------------------|--------------------|----------------------|----------------------|--------------------|
| January 1997 | \$29,252 | \$53,303,323 | \$53,282,576 | \$50,000 |
| February 1997 | \$50,000 | \$52,151,036 | \$52,151,036 | \$50,000 |
| March 1997 | \$50,000 | \$61,535,040 | \$61,441,073 | \$143,967 |
| April 1997 | \$143,967 | \$51,890,047 | \$51,969,615 | \$64,400 |
| May 1997 | \$64,400 | \$65,409,697 | \$65,424,097 | \$50,000 |
| June 1997 | \$50,000 | \$123,432,889 | \$123,432,889 | \$50,000 |
| July 1997 | \$50,000 | \$77,893,843 | \$77,893,843 | \$50,000 |
| August 1997 | \$50,000 | \$69,659,609 | \$69,648,709 | \$60,900 |
| September 1997 | \$60,900 | \$34,261,446 | \$34,272,346 | \$50,000 |
| October 1997 | \$50,000 | \$63,395,384 | \$63,395,384 | \$50,000 |
| November 1997 | \$50,000 | \$29,626,805 | \$29,547,543 | \$129,262 |
| December 1997 | \$129,262 | \$32,116,655 | \$32,195,917 | \$50,000 |
| Total 1997 | | \$714,675,774 | \$714,655,028 | |
| January 1998 | \$50,000 | \$22,477,997 | \$22,477,997 | \$50,000 |
| February 1998 | \$50,000 | \$21,638,729 | \$21,656,626 | \$32,102 |
| March 1998 | \$32,102 | \$52,967,821 | \$52,898,526 | \$101,397 |
| April 1998 | \$101,397 | \$36,678,415 | \$36,729,813 | \$50,000 |
| May 1998 | \$50,000 | \$14,723,277 | \$14,772,243 | \$1,033 |
| June 1998 | \$1,033 | \$88,437 | \$83,915 | \$5,555 |
| July 1998 | \$5,555 | \$809,708 | \$803,435 | \$11,828 |
| August 1998 | \$11,828 | \$477,493 | \$487,567 | \$1,754 |
| September 1998 | \$1,754 | \$13,864,214 | \$13,851,106 | \$14,862 |
| October 1998 | \$14,862 | \$17,297,364 | \$17,271,129 | \$41,098 |
| November 1998 | \$41,098 | \$25,007,496 | \$25,041,389 | \$7,205 |
| December 1998 | \$7,205 | \$22,307,275 | \$22,285,826 | \$28,654 |
| Total 1998 | | \$228,338,226 | \$228,359,572 | |

Prepared by the Minority Staff, U.S. Senate Permanent Subcommittee on Investigations, February 2001.

M.A. BANK MONTHLY ACCOUNT ACTIVITY AT CITIBANK
January 1999–September 1999

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|------------------------|--------------------|------------------------|------------------------|--------------------|
| January 1999 | \$28,654 | \$15,456,337 | \$15,465,042 | \$19,949 |
| February 1999 | \$19,949 | \$12,091,326 | \$12,022,305 | \$88,971 |
| March 1999 | \$88,971 | \$24,896,503 | \$24,878,009 | \$107,465 |
| April 1999 | \$107,465 | \$30,695,291 | \$30,752,757 | \$50,000 |
| May 1999 | \$50,000 | \$17,330,081 | \$17,344,307 | \$35,773 |
| June 1999 | \$35,773 | \$37,675,161 | \$37,672,550 | \$38,384 |
| July 1999 | \$38,384 | \$13,204,280 | \$13,227,554 | \$15,109 |
| August 1999 | \$15,109 | \$32,415,839 | \$32,380,949 | \$50,000 |
| September 1999 | \$50,000 | \$40,784,536 | \$40,809,836 | \$24,699 |
| Total 1999 | | \$224,549,354 | \$224,553,309 | |
| Total 1995–1999 | | \$1,884,016,944 | \$1,883,962,203 | |

Prepared by the Minority Staff, U.S. Senate Permanent Subcommittee on Investigations, February 2001.

**M.A. BANK ACCOUNT ACTIVITY AT CITIBANK
AFTER SERVICE OF THE SEIZURE WARRANT
June 1998–September 1999**

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|--------------------|----------------------|----------------------|--------------------|
| June 1998 | \$1,033 | \$88,437 | \$83,915 | \$5,555 |
| July 1998 | \$5,555 | \$809,708 | \$803,435 | \$11,828 |
| August 1998 | \$11,828 | \$477,493 | \$487,567 | \$1,754 |
| September 1998 | \$1,754 | \$13,864,214 | \$13,851,106 | \$14,862 |
| October 1998 | \$14,862 | \$17,297,364 | \$17,271,129 | \$41,098 |
| November 1998 | \$41,098 | \$25,007,496 | \$25,041,389 | \$7,205 |
| December 1998 | \$7,205 | \$22,307,275 | \$22,285,826 | \$28,654 |
| January 1999 | \$28,654 | \$15,456,337 | \$15,465,042 | \$19,949 |
| February 1999 | \$19,949 | \$12,091,326 | \$12,022,305 | \$88,971 |
| March 1999 | \$88,971 | \$24,896,503 | \$24,878,009 | \$107,465 |
| April 1999 | \$107,465 | \$30,695,291 | \$30,752,757 | \$50,000 |
| May 1999 | \$50,000 | \$17,330,081 | \$17,344,307 | \$35,773 |
| June 1999 | \$35,773 | \$37,675,161 | \$37,672,550 | \$38,384 |
| July 1999 | \$38,384 | \$13,204,280 | \$13,227,554 | \$15,109 |
| August 1999 | \$15,109 | \$32,415,839 | \$32,380,949 | \$50,000 |
| September 1999 | \$50,000 | \$40,784,536 | \$40,809,836 | \$24,699 |
| TOTAL | | \$304,401,341 | \$304,377,676 | |

Prepared by the Minority Staff, U.S. Senate Permanent Subcommittee on Investigations, February 2001.

FEDERAL BANK MONTHLY ACCOUNT ACTIVITY AT CITIBANK
November 1992–December 1994

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|-----------------|--------------------|------------------------|------------------------|--------------------|
| November 1992 | \$0 | \$5,330,633 | \$5,328,982 | \$1,650 |
| December 1992 | \$1,650 | \$14,368,856 | \$14,285,770 | \$84,736 |
| January 1993 | \$84,736 | \$19,293,049 | \$19,376,530 | \$1,255 |
| February 1993 | \$1,255 | \$11,915,523 | \$11,917,691 | (\$912) |
| March 1993 | (\$912) | \$41,857,850 | \$41,851,575 | \$5,362 |
| April 1993 | \$5,362 | \$12,360,188 | \$12,329,939 | \$35,611 |
| May 1993 | \$35,611 | \$36,299,282 | \$36,339,371 | (\$4,477) |
| June 1993 | (\$4,477) | \$37,703,801 | \$37,699,349 | (\$25) |
| July 1993 | (\$25) | \$88,234,741 | \$88,251,972 | (\$17,256) |
| August 1993 | (\$17,256) | \$52,691,342 | \$52,682,873 | (\$8,787) |
| September 1993 | (\$8,787) | \$73,444,093 | \$73,438,767 | (\$3,461) |
| October 1993 | (\$3,461) | \$51,118,708 | \$51,126,460 | (\$11,213) |
| November 1993 | (\$11,213) | \$149,155,112 | \$149,143,898 | \$0 |
| December 1993 . | \$0 | \$79,902,823 | \$79,917,429 | (\$14,605) |
| January 1994 | (\$14,605) | \$119,180,140 | \$119,170,186 | (\$4,652) |
| February 1994 | | | | |
| March 1994 | (\$1,079) | \$128,860,126 | \$128,874,553 | (\$15,506) |
| April 1994 | (\$15,506) | \$173,589,317 | \$173,582,384 | (\$8,573) |
| May 1994 | | | | |
| June 1994 | | | | |
| July 1994 | (\$2,376) | \$75,126,638 | \$75,154,291 | (\$30,029) |
| August 1994 | (\$30,029) | \$104,071,925 | \$104,095,369 | (\$53,474) |
| September 1994 | (\$53,474) | \$104,015,463 | \$103,973,061 | (\$13,130) |
| October 1994 | | | | |
| November 1994 | | | | |
| December 1994 | (\$24,173) | \$131,987,104 | \$131,953,077 | \$9,853 |
| TOTAL | | \$1,510,506,794 | \$1,510,493,527 | |

Prepared by the Minority Staff, U.S. Senate Permanent Subcommittee of Investigations, February 2001.
Blanks indicate missing or illegible statements.

FEDERAL BANK MONTHLY ACCOUNT ACTIVITY AT CITIBANK
January 1995–December 1996

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|--------------------|------------------------|------------------------|--------------------|
| January 1995 | \$9,853 | \$77,902,327 | \$77,812,083 | \$100,097 |
| February 1995 | \$100,097 | \$37,320,409 | \$37,420,510 | (\$2) |
| March 1995 | (\$2) | \$40,146,626 | \$40,128,623 | \$18,000 |
| April 1995 | \$18,000 | \$64,907,222 | \$64,925,222 | \$0 |
| May 1995 | \$0 | \$66,135,773 | \$66,135,773 | \$0 |
| June 1995 | \$0 | \$53,132,809 | \$53,132,809 | \$0 |
| July 1995 | \$0 | \$38,592,158 | \$38,498,750 | \$93,407 |
| August 1995 | \$93,407 | \$35,547,949 | \$35,535,402 | \$105,954 |
| September 1995 | \$105,954 | \$36,033,726 | \$36,056,731 | \$82,950 |
| October 1995 | \$82,950 | \$24,221,051 | \$24,304,001 | \$0 |
| November 1995 | \$0 | \$36,479,258 | \$36,479,258 | \$0 |
| December 1995 | \$0 | \$113,992,702 | \$113,992,702 | \$0 |
| January 1996 | \$0 | \$54,200,617 | \$54,129,753 | \$70,864 |
| February 1996 | \$70,864 | \$62,305,676 | \$61,707,140 | \$669,400 |
| March 1996 | \$669,400 | \$75,194,172 | \$75,778,277 | \$85,295 |
| April 1996 | \$85,295 | \$48,112,851 | \$48,125,529 | \$72,617 |
| May 1996 | \$72,617 | \$56,509,422 | \$56,555,268 | \$26,771 |
| June 1996 | \$26,771 | \$55,312,054 | \$55,314,825 | \$24,000 |
| July 1996 | \$24,000 | \$53,429,086 | \$53,436,486 | \$16,600 |
| August 1996 | \$16,600 | \$63,314,748 | \$63,331,348 | \$0 |
| September 1996 | \$0 | \$39,876,070 | \$39,876,070 | \$0 |
| October 1996 | \$0 | \$46,031,435 | \$45,979,735 | \$51,700 |
| November 1996 | \$51,700 | \$58,088,719 | \$58,140,419 | \$0 |
| December 1996 | \$0 | \$81,790,876 | \$81,741,676 | \$49,200 |
| TOTAL | | \$1,318,577,736 | \$1,318,538,390 | |

Prepared by the Minority Staff, U.S. Senate Permanent Subcommittee of Investigations, February 2001.

FEDERAL BANK MONTHLY ACCOUNT ACTIVITY AT CITIBANK
January 1997–December 1998

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|--------------------|------------------------|------------------------|--------------------|
| January 1997 | \$49,200 | \$43,274,452 | \$43,323,652 | \$0 |
| February 1997 | \$0 | \$52,501,155 | \$52,501,155 | \$0 |
| March 1997 | \$0 | \$61,630,109 | \$61,630,109 | \$0 |
| April 1997 | \$0 | \$72,857,583 | \$72,853,383 | \$4,200 |
| May 1997 | \$4,200 | \$62,792,675 | \$62,796,875 | \$0 |
| June 1997 | \$0 | \$75,546,117 | \$75,546,117 | \$0 |
| July 1997 | \$0 | \$97,272,324 | \$97,272,324 | \$0 |
| August 1997 | \$0 | \$85,765,292 | \$85,765,292 | \$0 |
| September 1997 | \$0 | \$74,203,479 | \$74,203,479 | \$0 |
| October 1997 | \$0 | \$51,146,255 | \$51,008,730 | \$137,525 |
| November 1997 | \$137,525 | \$70,438,211 | \$70,575,736 | \$0 |
| December 1997 | \$0 | \$80,512,574 | \$80,512,574 | \$0 |
| January 1998 | \$0 | \$31,683,853 | \$31,683,853 | \$0 |
| February 1998 | \$0 | \$57,012,817 | \$57,012,817 | \$0 |
| March 1998 | \$0 | \$69,827,366 | \$69,827,366 | \$0 |
| April 1998 | \$0 | \$22,084,470 | \$22,084,470 | \$0 |
| May 1998 | \$0 | \$61,855,635 | \$61,841,635 | \$14,000 |
| June 1998 | \$14,000 | \$58,670,711 | \$58,663,711 | \$21,000 |
| July 1998 | \$21,000 | \$43,087,986 | \$42,220,686 | \$888,300 |
| August 1998 | \$888,300 | \$71,361,949 | \$71,873,449 | \$376,800 |
| September 1998 | \$376,800 | \$55,974,848 | \$56,334,848 | \$16,800 |
| October 1998 | \$16,800 | \$25,500,166 | \$25,489,966 | \$27,000 |
| November 1998 | \$27,000 | \$8,989,479 | \$9,014,979 | \$1,500 |
| December 1998 | \$1,500 | \$22,857,608 | \$22,859,108 | \$0 |
| Total | | \$1,356,847,114 | \$1,356,896,314 | |

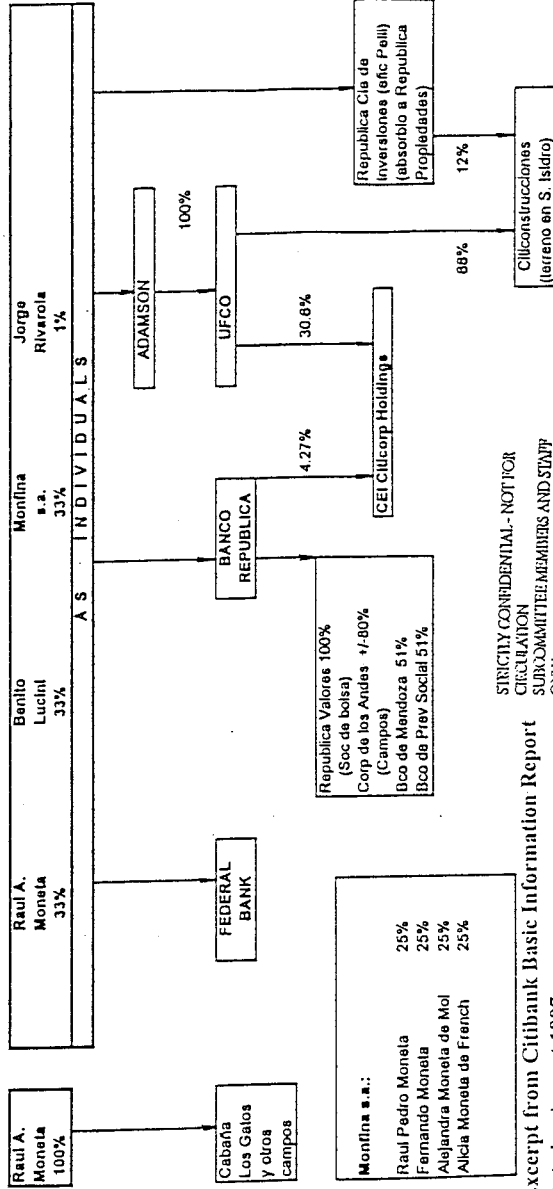
Prepared by the Minority Staff, U.S. Senate Permanent Subcommittee of Investigations, February 2001.

FEDERAL BANK MONTHLY ACCOUNT ACTIVITY AT CITIBANK
January 1999–May 2000

| MONTH | OPENING BALANCE | DEPOSITS | WITHDRAWALS | CLOSING BALANCE |
|----------------|--------------------|----------------------|----------------------|--------------------|
| January 1999 | \$0 | \$35,205,145 | \$35,205,145 | \$0 |
| February 1999 | \$0 | \$19,695,910 | \$19,695,910 | \$0 |
| March 1999 | \$0 | \$22,251,472 | \$22,251,472 | \$0 |
| April 1999 | \$0 | \$8,226,070 | \$8,226,070 | \$0 |
| May 1999 | \$0 | \$12,425,893 | \$12,424,393 | \$1,500 |
| June 1999 | \$1,500 | \$3,045,581 | \$3,047,081 | \$0 |
| July 1999 | \$0 | \$2,905,798 | \$2,905,798 | \$0 |
| August 1999 | \$0 | \$7,559,454 | \$7,559,454 | \$0 |
| September 1999 | \$0 | \$813,164 | \$813,164 | \$0 |
| October 1999 | \$0 | \$1,902,299 | \$1,902,299 | \$0 |
| November 1999 | \$0 | \$3,780,819 | \$3,779,819 | \$1,000 |
| December 1999 | \$1,000 | \$1,313,588 | \$1,314,588 | \$0 |
| January 2000 | \$0 | \$344,609 | \$344,609 | \$0 |
| February 2000 | \$0 | \$797,156 | \$797,156 | \$0 |
| March 2000 | \$0 | \$1,372,541 | \$1,372,541 | \$0 |
| April 2000 | \$0 | \$6,386,905 | \$6,386,905 | \$0 |
| May 2000 | \$0 | \$3,688,886 | \$3,660,165 | \$28,721 |
| TOTAL | | \$131,715,290 | \$131,686,569 | |

Prepared by the Minority Staff, U.S. Senate Permanent Subcommittee of Investigations, February 2001.

MONETA GROUP: SUBSIDIARIES and OWNERSHIP



STRICTLY CONFIDENTIAL - NOT FOR CIRCULATION SUBCOMMITTEE MEMBERS AND STAFF ONLY

Excerpt from Citibank Basic Information Report
Dated: August 1997

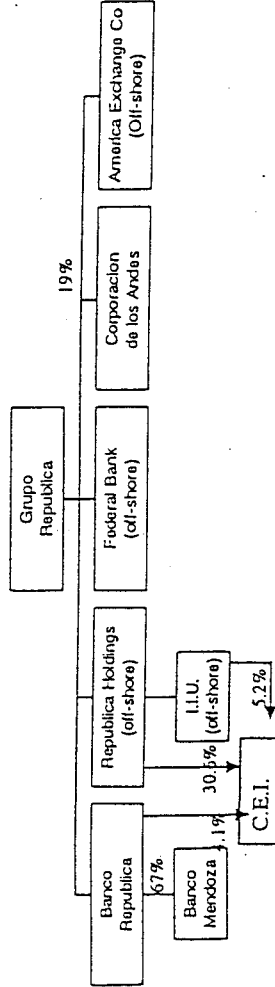
PS018276

Management Information:

Ownership:

| Owner Name | % |
|--|----|
| Raul Moneta | 33 |
| Benito Lucini | 33 |
| Monfina(Raul Moneta)(25%),Fernando(25%), Alejandra(25%) y Alicia (25%) | 33 |
| Jorge Rivarola | 1 |

If this company is a Financial Group or is part of an Economic Group, please provide an organizational chart of its structure:



PS000832



Banco Central de la República Argentina

Sírvase citar: 540/38/99

Buenos Aires,

AL RESPONSABLE DE LA ADMINISTRACION de
CITIBANK N.A. (SUCURSAL ARGENTINA),
Sr. CARLOS MARIA FEDRIGOTTI GONGORRA,
Bartolomé Mitre 530,
(1036) CAPITAL FEDERAL

STRICTLY CONFIDENTIAL - NOT FOR
CIRCULATION
SUBCOMMITTEE MEMBERS AND STAFF
ONLY

Nos dirigimos a Ud. con relación a un procedimiento para determinar si existe algún tipo de vinculación económica entre entidades financieras sujetas al control de esta Superintendencia y *Federal Bank Limited*, una sociedad constituida el 9.3.92 de acuerdo con las leyes del Estado de las Bahamas, con domicilio legal en Bolam House, King & George Streets, PO Box N° 4843, Nassau, Bahamas.


Mediante transferencias desde y hacia *Federal Bank Limited* las entidades financieras argentinas reciben y pagan depósitos de residentes en el exterior. Las transferencias se realizan con débitos y créditos en la cuenta de *Federal Bank Limited* en Citibank New York, número 36017146.

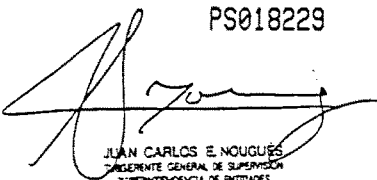
En vista de la importancia de las transferencias citadas, esta Superintendencia solicita toda información que pudiera tener esa Sucursal sobre *Federal Bank Limited*, especialmente la identidad de sus accionistas. En igual orden, también solicitamos su intercesión ante la casa en Nueva York, a fin de que su Matriz provea la información requerida.

El tratamiento será confidencial, ya que las informaciones que obtiene la Superintendencia en el ejercicio de sus facultades tienen carácter secreto, de acuerdo con el artículo 53 de la Ley 24.144.

