



TOO BIG TO JAIL:
INSIDE THE OBAMA JUSTICE DEPARTMENT'S DECISION
NOT TO HOLD WALL STREET ACCOUNTABLE

REPORT PREPARED BY THE REPUBLICAN STAFF OF THE
COMMITTEE ON FINANCIAL SERVICES, U.S. HOUSE OF REPRESENTATIVES

HON. JEB HENSARLING, CHAIRMAN

114TH CONGRESS, SECOND SESSION
JULY 11, 2016

This report has not been officially adopted by the Committee on Financial Services and may not necessarily reflect the views of its Members.

TABLE OF CONTENTS

<i>Executive Summary</i>	1
<i>Background</i>	3
The Federal Government’s Investigations and Enforcement Actions Involving HSBC for Violations of U.S. Anti-Money Laundering and Sanctions Laws	3
DOJ and Treasury Representations Regarding DOJ’s Consideration of the Potential Impact to the Financial System of Prosecuting HSBC.....	8
Attorney General Holder Walks Back His March 6, 2013, Testimony Suggesting that Some Banks Are Too Large to Prosecute	10
The House Financial Services Committee’s Investigation into DOJ’s Exercise of Prosecutorial Discretion Concerning HSBC and Other Large Financial Institutions	12
<i>Committee Findings</i>	12
Senior DOJ Leadership, Including Attorney General Holder, Overruled an Internal Recommendation by DOJ’s Asset Forfeiture and Money Laundering Section to Prosecute HSBC Because of DOJ Leadership’s Concern that Prosecuting the Bank Would Have Serious Adverse Consequences on the Financial System.....	12
Notwithstanding Attorney General Holder’s “Catch” that HSBC Agree to DOJ’s “Take-It-Or-Leave-It” DPA Deal by November 14, 2012, HSBC Appears to Have Successfully Negotiated with DOJ for Significant Alterations to the DPA’s Terms in the Weeks Following the Attorney General’s Deadline	18
DOJ and the Federal Financial Regulators Were “Scrambling” at an “Alarming Speed” to Complete Their Investigations and Enforcement Actions Involving HSBC Before the New York Department of Financial Services	20
In Its Haste to Complete Its Enforcement Action Against HSBC, DOJ Transmitted Settlement Numbers to HSBC Before Consulting with OFAC to Ensure that the Settlement Amount Accurately Reflected the Full Degree of HSBC’s Sanctions Violations	21
The FSA’s Involvement in the U.S. Government’s HSBC Investigations and Enforcement Actions Appears to Have Hampered the U.S. Government’s Investigations and Influenced DOJ’s Decision Not to Prosecute HSBC	24
Attorney General Holder Misled Congress Concerning DOJ’s Reasons for Not Prosecuting HSBC	26

DOJ’s and Treasury’s Longstanding Efforts to Improperly Impede the Committee’s Investigation Appear to Constitute Contempt and Obstruction of Congress.....	27
DOJ Stonewalling of the Committee’s Information Requests and Subpoena.....	27
Treasury Stonewalling of the Committee’s Information Requests and Subpoena	29
The American People and the Congress Deserve to Know the Truth About the Merits of DOJ’s Decision Not to Prosecute HSBC or Any of Its Executives or Employees for Violating U.S. AML and Sanctions Laws.....	33
<i>Appendices.....</i>	<i>34</i>
Appendix 1	34
Letter from Chairmen Hensarling and McHenry to Secretary Lew and Attorney General Holder (March 8, 2013).....	35
Appendix 2	38
Email Regarding HSBC Developments (September 4, 2012)	39
Appendix 3	40
Emails Regarding the Next “Interagency Coordination Call” on HSBC (September 7, 2012)	41
Appendix 4	42
Letter from Chancellor Osborne to Chairman Bernanke and Secretary Geithner (September 10, 2012)	43
Appendix 5	46
Email Regarding HSBC Update (September 11, 2012).....	47
Appendix 6	48
Email from Dennis Wood Regarding HSBC (September 11, 2012)	49
Appendix 7.....	50
Email Regarding HSBC (September 28, 2012)	51
Appendix 8.....	52
Email Regarding Updated Secretary Travel Schedules to India and Japan Oct. 5 (October 7, 2012)	53
Appendix 9.....	58
Email Regarding AGC Meeting (October 11, 2012).....	59
Appendix 10	60
Email Regarding HSBC (November 5, 2012)	61
Appendix 11	62
Email Regarding “HSBC Is Now An “Out of Control” Express Train” (November 7, 2012)	63
Appendix 12	64
Email Regarding New Developments in HSBC (November 8, 2012)	65
Appendix 13	66
Email from Dennis Wood Regarding HSBC (November 9, 2012)	67

Appendix 14	68
Email Chain Regarding HSBC (November 9, 2012)	69
Appendix 15	71
DOJ Settlement Documentation Transmitted to HSBC (November 9, 2012)	72
Appendix 16	152
Emails Regarding New Developments in HSBC (November 13-14, 2012)	153
Appendix 17	156
Email from Tyler Hand Regarding New Developments in HSBC (November 14, 2012)	157
Appendix 18	159
Email to Christopher Meade and Christian Weideman Regarding HSBC Status (November 14, 2012)	160
Appendix 19	162
Email Regarding HSBC Update (November 30, 2012).....	163
Appendix 20	164
Email Regarding HSBC (December 4, 2012)	165
Appendix 21	166
Email from DOJ Regarding HSBC Update (November 27, 2012)	167
Appendix 22	168
Secretary Geithner Memorandum Regarding Meeting with Chancellor Osborne (October 9, 2012)	169
Appendix 23	182
Email Regarding HSBC Team (September 12, 2012).....	183
Appendix 24	185
Email Regarding Update on Iran Sanctions-Related Actions Against Banks (Aug. 24, 2012)..	186
Appendix 25	188
Email Regarding AGC Meeting (August 27, 2012)	189
Appendix 26	191
Email Regarding Proposed Language for Memo (August 30, 2012).....	192
Appendix 27	193
Email Regarding “HSBC Legally Privileged” (September 24-25, 2012).....	194
Appendix 28	196
Emails Regarding Talking Points (August 13, 2012)	197
Appendix 29	200
Email Chain Regarding Talking Points (August 13-14, 2012)	201
Appendix 30	204
Email Regarding HSBC Settlement Timetable (August 24, 2012).....	205
Appendix 31	208

Email Regarding “Just for Your Awareness” (October 4, 2012)	209
Appendix 32	210
Email Regarding Updated Secretary Travel Schedules (October 8, 2012)	211
Appendix 33	217
Email from Jonathan Thomas Regarding HSBC (August 15, 2012)	218
Appendix 34	219
Letter from Chairmen Hensarling and McHenry to Att’y General Holder (June 10, 2013)	220
Appendix 35	221
Letter from Chairman McHenry to Attorney General Holder (August 27, 2013)	222
Appendix 36	226
Letter from Chairmen Hensarling and McHenry to Att’y General Holder (Mar. 25, 2014)	227
Appendix 37	229
Letter from Chairmen Hensarling and McHenry to Att’y General Holder (May 23, 2014).....	230
Appendix 38	231
Letter from Chairman McHenry to Attorney General Holder (December 5, 2014).....	232
Appendix 39	234
Letter from Chairman Hensarling to Attorney General Holder (March 10, 2015)	235
Appendix 40	236
Letter from Assistant Secretary Fitzpayne to Chairman Hensarling (March 28, 2013)	237
Appendix 41	239
Letter from Assistant Secretary Fitzpayne to Chairman McHenry (May 10, 2013)	240
Appendix 42	242
Letter from Chairman McHenry to Secretary Lew (June 7, 2013).....	243
Appendix 43	245
Letter from Chairman McHenry to Secretary Lew (July 18, 2013).....	246
Appendix 44	247
Letter from Assistant Secretary Fitzpayne to Chairman McHenry (July 26, 2013)	248
Appendix 45	250
Letter from Chairman McHenry to Secretary Lew (August 22, 2013).....	251
Appendix 46	252
Letter from Chairmen Hensarling and McHenry to Secretary Lew (March 25, 2014)	253
Appendix 47	255
Letter from Assistant Secretary Fitzpayne to Chairman Hensarling (April 8, 2014).....	256
Appendix 48	260
Letter from Chairmen Hensarling and McHenry to Secretary Lew (May 23, 2014).....	261
Appendix 49	262
Letter from Chairman Hensarling to Secretary Lew (March 10, 2015)	263