Sin otro particular, saludamos a Ud. muy atentamente.

BANCO CENTRAL DE LA REPUBLICA ARGENTINA
Superintendencia de Entidades Financieras y Cambiarias


ELBA CASTAÑO
GERENTE DE SUPERVISION
DE ENTIDADES FINANCIERAS
Grupo D

PS018229

JUAN CARLOS E. NOUGUÉS
GERENTE GENERAL DE SUPERVISION
SUPERINTENDENCIA DE ENTIDADES

PS018229

To the OFFICER IN CHARGE OF ADMINISTRATION
OF CITIBANK N.A. (ARGENTINA BRANCH)
Mr. CARLOS MARIA FEDRIGOTTI GONGORRA
Bartolomé Mitre 530
(1036) CAPITAL FEDERAL

This is in reference to a proceeding to determine if there is any sort of economic link between financial entities subject to the control of this Superintendence and *Federal Bank Limited*, a company established on March 1992, under the laws of the Commonwealth of the Bahamas, with legal domicile at Bolam House, King & George Streets, PO Box 4843, Nassau, Bahamas.

By means of transfers from and to Federal Bank Limited, the Argentine financial entities receive and pay deposits of residents abroad. The transfers are made with debits and credits to the account of Federal Bank Limited in Citibank New York, number 36017146.

In light of the importance of the aforementioned transfers, this Superintendence requests all information that Branch may have about Federal Bank Limited, especially the identity of its shareholders. Likewise, we also request your intercession with the house in New York so your headquarters will provide the requested information.

The matter will be treated confidentially, since the information obtained by the Superintendence in the exercise of its authorities is confidential in accordance with Article 53 of Law 24,144.

Sincerely,

Translated from the Spanish by
the Congressional Research
Service

N.A.

Bartolomé Mitre 330
1036 Buenos Aires
Argentina
541/2129-1290
Fax
541/2129-1032

Carlos M. Fedrigoni
Presidente

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CIRCULATION
SUBCOMMITTEE MEMBERS AND STAFF
ONLY

Señora y Señor
Elba Castaño y Juan Carlos E. Nougés
Banco Central de la República Argentina
Reconquista 266
(1003) Buenos Aires, Argentina



De nuestra consideración:

RE: FEDERAL BANK LIMITED

De acuerdo a lo solicitado en su carta del 20 de abril de 1999, les informamos que no obra en nuestros registros información que nos permita determinar la identidad de los accionistas del banco de la referencia.

Respecto a la solicitud de intercesión ante Citibank N.A. New York, cumplimos en señalar que la información deberá ser requerida a ésta directamente, por vía de la rogatoria de estilo a ser cursada a la autoridad local competente, para que ésta, autorice y disponga la entrega de la información solicitada. Ello debido a que Citibank N.A., New York es una entidad diferente a Citibank N.A., Sucursal Buenos Aires, sujeta a jurisdicción y leyes aplicables distintas a las de ésta última.

No duden en contar con nuestra colaboración a los efectos de agilizar la mencionada intercesión ante Citibank N.A., New York, una vez efectuados por Uds. los pasos señalados en el párrafo anterior.

Sin otro particular, saludamos a Uds. muy atentamente.



PS018230

PS018230

CITIBANK [logo]

Elba Castaño and Juan Carlos E. Nogués
Banco Central de la República Argentina
Reconquista 266
(1003) Buenos Aires, Argentina

Dear Sir and Madam:

RE: FEDERAL BANK LIMITED

Pursuant to the request in your letter of April 20, 1999, this is to advise that our records contain no information that would enable us to determine the identity of the shareholders of the referenced bank.

With respect to the request to intercede with Citibank N.A. New York, please be advised that the information must be requested from that entity directly, by standard letter rogatory to be issued to the local competent authority so that it may authorize and order that the requested information be turned over. This is because Citibank N.A., New York is an entity different from Citibank N.A., Buenos Aires Branch, subject to applicable jurisdiction and laws different from those of the latter.

Please be assured of our cooperation for purposes of facilitating the aforementioned intercession with Citibank N.A., New York, once you have taken the steps specified above.

Very sincerely,

Translated from the Spanish by
the Congressional Research Service

Citibank N.A.

Bartolomé Mitre 330 541/329-1290
1036 Buenos Aires Fax
Argentina 541/329-1032

Carlos M. Feigrigoni
Presidente

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CIRCULATION
SUBCOMMITTEE MEMBERS AND STAFF
ONLY



27 de julio de 2000.

Señores
Elba Casraño/Dr. Juan Carlos Barale
Banco Central de la República Argentina
Edificio San Martín, 2do. Piso, Of. 200
(1003) Buenos Aires, Argentina

De mi consideración:

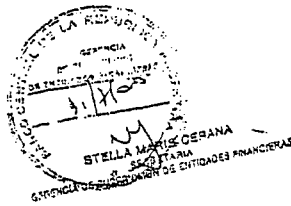
RE: FEDERAL BANK LIMITED

Tenemos el agrado de dirigimos a Uds. haciendo relación a la carta que bajo referencia 540/38/99 y con referencia al Federal Bank Limited, que esa Superintendencia nos dirigiera y la constatación, que a la misma este banco brindara.

Este banco ha tomado conocimiento de una investigación que está siendo llevada a cabo en los Estados Unidos de América sobre algunas cuestiones relativas al Federal Bank Limited, lo que nos ha llevado a revisar nuevamente la información existente en esta entidad y que está relacionada con el Federal Bank Limited. En este sentido nos parece apropiado darles a conocer que en la información elaborada internamente por nuestra institución sobre Federal Bank Limited, existe información que incluye referencias sobre la identidad de sus accionistas. Ella no tiene relación con transacciones realizadas por Citibank Argentina, puesto que Federal Bank Limited no es ni ha sido cliente de esta entidad en la Argentina.

Si están interesados en la información indicada, les rogamos nos lo hagan saber y pondremos la misma a vuestra disposición.

Carlos M. Feigrigoni
Presidente



PS018231

PS018231

July 27, 2000

Elba Castaño / Dr. Juan Carlos Barale
Banco Central de la República Argentina
Edificio San Martín, 2do Piso, Of. 200
(1003) Buenos Aires, Argentina

Dear Sir and Madam:

RE: FEDERAL BANK LIMITED

This is in connection with the letter which, under reference 540/38/99 regarding Federal Bank Limited, that Superintendence sent us, and the answer this bank provided.

This bank has become aware of an investigation being carried out in the United States of America regarding certain questions relative to Federal Bank Limited, which has caused us to re-review the information existing in this entity which is connected with Federal Bank Limited. In this regard, we feel it is appropriate to advise you that the information prepared internally by our institution regarding Federal Bank Limited includes references to the identity of its shareholders. That has no connection with transactions carried out by Citibank Argentina, since Federal Bank Limited is not and has not been a customer of this entity in Argentina.

If you are interested in the aforementioned information, please let us know and we will make it available to you.

[illegible signature]

Translated from the Spanish by
the Congressional Research
Service



APPENDIX

This appendix summarizes a number of money laundering scandals and financial frauds referenced in the report, concentrating on how each utilized U.S. correspondent bank accounts. Included are:

- (1) Bank of New York scandal;
- (2) Koop fraud;
- (3) Cook fraud;
- (4) Gold Chance fraud;
- (5) \$10 million CD interpleader;
- (6) other suspect transactions at the British Trade and Commerce Bank;
- (7) Taves fraud and the Benford account; and
- (8) IPC fraud.

(1) Bank of New York Scandal

The Bank of New York scandal became public news during the summer of 1999, with media reports of \$7 billion in suspect funds moving from two Russian banks through a U.S. bank to thousands of bank accounts throughout the world.

Pleadings from subsequent criminal cases describe what happened.³¹¹ They indicate that, during a 4-year period from 1995–1999, two Russian banks, Depositamo-Kliringovy Bank (“DKB”) and Commercial Bank Flamingo, deposited over \$7 billion into correspondent bank accounts at the Bank of New York (“BNY”) in the United States. After successfully gaining entry for these funds into the U.S. banking system, on multiple occasions, the Russian banks transferred amounts from their BNY correspondent accounts to commercial accounts at BNY that had been opened for three shell corporations, Benex International Co. Inc. (“Benex”), Becs International L.L.C. (“Becs”), and Lowland, Inc. These three corporations, in turn, transferred the funds to thousands of other bank accounts around the world, using electronic wire transfer software provided by BNY. In aggregate, from February 1996 through August 1999, the three corporations completed more than 160,000 wire transfers.

In February 2000, guilty pleas were submitted by Lucy Edwards, former vice president of BNY’s Eastern European Division, her husband Peter Berlin, and the three corporations to conspiracy to commit money laundering, operating an unlawful banking and money transmitting business in the United States, and aiding and abetting Russian banks in conducting unlawful and unlicensed banking activities in the United States. The defendants admitted that their money laundering scheme had been designed in part to help Russian individuals and businesses transfer funds in violation of Russian currency controls, customs duties and taxes. The three corporations agreed to forfeit more than \$6 million in their BNY bank accounts.

In August 2000, a Federal court held that the United States had alleged sufficient facts to establish probable cause to seize an addi-

³¹¹ *United States v. Berlin* (U.S. District Court for the Southern District of New York Criminal Case No. S1-99-CR-914 (SWK)), information filed 2/16/00; *United States v. Kudryautsev* (U.S. District Court for the Southern District of New York Criminal Case No. S1-00-CR-75 (JSR)), information filed 3/29/00.

tional \$27 million from two BNY correspondent accounts belonging to DKB and its part owner, another Russian bank called Sobinbank.³¹² The judge expressed skepticism regarding Sobinbank's claim to be protected from seizure of its funds due to its status as an innocent bank, observing in a footnote:

The Court cannot fathom how billions of Sobinbank's dollars could have been transferred out of its constantly replenished BONY Account, to accounts in the United States, without Sobinbank's knowledge or willful blindness to the scheme.³¹³

While denying criminal liability for its own actions, BNY committed itself in a February 2000 agreement with the Federal Reserve Bank of New York and the New York State Banking Department to revamping its correspondent banking practices and anti-money laundering controls. In particular, BNY agreed to strengthen its due diligence reviews and its systems for reporting suspicious activity. BNY subsequently ended correspondent relationships with about 180 Russian banks.

The BNY scandal caused other U.S. banks to review their correspondent accounts with Russian banks as well. Information provided in response to the Subcommittee's correspondent banking survey indicates that, from 1998 to 2000, Deutsche Bank's U.S. operations reduced the number of its correspondent relationships with Russian banks from 149 to 57, while HSBC Bank USA ended almost 230 relationships with Russian banks, going from 283 to 57.

The BNY scandal also led to a wider review of Russian money laundering activities utilizing international payment systems to move funds.³¹⁴ The State Department's 1999 International Narcotics Control Strategy Report, a leading analysis of international anti-money laundering efforts, reported that according to the Central Bank of Russia, \$78 billion was sent by Russians to offshore accounts in 1998 alone, and \$70 billion of that amount went through banks chartered in Nauru, a small island in the Pacific. In response, several U.S. banks determined in 1999 that they would no longer open correspondent accounts or process wire transfers for banks licensed by Nauru or certain other small South Pacific islands. Nauru is reported to have licensed 400 banks in recent years, including Sinex Bank which, according to the court order in the BNY civil forfeiture case, was the ordering party "responsible for over \$3 billion in transfers to the Benex and Becs Accounts" at the Bank of New York.

The BNY money laundering scandal, the revelations regarding Russian correspondent banking practices, and the \$7 billion and \$78 billion figures reflecting possibly illegal Russian funds moving through the U.S. and international correspondent banking systems, drive home the money laundering vulnerabilities present in the correspondent banking field.

³¹²*United States v. \$15,270,885.69 (2000 U.S. Dist. LEXIS 12602, 2000 WL 1234593 SDNY 2000).*

³¹³*Id.* at footnote 11.

³¹⁴*See, e.g.,* 1999 hearings on Russian Money Laundering before House Banking Committee.

(2) Koop Fraud

In February 2000, William H. Koop, a U.S. citizen from New Jersey, pleaded guilty to conspiracy to commit money laundering in violation of 18 U.S.C. 1957.³¹⁵ Koop was the key figure in a financial fraud which, over 2 years, bilked hundreds of U.S. investors out of millions of dollars. As part of this fraud, Koop made frequent use of U.S. correspondent accounts utilized by three offshore banks, Overseas Development Bank and Trust (ODBT), Hanover Bank and British Trade and Commerce Bank (BTCB). He moved about \$13 million in illicit proceeds through U.S. accounts associated with these banks,³¹⁶ and used their services to launder these funds and otherwise advance his fraudulent activity.

Nature of Koop Fraud. Court pleadings, documents, videotapes, and interviews³¹⁷ provide the following information about Koop's illicit activities.³¹⁸ In or around the summer of 1997, Koop, a retired swimming pool contractor with no financial credentials or education beyond high school, began to represent himself as an experienced investment advisor. Koop claimed he had a high yield investment program that could produce returns as high as 489% over a 15-month period, allegedly with little or no risk. He also admitted in his criminal proceedings that he had represented himself as specializing in "prime bank notes," which he acknowledged are fictitious financial instruments. On a number of occasions, Koop appeared before groups of small investors urging them to pool their funds into amounts of \$1 million to \$5 million, for placement into his investment program. Over 200 U.S. investors appear to have placed funds with Koop. With rare exceptions, none has recovered any of their principal or promised returns.

Koop called his investment program the "I.F.S. Monthly 'Prime' Program." Koop operated this program through several entities he controlled, all of which he referred to as "IFS." These entities included: (1) International Financial Solutions, Ltd., which was incorporated in Dominica by OBD, and changed its name on 11/28/97, to Info-Seek Ltd.; (2) Info-Seek Asset Management Trust, which was established by BTCB in Dominica on 4/20/98; and (3) Info-Seek Asset Management S.A., which was established by BTCB in Dominica on the same day, 4/20/98.

Koop prepared and distributed a large packet of information about the IFS investment program to potential investors. His promotional materials explained the IFS investment program as follows:

³¹⁵ *United States v. Koop* (U.S. District Court for the District of New Jersey Criminal Case No. 00-CR-68), criminal information dated 2/4/00.

³¹⁶ As set out in the case histories for each bank, Koop moved about \$4.3 million through ODBT, nearly \$5 million through Hanover Bank, and about \$4 million through BTCB. He moved additional millions through other banks in the United States and elsewhere.

³¹⁷ Key interviews included a March 30, 2000 interview of Koop; a June 26, 2000 interview of Hanover Bank's sole owner, Michael Anthony ("Tony") Fitzpatrick, an Irish citizen who voluntarily cooperated with the investigation; a October 13, 2000 interview of ODBT's sole owner L. Malcolm West, a British citizen who also voluntarily cooperated; and a July 23, 2000 interview of Terrence S. Wingrove, a British citizen fighting extradition to the United States to stand trial on criminal charges related to the Koop fraud. Wingrove also voluntarily cooperated with the investigation and was interviewed at Wormwood Scrubs prison in London.

³¹⁸ Many of the documents in this matter were provided by a defrauded investor who filed suit against Koop, *Schmidt v. Koop* (U.S. District Court for the District of New Jersey Civil Case No. 978-CIV-4305), in an attempt to recover a \$2.5 million investment.

This program will pay you up to 489% plus principal on your investment, and your initial investment is guaranteed. . . . Receive a check for 5% of your initial investment each month while your balance grows to the rate chosen in any one of the following listed programs. Your first check starts after the first 90 days. . . . **If you are worried about whether IFS will really pay what is promised, please be advised that IFS has never failed to payout on any program that it has ever entered into with any and all clients.** [Emphasis in original text.]

In a section entitled, “Frequently asked questions,” the IFS materials explained how IFS could offer such large returns:

Your investment in the form of money will be held in a trust offshore. There is a very large demand offshore for large blocks of money that are certified and cleared as clean funds. By joining group funds together and committing large blocks of funds, we are able to command the returns that are normal for these transactions.

In response to a question about the safety of the funds, the IFS materials stated:

All of the monies go into the trust where they are disbursed through lines of credit and promissory notes. This is done through a credit line that IFS has been able to establish with many of the prime banks of the world. The money never leaves the trust. The truth of the matter is that these funds are safer than mutual funds, real estate and the stock market.

When asked about taxes, the materials stated, “It is up to you to report your income to Uncle Sam as you see fit to do so. Due to the fact that IFS is setup as a pure private trust, we do not report it to anyone.”

Koop worked with a number of other persons who served as intermediaries in organizing individuals into investment groups and soliciting investment funds. Koop worked, for example, with a minister in South Carolina, Johnny Cabe, who formed his own company called Hisway International Ministries, and solicited investments primarily from church members.³¹⁹ He worked with Hank A. Renovato Jr. who formed a Nevada corporation, Capital Fortress, Inc., and solicited investors in Alabama and Colorado. He worked with Glenn Cruzen who formed a company called Effortless Prosperity and solicited investments in Texas and California; Richard Olit who solicited investors in California; Leighton L.K.L. Sukanuma who formed a Nevada corporation called Aloha “The Breath of Life” Foundation, Inc.; and Mark A. Meyerdirk in Kansas. Koop also worked with two individuals living in England, Terrence Wingrove and Winston Allen. Koop has indicated that he typically paid an intermediary 10% of the funds they were responsible for directing into the IFS investment program.³²⁰

³¹⁹See *United States v. Johnny William Cabe and Shelton Joel Shirley* (U.S. District Court for the District of South Carolina Criminal Case No. 0:00-301) and *United States v. Terrence Stanley Victor Wingrove* (U.S. District Court for the District of South Carolina Criminal Case No. 0:00-91).

³²⁰*Schmidt v. Koop*, Koop deposition (12/10/98) at 121.

Koop's Use of Offshore Banks. Koop utilized numerous bank accounts in the commission of his illicit activities. At first, he directed fraud victims to send money to his personal bank account at Interchange State Bank in Saddle Brook, New Jersey. Later he directed funds to banks in other States such as Illinois, Missouri, and Oregon. In 1997, he began using offshore banks. Koop used the offshore banks examined in this investigation to further his fraudulent activities in four ways: (1) to establish offshore companies to conduct business transactions; (2) to open offshore accounts where co-conspirators and investors could send funds and he could start to launder them; (3) to generate revenue and perpetrate his fraud by offering investors the opportunity, for a fee, to open their own offshore bank accounts where promised investment returns could be deposited; and (4) to increase his wealth by earning interest on deposits or using the offshore banks' investment programs.

Overseas Development Bank and Trust. ODBT was the first offshore bank Koop used in his fraud. ODBT established Koop's initial offshore corporation, International Financial Solutions, Ltd., which would become one of Koop's primary corporate vehicles for the fraud. ODBT opened five accounts for Koop and allowed millions of dollars in illicit proceeds to move through them. It allowed Koop to open at least 60 more accounts for third parties—who turned out to be the defrauded investors, before ODBT liquidity problems caused Koop to switch his offshore banking to Hanover Bank and BTCB.

According to Koop, he first became involved in offshore banking when, in 1997, he saw a fax advertising offshore services at American International Bank (AIB) in Antigua and Barbuda. Koop said that he quickly and easily established his first offshore corporation and opened his first offshore account at AIB, without ever actually speaking to anyone at the bank. He said he simply exchanged faxed materials with the bank, including an application form requesting minimal due diligence information, and his corporation and account were established.

Koop said in his interview that he later learned that AIB had been taken over by ODBT and so began dealing with ODBT. However, account documentation indicates that he dealt with directly with ODBT from the beginning, and that ODBT appears to have handled his accounts from their inception.³²¹ The documentation indicates that Koop had accounts at ODBT for almost 2 years, from August 1997 until April 1999, which was also the key time period for his fraudulent activity.³²²

³²¹ For example, the investigation obtained copies of faxes dated 8/12/97, which were written by Koop, were addressed specifically to ODBT, and referred to the initial opening of Koop-related accounts at the bank. A key account statement covering an 18-month period from 8/97 until 3/99, was also issued by ODBT. The investigation found no similar documentation addressed to AIB. Because, from its inception in 1996 until late 1997, ODBT had a correspondent account at AIB, Koop may have mistakenly thought that he was dealing with AIB. Much of the documentation related to the Koop accounts at ODBT was collected in discovery proceedings related to *Schmidt v. Koop*, after Koop provided written authorization for ODBT to produce all documentation related to his accounts at the bank. Some of the documents refer to Overseas Development Bank, or Overseas Development Banking Group, rather than Overseas Development Bank and Trust. But because the vast majority refers to ODBT, this discussion refers to ODBT throughout the text.

³²² ODBT also appears to have kept the Koop-related accounts after it terminated its association with AIB in the spring of 1998, possibly because Koop was one of the few AIB depositors with substantial assets.

ODBT documentation indicates that the bank established at least the following five Dominican corporations for Koop and opened bank accounts in their names:

- (a) account numbered 010-001-988 for International Financial Solutions, Ltd.;³²³
- (b) account numbered 010-002-285 for International Financial Solutions, Ltd.;³²⁴
- (c) account numbered 010-003-844 for Info-Seek Ltd.;
- (d) account numbered 010-003-753 for Charity-Seek International Ltd.;³²⁵ and
- (e) account numbered 010-003-754 for Professional Fund Raisers International Ltd.