Appendix 50	264
Letter from Acting Assistant Secretary Randall DeValk to Chairman Hensarling (May 26, 2015)	265
Appendix 51	269
Letter from Chairman Duffy to Secretary Lew (August 27, 2015)	270
Appendix 52	271
Letter from Chairman Duffy to Secretary Lew (September 14, 2015)	272
Appendix 53	273
Letter from Chairman Duffy to Secretary Lew (December 3, 2015)	274
Appendix 54	276
Letter from Chairman Duffy to Secretary Lew (January 14, 2016)	277
Appendix 55	279
Letter from Chairman Duffy to Secretary Lew (March 9, 2016)	280

Executive Summary

In March 2013, the Committee on Financial Services (Committee) initiated a review of the U.S. Department of Justice's (DOJ's) decision not to prosecute HSBC Holdings Plc. and HSBC Bank USA N.A. (together with its affiliates, HSBC) or any of its executives or employees for serious violations of U.S. anti-money laundering (AML) and sanctions laws and related offenses. The Committee's efforts to obtain relevant documents from DOJ and the U.S. Department of the Treasury (Treasury) were met with non-compliance, necessitating the issuance of subpoenas to both agencies. Approximately three years after its initial inquiries, the Committee finally obtained copies of internal Treasury records showing that DOJ has not been forthright with Congress or the American people concerning its decision to decline to prosecute HSBC. Specifically, these documents show that:

- Senior DOJ leadership, including Attorney General Holder, overruled an internal recommendation by DOJ's Asset Forfeiture and Money Laundering Section to prosecute HSBC because of DOJ leadership's concern that prosecuting the bank would have serious adverse consequences on the financial system.
- Notwithstanding Attorney General Holder's personal demand that HSBC agree to DOJ's "take-it-or-leave-it" deferred prosecution agreement deal by November 14, 2012, HSBC appears to have successfully negotiated with DOJ for significant alterations to the DPA's terms in the weeks following the Attorney General's deadline.
- DOJ and federal financial regulators were rushing at what one Treasury official described as "alarming speed" to complete their investigations and enforcement actions involving HSBC in order to beat the New York Department of Financial Services.
- In its haste to complete its enforcement action against HSBC, DOJ transmitted settlement numbers to HSBC before consulting with Treasury's Office of Foreign Asset Control (OFAC) to ensure that the settlement amount accurately reflected the full degree of HSBC's sanctions violations.
- The involvement of the United Kingdom's Financial Services Authority in the U.S. government's investigations and enforcement actions relating to HSBC, a British-domiciled institution, appears to have hampered the U.S. government's investigations and influenced DOJ's decision not to prosecute HSBC.
- Attorney General Holder misled Congress concerning DOJ's reasons for not bringing a criminal prosecution against HSBC.
- DOJ to date has failed to produce any records pertaining to its prosecutorial decision making with respect to HSBC or any large financial institution, notwithstanding the Committee's multiple requests for this information and a congressional subpoena requiring Attorney General Lynch to timely produce these records to the Committee.

- Attorney General Lynch and Secretary Lew remain in default on their legal obligation to produce the subpoenaed records to the Committee.
- DOJ's and Treasury's longstanding efforts to impede the Committee's investigation may constitute contempt and obstruction of Congress.

The Committee is releasing this report to shed light on whether DOJ is making prosecutorial decisions based on the size of financial institutions and DOJ's belief that such prosecutions could negatively impact the economy.

**Too Big to Jail:
Inside the Obama Justice Department's Decision
Not to Hold Wall Street Accountable**

Background

***The Federal Government's Investigations and Enforcement Actions
Involving HSBC for Violations of U.S. Anti-Money Laundering and
Sanctions Laws***

On December 11, 2012, DOJ, the New York County District Attorney's Office (DANY), the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), and Treasury's OFAC and Financial Crimes Enforcement Network (FinCEN) announced that they had settled their coordinated investigations and enforcement actions involving HSBC for violating U.S. anti-money laundering (AML) and sanctions laws and related offenses, including the Bank Secrecy Act (BSA), the International Emergency Economic Powers Act (IEEPA), and the Trading with the Enemy Act (TWEA).¹ Under the terms of the settlement agreement, HSBC entered into a five-year deferred prosecution agreement (DPA) with DOJ.² As part of the DPA, HSBC admitted to violating the BSA, IEEPA, and TWEA and agreed, among other things, to pay penalties to the federal government totaling approximately \$1.92 billion and implement certain remedial efforts to improve its compliance policies and procedures.³

In its press release announcing the HSBC settlement, DOJ provided the following description of what it termed "blatant" criminal violations resolved by the DPA:

¹ See DOJ Press Release, HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement [hereinafter, DOJ Press Release] (Dec. 11, 2012), <https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations>; DANY Press Release, District Attorney Vance Announces \$375 Million Settlement with HSBC Bank [hereinafter, DANY Press Release] (Dec. 11, 2012), <http://manhattanda.org/press-release/district-attorney-vance-announces-375-million-settlement-hsbc-bank>; Federal Reserve Press Release (Dec. 11, 2012), <https://www.federalreserve.gov/newsevents/press/enforcement/20121211b.htm>; Treasury Press Release, Treasury Department Reaches Landmark Settlement with HSBC [hereinafter, Treasury Press Release] (Dec. 11, 2012), <https://www.treasury.gov/press-center/press-releases/Pages/tg1799.aspx>; OCC Press Release, OCC Assesses \$500 Million Civil Money Penalty Against HSBC Bank USA, N.A. (Dec. 11, 2012), <http://www.occ.treas.gov/news-issuances/news-releases/2012/nr-occ-2012-173.html>.

² See Deferred Prosecution Agreement at 3, *United States v. HSBC Bank USA, N.A. and HSBC Holdings, PLC*, No. 12-CR-763 (S.D.N.Y. Dec. 11, 2012).

³ *Id.* Although HSBC admitted to the facts set forth in the DPA, the bank did not enter a guilty plea.

According to court documents, HSBC Bank USA violated the BSA by failing to maintain an effective anti-money laundering program and to conduct appropriate due diligence on its foreign correspondent account holders. The HSBC Group violated IEEPA and TWEA by illegally conducting transactions on behalf of customers in Cuba, Iran, Libya, Sudan and Burma—all countries that were subject to sanctions enforced by the Office of Foreign Assets Control (OFAC) at the time of the transactions. . . .

A four-count felony criminal information was filed today in federal court in the Eastern District of New York charging HSBC with willfully failing to maintain an effective anti-money laundering (AML) program, willfully failing to conduct due diligence on its foreign correspondent affiliates, violating IEEPA and violating TWEA. HSBC has waived federal indictment, agreed to the filing of the information, and has accepted responsibility for its criminal conduct and that of its employees.

“HSBC is being held accountable for stunning failures of oversight—and worse—that led the bank to permit narcotics traffickers and others to launder hundreds of millions of dollars through HSBC subsidiaries, and to facilitate hundreds of millions more in transactions with sanctioned countries,” said Assistant Attorney General [Lanny] Breuer. “The record of dysfunction that prevailed at HSBC for many years was astonishing. Today, HSBC is paying a heavy price for its conduct, and, under the terms of today’s agreement, if the bank fails to comply with the agreement in any way, we reserve the right to fully prosecute it.”

“Today we announce the filing of criminal charges against HSBC, one of the largest financial institutions in the world,” said U.S. Attorney [Loretta] Lynch.^[4] “HSBC’s blatant failure to implement proper anti-money laundering controls facilitated the laundering of at least \$881 million in drug proceeds through the U.S. financial system. HSBC’s willful flouting of U.S. sanctions laws and regulations resulted in the processing of hundreds of millions of dollars in OFAC-prohibited transactions. Today’s historic agreement, which imposes the largest penalty in any BSA prosecution to date, makes it clear that all corporate citizens, no matter how large, must be held accountable for their actions.” . . .