The investigation obtained only one, fairly complete account statement for these five accounts. It lists all transactions for IFS account numbered 010-001-988, from August 1997 when it opened, until March 17, 1999, about a month before the account closed. Most of the deposits and withdrawals were in large round numbers, such as \$10,000, \$50,000 or \$100,000. Many of the deposits were made by Koop, his fraud victims or co-conspirators.³²⁶ Over a dozen transactions, mostly withdrawals, exceeded \$100,000.³²⁷ Altogether over almost 18 months, the account statement shows deposits totaling more than \$4.3 million and withdrawals of nearly the same amount.

The investigation also obtained a single page from an account statement for the IFS account numbered 010-002-285, covering the first month this account was opened. It shows an initial deposit of \$800,000, all of which was transferred from the original IFS ac-

³²³The incorporation papers for Koop's key offshore company, International Financial Solutions, Ltd., indicate it was incorporated in Dominica on 10/21/94, although later documents claim the incorporation date was 10/21/97. Since the ODBT account documentation shows transactions as early as August 1997, however, the 1994 incorporation date appears more likely to be authentic. On November 28, 1997, Koop changed the name of his company from International Financial Solutions, Ltd. to Info-Seek Ltd. He referred to both companies as "IFS."

³²⁴This account was associated with a Visa credit card that ODBT had provided to Koop's company and was apparently used to pay the company's substantial Visa charges.

³²⁵Charity-Seek International Ltd. was incorporated as a Dominican bearer-share company by ODBT at Koop's request in December 1997. Koop told the bank that the company would be owned by Charity-Seek International Trust, which Koop described as a trust he had previously established in Belize and which was controlled by him and his associates, Hank Renovato, Leighton Sukanuma and Mark Meyerdirk. Professional Fund Raisers International Ltd. was incorporated by ODBT on the same day as a bearer-share company that Koop said would be owned by a Belizian trust, Professional Fund Raisers International Trust, controlled by the same individuals. Koop requested the establishment of both companies and their accounts in a 12/2/97 memorandum he sent to West at ODBT. He asked ODBT to establish the companies and accounts within 24 hours of his request. Koop also made the unusual request that ODBT serve as the account signatory for both accounts, apparently to avoid identification of the accounts if a subpoena were to request all accounts for which Koop were a signatory. In response, ODBT established both accounts within 24 hours, although it is unclear whether ODBT agreed to act as the signatory for them. West indicated in his interview that he did not recall either account and did not believe that ODBT would have agreed to act as the signatory since that would have been "very unusual." He said that his normal course of action would have been to forward the Koop requests to AIMS for processing. He promised to research the matter and provide copies of the account opening documentation if they could be located, but no such documents were provided to the Minority Staff investigation.

³²⁶ODBT also opened accounts for some of the persons working with Koop, in particular account numbered 010-003-026 for Effortless Prosperity, a company associated with Glenn Cruzen.

³²⁷The largest transactions were:

- \$1.2 million withdrawal on 9/8/97 to Bank of America for George Bevre;
- \$800,000 transfer on 11/5/97 to the second IFS account numbered 010-002-285;
- \$800,000 withdrawal on 12/3/97 to Arab Bank in Dubai, U.A.E.; and
- \$500,000 withdrawal on 3/6/98 to Measures Frank & Co.

count; two withdrawals totaling \$700,000, which were wire transferred on December 3, 1997 to Arab Bank in Dubai, and a closing balance of about \$100,000. On November 26, 1997, Overseas Development Banking Group issued a letter "To Whom It May Concern" stating that Koop was the sole signatory for the IFS account and the account balance was in excess of \$1.5 million.³²⁸ All of this money was related to Koop's self-confessed financial fraud and money laundering.

The IFS account statement also includes four entries showing that Koop paid \$300 per account to open 60 additional accounts at ODBT, apparently for fraud victims who wished to open their own offshore accounts.³²⁹ Koop apparently was charging his investors a much higher fee than \$300 for each account he opened. The investigation obtained copies of faxes sent by 16 individuals in nine States in the United States to ODBT, inquiring about the status of their ODBT accounts and whether Koop or IFS had deposited any funds into them. When asked, West indicated during his interview that he had been unaware of the 60 accounts opened by Koop for third parties. He said that, in 1999, ODBT had closed numerous accounts with small balances due to a lack of information about the beneficial owners of the funds, and guessed that the 60 accounts were among the closed accounts. While he promised to research the 60 accounts, he did not provide any additional information about them.

Because the Minority Staff investigation was unable to obtain account statements for the 60 accounts, the other four accounts opened for Koop, and the accounts opened for other persons involved in the IFS investment scheme, the total deposited into ODBT accounts in connection with the Koop fraud is unknown. The facts indicate, however, that it is certain to collectively involve millions of dollars.

Koop directed his co-conspirators and fraud victims to send funds to his ODBT accounts through various U.S. correspondent accounts. For example, account statements for Jamaica Citizens Bank Ltd. (now Union Bank of Jamaica, Miami Agency) show numerous Koop-related transactions from October 1997 into early 1998. Wire transfer documentation shows repeated transfers through Barnett Bank in Jacksonville. In both cases, the funds went through a U.S. account belonging to AIB, and from there were credited to ODBT and then to Koop. In January 1998, Koop also issued wire transfer instructions directing funds to be sent to Bank of America in New York, for credit to Antigua Overseas Bank, for further credit to Overseas Development Bank, and then to one of his five accounts at ODBT.

In the spring of 1998, ODBT began experiencing liquidity problems and failing to complete Koop's wire transfer requests. Koop materials from this time period state:

³²⁸This balance apparently reflects both IFS accounts open at the time, account 101-001-988 with about \$783,000, and account 010-002-285 with about \$800,000.

³²⁹These account entries were:

- \$7,500 on 11/7/97 for 25 accounts;
- \$4,500 on 11/12/97 for 15 accounts;
- \$4,500 on 1/16/98 for 15 accounts;
- \$1,800 on 2/13/98 for 6 accounts.

We are currently transacting our banking business with the Overseas Development Bank and Trust Company, which is domiciled in the island of Dominic[a] in the West Indies. We have witnessed a slowness in doing business with this bank as far as deposit transfers and wire transfers are concerned. Because of these delays, we have made arrangements with the Hanover Bank to open accounts for each of our clients that are currently with ODB, without any charge to you. If you are interested in doing so, please send a duplicate copy of your bank reference letter . . . passport picture . . . [and] drivers license. . . . IFS will then open an account for you in the Hanover Bank, in the name of your trust.

By April 1998, Koop began directing his co-conspirators, and fraud victims to deposit funds in U.S. correspondent accounts being used by Hanover Bank or BTCB, and generally stopped using his ODBT accounts. In a document sent to Koop investors entitled, "A Personal Letter from the Desk of William H. Koop," dated June 22, 1998, Koop stated that, due to the problems encountered at ODBT, IFS had made the "changeover" to Hanover Bank. Koop finally closed his ODBT accounts in April 1999.

Hanover Bank. Koop's subsequent use of Hanover Bank is detailed in that bank's case history, earlier in this report.

Koop and BTCB. Koop stated that he began his relationship with BTCB in mid-1998, after a chance meeting in Washington, D.C. with Charles Brazie, a BTCB vice president, who told him about the bank's high yield investment program and faxed him account opening forms.³³⁰ BTCB documentation indicates that Koop opened his first BTCB bank account on April 20, 1998.

Over the course of 1998, BTCB documentation indicates that the bank established the following five Dominican corporations for Koop and opened bank accounts in their names:

- (a) account numbered 101-011089-0 for Info-Seek Asset Management S.A.;
- (b) account numbered 101-011079-2 for Hanover B Ltd.;
- (c) account numbered 101-011117-3 for Cadogan Asset Management Ltd.;
- (d) account numbered 101-011107-5 for Atlantic Marine Bancorp Ltd.; and
- (e) an account for Starfire Asset Management S.A.

The Info-Seek Asset Management S.A. account was the successor to Koop's three IFS accounts at ODBT. Hanover B Ltd. was incorporated on May 21, 1998. The Hanover B account was opened in an apparent attempt by Koop to mimic a correspondent account for Hanover Bank. Koop has stated in a sworn deposition that the name "Hanover B Ltd." was chosen "to correspond to Hanover Bank."³³¹ Another person indicted in the Koop fraud, Terrence Wingrove has said that he understood the Hanover B account was opened to "mirror" the real Hanover Bank account and make fraud victims think they were sending funds to either IFS or to their own Hanover Bank offshore accounts that Koop, for a fee, had pre-

³³⁰ See account opening documentation, 4/9/98 document signed by Brazie on how to structure BTCB relationship. See also *Schmidt v. Koop*, Koop deposition (12/10/98) at 130.

³³¹ *Schmidt v. Koop*, Koop deposition (3/2/99) at 431.

tended to open for them. In a letter dated 12/10/98, BTCBs own legal counsel referred to the Hanover B account as the “Hanover Bank” account.³³²

BTCB account statements covering most of 1998,³³³ show that in a 6-month period from April to October 1998, over \$2.6 million was transferred into and out of the IFS account, while about \$1.3 million passed through the Hanover B account in the same period.³³⁴ These funds, which were deposited into BTCB’s U.S. accounts at BIV and Security Bank, total almost \$4 million. All of this money is related to Koop’s self-confessed financial frauds and money laundering.

Most IFS investors, when sending money to IFS directly, transferred amounts in the range of \$5,000 to \$50,000. The largest single IFS investor appears to have been Glenn Schmidt, of California, who sent \$2.5 million. This money was sent by wire transfer on 4/22/98, 2 days after Koop opened his first account at BTCB. Schmidt transferred the funds from his bank in California to BTCBs correspondent account at BIV in Miami, for further credit to IFS. It was the largest single deposit into BTCB’s account at BIV. Koop admitted in his criminal case that he had convinced Schmidt to invest these funds, failed to invest the money as promised, and failed to repay any funds to Schmidt despite repeated assurances. Instead, he used the \$2.5 million to provide funds to his co-conspirators, establish four more accounts at BTCB, and make Ponzi payments to a few IFS investors awaiting returns. He also transferred \$1 million to a Bank of America account in Oregon for “CPA Services,” a company run by the Christian Patriot Association, an organization which is associated with militia groups and which Koop said he sometimes used to make cash payments to third parties.³³⁵

In September 1998, Schmidt filed a civil suit in federal court in New Jersey to recover his \$2.5 million.³³⁶ That suit named as defendants Koop, several of his companies, BTCB, BIV and Hanover Bank. BTCB sought to be dismissed from the suit, claiming among other arguments that the suit had failed to state a claim against the bank and the U.S. court lacked jurisdiction over it. BTCB also, at first, seemed to deny any relationship with Koop. A 10/29/98 “certification” filed by BTCB president Requena stated in part: “[T]here is not, nor has there been an account opened in BTCB . . . for ‘William H. Koop’ or for ‘International Financial Solutions Ltd.’”³³⁷ Despite this certification, plaintiffs counsel sent BTCB a written authorization by Koop to provide documentation related to

³³² Both BTCB and Hanover Bank have told the investigation that they never dealt directly with each other, and Hanover Bank never opened a correspondent account at BTCB. While the documentation supports that representation, the documentation also makes it clear that Hanover B Ltd. was confused on more than one occasion with Hanover Bank.

³³³ These statements were produced by BTCB in response to *Schmidt v. Koop* discovery requests.

³³⁴ BTCB account statements for the Cadogan and Atlantic Marine Bancorp accounts show they were opened in July 1998, with the \$6,500 minimum in deposits allowed, and experienced no further activity through December 9, 1998. No account statement was produced for the Starfire account. The deposits into the IFS and Hanover B accounts came from co-conspirators in the Koop fraud and from defrauded investors. BTCB records show, for example, that Koop’s co-conspirator, Cabe, sent payments of \$450,000, \$150,000 and \$499,990 to the Hanover B account. Several IFS investors wired funds to the IFS account.

³³⁵ *Schmidt v. Koop*, Koop deposition (12/10/98) at 66, 73.

³³⁶ This is the *Schmidt v. Koop* case.

³³⁷ *Schmidt v. Koop* “Certification of Rudolfo Requena,” dated 10/29/98.

“any BTCB account” controlled by or related to him. In response, on 12/10/98, BTCB disclosed that Koop had, in fact, five accounts at the bank and provided account statements and other information. In return, plaintiff’s counsel voluntarily dismissed BTCB from the civil suit “without prejudice,” meaning that it could petition to rejoin the bank again, if appropriate.

Koop has pleaded guilty to conspiracy to launder the fraud proceeds. BTCB records show that virtually all of the \$4 million deposited into the IFS and Hanover B accounts in 1998 was withdrawn within about 6 months. Much of the money was transferred to bank accounts controlled by Koop or his accomplices, including in Mississippi, the United Kingdom, and at CPA Services. In two instances in June 1998, a total of over \$30,000 was paid to third parties to help purchase and furnish a New York apartment. In another instance, on 7/21/98, BTCB issued a certified check for \$294,000 to Bergen County in New Jersey, enabling Koop to purchase a house there.³³⁸ According to Koop, what is omitted from the records provided by BTCB in the civil suit is another \$1.3 million in illicit proceeds that he placed in BTCB’s high yield investment program.

Koop Investment in BTCB High Yield Program. Koop told the investigation that, on June 29, 1998, he transferred \$1,325,000 to a BTCB subsidiary, Global Investment Fund, for investment in BTCB’s high yield program.³³⁹ He said that BTCB had contacted him repeatedly about investment opportunities. He provided a copy, for example, of a BTCB document promising annual returns on certificates of deposit as high as 79%. He also provided copies of BTCB documents setting out specific terms for an investment in its high yield program, including a letter of intent, corporate resolution for a private placement of funds, and cooperative venture agreement. Koop said that he pursued only one of the offered BTCB investments, in which BTCB’s subsidiary, Global Investment Fund, promised to pay him a 100% return on the \$1.3 million each week for 40 weeks, for a total of more than \$50 million.

U.S. bank records for BTCB’s account at Security Bank show transfers of millions of dollars in July and August 1998 to accounts associated with Global Investment Fund, any one of which could have included Koop’s investment funds. These transactions included:

- 7/3/98 wire transfer of \$1 million from BTCB’s account at Security Bank to Bank One in Columbus, Ohio, for further credit to Bank One in Houston, Texas, for further credit to “Global Investment Fund S.A.”—these funds were initially rejected and successfully re-transmitted on 7/6/98;
- 8/14/98 wire transfer of \$170,000 from BTCB’s account at Security Bank to Banque National de Paris in New York for Sundland States “Ref. Global Investment Fund/Outlast”;

³³⁸ *Schmidt v. Koop*, Koop deposition (3/2/99) at 433.

³³⁹ See also *Schmidt v. Koop*, Koop deposition (12/10/98) at 58–59, 143–46, 149–57; and (3/2/99) at 406; and evidence of \$1 million transfers from the BTCB account at Security Bank to a Global Investment Fund on 7/3 and 7/6/00.

- 8/14/98 wire transfer of \$830,000 from BTCB's account at Security Bank to the Royal Bank of Scotland in the Bahamas for Highland Financial Corp. "Ref. Global Investment Fund";
- 8/26/98 wire transfer of \$1,006,918.31 from Bank One Trust Company N.A. in Columbus, Ohio, to BTCB's account at Security Bank for further credit to "Global Investment Fd SA"; and
- 8/31/98 wire transfer of \$1 million from BTCB's account at Security Bank to U.S. Bank in Aurora, Colorado, for Global Investment Fund S.A.

These transactions alone establish transfers of \$3 million to Global Investment Fund during the summer of 1998, which was when Koop alleged he made his investment into BTCB's high yield program. Koop noted in his interview that, as of March 2000, BTCB had yet to make a single payment or to return any of his principal. He stated that BTCB still had \$1,325,000 of his proceeds, together with any interest or profits accumulated over the last 2 years. If true, BTCB would still have possession of over \$1.3 million in fraud proceeds that ought to be returned to Koop's defrauded investors.

The Koop fraud provides a detailed illustration of how criminals can use offshore banks and their U.S. accounts to launder funds and perpetuate financial frauds. It also demonstrates how inadequate bank controls and money laundering oversight contribute to the ability of criminals to carry out their activities. The impact on the United States includes hundreds of defrauded investors, prosecutions in New Jersey and South Carolina, extradition proceedings in the United Kingdom, civil litigation, and the ongoing depletion of law enforcement and court resources.

(3) Cook Fraud

In March 1999, Benjamin Franklin Cook III was named in civil pleadings filed by the Securities and Exchange Commission (SEC) in Texas as a key figure in a fraudulent high yield investment program which, in the course of less than 1 year, bilked over three hundred investors out of more than \$40 million. In August 2000, a criminal indictment in Arizona charged Cook with 37 counts of racketeering, fraud and theft. U.S. bank records indicate that at least \$4 million associated with this fraud passed through U.S. correspondent accounts belonging to BTCB, and BTCB was directly involved in investment activities undertaken by persons and companies associated with the Cook fraud.

Nature of Cook Fraud. On March 16, 1999, the SEC filed a complaint and other pleadings before a Federal court in Texas requesting emergency relief against Cook, his company Dannel Finance Ltd. ("Dannel"), International Business Consultants Ltd. ("IBCL"), and a number of other individuals and entities, for engaging in a "fraudulent scheme to offer and sell unregistered 'prime bank' securities throughout the United States."³⁴⁰ The complaint alleged that the defendants raised funds primarily by "target[ing]

³⁴⁰ *SEC v. Cook* (U.S. District Court for the Northern District of Texas Civil Case No. 399-CV-0571), complaint and other pleadings dated 3/16/99. See also legal pleadings compiled at www.dannelfinancial.com.

religious and charitable groups and persons investing retirement funds.” It alleged “numerous misrepresentations and omissions of material fact” by defendants, including that investor funds would be “secured by a bank guarantee,” would serve as “collateral to trade financial instruments with top 50 European Banks,” and would earn “annual returns of 24 to 60 percent.” The complaint alleged that, “[i]n reality, the prime bank program . . . [did] not exist,” and defendants had “misappropriated investment funds for personal and unauthorized uses, including making Ponzi payments to existing investors with funds provided by new investors.”

The U.S. district court in Texas issued orders in March and April 1999, prohibiting Cook from making false statements to investors, freezing his assets, appointing a receiver, requiring expedited discovery, and affording other emergency relief requested by the SEC. To recover investor funds, the SEC appointed Lawrence J. Warfield as its official receiver charged with locating and taking control of assets belonging to Cook and others involved in the fraud. The receiver quickly froze about \$11 million in assets, began reconstructing business and financial records, and began subpoenaing records from 142 U.S. bank accounts used in the Cook fraud.

Cook and his associates refused to cooperate with the investigation. In September, the court issued an order requiring Cook to show cause why he should not be held in contempt, and on October 8, 1999, ordered him imprisoned for contempt of court. On October 20, Cook was arrested and confined to a Texas detention facility.

On August 20, 2000, the Arizona Attorney General indicted Cook on 37 counts of racketeering, fraud and theft. The indictment, which was sealed pending Cook’s extradition from Texas, was described by the Arizona Attorney General as alleging that Cook defrauded 300 investors out of more than \$41 million through a fraudulent investment program. The indictment allegedly asserted that only \$635,000 of the \$41 million had ever been invested, and most of these funds were lost. The complaint also allegedly stated that Cook used much of the \$41 million on personal expenses, including a luxury home, automobiles, airplanes and jewelry, and to purchase real estate.

Cook and BTCB. After reviewing U.S. bank records and other information, the investigation determined that at least \$4 million in illicit proceeds from the Cook fraud moved through accounts at BTCB, and that BTCB itself was directly involved in investment activities undertaken by persons and entities associated with the Cook fraud.

An analysis of BTCB’s U.S. correspondent bank records by Minority Staff investigators uncovered documentary evidence linking 100 wire transfers to defrauded investors or entities associated with the Cook fraud, including Dannel and IBCL.³⁴¹ These transactions moved funds totaling \$4,086,152 over a 2-year period from 1998 until 2000, suggesting BTCB accounts were an active conduit for funds associated with the Cook fraud. The 100 wire transfers included the following:

—BIV records disclosed 34 deposits totaling over \$1.4 million from April 6 until May 28, 1998, when BIV closed the BTCB

³⁴¹ See chart entitled, “BTCB Transactions Related to Cook Fraud,” in BTCB case history.

account. All were wire transfers directed to BTCB for further credit to IBCL. The first deposit, on 4/6/98, was for \$634,982, which increased the bank's total deposits at the time by 23%.

- Security Bank records disclosed 34 deposits totaling over \$2.3 million, and 24 withdrawals totaling over \$2 million from June 22, 1998 until February 14, 2000. These transactions involved wire transfers to or from Security Bank's U.S. correspondent account for BTCB, accompanied by directions to credit or debit an entity associated with the Cook fraud. The transactions involved primarily IBCL or Dennel, but also Global Investments Network Ltd., Trans Global Investments, Wealth & Freedom Network LLC, and Premier Gold Fund Ltd. The transfers included 14 deposits in 1998 with directions to credit the funds to Dennel, suggesting the existence of a Dennel account at BTCB at least during that year.
- First Union records disclosed eight withdrawals totaling over \$2 million from April 26 to October 6, 1999. All were wire transfers from BTCB to accounts associated with IBCL and, in one instance, with Desert Enterprises Ltd., also associated with the Cook fraud.

More than 20 of the 100 wire transfers equaled or exceeded \$100,000. Two of the largest transactions, on 4/6/98 and 9/16/98, together deposited more than \$1 million into the IBCL account at BTCB. The largest withdrawal, on 5/7/99, sent \$900,000 to an IBCL account in California.

The transactions included in this data analysis were selected because of bank account or wire transfer documentation which, on its face, directly linked the funds to a defrauded investor or to an entity associated with the Cook fraud, as indicated in court filings and other materials provided by the SEC receivers' office. It is likely that additional Cook-related transactions escaped detection due to the limited documentation available to the Minority Staff investigation and limited public information regarding how the Cook fraud operated. In light of the \$40 million scope of the Cook fraud, the \$4 million that passed through BTCB accounts shows BTCB was an active conduit for the fraud.

IBCL Investment in BTCB High Yield Program. In addition to opening accounts and moving funds, the investigation obtained evidence indicating that BTCB actively participated in some of the investment activities undertaken by persons and companies associated with the Cook fraud. BTCB's investment role appears to have begun in 1998 and continued throughout 1999, despite the March 1999 SEC complaint naming Dennel and IBCL, among others, as participants in a massive investment fraud.

The investigation first learned of BTCB's investment role after speaking with a person who had complained about BTCB to the Dominican Government. Wayne Brown, a Canadian citizen, voluntarily answered questions and provided documents related to his ongoing efforts to recover \$30,000 he sent to BTCB in 1998 for placement in a high yield investment program. Brown characterized his lost investment as due, in part, to the Cook fraud.

Brown explained that he made the \$30,000 investment because an old friend, Tony Rodriguez, allegedly an experienced investor, had recommended that he try the BTCB high yield program. Brown said that, on the advice of Rodriguez, he solicited additional investments from family members and other persons, pooled the funds, and provided a total of about \$250,000 to Rodriguez for investment. He said the funds were wire transferred to BTCB's correspondent account at Security Bank in several installments, and Rodriguez was supposed to ensure their placement in the BTCB program. He said that it was his understanding that, in order to gain access to the BTCB investment program, Rodriguez had worked with Peter Shifman, an accountant with ties to both Cook and IBCL. He said that it was his understanding that Shifman, who was familiar with Dominica and BTCB, was able to get Rodriguez' investors into the BTCB program. He said the investment program never produced any returns, and he and his associates have been unable to recover any of their funds.

Documents obtained by the investigation establish that Rodriguez was associated with at least three entities that, according to the SEC receiver, were involved in the Cook fraud: Global Investment Network Ltd., Coopman Ltd., and Wealth & Freedom Network, LLC. The documents establish that, in 1998, BTCB not only maintained accounts for Global Investment Network Ltd., Coopman Ltd. and IBCL, but also dealt directly with Rodriguez and Shifman, and eventually placed IBCL funds into BTCB's own high yield investment program.

In a memorandum dated 7/20/98, on IBCL letterhead, for example, Shifman reported the following to "All Investors," including Brown:

I have just returned from Roseau, Dominica. . . . [A]ll pooled funds are now invested. I have received a letter from Dr. Charles Brazie, Vice President of Managed Accounts of British Trade and Commerce Bank indicating that our funds have been allocated for participation. . . . Please note that the Company mentioned on the letter head (Global Investment Funds S.A.) is the Investment Company of British Trade and Commerce Bank. . . . Dr. Brazie has indicated that the first disbursement will now be sometime next week.

This document indicates that BTCB was directly involved in handling investments for IBCL and IBCL's investors.

A later memorandum from Shifman to "All Investors," dated 4/1/99, suggests that the BTCB investment program was not going well and investment returns were not being paid as promised.

All of you are aware that . . . disbursements have not been issued since the beginning of December, 1998 . . . due to the lack of performance by the Bank that IBCL is contracted with. . . . I am able to offer these options to each individual investor. . . . Continue our current contract and wait until the end of April to see if that contact performs. Request the return of your investment. . . . Terminate the current contract and issue a new contract with the following terms: 1. The investment contract will be for twelve (12) months. 2. A Certificate of Deposit will be purchased through the Bank and its Florida-

based Securities Firm for the total amount of the investment.
3. A guaranteed rate of return of two percent (2%) per month, paid monthly will be paid to investors.

This memorandum is dated less than 1 month after the SEC complaint alleging IBCL involvement with investment fraud.

Brown indicated that, despite the Shifman promise of a 2% monthly return, he requested the return of his \$30,000.³⁴² Brown indicated that, in response, he received conflicting stories about whether his \$30,000 was actually with Global Investment Network Ltd. under the control of Rodriguez, or with IBCL under the control of Shifman. On 10/8/99, Brown received a fax on IBCL letterhead stating that, while the records indicated his \$30,000 had been “transferred directly to the IBCL account” at BTCB:

[h]owever, the funds were placed in that account under contract with Global Investments Network Ltd., leaving them outside of our control. In order to place them into the Certificate of Deposit Program, and realize further profits from the BTCB, we would have to enter a new [agreement] issued to you from this office. I am expecting a call from Betts [at BTCB] sometime in the next hour or so, and he and I will address your situation, as well as others, and figure out the best and most efficient means of handling your investment.

A few days later, Brown received a letter from BTCB dated 10/11/99, signed by Betts and addressed, “To all depositors in Global Investment Network Ltd. [a]nd certain depositors in International Business Consultants Ltd.” After observing that the Global Investment Network account had been largely depleted, the letter indicated a solution had been found to help individual investors. The letter announced that BTCB had “come to an arrangement with Tony Rodriguez with respect to handling your deposits with Global and IBCL.” The letter continued:

As I have explained to many of you on the telephone the remaining balance in Global will only return 17% of your original principal. However, of the approximately \$300,000 of your deposits that went into Global, \$252,615 was transferred into IBCL and is presently invested in their managed account with the Bank. . . . The bottom line is that if you agree to let your funds be placed under the management of IBCL and Peter Shifman then the Bank can assure you that your funds are safe and in an account that is intact and will stay that way until the investment program is over.

Despite BTCB’s strong encouragement to leave all funds with IBCL in the BTCB investment program, Brown continued to ask for the return of his funds, without success.

The investigation obtained a second BTCB letter dated 10/11/99, which was also signed by Betts. This letter was addressed to Tony Rodriguez at Global Investment Network Ltd. It discussed a “proposed settlement” in which BTCB would “take over the management” of Global Investment Network funds “in conjunction with Peter Shifman,” provided that Rodriguez made up a funding short-

³⁴² See document signed by Brown, dated 4/6/00, requesting return of his \$30,000 investment.

fall by transferring additional funds from his Coopman Ltd. account at BTCB to the IBCL account. This letter provides still more evidence of BTCB's deep involvement in the investment activities of these entities at a time when, in 1999, each was under investigation in the ongoing SEC fraud proceedings.

Brown said that, after many attempts to recover his funds from the BTCB high yield investment program, he requested the assistance of Dominica's banking regulators. On August 1, 2000, he received a letter from Dominica's banking supervisor stating that records produced by BTCB indicated that his \$30,000 had been transferred by Rodriguez out of BTCB to one of Rodriguez's "other accounts in the United States." The banking supervisor wrote: "It now appears that you have to pressure Rodriguez for the return of the funds. It was a mistake not to have invested directly with [BTCB]."

Brown indicated that he felt as if he were in a shell game where his funds were being moved from account to account, always beyond his reach, from Global Investment Network to IBCL to BTCB to another bank in the United States. He noted that, at each step, the persons involved had simply blamed someone else for not producing promised returns and not returning his funds.

When Minority Staff investigators contacted the SEC receiver and his staff to obtain their perspective on BTCB, the receiver's staff expressed surprise at the number, dollar amount and timing of BTCB transactions tied to persons and entities associated with the Cook fraud. The staff provided a copy of a letter sent by the SEC receiver to BTCB on May 8, 2000, asking the bank to freeze all funds in the IBCL account. The staff said it was their understanding that BTCB had, in fact, frozen the IBCL account, but few funds were captured. They indicated they had been unaware that \$4 million in suspect funds had passed through BTCB; unaware of the Dennel, Global Investment Network and Coopman accounts at BTCB; and unaware that IBCL investor funds had been lodged with BTCB.

The Cook fraud provides another illustration of how criminals use offshore banks and their U.S. accounts to launder funds and facilitate financial fraud. The impact on the United States includes, again, hundreds of defrauded investors, SEC proceedings prosecutions in New Jersey and South Carolina, extradition proceedings in the United Kingdom, civil litigation, and the ongoing depletion of law enforcement and court resources.

(4) Gold Chance Fraud

In April 2000, two brothers filed a civil suit in Canada alleging, in essence, that their company, Gold Chance International Ltd. ("Gold Chance"), was the victim of a loan fraud involving \$3 million.³⁴³ They alleged that Gold Chance had been fraudulently induced to deposit \$3 million as supposed loan collateral into an attorney trust account in Canada, waited months for a loan that never materialized, and then learned that the company's funds had been secretly transferred to an offshore account at BTCB.

³⁴³*Gold Chance International Ltd. v. Daigle & Hancock* (Ontario Superior Court of Justice, Case No. 00-CV-188866)(hereinafter "*Gold Chance*").

In response to plaintiffs' efforts to recover the funds, an Ontario court granted immediate emergency relief, including freezing assets under a Mareva injunction, appointing a receiver for the law firm's trust account, and ordering BTCB and others to cooperate with discovery. Although the civil proceedings have yet to reach a conclusion, a preliminary court decision, pleadings in the civil case, and other information show that the \$3 million was deposited into BTCB's U.S. correspondent account at First Union National Bank on December 15, 1999, and within a week, the funds were divided up and wired to multiple bank accounts around the world. In an order dated June 12, 2000, the court expressed skepticism regarding BTCB's claim that the \$3 million was still safely on deposit with the bank, invested at the request of a client into a 1-year BTCB high yield program maturing in December 2000.

Nature of Gold Chance Fraud. On April 16, 2000, Canadian citizens Brent and Greg Binions filed a civil suit in the Ontario Superior Court of Justice, on behalf of Gold Chance and two other companies they own, seeking recovery of the \$3 million from two individuals, Sayse Chatterpaul and Paul Zhernakov, several companies controlled by these individuals, and the law firm and banks involved in moving the funds out of Canada, including BTCB.

The plaintiffs' statement of claim, related pleadings and an opinion issued by the court in June 2000, indicate the following facts.³⁴⁴ In the fall of 1999, Gold Chance was introduced to and entered into negotiations with Chatterpaul to obtain a loan to develop certain automobile fuel technology. In December 1999, Gold Chance executed a borrowing agreement with Chatterpaul's alleged company, Triglobe International Funding Inc. The agreement provided that Triglobe would issue a loan to Gold Chance, on the condition that Gold Chance first posted 25% of the loan amount in cash collateral to be kept in a fiduciary account under the control of legal counsel. On December 3, 1999, having borrowed the required sum from Toronto Dominion Bank, Gold Chance delivered a \$3 million bank draft to Daigle & Hancock, a Canadian law firm, for deposit into the firm's fiduciary account at the Bank of Montreal.

The promised loan was not, however, issued to Gold Chance. After 2 months, on February 17, 2000, Chatterpaul and Gold Chance replaced the original agreement with a second borrowing agreement which, among other changes, replaced Triglobe with a company called Free Trade Bureau S.A. ("Free Trade"). The agreement provided that Free Trade would issue a \$12 million loan to Gold Chance, collateralized by the \$3 million in the fiduciary account. Chatterpaul signed the contract on behalf of Free Trade. When no loan materialized, on March 13, 2000, Gold Chance demanded return of the \$3 million.

The pleadings allege plaintiffs learned in March 2000 that, without their consent, the \$3 million had been transferred in December 1999, to a BTCB account for Free Trade. The pleadings allege that the \$3 million was quickly depleted through multiple wire transfers initiated by BTCB to bank accounts around the world. The pleadings also state that plaintiffs learned Free Trade was owned, not

³⁴⁴See *Gold Chance* statement of claim (4/16/00), amended statement of claim (5/17/00), and "Reasons for Decision" by Judge Campbell (6/12/00).

by Chatterpaul, but by Zhernakov, an individual with whom they had had no prior dealings. The pleadings accuse the defendants of a variety of fraudulent acts, contractual and fiduciary breaches, wrongful conversion and other misconduct, and demand compensatory and punitive damages.

Free Trade and BTCB. BTCB admits that it has not only handled accounts and funds for persons and entities associated with the Gold Chance fraud, but also retains possession of the disputed \$3 million, which it claimed was placed in a 1-year BTCB investment program.

In its September 2000 submission to the Subcommittee, BTCB acknowledged its involvement in the Gold Chance dispute, without using specific client names. BTCB provided the following description of the civil litigation:

A longstanding Canadian client had an existing account with BTCB, and his background fully checked out. He subsequently placed an additional \$3 million into this BTCB account . . . [and] committed these funds under a year long investment contract with BTCB to place the funds; which the bank in turn committed for a year. The first sign of trouble BTCB had was when a company completely unknown to us surfaced, and alleged that the \$3 million was actually its money given to the lawyer in Trust.

Unfortunately, it turned out later that the Canadian lawyer had obtained the \$3 million from a client company under the false pretense, that the \$3 million would be used as collateral for a loan from BTCB of \$12 million, a situation completely unknown to us and contradicted by all paperwork between BTCB and this Canadian client and lawyer regarding the placement of \$3 million with us in December 1999. . . .

BTCB has the \$3 million invested under the signed contract, and will return the funds when the contracted 1-year period expires in December 2000.”

BTCB also stated that it had “filed an affidavit [with the Canadian court] explaining our lack of knowledge and documenting the Canadian client and lawyer’s signed documents submitted to our bank; thus requesting a complete dismissal from the action.” Although BTCB did not provide a copy of the affidavit or the attached documents, the investigation obtained them from the publicly available pleadings in the Canadian lawsuit. The affidavit was signed by BTCB president Requena and filed on September 7, 2000, less than 2 weeks before BTCB made its submission to the Subcommittee.

In explaining BTCB’s role to the court, the Requena affidavit attempted to draw a stark contrast between Zhernakov and Chatterpaul, stating that while BTCB had done business with Zhernakov for 2 years, BTCB “does not have any knowledge or information . . . and has never had any business or other relationship or affiliation with” Chatterpaul or any of his companies.³⁴⁵ With respect to Zhernakov, the Requena affidavit stated that Free Trade had been “incorporated on 2 January 1998 . . . for the De-

³⁴⁵ Requena affidavit at 6.

fendant, Paul Zhernakov pursuant to his instructions [and] . . . has been a customer of BTCB since January 1998.”³⁴⁶ Exhibit L to the affidavit provides copies of BTCB’s standard agreements for its high yield investment program, signed by Zhernakov on behalf of his company Free Trade, establishing that the company became a participant in the program in January 1998.

U.S. bank records substantiate Zhernakov’s status as a BTCB client, including records showing the Zhernakov name in BTCB account transactions as early as April 1998. U.S. bank records also show one transaction involving Chatterpaul—a wire transfer dated June 21, 1999, originated by Sayse Chatterpaul, sending \$680,000 from the Canada Trustee Mortgage Company in Ontario to the BTCB account at Security Bank for further credit to Free Trade. This deposit, for more than half a million dollars, should have attracted BTCB’s notice. At a minimum, it provides evidence of a connection between Chatterpaul and Free Trade and contradicts BTCB’s claim to the court that it had never had any business dealings with Chatterpaul.

Plaintiffs’ pleadings raise questions about Zhernakov’s background, business dealings, and source of funds.³⁴⁷ Plaintiffs’ information appears to be based primarily on a sworn deposition provided by Zhernakov on June 5, 2000, in connection with the lawsuit. Citing pages in a Zhernakov transcript, plaintiffs allege that Zhernakov was born in Russia in 1954, and is currently a citizen of Grenada. They allege he was employed by the Russian Navy for 17 years, then worked for an airline and had a business consulting firm, but currently “does not work or have a business.”³⁴⁸ They state that Zhernakov testified at his deposition that he arranged loans through BTCB for commissions, spoke regularly with Betts during 1999, and worked on occasion with Chatterpaul. Plaintiffs state that Zhernakov testified that both he and Chatterpaul were “authorized” to act on behalf of Free Trade.³⁴⁹ This information raises questions about what due diligence research BTCB did prior to accepting Zhernakov as a client and what information BTCB had about the source of his funds. It also casts doubt on BTCB’s assertion to the court that it had no prior dealings with or information about Chatterpaul since, according to Zhernakov, Chatterpaul had signing authority for Free Trade, a BTCB-established Dominican corporation.

With respect to the Gold Chance funds, U.S. bank records show the deposit of the \$3 million into BTCB’s account at First Union on 12/15/99. The wire transfer documentation states that the funds originated from Daigle & Hancock at the Bank of Montreal and the intended beneficiary was Free Trade Bureau S.A. at BTCB. On the day the funds were deposited, BTCB’s account balance at First Union was only \$14,308. Over the next 2 weeks, only three other small deposits, totaling about \$25,000, came into the BTCB account. That means that, for the month of December 1999, the \$3 million in Gold Chance funds were the primary source of funds in the BTCB account.

³⁴⁶ *Id.*

³⁴⁷ See *Gold Chance*, “Factum of the Plaintiffs” (6/8/00).

³⁴⁸ *Id.* at 7.

³⁴⁹ *Id.* at 8–9.

The wire transfers that depleted the \$3 million deposit do not, on their face, substantiate BTCB's claim that it placed the \$3 million into a year-long investment program. Instead, the bank records show that the \$3 million deposit on 12/15/99 was followed by a flurry of outgoing wire transfers in widely varying amounts to multiple bank accounts around the world. Most of the payments using the Gold Chance funds appear to have been made to BTCB creditors or clients, with about \$355,000 transferred to other BTCB correspondent accounts. Altogether, in the span of 1 week ending December 23, 1999, about \$2.3 million left the BTCB account.³⁵⁰ By December 29, 1999, only about \$734,000 remained in the BTCB account, of which all but \$40,000 was attributable to the Gold Chance funds. On 12/30/99, BTCB deposited another \$275,000, taken from its Security Bank correspondent account, and on 1/3/00, it transferred \$1 million from the BTCB account to a Bank of America branch in Idaho for "Orphan Advocates LLC."³⁵¹ After the \$1 mil-

³⁵⁰The wire transfers included the following:

- \$93,000 on 12/16/99 to Bank of Nevis International for Universal Marketing Consultants;
- \$15,339.95 on 12/16/99 to First National Bank of Antlers, Oklahoma for Republic Products Corp., a company controlled by BTCB's major stockholder John Long;
- \$240,000 on 12/17/99 to Barclays Bank in the Bahamas for BSI Corporation;
- \$50,000 on 12/20/99 and \$50,000 on 12/23/99 to National Commercial Bank in Dominica for BTCB's correspondent account;
- \$200,000 and \$55,000 in two separate wire transfers on 12/21/99, both to Pacific National Bank in Miami for BTCB's correspondent account;
- \$205,000 on 12/21/99 to Mashreq Bank in Dubai for Graham Farrell;
- \$612,000 on 12/21/99 to Banque Cantonale de Geneve for Laurent Finance;
- \$200,000 on 12/23/99 to HSBC Bank in Hong Kong for Wanvijit Chauatong;
- \$140,000 on 12/23/99 to ANZ Grindlay Bank in India for Asset Management India;
- \$40,000 on 12/23/99 to a Union Planters Bank account for the credit of BTCB's president Rodolfo Requena; and
- \$14,625 on 12/23/99 to the Bank of Montreal for Zhernakov, one of the defendants in the civil lawsuit.

³⁵¹Orphan Advocates LLC is an Idaho corporation and another BTCB client. The Ontario court reviewing the Gold Chance case has authorized the plaintiffs to inquire about whether this Idaho corporation is somehow associated with Betts or his wife, Mavis Betts, who still resides in Idaho. See *Gold Chance*, court orders dated 5/15/00 and 6/2/00. The court has also authorized inquiries into the corporation's relationship with entities called Orphan Advocates Trust, Orphan Advocates Foundation, China Fund for the Handicapped, and a company which has changed its name four times in 4 years, from Children's Aid of Idaho, Inc. in 1994, to Children's Adoption Service International, Inc. in 1995, to Children's Adoption Services Inc. in 1996, to CASI Foundation for Children, Inc. in 1998.