⁴ At the time of the HSBC settlement, Loretta Lynch was the U.S. Attorney for the Eastern District of New York. On April 27, 2015, Ms. Lynch succeeded Eric Holder as Attorney General.

The AML Investigation

According to court documents, from 2006 to 2010, HSBC Bank USA severely understaffed its AML compliance function and failed to implement an anti-money laundering program capable of adequately monitoring suspicious transactions and activities from HSBC Group Affiliates, particularly HSBC Mexico, one of HSBC Bank USA's largest Mexican customers. This included a failure to monitor billions of dollars in purchases of physical U.S. dollars, or "banknotes," from these affiliates. Despite evidence of serious money laundering risks associated with doing business in Mexico, from at least 2006 to 2009, HSBC Bank USA rated Mexico as "standard" risk, its lowest AML risk category. As a result, HSBC Bank USA failed to monitor over \$670 billion in wire transfers and over \$9.4 billion in purchases of physical U.S. dollars from HSBC Mexico during this period, when HSBC Mexico's own lax AML controls caused it to be the preferred financial institution for drug cartels and money launderers. . . .

As a result of HSBC Bank USA's AML failures, at least \$881 million in drug trafficking proceeds—including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in Colombia—were laundered through HSBC Bank USA. HSBC Group admitted it did not inform HSBC Bank USA of significant AML deficiencies at HSBC Mexico, despite knowing of these problems and their effect on the potential flow of illicit funds through HSBC Bank USA.

The Sanctions Investigation

According to court documents, from the mid-1990s through September 2006, HSBC Group allowed approximately \$660 million in OFAC-prohibited transactions to be processed through U.S. financial institutions, including HSBC Bank USA. HSBC Group followed instructions from sanctioned entities such as Iran, Cuba, Sudan, Libya and Burma, to omit their names from U.S. dollar payment messages sent to HSBC Bank USA and other financial institutions located in the United States. The bank also removed information identifying the countries from U.S. dollar payment messages; deliberately used less-transparent payment messages, known as cover payments; and worked with at least one sanctioned entity to format payment messages, which prevented the bank's filters from blocking prohibited payments.

Specifically, beginning in the 1990s, HSBC Group affiliates worked with sanctioned entities to insert cautionary notes in payment

messages including “care sanctioned country,” “do not mention our name in NY,” or “do not mention Iran.” HSBC Group became aware of this improper practice in 2000. In 2003, HSBC Group’s head of compliance acknowledged that amending payment messages “could provide the basis for an action against [HSBC] Group for breach of sanctions.” Notwithstanding instructions from HSBC Group Compliance to terminate this practice, HSBC Group affiliates were permitted to engage in the practice for an additional three years through the granting of dispensations to HSBC Group policy.

Court documents show that as early as July 2001, HSBC Bank USA’s chief compliance officer confronted HSBC Group’s Head of Compliance on the issue of amending payments and was assured that “Group Compliance would not support blatant attempts to avoid sanctions, or actions which would place [HSBC Bank USA] in a potentially compromising position.” As early as July 2001, HSBC Bank USA told HSBC Group’s head of compliance that it was concerned that the use of cover payments prevented HSBC Bank USA from confirming whether the underlying transactions met OFAC requirements. From 2001 through 2006, HSBC Bank USA repeatedly told senior compliance officers at HSBC Group that it would not be able to properly screen sanctioned entity payments if payments were being sent using the cover method. These protests were ignored.⁵

Treasury’s press release likewise described HSBC’s criminal activities as “particularly egregious”:

The bank’s breakdowns in anti-money laundering (AML) compliance were particularly egregious because these failures allowed hundreds of millions of dollars from Mexican drug trafficking organizations to flow through accounts in the United States. Despite HSBC’s extensive global operations and the substantial resources it had available to manage transnational risk, it failed to help secure the United States financial borders and left dangerous gaps that international drug dealers and other criminals readily abused. The penalties reflect the damage to the integrity of the U.S. financial system inflicted by HSBC, and the federal government’s intolerance of behavior and business practices that disregard BSA requirements and U.S. sanctions regimes.