Plaintiffs have alleged that the \$1 million payment to Orphan Advocates LLC on January 3rd was actually paid into an account held by Orphans Advocates Trust which, in turn, transferred the funds on the same day to the China Fund for the Handicapped. See *Gold Chance*, "Factum of the Plaintiffs" (6/8/00) at 6. China Fund for the Handicapped appears to be another investor in BTCB's high yield program. Documentation at First Union shows that, on 6/21/99, the Fund transferred \$3 million from its bank account at Chiyu Banking Corp. in Hong Kong to BTCB's account at First Union. Ted Johnson, a member of the Board of CASI Foundation for Children, Inc., told a Minority Subcommittee investigator on November 3, 2000, that it was his understanding that the China Fund for the Handicapped had invested a significant amount in BTCB's high yield investment program. Johnson said that the Fund was "not satisfied with the timing or amount" of the returns on their BTCB investment, although he understood the Fund had not filed any legal action. He also said that the China Fund for the Handicapped with BTCB investments was associated with the China Fund for the Handicapped that is a quasi-governmental organization in China, headed by Deng Xiaoping's son, Deng Pufang. He also stated that the China Fund for the Handicapped is associated with Orphan Advocates LLC.

Wire transfer documentation indicates additional links between BTCB, the China Fund for the Handicapped, and Orphan Advocates LLC. The wire transfers include the following:

- 7/8/99 transfer of \$1 million from BTCB account at First Union to a bank in Milwaukee, Wisconsin, called Marshall & Isley Bank, for further credit to an attorney trust account, belonging to John P. Savage;
- 8/11/99 transfer of \$2,500 from BTCB account at BIV to the same Milwaukee bank and the same attorney trust account, with the following notation: "Ref: Orphans Advocates Ltd."; and
- 11/30/99 transfer of \$150,000 from BTCB account at First Union to the Bank of Communication in Beijing for the "Corporation Project of the Rehabilitation of Disable Children,"

Continued

lion transfer, the BTCB account at First Union held only about \$11,000. No significant activity took place in the account afterward, and in February 2000, First Union closed the BTCB account.

The Ontario court appeared to have reached the conclusion in June 2000, that Gold Chance's \$3 million was no longer at BTCB. After reviewing bank and wire transfer documentation showing disbursement of the Gold Chance funds and recounting BTCB's failure to return the \$3 million to Zhernakov upon his request, the Ontario court wrote, "The prepared statement of Betts that the funds are in BTCB is not to be believed, against either the tracing evidence or Betts' failure to deliver the funds."³⁵²

Despite this statement by the court in June, BTCB nevertheless claimed, in the Requena affidavit submitted to the court in September, that the \$3 million was "invested on 15 December 1999."³⁵³ The affidavit contended that the First Union account was a "general account used for business and investment purposes by BTCB[,] [t]he money from Free Trade was not trust money as far as BTCB was aware and so it was co-mingled with the general funds in this account." The affidavit maintained that the \$3 million was credited to the Free Trade account and "deposited by the Defendant Free Trade . . . into a managed investment account for a locked-in period of 1 year."³⁵⁴ BTCB further claimed that any dispute over the \$3 million investment must be resolved by arbitration in London, as provided in the investment agreement.

Free Trade Investment in BTCB High Yield Program. The evidence suggests that BTCB's high yield investment program may be contributing to the Gold Chance fraud. First, the documents provided by BTCB to the court, attached as Exhibit L to the Requena affidavit, establish that Free Trade enrolled in BTCB's investment program in January 1998—2 full years before the Gold Chance deposit. Although BTCB maintains that the \$3 million was intended for and immediately placed into its investment program pursuant to Free Trade's managed account agreement, the documentation provided by the bank does not support that assertion. To the contrary, Exhibits M through U discuss opening a "new account" with the money, under dual signatory authority that differed from Free Trade's managed account agreement. Not one of these documents mentions the word "investment" in connection with the \$3 million; not one references the BTCB investment program. The first document to claim that the \$3 million was placed into a BTCB investment program is a BTCB letter dated April 12, 2000, a month after Gold Chance demanded return of its funds. The unavoidable implication is that BTCB may itself be defrauding Gold Chance—delaying return of the \$3 million by falsely claiming the money's enrollment in the BTCB investment program.

Additional concerns arise from BTCB's admission in the Requena, affidavit at page 19 that, although transactions involving the \$3 million required two signatures—from Zhernakov and Daigle—the bank had already advanced \$240,000 to Zhernakov on

which allegedly is a member of the same Federation for the Disabled, in China, as is the China Fund for the Handicapped.

³⁵² See *Gold Chance* "Reasons for Decision" (6/12/00) at 9.

³⁵³ See *Gold Chance*, Requena affidavit (9/7/00) at 14.

³⁵⁴ *Id.* at 2.

his signature alone. BTCB has admitted that releasing the \$240,000 violated the account instructions. Whether this violation was deliberate or inadvertent, it demonstrates a lack of proper account controls. And it raises, again, the spectre of BTCB misconduct—paying funds upon request to Zhernakov, while refusing to pay funds to the plaintiffs with the excuse that the entire \$3 million is “locked” into a year-long investment.

BTCB later posted with the Ontario court a \$3 million letter of credit with a maturity date of December 15, 2000. However, when that date arrived, BTCB failed to pay the required amount to the court. Gold Chance is still seeking recovery of its funds.

The Gold Chance fraud provides a third illustration of a financial fraud carried out in part through an offshore bank with a U.S. account. While the major impact in this instance is in Canada, where the defrauded investors reside and the key civil suit has been filed, there is also a collateral impact on the United States in which BTCB’s U.S. correspondent bank is being asked to produce documents and explain what happened to the \$3 million sent to BTCB’s U.S. account.

(5) \$10 Million CD Interpleader

In August 1999, PaineWebber’s clearing firm, Correspondent Services Corporation (CSC), filed an interpleader complaint in Federal court in New York to resolve a dispute over the ownership of a \$10 million certificate of deposit (“CD”) issued by BTCB.³⁵⁵ The parties asserting conflicting claims to it included J. Virgil Waggoner, a wealthy U.S. citizen from Texas; Donal Kelleher, an Irish citizen living in England who served, for a time, as an investment advisor to Waggoner; J.V.W. Investment Ltd., a Dominican corporation established by BTCB for Waggoner and administered for a time by Kelleher; and First Equity Corporation of Florida, the securities firm that, in 1998, was owned by BTCB. In August 2000, the U.S. district court issued a decision³⁵⁶ which resolved the CD ownership issue in favor of Waggoner, but also identifies troubling information about BTCB’s investment activities and operations.

BTCB’s Issuance of the \$10 Million Bearer CD. The August 2000 court decision, documents associated with the interpleader action, discussions with bank officials, and other information produced the following facts: Waggoner is a retired chief executive officer of a large chemical company in Texas, and the current chief executive and owner of a U.S. company called J.V.W. Investments, Ltd.³⁵⁷ In November 1997, Waggoner entered into an arrangement with Kelleher under which Kelleher agreed to locate a high-yield investment program for a \$10 million investment by Waggoner, in exchange for receiving a percentage of any profits on such investment.³⁵⁸ In mid-1998, Kelleher told Waggoner about the BTCB high yield program, and Waggoner agreed to invest in it.

³⁵⁵ *Correspondent Services Corp. v. J.V.W. Investment Ltd.* (U.S. District Court for the Southern District of New York Civil Case No. 99–CIV–8934 (RWS)), complaint (8/16/99).

³⁵⁶ *Correspondent Services Corp. v. J.V.W. Investment Ltd.*, 2000 U.S. Dist. LEXIS 11881 (U.S. District Court for the Southern District of New York 2000)(hereinafter “*CSC v. J.V.W.*”).

³⁵⁷ See SEC filing by Sterling Chemicals Holdings, Inc., Schedule 14A (12/27/97), proxy statement at 5.

³⁵⁸ *CSC v. J.V.W.* at 4.

On June 12, 1998, BTCB requested their completion of various forms to establish an international business corporation and open an account.³⁵⁹ On June 19th, BTCB incorporated J.V.W. Investment Ltd. as a bearer share Dominican corporation.³⁶⁰ The name of this company mirrored the name of Waggoner's existing U.S. corporation, J.V.W. Investments Ltd., but omitted the letter "s" from "Investments." BTCB has advocated taking this approach to naming a new Dominican corporation "to allow an orderly and mostly invisible transition" from an existing corporation somewhere else.

On June 25, 1998, J.V.W. Investment Ltd. ("JVW") entered into a cooperative venture agreement with BTCB to place an investment in BTCB's high yield program. As explained in the court's decision, this agreement provided:

- (a) JVW would deposit \$1.0 million into a "Custody/Transaction Account at BTCB";
- (b) BTCB would issue a certificate of deposit ("CD") in JVW's name;
- (c) the CD would have a term of 1 year and bear interest at 6% per annum;
- and (d) BTCB would place the \$10 million into investments to provide a "significant yield" on a best efforts basis over the course of a year.³⁶¹

On 6/28/98, \$10 million belonging to Waggoner was transferred into a Citibank correspondent account in New York. This correspondent account belonged to Suisse Security Bank and Trust ("SSBT"), a small offshore bank licensed in the Bahamas. Although Citibank was unaware of it, beginning in 1997 or 1998, SSBT had begun providing correspondent services to BTCB and allowing BTCB to use the SSBT account at Citibank.

The court notes a factual dispute over whether the \$10 million paid into the correspondent account was supposed to be deposited into the BTCB account at SSBT, or into a freestanding account at SSBT. The court decision states:

According to Waggoner's pleadings, BTCB instructed Kelleher to place the \$10 million into a BTCB sub-account in the name of JVW at SSBT. . . . BTCB would then place the \$10 million into the Investment Program and issue the CD to JVW. Kelleher, however, transferred Waggoner's \$10 million into a freestanding account at SSBT, not the designated BTCB sub-account. . . . SSBT [then] refused to transfer the \$10 million from the freestanding account to the BTCB sub-account. As a result, Waggoner did not gain entry into the Investment Program. SSBT, when asked why it refused to effect the transfer, first stated that it was concerned that the \$10 million might have an illegal origin. When a formal inquiry showed that to be wholly without basis, SSBT stated that it had placed the \$10 million into ACM mutual funds . . . at Kelleher's direction. . . . Kelleher claims, by contrast, that he instructed SSBT to place the \$10 million in the BTCB sub-account.³⁶²

³⁵⁹ *Id.* at 11.

³⁶⁰ *Id.* at 14.

³⁶¹ *Id.* at 19.

³⁶² *Id.* at 22-24.

The court notes that Kelleher claimed the \$10 million CD issued in JVW's name was replaced by BTCB with another \$10 million CD "with the identical certificate number, but issued in bearer form."³⁶³ This bearer CD, dated 6/28/98, is the CD that was placed into Correspondent Services Corporation custody, to be held until the CD's 1-year maturity date.

After vigorous complaints about the bank to Bahamian bank regulators, SSBT agreed to release the funds deposited by Waggoner. SSBT chose to do so by transferring the ACM mutual funds it had purchased with the \$10 million. SSBT transferred the mutual funds to CSC, for further credit to BTCB, to benefit JVW.³⁶⁴ When liquidated, the mutual funds produced about \$7.7 million.³⁶⁵ The court found that, by investing the \$10 million in ACM mutual funds, SSBT was responsible for a shortfall of about \$2.2 million from the \$10 million originally deposited.³⁶⁶ The court noted that Waggoner considered taking legal action against SSBT to recover the \$2.2 million, but did not do so.³⁶⁷ When a Minority Staff investigator asked why no legal action had been taken against SSBT, Waggoner and JVW's legal counsel, Kenneth Caruso, declined to discuss his clients' legal strategy. Bahamian bank regulators provided a September 15, 2000 letter stating that an external audit of SSBT had "ruled out any possibility of irregularity on the part of [SSBT]." However, neither the government nor SSBT would produce a copy of the audit report.

In any event, once his funds were lodged with BTCB, Waggoner took action to eliminate Kelleher's role in overseeing the BTCB investment. On November 10, 1998, Waggoner sent a letter to Kelleher terminating his services for allegedly breaching their agreement to locate a high yield investment program.³⁶⁸ On the same date, Waggoner transferred all JVW shares to Wagonwheel Trust, a new Dominican trust formed for him by BTCB and controlled by BTCB as the appointed trustee. The next day, November 11th, Wagonwheel Trust removed Kelleher from his position as sole director of JVW, and replaced him with a BTCB subsidiary, International Corporate Services, Ltd. After that date, BTCB refused to provide Kelleher with any information about JVW's investments in the BTCB high yield program or to pay him any portion of alleged profits.³⁶⁹

In June 1999, the \$10 million CD matured, and Kelleher claimed a portion of the funds, leading to the interpleader action. On August 16, 2000, the U.S. district court held that Kelleher had no ownership interest in the CD, but refused to dismiss, on summary judgment, his claim for damages against Waggoner for failing to act in good faith in their joint business dealings.³⁷⁰ The civil proceedings are ongoing.

JVW and BTCB. The interpleader action over the \$10 million CD opens a window on BTCB's dealings with one of its clients and,

³⁶³ *Id.* at 24.

³⁶⁴ See 9/21/98 letter from Betts to Tucker Anthony; and undated letter from Kelleher to Tucker Anthony. Tucker Anthony held the ACM mutual funds for SSBT.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.* at 24, 27.

³⁶⁸ *Id.* at 26.

³⁶⁹ *Id.* at 27.

³⁷⁰ *Id.* at 64.

in so doing, raises three sets of concerns about the bank's internal controls and investment activities. First, the proceedings expose operational deficiencies and aggressive tactics at BTCB. Second, they disclose troubling information about BTCB's dealings with SSBT, a small Bahamian bank with a poor reputation and limited assets. Third, they illustrate problems with BTCB's high yield investment program, including possibly fraudulent promises to pay extravagant returns and possibly fraudulent misuse of investor funds.

The civil litigation discloses, first, operational and internal control deficiencies at BTCB. The court found a number of inconsistencies and ambiguities in the documentation used to establish the beneficial owner of the \$10 million CD and JVW, requiring pages of legal analysis to recite and resolve. The CD, for example, was issued by BTCB in bearer form, despite a provision in the cooperative venture agreement calling for the CD to name JVW so that its ownership would be clear. With respect to JVW, the court noted that the "IBC order form" containing instructions for forming JVW, including naming the company's beneficial owner, was signed on June 22, 1998—3 days after the company had been incorporated on June 19th.³⁷¹ JVW's incorporation documents were signed by BTCB's subsidiary, ICS, again without indicating the corporation's beneficial owner.³⁷² A letter sending "account opening forms" for a JVW bank account at BTCB is dated June 23, 1998—5 days after the \$10 million had been sent to SSBT and an account opened.

The civil litigation also exposes BTCB's willingness to engage in aggressive tactics when intervening in a dispute over client funds, even when the dispute is due, at least in part, to BTCB's own missteps. To resolve the dispute between Waggoner and Kelleher over the \$10 million CD, BTCB established and became the trustee of a new Dominican trust, Wagonwheel Trust, in November 1999, set up to benefit Waggoner. BTCB caused the trust to take possession of JVW's bearer shares, and remove Kelleher as JVW's sole director. In taking these actions, BTCB did not act as a neutral or passive financial institution. To the contrary, it took an active stance in favor of Waggoner and used the bank's fiduciary powers and subsidiary to help Waggoner wrest control of JVW away from Kelleher. BTCB also took possession of Waggoner's funds for placement in its high yield program, and refused Kelleher's requests for information about the investment or its alleged returns.

Second, the civil litigation exposes troubling information about BTCB's dealings with SSBT. The documentation in the civil proceeding makes it clear that BTCB actively assisted JVW in opening an account and transferring funds to SSBT. For example, a fax dated June 29, 1998, from Betts to Kelleher, provided BTCB's account number at SSBT, approved a JVW letter to SSBT, and offered to forward the \$10 million CD to SSBT on JVW's behalf. SSBT then refused for 3 months to release the \$10 million. In an 8/27/98 letter to SSBT, Kelleher stated that an audited balance sheet obtained from public records in the Bahamas showed that SSBT was "extremely small with very little cash or assets and . . .

³⁷¹*Id.* at 11–12.

³⁷²*Id.* at 14–15.

is indeed far smaller than the size of [JVW's \$10 million] deposit." The letter expressed "doubt" about SSBT's "stability and liquidity." Bahamian Government officials told the investigation that SSBT had a long history of regulatory problems requiring oversight. Yet BTCB chose to do business with SSBT, despite its lack of assets and poor regulatory history. In addition, neither BTCB nor SSBT ever informed Citibank that BTCB was using SSBT's Citibank account to transact business. Citibank told the investigation that it had been completely unaware it was providing services to BTCB.

Even more troubling is information released in the course of the civil litigation regarding BTCB's high yield investment program. Several of the documents indicate that Waggoner and Kelleher had been told by BTCB that the \$10 million investment would produce \$50 million or more in profits in less than 6 months. A 9/15/98 letter from Brazie, for example, suggested that the funds released by SSBT be invested into "ongoing HYIPs" or high yield investment programs at Global Investment Fund S.A. Brazie explained that Global Investment Fund S.A. was "wholly owned by ICS/BTCB and serve[d] as a 'pooling' and 'masking' entity for funds from other IBC clients." Handwritten notes by Kelleher on the letter, following a telephone conversation with Brazie, stated: "Return min 25%/wk." One week later, a 9/23/98 letter from Waggoner to Kelleher stated, "I want this project expedited and the delays/excuses ended. As my trustee, you must hurry to get my \$50 million in profits to me this year." A letter to BTCB from Kelleher, dated 4/13/99, stated, "The sum over due and payable [to his company alone] . . . by [BTCB] is we repeat: **USD—58,660,200.**" [Emphasis in original text.] Dominican Government officials and U.S. bankers interviewed during the investigation uniformly expressed disbelief that such returns were possible.

U.S. bank records also raise questions about what BTCB actually did with the funds once they were in the bank's possession. Waggoner's \$10 million is the largest single investment in BTCB's high yield program uncovered by the investigation. The court pleadings indicate that the ACM mutual funds purchased with the \$10 million were apparently transferred by SSBT in several stages in September and October 1998, to CSC for liquidation.³⁷³

On 10/26/98, at BTCB's request, CSC transferred \$6.5 million to BTCB's account at Security Bank. The origination, timing and size of this transfer suggests that the \$6.5 million came from the JVW funds; the investigation found no other transaction that could account for the source of funds used in this wire transfer. The next day, on 10/27/98, BTCB transferred the \$6.5 million to an attorney trust account at First Union National Bank belonging to Robert Garner. Garner is an attorney who has worked for both BTCB and First Equity Corporation of Florida. Within a week of receiving the funds, Garner transferred the \$6.5 million, on 11/3/98, to an attorney trust account at Union Bank of Switzerland ("UBS") in Zurich belonging to Robert McKellar.

The \$6.5 million was not the first time that U.S. bank records showed funds moving among accounts belonging to McKellar, Gar-

³⁷³ See 9/21/98 letter from Betts to Tucker Anthony; and undated letter from Kelleher to Tucker Anthony. Tucker Anthony held the ACM mutual funds for SSBT.

ner and BTCB. Less than 2 weeks earlier, on 10/19/98, BTCB, had wire transferred \$3.5 million from its account at Security Bank to "McKellar's Solicitors Unit." The source of this \$3.5 million is unclear, as is its relationship, if any, to the JVW proceedings. The fact that the \$3.5 million and \$6.5 million sent to McKellar in October 1998 together add up to the \$10 million at issue in the JVW proceedings may be just coincidence.

Two 1998 BTCB financial statements further document the movement of these funds. A BTCB financial statement as of 6/30/98, which BTCB submitted to First Union when applying for a correspondent account, states in Note 3 that the bank had \$10 million in deposits at SSBT. There is no mention of deposits at UBS. BTCB's audited financial statement 6 months later, as of 12/31/98, which was submitted to the Dominican Government, states in Note 4 that the bank had "10M in Union Bank of Switzerland." The December 1998 financial statement made no reference to deposits at SSBT. The logical inference, then, is that BTCB moved \$10 million from SSBT to UBS during the latter half of 1998. The timing, dollar amount and banks involved all suggest that the BTCB funds in Switzerland came, in whole or in part, from the JVW funds.

Once the funds were placed in a Swiss bank account, little is known about them, and it is unclear whether the funds were ever placed in an investment. What is clear is that, 6 months later, on 4/26/99, U.S. bank records show McKellar wire transferring \$6 million from the UBS account in Zurich to Garner's account at First Union. On the same day, Garner transferred the \$6 million to BTCB's account at First Union. On the day before, 4/25/99, BTCB's First Union account balance was only about \$77,000. The \$6 million was a huge addition to an account that otherwise had few funds. From 4/26/99 to the end of May, only six other deposits were made into the BTCB account totaling about \$217,000. The bank records establish, then, that the majority of funds in the BTCB account at First Union, from April 26 until May 31, 1999, was attributable to the \$6 million deposit.

The bank records also show that the \$6 million deposit on 4/26/99 was followed by a flurry of outgoing wire transfers, 43 in April and 58 in May, in widely varying amounts to bank accounts around the world. In the span of 1 month ending May 31, 1999, BTCB transferred about \$5.7 million out of its First Union account. The three largest sets of wire transfers were the following:

- \$1 million on 4/26/99 to BTCB's account at Correspondent Services Corporation;
- \$1 million on 4/26/99 to BTCB's account at Security Bank; and
- 1.4 million in four wire transfers on 4/26/99 and 5/7/99 to four accounts, each of which referenced International Business Consultants Ltd., a participant in the Cook fraud described earlier.

U.S. bank records show another, possibly related set of transactions 6 months later. On 10/15/99, \$999,976 was transferred from an unidentified account at UBS in Zurich to Garner's account at First Union. Given earlier wire transfers, it is possible that these

funds came from the UBS account belonging to McKellar. Four days later, on 10/19/99, Garner transferred the \$1 million to BTCB's account at First Union. When the deposit was made, BTCB's account balance was only about \$27,600. BTCB then disbursed the \$1 million in the same way it had disbursed the \$6 million, using multiple wire transfers to multiple bank accounts.

BTCB's treatment of the JVW funds, once lodged with the bank, raise unavoidable questions about whether the bank was misusing investor funds. First, there is no clear evidence that the JVW funds were ever invested, especially if the \$6.5 million sent to Switzerland was, in fact, taken from the JVW investment. Second, the \$6.5 million transferred from CSC to BTCB, was quickly transferred out of the bank through two attorney trust accounts in the United States and Switzerland. The reasons BTCB used two attorney trust accounts to move the \$6.5 million to Switzerland are unclear; possibly it was devised to conceal the movement of the funds or impede tracing them.

Third, when the \$6 million came back from the Swiss account, through Garner's account, to BTCB in April 1999, the funds arrived at a time when BTCB's primary U.S. correspondent account was almost empty. The quick disbursement of the \$6 million in varying amounts to various bank accounts suggests that JVW investment funds were being used, in whole or in part, to pay BTCB's creditors and clients and to replenish BTCB's coffers. The \$1 million transfer from Switzerland in October 1999, seems to have followed the same pattern. When a Minority Staff investigator asked legal counsel for Waggoner and JVW about how the JVW funds were invested and whether Waggoner had any concerns about the status of the funds, he declined to respond, other than to indicate that his clients did not wish to discuss their financial affairs.

(6) Other Suspect Transactions At BTCB: KPJ Trust, Michael Gendreau, Scott Brett, Global/Vector Medical Technologies

In reviewing U.S. bank records and other information associated with BTCB, the investigation came across additional evidence of possible misconduct and ongoing civil and criminal investigations involving funds at BTCB. This evidence included the following:

—**KPJ Trust.** U.S. bank records show that, on 9/21/98, Tiong Tung Ming of Malaysia transferred \$1 million to BTCB's account at Security Bank. Tiong has since complained to Dominican, U.K. and U.S. Government officials, the Eastern Caribbean Central Bank, and Security Bank about his continuing inability to recover his funds. Tiong invested these funds with a BTCB client, K.P.J. Trust S.A. ("KPJ Trust"), through Michael Dibble and Rosemarie Roeters-Van Lennep, based upon a 9/15/98 joint venture agreement promising "[t]rading profits . . . [of] ONE HUNDRED FIFTY PERCENT (150%) during the duration of the program (40 weeks), which will be distributed on a monthly basis." [Emphasis in original text.]

A 9/17/98 letter on BTCB letterhead, signed by Betts, acknowledged receipt of the funds "from Ming Tung Tion [sic] in favor of KPJ S.A." However, after Tiong complained to Security

Bank and others, Betts sent a 2/25/99, letter denying any knowledge of Tiong. After additional correspondence, Betts sent a 3/15/99 letter stating that Tiong's funds had been placed, through KPJ Trust, into a BTCB "Managed Accounts Contract" for 1 year, and could not be returned to him until 9/21/99. When Tiong continued to demand his funds and the KPJ Trust later joined in those demands, a 5/11/99 letter from Brazie stated that Tiong's funds could be released earlier if "we receive additional funds from other entities and those are committed to Global Investment Fund S.A. to replace your funds." BTCB did not, however, release any funds, even at the end of the 1-year period on 9/21/99.

Documents supplied by Tiong recite repeated broken promises by BTCB to return the funds. Yet, at the same time, U.S. bank records show that BTCB made \$315,000 in payments to several persons associated with the KPJ Trust:

- 9/22/98 wire transfer of \$200,000 from BTCB's account at Security Bank to United Bank in Rustenburg, South Africa, for "W.H. Keyser . . . Ref. K.P.J. Trust S.A.," returned on 9/29/98 because United Bank could not locate the account;
- 1/15/99 wire transfer of \$5,000 from BTCB's account at Security Bank to the Royal Bank of Scotland in London, for Ms. Van Lennep and KPJ Trust SA, using the account of Stuart Moss, a London resident who regularly works with BTCB;
- 8/5/99 wire transfer of \$25,000 from BTCB's account at Security Bank to Wells Fargo Bank in Denver, Colorado, for Ms. Van Lennep, "Ref. K.P.J. Trust S.A.";
- 11/1/99 wire transfer of \$110,000 from BTCB's account at First Union to Wells Fargo Bank in San Francisco, California, for Ms. Van Lennep; and
- 11/26/99 wire transfer of \$175,000 from BTCB's account at First Union to Wells Fargo Bank in California for Ms. Van Lennep.

The KPJ Trust allegations have clear parallels to other BTCB matters examined by the investigation, including the references to BTCB's high yield investment program and Global Investment Fund subsidiary; BTCB's insistence that the investor's funds were unavailable for 1 year; and BTCB's non-payment of the funds to the investor, despite making payments to the BTCB client who arranged for the funds to be deposited at the bank in the first place.

—**Brett Investors.** Investors in Texas, California and Canada have made complaints that funds invested with Scott Brett and, on his instructions, wired to BTCB, have not been returned. Brett is a part owner of BTCB through Baillett International Ltd., according to documents supplied by BTCB to U.S. banks, and other information linking Brett to John Long, BTCB's majority owner. Despite the limited information available about this matter, the investigation located U.S. bank records showing over \$763,000 in wire transfers involving in-

vestors who have complained of being defrauded or persons or entities associated with Brett, including the following:

- 2/10/98 wire transfer of \$25,000 from unknown originator to BTCB’s account at BIV for “Aurora Investments”;
- 2/25/98 wire transfer of \$2,010 from unknown originator to BTCB’s account at BIV for “Aurora Investments”;
- 3/11/98 wire transfer of \$29,994 from A. Kotelr to BTCB’s account at BIV for “Bailett I”;
- 4/22/98 wire transfer of \$15,000 from unknown originator to BTCB’s account at BIV for “Aurora Investments”;
- 10/22/98 wire transfer of \$10,500 from Arthur W. Hogan, an investor claiming to have been defrauded by Brett, to BTCB’s account at Security Bank;
- 10/27/98 wire transfer of \$110,500 from Denver and Arlene Hopkins in Louisiana to BTCB’s account at Security Bank “per Scott Brett”;
- 12/9/98 wire transfer of \$250,000 from “Newcastle Enterprises Scott Brett” to BTCB’s account at Security Bank for “Aurora Investments”;
- 1/14/99 wire transfer of \$100,000 from BTCB’s account at Security Bank to Washington Trust Bank in Spokane, Washington, for “Bailett International . . . Ref: Aurora Investments S.A.”; and
- 4/28/99 wire transfer of \$220,000 from BTCB’s account at First Union to Canadian Imperial Bank of Commerce in Kelowna, British Columbia, for “Bearisto & Co. Trust” for “Aurora Investments S.A.”

Civil and criminal investigations may be underway into these complaints.

—**Gendreau Investment.** Plaintiffs’ filings in the Gold Chance case provide information about a BTCB client in Minnesota, Michael Gendreau, who allegedly invested \$390,000 with BTCB in 1998, and has been “unable to get his money back.”³⁷⁴ The U.S. Treasury Department and the FBI in Seattle have allegedly been informed and may be investigating his claims against BTCB.

—**Global/Vector Medical Technology Accounts.** U.S. bank records show BTCB’s involvement with a company headed by an individual suspected of past securities fraud. The company is Global Medical Technologies, Inc., a Florida corporation which, on January 29, 1999, changed its name to Vector Medical Technologies, Inc. (“Vector”). Vector’s chairman and chief executive is Dr. Michael H. Salit, a Florida resident who apparently received a medical degree in Israel, but has not been licensed to practice medicine in any U.S. State including Florida. Salit was the subject of a 1996 SEC enforcement action for

³⁷⁴ *Gold Chance*, “Affidavit of Brent Binions” (4/20/00) at 2.

securities fraud³⁷⁵ which resulted in a March 2000 final judgment that required him, without admitting or denying SEC allegations, to pay \$600,000 to the government and accept a court order permanently enjoining him from engaging in securities fraud. The court excused Salit from paying all but \$25,000 of the required sum in light of a financial statement showing him to be without assets. The court warned, however, that the full \$600,000 would become due if the SEC “obtain[ed] information indicating that Defendants’ representations to the [SEC] concerning their assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate or incomplete.”³⁷⁶

Salit is a signatory on at least seven Vector accounts at First Union, and U.S. bank records show a number of transactions between BTCB and Vector.³⁷⁷ The bank records indicate that Vector’s initial account was opened at First Union on 9/30/98, well after the SEC enforcement action was underway. The bank records indicate that, during 1999 and 2000, hundreds of investors across the United States paid over \$16 million into Vector’s CAP account to purchase Vector shares. The bank records show that BTCB paid \$500,000 into Vector’s initial account soon after it opened, and subsequently received \$1 million in payments from Vector over a 12-month period, several installments of which were pass-through payments involving BTC Financial.

The key transactions include the following:

- 12/14/98 wire transfer of \$300,000 with the notation “[promissory] note & investment,” and a 3/15/99 wire transfer of \$200,000, from BTCB’s account at Security Bank into Vector’s initial account at First Union, which provided virtually all of the funds in the Vector account;
- 1/6/99 wire transfer of \$145,000 from Vector’s initial account to its newly-opened CAP account, utilizing the funds provided by BTCB;
- 8/26/99 check for \$300,000 written by Vector on its CAP account for BTCB, which BTCB deposited on 9/2/99 into its Security Bank account, presumably in repayment of the funds provided by BTCB in December;
- 10/4/99 check for \$200,000 written by Vector on its CAP account for BTCB, which BTCB deposited on 10/5/99 into its First Union account, presumably in repayment of the funds provided by BTCB in March;

³⁷⁵*SEC v. The Appletree Companies Inc. f/k/a Modami Services, Inc., Michael H. Salit, David B. Lobel, Paul B. Kravitz, and W. Scott Long III* (U.S. District Court for the Southern District of Florida Civil Case No. 96-8675-Civ-Seitz).

³⁷⁶*Id.*, “Final Judgment of Permanent Injunction and Other Relief as to Defendants Salit and Lobel” (3/3/00) at 5.

³⁷⁷Vector has at least seven accounts at First Union, numbered 209-000-294-6659 (opened 9/30/98 until 11/1/99, and referred to as the “initial account”); 998-324-6063 (opened 1/5/99 to present, and referred to as the “CAP account”); 200-000-276-0469 (opened 8/30/99 to present); 200-000-276-0375 (opened 9/8/99 to present); 200-000-748-1837 (opened 5/12/00 to present); 24021271 (brokerage account); and 4063000997 (money manager account, possibly opened in 8/00). Vector may have additional accounts in First Union’s private bank.

- 11/12/99 check for \$100,000 written by Vector on its CAP account for BTC Financial Services which deposited the check on the same day, waited for it to clear, and then wrote a \$100,000 check to BTCB, signed by Betts and dated 11/18/99, which BTCB deposited into its First Union account on 11/19/99;
- 12/14/99 check for \$100,000 written by Vector on its CAP account for BTC Financial Services which deposited the check on the same day, and immediately wrote a \$100,000 check to BTCB, signed by Requena. and dated 12/14/99, which BTCB deposited into its Security Bank account on 12/15/99;
- 1/10/00 check for \$100,000 written by Vector on its CAP account for BTC Financial Services which deposited the check on 1/11/00, and immediately wrote a \$100,000 check to BTCB, signed by David Cooper and dated 1/11/99, which BTCB deposited into its Security Bank account on 1/12/00;
- 2/2/00 check for \$100,000 written by Vector on its CAP account for BTCB, which BTCB deposited into an unknown account on 2/9/00; and
- 2/29/00 check for \$100,000 written by Vector on its CAP account for BTCB, with the notation “Final Payment,” which BTCB deposited into its Security Bank account on 3/1/00.

A 1999 Vector financial statement indicates, in Note 8, that the \$500,000 provided by BTCB was a loan and, on October 4, 1999, apparently in connection with repaying the \$500,000 principal, Vector agreed to pay BTCB a second \$500,000 “as payment in full of principal and interest as well as for the surrender and release by BTCB of all its right, title and interest in Vector, including its stock ownership. BTCB had the right to approximately 1,400,000 unissued shares of the Company’s common stock.”

BTCB either failed to conduct sufficient due diligence to discover Salit’s recent involvement with securities fraud allegations or decided to do business with Salit despite his past. BTCB not only lent Vector significant funds—one of the few business loans issued by this bank—but then allegedly acquired rights to 1.4 million in unissued Vector shares. BTCB then supposedly surrendered these rights in exchange for a portion of the \$16 million the company was raising from new investors. SEC and criminal investigations may now be underway to determine whether Vector Medical Technology venture has any indications of securities fraud.

(7) Taves Fraud and the Benford Account

In April 2000, U.S. citizens Kenneth H. Taves and his wife Teresa Callei Taves were found liable by a U.S. district court for defrauding hundreds of thousands of credit card holders by billing their credit cards for unauthorized charges totaling more than \$49 million. About \$7.5 million in fraud proceeds was traced to a European Bank account opened in the name of a Vanuatu corporation, Benford Ltd. Benford Ltd. had been established by European Trust and its bank account opened by European Bank, without any due

diligence research into the company's beneficial owner or source of funds. Even after learning that the \$7.5 million came from the Taves fraud victims, European Bank fought for more than 1 year to prevent U.S. seizure of the \$7.5 million from its correspondent account at Citibank.

Taves Fraud. The Taves fraud first became public in January 1999, when the U.S. Federal Trade Commission (FTC) filed a civil complaint in California charging the Taves and associated companies and individuals with unfair and deceptive business practices arising from fraudulent credit card billing.³⁷⁸ In response, the court issued a temporary restraining order freezing the Taves' assets, requiring the defendants to provide an accounting of their activities and assets, and appointing an FTC receiver to locate and return fraudulently obtained monies.³⁷⁹

In May 1999, the court held Taves in criminal contempt for hiding assets from the FTC, including a \$2 million house in Malibu transferred to a corporation and \$6.2 million deposited into a bank account at Euro Bank in the Cayman Islands.³⁸⁰ Euro Bank is a longstanding, Cayman licensed bank that has no affiliation with European Bank or the Bayer family. The U.S. district court ordered Taves imprisoned until he turned over the \$2 million from the house transfer to the FTC receiver. Imprisoned on May 4, 1999, Taves was still in custody when he was indicted in February 2000, in both the United States and Cayman Islands.³⁸¹

In April 2000, the U.S. court issued findings of fact and conclusions of law holding the Taves and other defendants liable for fraudulent credit card billing.³⁸² The court ruled that "the uncontroverted evidence overwhelmingly demonstrate[d] that the defendants participated in a billing scheme by submitting unauthorized [credit card] charges for processing."³⁸³ The court determined that, in November 1997, the Taves' companies paid a fee to Charter Pacific Bank in California to gain access to a credit card database containing over 3 million credit card numbers.³⁸⁴ The Taves then opened merchant bank accounts—accounts used to accept credit card payments—at Charter Pacific Bank and Heartland Bank and began billing small amounts, often \$19.95, to thousands of credit card numbers in the database.³⁸⁵ Although the defendants apparently alleged that the \$19.95 was a monthly fee that the credit card holders paid to access adult-content Internet web sites operated by Taves-related companies, the court found that the defendants had "stole[n]" the credit card numbers from the database and "charged card numbers without the cardholders' authorization."³⁸⁶ The court

³⁷⁸ See *FTC v. J.K. Publications, Inc.* (U.S. District Court for the Central District of California Civil Case Number CV 99-0044 ABC (AJWx)), complaint (1/5/99) and amended complaint (1/20/99).

³⁷⁹ See *FTC v. J.K. Publications, Inc.*, temporary restraining order (1/6/99).

³⁸⁰ See *FTC v. J.K. Publications, Inc.*, order holding Taves in contempt for not disclosing Malibu realty (5/4/99); order requiring Mr. and Mrs. Taves to produce documentation related to Euro Bank account (5/5/99); and order granting summary judgment (4/7/00) at 3.

³⁸¹ See *United States v. Taves* (U.S. District Court for the Central District of California Criminal Case No. 00-CR-187-ALL), indictment (2/29/00); money laundering charges filed in the Cayman Islands (2/9/00). A trial is scheduled on the U.S. charges in January 2001.

³⁸² See *FTC v. J.K. Publications, Inc.*, order granting summary judgment (4/7/00).

³⁸³ *Id.*, at 51.

³⁸⁴ *Id.* at 17, 21, 51.

³⁸⁵ *Id.* at 12, 16-17, 20, 51.

³⁸⁶ *Id.* at 53. See also *id.* at 6, 16-18, 34-35, 51-52.

found that, in 1998 alone, over \$49.6 million was deposited into the Taves' merchant accounts³⁸⁷ from unauthorized charges billed to over 783,000 credit card numbers in the Charter Pacific database.³⁸⁸ The funds were then used for various purposes, including paying Mr. and Mrs. Taves a "salary" of \$1.8 million each.³⁸⁹ The court found that \$25.3 million of the \$49.6 million had been transferred to offshore bank accounts at Euro Bank.³⁹⁰

In February 2000, the Cayman Government charged three senior Euro Bank officials with money laundering, citing the \$25.3 million transferred to the bank from the Taves fraud. These charges, brought against Ivan Richard Wykeham Burges, Brian Leslie Peter Culma, and Judith Mary Donegan, are the first money laundering prosecutions brought against Cayman bank officials in the country's history. Criminal charges were also brought against six other individuals, including Taves for money laundering.³⁹¹

In May 1999, due to money laundering concerns arising not only from the Taves fraud but other matters as well, the Cayman Government closed Euro Bank.³⁹² In June 1999, Euro Bank's shareholders placed the bank in voluntary liquidation, and the bank began winding up its affairs. On July 26, 1999, Euro Bank's liquidators agreed to provide the FTC with "information and documents in the Bank's possession" relating to the Taves fraud in exchange for releasing the Bank from damage claims related to the bank's actions in that matter.³⁹³ After the agreement was approved by the Cayman Grand Court, the FTC receiver reviewed Euro Bank information and found the \$7.5 million transfer from Taves-related accounts at Euro Bank to the Benford account at European Bank in Vanuatu.

Establishing Benford Ltd. The Benford account was opened in February 1999, at the request of Euro Bank employee Ivan Burges, later charged with money laundering on behalf of Taves. The account was opened by Susan Phelps, who is both a European Bank director and employee, and a European Trust officer.³⁹⁴ On 2/3/99, Burges sent a fax to European Bank inquiring about establishing a Vanuatu corporation and opening a corporate bank account for an unnamed client. Phelps faxed Burges the requested information. On 2/8/99, Burges requested incorporation and account opening forms and, the next day, faxed an "urgent" request to establish a Vanuatu corporation called Benford Ltd., still without naming the client on whose behalf he was acting. Phelps supplied him with the

³⁸⁷ *Id.* at 25.

³⁸⁸ *Id.* at 33-34.

³⁸⁹ *Id.* at 13.

³⁹⁰ *Id.* at 36-37.

³⁹¹ Documents attached to public court filings in the FTC case in the United States, includes, for example, documents showing Taves' paying Donegan, one of the Euro Bank employees, \$4,000 per month for her efforts on his behalf and authorizing her to use his Cayman beach house "for the purposes of spending a few leisurely hours there from time to time." Another document shows Taves' transferring one of his companies to her "free of charge" in February 1999, apparently in a continuing effort to hide assets from the FTC and evade the January 1999 court order imposing an asset freeze.

³⁹² *FTC v. J.K. Publications, Inc.*, "Report of Receiver's Activities Dated August 4, 1999," (8/6/99) at 1; interviews of Cayman Government officials in April 2000.

³⁹³ See "Deed of Compromise, Release, Accord and Satisfaction" (7/26/99) at 2.

³⁹⁴ This information is based upon affidavits filed by Phelps in various court proceedings, as well as account documentation and other information. See, for example, *Evans v. European Bank* (Civil Case No. 85 of 1999 before the Supreme Court of Vanuatu), Phelps affidavit (11/22/99); *Evans v. Citibank* (Case No. 4999 of 1999 before the Supreme Court of New South Wales, Sydney Registry, Equity Division), Phelps affidavit (12/17/99).

requested forms as well as wire transfer instructions for sending funds to European Bank's correspondent account at Citibank in New York.

On 2/17/99, Burges faxed an application to incorporate Benford Ltd. providing minimal information about the person who would be the corporation's beneficial owner. Burges provided nothing more than her name, Vanessa Phyllis Ann Clyde, a London address, a copy of her passport photograph, and a one-word description of her occupation as "business." On the same day Burges wire transferred \$100,000 from Euro Bank to Citibank in New York, for European Bank. Without asking any questions or obtaining any additional information, 24 hours later on 2/18/99, European Trust Incorporated Benford Ltd. Phelps faxed a copy of the incorporation papers to Burges on 2/19/99, and asked where to send the originals. He instructed her to send them to Clyde in London.