“These settlements implicate willful and dangerous practices by one of the world’s biggest banks,” said Under Secretary for Terrorism and

⁵ See DOJ Press Release, *supra* note 1.

Financial Intelligence David S. Cohen. “HSBC absolutely knew the risks of the business it pursued, yet it ignored specific, obvious warnings. Its failures allowed hundreds of millions of dollars in drug money to pass through its unattended gates.”⁶

DANY’s press release similarly noted the breadth of HSBC’s criminal conduct, stressing that it occurred “with the knowledge, approval, and encouragement of senior corporate managers and legal and compliance departments”:

Banks in Manhattan, which process most of the world’s U.S. dollar payments, use sophisticated computer systems commonly known as “OFAC filters” to prevent sanctioned entities, as well as terrorists, money launderers, and other criminals, from gaining access to the U.S. banking system. These OFAC filters act as the first line of defense to protect the U.S. financial system. HSBC helped its sanctioned clients, predominantly Iran, Myanmar, Sudan, Libya, and Cuba to evade U.S. banks’ OFAC filters and illegally gain access to the U.S. financial system.

Beginning in the early 1990s and continuing through 2006, HSBC committed this criminal conduct by, among other things: (1) following instructions from the sanctioned entities not to mention their names in U.S. dollar payment messages sent to HSBC and other financial institutions located in the U.S.; (2) amending and reformatting U.S. dollar payment messages to remove information identifying the sanctioned entities; and (3) instructing sanctioned entities how to format payment messages in order to avoid bank sanctions filters that could have caused payments to be blocked or rejected at HSBC.

HSBC’s conduct caused its U.S. affiliate in New York, as well as other unaffiliated U.S. financial institutions, to process transactions that otherwise should have been rejected, blocked, or stopped for investigation pursuant to OFAC regulations. This conduct occurred within HSBC locations around the world, with the knowledge, approval, and encouragement of senior corporate managers and legal and compliance departments.⁷

Notably, despite having to pay a record U.S. penalty in connection with the DPA, neither HSBC nor any of its executives or employees were ever prosecuted, let

⁶ See Treasury Press Release, *supra* note 1.

⁷ See DANY Press Release, *supra* note 1.

alone convicted, for any of the serious violations of U.S. AML and sanctions laws described above.⁸

DOJ and Treasury Representations Regarding DOJ's Consideration of the Potential Impact to the Financial System of Prosecuting HSBC

Shortly after the HSBC settlement, Attorney General Holder testified at a March 6, 2013, Senate Judiciary Committee hearing that the size of certain financial institutions made them difficult to prosecute because such prosecutions could have a “negative impact on the national economy, perhaps even the world economy”:

I am concerned that the size of some of these [financial] institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy. And I think that is a function of the fact that some of these institutions have become too large . . . I think it has an inhibiting influence—[an] impact on our ability to bring resolutions that I think would be more appropriate.⁹

Attorney General Holder’s testimony before the Senate Judiciary Committee conforms with statements made by Lanny Breuer, then-Assistant Attorney General