The documents created by European Trust to establish Benford Ltd. never identify the company's beneficial owner by name nor refer to Clyde.³⁹⁵ Instead they reference a series of shell corporations which Bayer said in his interview are controlled by "the Bayer group" of companies.³⁹⁶ Only one European Trust document—not part of the company's official incorporation papers—actually named Clyde. Entitled "Nominee Declaration" and bearing the same date, 2/18/99, as the official incorporation papers, it declared that European Trust's nominee company, Meldrew Ltd., was holding Benford's shares as a nominee for Clyde.³⁹⁷ Bayer explained that this nominee declaration was typically the key document European Trust used to establish the beneficial ownership of a Vanuatu company it formed. He said that typically European Trust would maintain a copy in its files, but would not supply a copy to European Bank.

Opening the Benford Account. After incorporating Benford Ltd. through European Trust, Phelps put on her European Bank hat and opened a bank account for corporation. Phelps admitted in court pleadings that, throughout the bank account opening process, she never spoke with either Burges or Clyde.³⁹⁸ The documentation

³⁹⁵The State Department's INCSR 2000 report states that one of the key deficiencies in Vanuatu's anti-money laundering laws is its corporate secrecy laws which "shield the identity and assets of beneficial owners of business entities. . . . The anonymity and secrecy provisions available through ownership of Vanuatuan [corporations], along with the ease and low cost of incorporation, make them ideal mechanisms for tax evasion and money laundering schemes." INCSR (March 2000) Money Laundering and Financial Crimes Country Reports, Vanuatu.

³⁹⁶For example, the "constitution" used to establish Benford Ltd. names only one "incorporator," Atlas Corp. Ltd., a Bayer group company. The constitution is signed on 2/17/99, by Phelps, on behalf of Atlas Corp. Ltd. A Benford corporate resolution, signed by Phelps on 2/18/99 on behalf of Atlas Corp. Ltd., appoints Benford's sole director, Diract Ltd., and its sole corporate officer, Lotim Ltd., which are two more Bayer group companies. A "share certificate" purporting to issue 100 Benford shares to a company called Meldrew Ltd., is signed by Phelps on behalf of Diract Ltd. and by another European Bank employee, David Outhred, who signed the certificate on behalf of Lotim Ltd. Bayer said during his interview that Meldrew Ltd. is owned by European Trust. Together, Benford Ltd.'s official incorporation documents, corporate resolutions and share certificate never mention Clyde, the company's true owner.

³⁹⁷The document states that Meldrew Ltd. "hereby admits that the above mentioned shares are your absolute property and that they only stand registered in our name at your request as your nominee in Trust for you absolutely and that we have no beneficial interest therein whatsoever." [Emphasis in original text omitted.] It is signed by Phelps and Outhred on behalf of still two more European Trust companies, Zenith Inc. and Orion Inc., which are apparently Meldrew's officers.

³⁹⁸See *Evans v. European Bank* (Civil Case No. 85 of 1999 before the Supreme Court of Vanuatu), Phelps affidavit (11/22/99), paragraph (3), "I did not speak to Mr. Burges during the course of the correspondence . . . and verily believe nobody else from [European Bank or European Trust] spoke to Burges." CG 6439-43.

also makes it clear that European Bank opened the Benford account without conducting any due diligence research into Clyde, the source of her wealth, or the origin of the initial deposit of \$100,000.

The European Bank forms used to open the Benford bank account provide even less due diligence information than the European Trust forms used to establish the corporation. The account opening questionnaire, as well as a Benford corporate resolution and mandate to open the bank account, are all signed by Phelps. None mentions Clyde.³⁹⁹ None provides additional due diligence information about Benford Ltd. Bayer indicated that these forms were filled out in the usual way for bank accounts opened for companies formed by its affiliate, European Trust.

One of the European Bank forms, entitled a "Statutory Declaration of Account Holder In Relation to the Operation of the Account," was apparently intended, in part, to protect the bank against money laundering. European Bank provided a copy of this completed form for the Benford account. It stated that the "beneficial owner" of the Benford account was "Benford Limited," again without making any reference to Clyde, and essentially declared that the funds deposited into the Benford account were not derived from criminal activities.⁴⁰⁰ But the declaration was not signed by Clyde or Burges. The form was instead signed by Phelps, on 2/25/99, prior to her making any inquiry into the origin of the Benford funds or conducting any substantive due diligence. Her signature was witnessed by Bayer, who also signed the form without having any knowledge of the account funds or Clyde. When asked how this document protected European Bank from money laundering, when it was signed by its own employee and not based on any factual knowledge, Bayer said that the Benford form had been completed in a routine manner similar to other accounts at the bank.

Bayer explained that, although Clyde's name never appeared on a bank document connected with the Benford account, European Bank had access to her identity through European Trust. Although Vanuatu law generally prohibits trust companies from disclosing a Vanuatu corporation's ownership, he explained that this prohibition could be waived by the company owner to open a bank account. Bayer said that European Bank could have simply asked European Trust at any time for the identity of the corporate beneficial owner. He noted that, in the case of Benford Ltd., that step

³⁹⁹One European Bank form, entitled "Declaration of the Beneficial Owner's Identity," appeared to require disclosure of a bank account's beneficial owner but was completed without doing so. The copy of this form provided by European Bank to the Subcommittee was signed by Phelps, dated 2/25/99, and identified "the beneficial owner of the assets deposited with the bank" as "Benford Limited." Bayer indicated this was a common way for European Trust to complete the form for companies they managed. He explained that the purpose of the form was not to reveal a company's true owner, but to establish that the accountholder is also the owner of the deposits placed into the account.

The Minority staff investigation later discovered a second version of this form, also signed by Phelps on 2/25/99, which was attached to an affidavit filed by Bayer in a Vanuatu court proceeding. See *In re European Bank* (Company Case No. 8 of 1999 before the Supreme Court of Vanuatu), Bayer affidavit (7/28/99), Exhibit L. The form stated that the "beneficial owner of the assets deposited with the bank" in the Benford account was "Vanessa P A Clyde." During his interview, Bayer was unable to explain why there were two versions of this document or why he had failed to supply the investigation with the same version he filed in court.

⁴⁰⁰The document states: "The deposits to be credited to the above mentioned account holder are not derived from, nor proceeds of, any forms of unlawful activity whatsoever nor were these assets (including the funds to be deposited) obtained in any manner contrary to the laws of the country whence they came or any other relevant country."

was unnecessary since Phelps worked for both the bank and the trust company and had the knowledge on hand for both entities.

Increasing Deposits and Increasing Concerns About the Benford Account. The Benford bank account application and related documents were dated 2/24/99 and 2/25/99. The Benford account was apparently opened on 2/26/00, when \$97,900 out of the \$100,000 transferred from Euro Bank on 2/17/99, was credited by European Bank to the newly opened Benford account, and the other \$2,100 was kept by European Trust to pay for Benford's incorporation expenses.

About 2 weeks after the Benford bank account was opened, on March 17, 1999, Burges telephoned European Bank and spoke with Phelps for the first time. He included in the telephone conversation a woman whom he alleged to be his client Clyde, who spoke with an American accent, despite her British passport. According to Phelps' sworn affidavit, this was the first of several telephone conversations she had in March and April discussing how Clyde wished to invest her funds.⁴⁰¹

During these 2 months, Burges also wired more than \$7 million to the Benford account.⁴⁰² All of the funds came from Taves-related accounts at Euro Bank. All were made after the 1/6/99 court order freezing Taves' assets. All were wire transferred to European Bank's U.S. dollar correspondent account at Citibank in New York.

Bayer indicated in a letter to the Subcommittee that these funds were unexpected⁴⁰³ and prompted additional due diligence efforts. After the March deposit of \$2.8 million, according to Bayer, European Bank contacted Euro Bank to ask about the nature of the funds, and Euro Bank promised to "get back to us with the answers."⁴⁰⁴ Phelps then asked European Bank's senior vice president, Douglas Peters, if he could find out more about Euro Bank.

On 3/29/99, Peters sent a fax to persons he knew in the Cayman Islands asking about Euro Bank. One of the persons responded by fax the same day stating that she would like to speak to him by telephone. Peters' handwritten notes of the telephone conversation on 3/30/99 state the following about Euro Bank:

Small locally incorporated bank, with a local banking license, 20/30 people on the staff, corporate activities too, not a good reputation locally, has its door open to business when other doors are closed to it, very much lower end of the local banking business, dubious, 3 months ago there were rumors that they might fail, not well respected, advise caution when dealing with them. Barclays would not accept a reference from them and would certainly not do business with them.

According to Bayer, Peters communicated this information to both Phelps and to Bayer himself.

⁴⁰¹ Clyde indicated on several occasions her preference for keeping the funds in U.S. dollars in a secure but liquid investment. For example, on 2/23/99, Clyde sent Phelps a fax asking whether the bank could "place Benford client funds in a market account . . . [i.e.,] a New York brokerage fund and keep privacy." European Bank ultimately placed the funds in U.S. dollar, interest-bearing accounts at its correspondent banks.

⁴⁰² Citibank records show that the \$7 million was deposited in three wire transfers: \$2.8 million on 3/17/99; \$750,000 on 4/9/99; and \$3.88 million on 4/9/99.

⁴⁰³ Letter dated 5/22/00 from Bayer to Senator Levin at 8.

⁴⁰⁴ *Id.*

Despite this negative portrayal of Euro Bank—the sole reference for the Benford account—European Bank left open the account, accepted additional funds, and chose not to try to verify any information about Clyde or her assets. Bayer explained the bank's actions by saying that Euro Bank had referred other clients with no negative consequences, the client was not asking to withdraw the funds, and Clyde had reassured Phelps by explaining that Clyde was retired and diversifying her holdings as part of an estate planning process. When asked how that information fit with Clyde's passport information indicating she was 61, and her incorporation application describing her as still in business, Bayer said that the bank had been satisfied with her explanation and did not feel any concern at the time. He acknowledged that the bank did not undertake any effort to independently verify Clyde's background or assets, or to obtain additional references for her.

By April 1999, the Benford deposits totaled about \$7.5 million. Bayer said in his interview that Benford Ltd. had become a "huge client" for the bank, and agreed that its \$7.5 million represented about 15% of the bank's total deposit base of \$50 to \$60 million at the time.

In May 1999, two incidents suddenly cast new suspicion on the Benford funds. The first was on 5/25/99, when Phelps received a telephone call about the account from a Clyde with an English accent, instead of an American accent. Phelps reported the call and a fax received the next day to Bayer who said during his interview that it was the first time European Bank appeared to have two different persons claiming to be the beneficial owner of an account at the bank. On 5/29/99, a Friday, European Bank received another fax, a letter dated 5/27/99, from a firm representing Euro Bank.⁴⁰⁵ It stated that Euro Bank had been placed into receivership and the \$7.5 million previously transferred to the Benford account appeared to be associated with the Taves fraud. Bayer indicated that, in response to these two events, the bank immediately froze the Benford account internally and, on Monday, 5/31/99, filed a report with the Vanuatu police.⁴⁰⁶

Bayer indicated, and bank documentation substantiates that, prior to May 1999, European Bank had followed its usual practice of directing the Benford funds into a series of "placements" at its correspondent banks, in order to maximize the interest earned on the funds. After freezing the funds, Bayer indicated that European Bank transferred them internally into a new, non-interest bearing account from which client withdrawals were prohibited.⁴⁰⁷ However, even after moving the Benford deposits into a non-interest bearing account within the bank, European Bank continued to place the \$7.5 million with the correspondent bank paying the highest interest rate on the funds.⁴⁰⁸ A series of placements by Eu-

⁴⁰⁵ See letter dated 5/27/99 from Maples and Calder to European Bank.

⁴⁰⁶ See also *Evans v. Citibank* (Case No. 4999 of 1999 before the Supreme Court of New South Wales, Sydney Registry, Equity Division), affidavit of Susan Phelps (12/17/99), CG 6519–22.

⁴⁰⁷ *Id.* Phelps affidavit at paragraph (7).

⁴⁰⁸ Documentation and interviews indicate the following U.S. dollar placements involving the \$7.5 million:

- 30 day placement from 7/20/99 until 8/20/99 at Westpac Bank;
- 30 day placement from 8/20/99 until 9/20/99 at Citibank;
- 30 day placement from 9/20/99 until 10/20/99 at ANZ Bank;

Continued

ropean Bank with its correspondents for \$7.5 million plus interest appear to have been paid for with the Benford funds.⁴⁰⁹ In his interview, Bayer said that while he was “not denying” that these placements included the Benford deposits, he maintained that they also included non-Benford funds, such as European Bank’s own interest earnings from the deposits and possibly \$20,000 to \$40,000 belonging to one or two other clients. Despite a request, Bayer did not identify these other clients or provide documentation showing how or when other client funds may have been combined with the frozen \$7.5 million in Benford funds and included in these placements.

In June 1999, after freezing the Benford funds internally, European Bank attempted to find out more about their origin. Bayer indicated and documentation suggests that inquiries directed to Euro Bank and Burges were unanswered. Phelps had already attempted, without success, to verify Clyde’s London address and telephone number.⁴¹⁰ She also asked Clyde to send a notarized copy of her passport photograph, which Clyde did and which matched the one the bank had on file for the Benford account. On 6/15/99, Phelps asked Clyde in a telephone conversation about the origin of the funds. She wrote this summary of the conversation:

[Clyde] said I should have got this info from Burges. I said the funds had just arrived without supporting documentation. . . . English was asked to open the a/c. Doesn’t know when. . . . Doesn’t know how much. Wasn’t responsible. for putting funds in. Not her personal funds. Extremely uncomfortable. . . . If somebody had taken funds she doesn’t want to be tarred.⁴¹¹

Vanuatu and Australia Court Proceedings. Within months of the \$7.5 million being deposited, European Bank had notice and evidence of their suspect origin. Yet when legal proceedings ensued in Vanuatu and then Australia, European Bank steadfastly opposed releasing the funds or remitting them to the FTC receiver representing the Taves fraud victims.

The litigation began in the summer of 1999. On July 2, 1999, someone claiming to be Clyde attempted to withdraw \$700,000 from the Benford account. Because the account was frozen, European Bank refused the request but, according to Bayer, also realized that it had no statutory basis or court order supporting its refusal. On 7/28/99, European Bank filed a lawsuit in Vanuatu court asking for a court order freezing the Benford account, which the court issued on the same day.⁴¹² On 8/25/99, the FTC receiver filed a civil suit in the Vanuatu court seeking information about the account and restraining Benford Ltd. from transferring any funds.⁴¹³ The court consolidated the two cases and granted the FTC receiver access to the information in the first suit.

—placement from 10/20/99 until November 2000 at Citibank, after which the funds were seized and taken into custody by the United States.

⁴⁰⁹ A review of European Bank’s U.S. dollar correspondent account records at Citibank and ANZ Bank show no other deposit, transaction or placement, in 1998 or 1999, which could have given rise to these \$7.5 million placements, other than the Benford deposits.

⁴¹⁰ See Phelps email dated 5/26/99, CG 6497.

⁴¹¹ See Phelps affidavit and notes, CG 6509–11.

⁴¹² *In re European Bank* (Company Case No. 8 of 1999 before the Supreme Court of Vanuatu).

⁴¹³ *Evans v. European Bank* (Civil Case No. 85 of 1999 before the Supreme Court of Vanuatu).

On 9/22/99, Clyde filed a pleading in the Vanuatu case stating that, "subject to the Order of this Honorable Court," she would like to remit all of the Benford funds to the FTC receiver.⁴¹⁴ Her sworn affidavit stated:

I knew nothing of the founding of Benford Limited, nor of the opening of an account with European Bank Limited, until I received, unsolicited, a copy of the Benford's Articles of Incorporation and a summary of charges from European Bank. . . . In late January of 1999, I was living in . . . Malibu, California . . . [and] an old and close friend of my family, Gretchen Buck . . . told me that . . . I would earn a helpers fee of at least \$10,000 if I would assist her in opening an offshore account for "a friend." I was assured that the purposes of the account were totally aboveboard and the "friend" was of unimpeachable integrity with a few legitimate business problems but a person who craved anonymity. I agreed to assist, and at Buck's request, signed 40 pieces of blank paper. I have not seen these papers since. . . . I became suspicious thereafter when Buck was not forthcoming . . . [and] would say . . . "Its best you don't know."

Gretchen Buck is an associate of Taves, a former Euro Bank accountholder, and one of the individuals indicted in the Cayman Islands for money laundering. She apparently directed the transfer of more than \$3 million to the Benford account.⁴¹⁵

Attached to Clyde's pleading were documents indicating that she intended to transfer control over Benford Ltd. from European Trust's nominee companies to the FTC receiver's legal counsel in Vanuatu, so that the \$7.5 million could be paid to the FTC. European Trust's nominee companies, however, opposed this change in control over Benford Ltd. and opposed remitting the \$7.5 million to the FTC receiver.⁴¹⁶

More litigation in Vanuatu followed, including a criminal investigation of Benford Ltd. by the Vanuatu police for money laundering.⁴¹⁷ On 11/30/99, the Vanuatu police charged Benford Ltd. with possession of property "suspected of being proceeds of crime."⁴¹⁸

⁴¹⁴ *Evans v. European Bank*, Clyde affidavit (9/22/99).

⁴¹⁵ See *FTC v. J.K. Publications*, "Report of Receiver's Activities dated August 4, 1999," at 5-6.

⁴¹⁶ See *Evans v. Citibank* (Case No. 4999 of 1999 before the Supreme Court of New South Wales, Sydney Registry, Equity Division), affidavit of Douglas Edmund Raftesath, Australian counsel for the FTC receiver (12/17/99) at 3.

⁴¹⁷ On 9/23/99, the Vanuatu police asked the court to impose a freeze under criminal law on the \$7.5 million, pending an investigation of Benford Ltd. for money laundering. Despite requests by Benford Ltd. and the FTC receiver to attend the hearing on this request, the court heard from the police on an ex parte basis, issued the requested order, declined to allow release of the \$7.5 million to the FTC receiver, and ordered additional proceedings. On 10/29/99 and 11/22/99, Phelps filed two affidavits in the case providing additional information and stating that, despite the bank's role in establishing the corporation, opening its bank account and managing the \$7.5 million, European Bank did not know the true identity of Benford Ltd.'s beneficial owner.

⁴¹⁸ Information filed before the Supreme Court of Vanuatu (Criminal Case No. 754 of 1999). On 12/2/99, pursuant to the request of the police, the Vanuatu court issued still another order freezing the Benford funds. On 12/3/99, Clyde filed a new civil suit in Vanuatu court requesting an order declaring her the sole beneficial owner of Benford Ltd. and requiring Meldrew Ltd., the European Trust nominee company, to transfer all Benford shares to the Vanuatu counsel working with the FTC receiver. *In re Benford Ltd.* (Company Case No. 14 of 1999 before the

Legal proceedings began in Australia after the FTC located a document notifying Benford Ltd. that its funds had been transferred to “Citibank Limited, [Offshore Bank Unit] Sydney.”⁴¹⁹ On 11/30/99, the FTC receiver sent a letter to Citibank offices in Sydney, Australia (“Citibank Sydney”), alerting it to the Taves fraud and its relation to the Benford funds deposited by European Bank.⁴²⁰ On 12/10/99, the FTC receiver filed suit in Australia to freeze the \$7.5 million on deposit with Citibank.⁴²¹

Unknown to the FTC receiver at the time of its filing, European Bank had, in fact, taken steps that same day to transfer the funds from Citibank to one of its correspondent banks in Vanuatu.⁴²² Before any transfer took place, however, the Australian court issued an order freezing the funds.

Additional pleadings followed in Australia from the Vanuatu Government, European Bank and FTC receiver, all seeking control of the \$7.5 million. At first, European Bank alleged that the frozen \$7.5 million was unrelated to the Benford funds and Taves fraud,⁴²³ and the FTC receiver’s Australian legal counsel agreed to drop the suit. That was on a Friday. According to Moore, European Bank asked Citibank to transfer the funds to Westpac Banking Corp. in Vanuatu on the following Monday. However, on Sunday, the Australian federal police filed an emergency request to freeze the funds pending further investigation, and the Australian court reinstated the freeze.

On 12/15/99, European Bank sent a fax to Citibank complaining that the FTC receiver was trying “every trick in the book” to “force the monies to be sent to the USA.”⁴²⁴ Bayer concluded the fax with these observations:

Supreme Court of Vanuatu). The intent of her lawsuit was, again, to facilitate the transfer of the \$7.5 million to the FTC receiver.

⁴¹⁹See “Interest Bearing Deposit Confirmation,” dated 10/12/99, issued by European Bank to Benford Ltd., CG 4625.

⁴²⁰The letter placed Citibank “on notice that [the FTC receiver] assert[s] priority claims over any funds originating from this fraud, including the funds on deposit with you.” According to Citibank, this letter was the first notice they had of any problem with the \$7.5 million deposit made by European Bank. See *Evans v. Citibank* (Case No. 4999 of 1999 before the Supreme Court of New South Wales, Sydney Registry, Equity Division), affidavit of Christopher Schofield Moore (12/16/99).

⁴²¹*Evans v. Citibank* summons (12/10/99). The pleadings stated, in part, that while the FTC receiver had obtained freeze orders for the funds in Vanuatu, the funds “had already been transferred before the orders could be carried out . . . [and] there is a real risk that any moneys held by Citibank . . . may be transferred out of Citibank’s accounts.” Affidavit of Douglas Edmund Raftesath, Australian counsel for the FTC receiver (12/10/99) at 3.

⁴²²In a 12/10/99 fax to Citibank Sydney, CG 4810, Bayer informed Moore for the first time about the suspicious activity surrounding the Benford account beginning 6 months earlier, in May 1999, the ongoing money laundering investigation by the Vanuatu police, and the Vanuatu court orders freezing the funds. Bayer wrote:

“We of course will not be distributing the [Benford] funds to anyone without the direction of the Vanuatu Supreme Court. Unfortunately for your bank, it has not been the high bidder for this deposit upon rollover and I confirm our request that you follow our instruction to transfer the funds to Westpac Banking Corporation for the credit of their Port Vila branch, for the further credit of ourselves (copy enclosed). I assure you that the decision to move the funds has been purely a commercial one and not one driven by any hidden agenda. We will continue to favor Citibank whenever possible in support of our relationship with your bank which we value greatly.”

⁴²³European Bank contended that the freeze order was inappropriate because the funds on deposit with Citibank “are not funds belonging to Benford but are funds belonging to European Bank.” *Evans v. Citibank*, affidavit of Susan Phelps (12/17/99) at paragraph (14).

⁴²⁴12/15/99 fax from European Bank to Citibank Sydney, CG 4686–87. He stated further, “The monies have never ‘fled the jurisdiction.’ They have always been on deposit in US\$ with European Bank and nowhere else. European Bank . . . placed the funds in various banks to get the best return.”

Locally [European Bank] has been perceived as being the bank that uncovered the suspicious transactions and took all the right steps to assist the authorities. Now in Australia we are being cast as money launderers and probable accomplices. I fear the Australian authorities would like to believe that.

In December 1999, a local Vanuatu newspaper gave this summary of the Benford matter:

The Vanuatu Government could find themselves with a US\$7.5 million (v982 million) windfall cash gift if the Public Prosecutors office are successful in convicting . . . Benford Ltd. of laundering money here from the illicit proceeds of one of the biggest credit card frauds in history. . . . [The FTC receiver] has been travelling the world tracking down the missing money. He advised, "There are a couple of countries in the Caribbean, . . . Channel islands, . . . Europe and Vanuatu where stolen money was sent. . . . [U]nfortunately, Vanuatu is the only country that is trying not to return the funds to the rightful owners. . . ." [M]embers of the Finance Centre believe that if the government do confiscate it, a clear message will be sent to the outside world not to launder the proceeds of crime through Vanuatu's Finance Centre. This case is however a sensitive one. Vanuatu may have a fight on its hands if it tries to confiscate the funds owing to ordinary people around the world that the court in California USA has ordered to be returned.⁴²⁵

The Vanuatu and Australian litigation continued throughout 2000.

U.S. Court Proceedings. Almost 1 year later, on November 29, 2000, at the request of the FTC, the U.S. Department of Justice filed legal proceedings to seize the Benford funds from Citibank in New York. It was able to file the pleadings in the United States, because Citibank Sydney had always kept the Benford funds in U.S. dollars in a U.S. account at Citibank in New York. When presented with the seizure warrant, issued by a U.S. magistrate, Citibank New York, delivered the funds to the United States. On December 21, 2000, the United States filed a civil forfeiture action seeking to eliminate any other claim to the Benford funds.⁴²⁶ The complaint alleged that the funds were the proceeds of the Taves credit card fraud, and the FTC receiver had "tried to obtain the funds from European Bank through a Vanuatuan court proceeding, but failed to obtain relief in Vanuatu."

During more than a year of litigation in three countries, Clyde has supported sending the Benford funds to the FTC, but European Bank has vigorously opposed it. When asked why, Bayer gave three reasons during his interview: (1) the ownership of the funds remained unclear, since Clyde had admitted that they were not her funds and she did not know their origin; (2) the allegation that the funds came from the Taves fraud should be established in Vanuatu

⁴²⁵ "Vanuatu Goes After \$US7.5m of Laundered Money," *Trading Post Vanuatu* (12/4/99).

⁴²⁶ *United States v. \$8,110,073.30 in U.S. Currency, Representing \$7,593,532.48 Deposited by European Bank at Citibank NA (Sydney Branch) on or about October 20, 1999, Plus Accrued Interest Since the Date of Deposit* (U.S. District Court for the Central District of California Civil Case No. CV-00-13328 (CBM)), complaint (12/21/00).

court and, if true, the Vanuatu Attorney General could reimburse the fraud victims, rather than pay the monies to the FTC receiver who might exhaust the entire sum through fees and expenses;⁴²⁷ and (3) European Bank had to defend itself from the risk of inconsistent court decisions which might order it to pay the \$7.5 million twice, once to the Vanuatu Government in connection with the Benford money laundering prosecution and once to the FTC receiver seeking funds for the Taves fraud victims. At times, Bayer also argued that the \$7.5 million deposit at Citibank represented European Bank's own funds, unrelated to the Benford matter, although at other times he acknowledged the Benford deposits made up the bulk of the Citibank placement.

The \$7.5 million, now swelled with interest earnings to \$8.1 million, remains in the custody of the United States, while the litigation in Vanuatu, Australia and the United States continues.

(8) IPC Fraud

In February 1999, the same month it opened the Benford account, European Bank opened another ill-fated account under a credit card merchant agreement with a Florida corporation called Internet Processing Corporation ("IPC"). As in the Benford matter, European Bank opened the account without a due diligence review of the prospective client. IPC used unauthorized credit card charges to obtain \$2 million in payments from European Bank and then absconded with the funds. By the time it learned of the fraud, European Bank was unable to locate IPC, the company's owner, or the missing \$2 million. It ultimately suffered a \$1.3 million loss which threatened the solvency of the bank.

IPC Merchant Account. According to Bayer, the IPC account was one of about a half a dozen new accounts that European Bank opened in 1999 in an effort to expand the bank's check clearing business into credit card clearing. Bayer said that the bank had not then understood the financial exposure involved in credit card clearing, and its negative experience with IPC and two other companies has since led to its getting out of that line of business for at least the short term.

Bayer explained that the credit card clearing business essentially involved European Bank's earning fees for providing advance payments at a discounted rate to merchants seeking the quick processing of credit card charges. He said that, in 1999, European Bank worked with a Netherlands credit-card processing company called TNT International Mail ("TNT") to make advance credit card payments. Essentially, a company with a European Bank merchant account would send its credit card slips to European Bank; European Bank would forward the data to TNT; TNT would advance the total amount of credit card charges, discounted at a certain rate, to European Bank; and European Bank would, in turn, advance certain payments to the merchant by depositing the funds into the company's merchant account. European Bank would then wait for the

⁴²⁷ However, the State Department's INCSR 2000 report warns: "Case law in Vanuatu has shown that proving the criminal origins of proceeds, especially of offenses committed abroad, is extremely difficult. Linking criminal proceeds seized in Vanuatu with the offense committed abroad through a complex series of financial transactions conducted by related corporations operating in several offshore jurisdictions is all but impossible." INCSR Report 2000 at 751.

credit card charges to clear, earning its profits from the payments ultimately made by the cardholders.

Bayer explained that European Bank had undertaken a variety of steps to protect the bank from the credit risk associated with advancing credit card payments to merchants, including: (1) requiring its merchants to make a large security deposit; (2) charging its merchants a 6% discount rate instead of the usual 2.5% to 3.5%; (3) retaining 10% of incoming payments from TNT until the merchant's credit card charges cleared; and (4) performing random reviews of credit card orders to detect fraud or misconduct. According to Bayer, what the bank had not taken into account was the possibility of a massive credit card fraud by a merchant who would abscond with the payments made by European Bank for unauthorized credit card charges that would never clear.

Bayer said that the IPC account was first referred to European Bank by a company called Media World which worked with telemarketers and, among other services, earned a fee for bringing them together with banks willing to provide merchant accounts.⁴²⁸ Bayer said that Media World was owned by Michael Okun, a U.S. citizen living in Florida who had referred two other merchants to European Bank as well. Bayer said that he thought Media World had investigated IPC and was recommending the company, but later learned that Media World had simply referred IPC, without any prior investigation into the company's reputation or reliability.

The documentation indicates that Media World first contacted European Bank about the IPC account around 2/15/99, when Okun sent an email to Kely Ihrig alerting her to expect account opening documentation from IPC. Ihrig had recently been hired by European Bank as its operations manager. The next day, IPC letters and materials arrived by fax, with 49 pages of account opening information.

Ihrig actually opened the IPC account 1 week later on 2/23/99. As with the Benford account, the IPC account was opened based upon written materials and correspondence, without any telephone conversation or direct client contact. Further, despite the credit risk involved, the documentation indicates that the bank performed virtually no due diligence prior to opening the IPC merchant account.

The IPC account opening questionnaire, dated 2/12/99, was signed by Mosaddeo Hossain. It indicated that IPC had been incorporated just 10 days earlier, on 2/2/99. Questions asking about IPC's assets and liabilities were left blank. The company address in Florida, which European Bank did not attempt to verify, was actually the address of a "Kwik Serve Food Store" in a questionable area of town. IPC's business activities were described as "Outbound Telemarketing of Tours & Time Shares," which Bayer said referred to selling vacation and travel packages on the Internet. Bayer said that while European Bank generally considered telemarketers a credit risk, it had been reassured by IPC's providing numerous pages of information about the travel packages it was marketing. Bayer indicated that, later, the bank was unable to find any evi-

⁴²⁸ For example, Bayer said that, for every \$100 in credit card charges posted by a merchant referred by Media World, European Bank would have kept \$6 and, from that \$6, paid Media World perhaps \$1 for referring the merchant.

dence that IPC had actually marketed any products on the Internet, although it may have made some telephone sales.

The questionnaire listed two references for IPC. The first was Mike Okun of Media World. According to Bayer, Okun later indicated that he was unaware that IPC had listed him as a reference, and knew little about either the company or Hossain. The second reference was “Bank Atlantic Hillsboro Office,” which turned out to be BankAtlantic, a Federal savings bank in Florida. The questionnaire states that IPC had “banked with them for 1 years/months,” without indicating whether the correct time period was 1 year or 1 month. As part of the account opening process, European Bank asked IPC for a written reference letter from BankAtlantic. In response, BankAtlantic provided a very brief letter, dated 2/19/99, addressed to “whom it may concern,” stating that IPC “has maintained an account with BankAtlantic, and has handled [the] account as agreed.” Bayer said during his interview that this letter had caused European Bank to assume IPC had a mature association with BankAtlantic. However, the bank learned later that the Florida bank account had been opened on 2/5/99, 2 weeks prior to the date of the reference letter; it held only \$1,500 at the time of the letter; and it represented the first time Hossain had done business with BankAtlantic.

No inquiry was made by European Bank and no information was provided by IPC about any aspect of the company’s finances, such as its initial capitalization or account balances. Nor was any information provided about the company’s ownership.⁴²⁹ The file did include copies of IPC’s incorporation papers, but the documents contained primarily boiler plate language and virtually no due diligence information other than listing Hossain as the company’s sole incorporator, sole director, sole officer and sole registered agent.

Hossain was, in fact, the only individual named in any of the IPC account opening documentation. Despite his key role, the account opening questionnaire provided minimal information about him—nothing more than his name, a Florida address, his Bangladeshi nationality, and his passport photograph—essentially the same skeletal information provided in the Benford account opening documentation.⁴³⁰ Hossain did list himself on the questionnaire as IPC’s accountant, but Bayer indicated that the bank did not know whether Hossain was actually a member of the accounting profession. He admitted that the bank had not obtained any information about Hossain’s business background, past employment or finances.⁴³¹

⁴²⁹ A form entitled, “Verification of the Beneficial Owner’s Identity,” listed IPC as the beneficial owner of the assets deposited with European Bank, but did not provide the “identity” of IPC’s owner. Bayer said this was not a mistake, because the beneficial ownership form was not intended to identify a company’s true owner, but merely to verify that the entity opening the account was the true owner of any funds deposited into its account. When asked whether the bank had noticed the lack of information about IPC’s ownership, Bayer indicated that had not been noticed at the time, but the bank had later determined that Hossain was the sole company shareholder.

⁴³⁰ In this instance, the Bangladeshi passport was marked as having expired 7 years earlier, in 1992, a fact that Bayer said was not noticed at the time.

⁴³¹ When asked whether European Bank had any concern about the geographic logic of a Bangladeshi doing business in the United States and using a bank in Vanuatu, Bayer indicated that had not been a concern. He said that the United States was a nation of immigrants, and Hossain had listed a U.S. telephone number, a U.S. address, and a U.S. bank account, so the bank reasonably believed he was a U.S. resident. Bayer said they had assumed IPC was using a Vanuatu bank because the company was so new that it had been unable to convince a U.S.

European Bank opened the IPC bank account within 1 week of being contacted for the first time by the company. Despite opening a merchant account involving credit risk and services beyond that of a run-of-the-mill corporate bank account, European Bank conducted virtually no due diligence investigation of IPC or Hossain. It did not inquire into the company's ownership, double check its references, ascertain its capital or bank account balances, or verify its physical address. With respect to Hossain, it did not inquire into his business or employment background, obtain any personal or professional references, check his credit history, or verify any personal or professional information about him. The only facts that the bank had were that IPC was a brand new company with a new Florida bank account, and Hossain was willing to pay unusually high charges to open a merchant account at a Vanuatu bank.

When asked whether he thought the bank's due diligence effort was adequate, Bayer said that, at the time, European Bank had not understood its exposure and had thought it was dealing with a U.S. corporation that had sufficient bona fides to open a U.S. bank account. He indicated that the bank later learned to its detriment that its due diligence efforts had been insufficient to protect it from loss.

IPC Fraud. European Bank approved opening the IPC merchant account in February, but the account did not become operational until late March 1999, after European Bank had obtained a merchant identification number for IPC from several credit card companies. During the 1-month waiting period, emails from Okun and Hossain inquired into the status of the account. Hossain indicated that he had already sold numerous travel packages and had credit card charges piling up that needed processing.

The Bayer interview and other documentation indicate that as soon as its merchant account became operational, IPC filed numerous credit card charges which, in less than 3 months, totaled about \$13 million. Bayer indicated in his interview that the vast majority of these charges, about 85%, would later be disputed by cardholders who refused to pay the billed amounts. He said there were also indications, never proven, that IPC may have illegally obtained the credit card numbers from a database and simply fabricated the unauthorized charges.

In April 1999, the first month the IPC account was operational, European Bank processed about \$3.5 million in charges and paid IPC over \$2 million. The documentation shows that European Bank sent the \$2 million in four payments through its U.S. dollar account at Citibank to the IPC account at BankAtlantic. The payments were:

- \$705,775.41 wire transferred by European Bank on 4/1/99;
- \$333,641.68 wire transferred by European Bank on 4/9/99;
- \$358,333.59 wire transferred by European Bank on 4/15/99;
- and
- \$728,098.90 wire transferred by European Bank on 4/22/99.

bank to open a merchant account and so began looking abroad. He acknowledged that the bank had subsequently been unable to locate Hossain's personal residence, either in the United States or elsewhere, and that the company address provided also proved false.

On 4/21/99, European Bank received an email from TNT, its credit card processing company, describing a phone call reporting “a possible fraud of cardholders of your merchant: Internet Processing Corp.” European Bank attempted to find out more, but was unable to obtain any new information for several days. On 4/23/99, it asked Citibank to recall its latest payment to IPC of \$728,000, and Citibank sent a 4/23/99 telex to BankAtlantic asking it to return the funds. Although BankAtlantic apparently acknowledged on 4/26 receiving the Citibank telex, BankAtlantic failed to return the \$728,000. Instead, on the same day, 4/26/99, at IPC’s request, it wire transferred all but about \$11,000 from the IPC account to a small bank in Jordan.

The documentation indicates that the 4/26 transfer was just the latest in a series of transfers by IPC within days of receiving a payment from European Bank. In each instance, IPC transferred the funds across international lines to a bank in either Israel or Jordan.⁴³²

When asked to describe BankAtlantic’s response to the possible IPC fraud, Bayer characterized it as “abysmal.” He noted that BankAtlantic never returned the \$728,000; failed to promptly alert the banks in Israel and Jordan to the possible IPC fraud; and failed to provide effective assistance in locating Hossain, IPC or the missing \$2 million. The Minority Staff investigation contacted BankAtlantic directly about the IPC account. BankAtlantic neither confirmed nor denied that it had opened the IPC account based upon an expired Florida drivers license, expired passport, and an unverified company address. BankAtlantic indicated that it did not normally issue a bank letter of reference for a 2-week old account with minimal funds, and speculated that the BankAtlantic letter provided to European Bank might have been a forgery. When asked whether the bank had any concerns in April 1999 when IPC began moving large sums from Vanuatu to banks in the Middle East, BankAtlantic indicated that the events had taken place so quickly, within the space of a month, that it had no documentation indicating concerns prior to being contacted by European Bank. Despite a request, BankAtlantic did not provide an explanation of why it transferred the \$728,000 payment to a Jordan bank on 4/26/99, instead of returning the funds to European Bank as requested.

European Bank alerted U.S. law enforcement, including the Secret Service, to the IPC fraud. On 5/7/99, European Bank faxed urgent messages to Bank Leumi in Israel and Union Bank in Jordan about the IPC fraud, but neither bank returned any funds or provided investigative leads. Bank Leumi stated in a 6/10/99 fax that

⁴³²Bank documentation indicates the following four transfers:

- Following European Bank’s payment of about \$705,000 on 4/1/99, IPC transferred \$700,000 on 4/5/99 to Bank Leumi in Tel Aviv, Israel, and an unspecified accountholder withdrew the funds on 4/9/99.
- Following European Bank’s payment of about \$333,000 on 4/9/99, IPC transferred \$330,000 on 4/12/99 to Union Bank for Savings and Investment in Amman, Jordan, and Paul Al Marjai, the accountholder, withdrew the funds on 4/15/99.
- Following European Bank’s payment of about \$358,000 on 4/15/99, IPC transferred \$342,000 on 4/21/99 to the same Union Bank in Jordan, and Marjai withdrew the funds on 4/26/99.
- Following European Bank’s payment of about \$728,000 on 4/26/99, IPC transferred \$734,000 on 4/22/99 to Union Bank in Jordan, and Marjai withdrew the funds on 4/29/99.

“under Israeli law, banks owe a strict duty of confidentiality to their customers, which prevents us from providing any additional information other than by compulsion of law.” European Bank asked Media World for assistance in locating IPC and Hossain; Okun agreed and stated in an email that, “to avoid this absolute mess in the future, my investigating team will investigate any and all people we bring to you.”⁴³³ European Bank was unable to find any trace of IPC, Hossain or the missing \$2 million.

European Bank calculated that, after taking into account IPC’s security deposit, the bank’s discount rate and holdbacks, it actually lost about \$1.3 million from the IPC fraud. On 5/17/99, Citibank sent a letter asking about the fraud: “Citibank feels it would like to have an understanding of what . . . happened, and what will be done to avoid a repeat, given that we have placed very considerable weight on European Bank’s management.” In an internal Citibank memorandum dated 5/18/99, the relationship manager for the European Bank account, Christopher Moore, indicated that the loss appeared to be a substantial one, given European Bank’s thin capitalization. He wrote:

The real risk for us in the future is that some transactions that cause loss finish up in accounts with us . . . and they don’t have the resources to cover us. . . . [W]e have to decide if this event is terminal for us.

In the end he recommended requiring European Bank to keep \$1 million on deposit at Citibank until the IPC matter was fully resolved. European Bank eventually sent Citibank a more detailed explanation of the IPC fraud.⁴³⁴ The memorandum by bank president Robert Bohn stated in part:

The fraud occurred in the business of credit card clearing for a U.S. merchant that had been recommended . . . by an existing client and which very quickly turned out to be bad. Our normal due diligence . . . on that merchant, including a trade reference and a reference from his USA bank, as well as a financial assessment, revealed no obvious warning signals.

When asked about this memorandum, Bayer explained that the “existing client” and “trade reference” both referred to Okun at Media World, and the “financial assessment” was the bank’s determination that, because IPC was so new, the bank would use its most cautious merchant account terms, requiring a 6% discount rate and 10% holdbacks on incoming credit card payments. Bayer said that, even with those precautions, the loss had been a “very serious matter” for the bank, had required him to deposit \$1 million to cover the lost funds, and could have resulted in a bank failure, if the exposure had been greater. He said, however, that European Bank appears to have weathered the damage to its solvency.

⁴³³ Email dated 7/13/99 from Okun of Media World to Ihrig at European Bank.

⁴³⁴ See 7/1/99 memorandum from European Bank to Moore at Citibank, CG 3966–67.