⁸ See generally Deferred Prosecution Agreement, *United States v. HSBC Bank USA, N.A. and HSBC Holdings, PLC*, No. 12-CR-763 (S.D.N.Y. Dec. 11, 2012). See also, e.g., Editorial, *Too Big to Indict*, THE NEW YORK TIMES (Dec. 11, 2012), <http://www.nytimes.com/2012/12/12/opinion/hsbc-too-big-to-indict.html> (“It is a dark day for the rule of law. Federal and state authorities have chosen not to indict HSBC, the London-based bank, on charges of vast and prolonged money laundering. . . They also have not charged any top HSBC banker in the case, though it boggles the mind that a bank could launder money as HSBC did without anyone in a position of authority making culpable decisions.”); *HSBC and Standard Chartered: Too big to jail*, THE ECONOMIST (Dec. 15, 2012), <http://www.economist.com/news/finance-and-economics/21568403-two-big-british-banks-reach-controversial-settlements-too-big-jail> (“The [DPA] agreements put an end to uncertainty over [HSBC’s and Standard Chartered’s] ability to operate within America, a key link in their global networks; their share prices both rose on the day the fines were announced. And the penalties are, in effect, levied on shareholders; not one corporate employee faces charges.”); *Outrageous HSBC Settlement Proves the Drug War is a Joke*, ROLLING STONE (Dec. 13, 2012), <http://www.rollingstone.com/politics/news/outrageous-hsbc-settlement-proves-the-drug-war-is-a-joke-20121213> (“[Lanny] Breuer this week signed off on a settlement deal with the British banking giant HSBC that is the ultimate insult to every ordinary person who’s ever had his life altered by a narcotics charge. Despite the fact that HSBC admitted to laundering billions of dollars for Colombian and Mexican drug cartels (among others) and violating a host of important banking laws (from the Bank Secrecy Act to the Trading With the Enemy Act), Breuer and his Justice Department elected not to pursue criminal prosecutions of the bank, opting instead for a “record” financial settlement of \$1.9 billion, which as one analyst noted is about five weeks of income for the bank.”).

⁹ *Hearing Before the S. Comm. on the Judiciary*, 113th Cong. (Mar. 6, 2013), available at <http://www.judiciary.senate.gov/meetings/oversight-of-the-us-department-of-justice-2013-03-06>.

for the Criminal Division, in an interview on November 30, 2012—just days before the HSBC DPA deal was finalized:

[I]n any given case, I think I and prosecutors around the country, being responsible, should speak to regulators, should speak to experts, because if I bring a case against institution A, and as a result of bringing that case there's some huge economic effect, it affects the economy so that employees who had nothing to do with the wrongdoing of the company. . . . If it creates a ripple effect so that suddenly counterparties and other financial institutions or other companies that had nothing to do with this are affected badly, it's a factor we need to know and understand.¹⁰

The day after Attorney General Holder appeared before the Senate Judiciary Committee, then-Treasury Under Secretary for Terrorism and Financial Intelligence David Cohen testified at a Senate Banking Committee hearing on March 7, 2013, that DOJ asked Treasury for its assessment of the potential economic ramifications of prosecuting HSBC:

Senator [ELIZABETH] WARREN. [W]hen the Justice Department is making the decision about whether or not to make a criminal prosecution, do they ask you about the impact on the economy for one of these large banks?

Mr. COHEN. So I cannot speak to every instance whether that occurs. That did occur in the HSBC matter. We told the Justice Department that we were not in a position to offer any meaningful assessment of what the impact might be of whatever criminal disposition they may take. But I would distinguish between the ongoing communication among investigators to the ultimate—

Senator WARREN. Wait. I want to make sure I understand what you just said. The Justice Department, in making its decision whether or not to pursue a criminal prosecution, checked with the Department of Treasury to determine your views on whether or not there would be a significant economic impact if a large bank were prosecuted? Is that what you just said?

¹⁰ See Jason M. Breslow, *Lanny Breuer: Financial Fraud Has Not Gone Unpunished*, PBS (Jan. 22, 2013), <http://www.pbs.org/wgbh/frontline/article/lanny-breuer-financial-fraud-has-not-gone-unpunished/>.

Mr. COHEN. What I said was the Justice Department contacted us, asked whether we could provide guidance on what the impact to the financial system may be of a criminal disposition in the HSBC case.¹¹

Attorney General Holder Walks Back His March 6, 2013, Testimony Suggesting that Some Banks Are Too Large to Prosecute

Attorney General Holder's March 6th testimony before the Senate Judiciary Committee that some banks may be too large to prosecute drew considerable criticism from both the media and members of Congress.¹² As a result, the Attorney General disavowed his previous testimony shortly thereafter at a May 15, 2013, House Judiciary Committee hearing:

[Congressman JOHN] CONYERS.

Now there has been a lot of discussion about banks being too big to prosecute. And I would like to—I think this is very critical because much of the sagging economy that we are climbing out of is a direct result of Wall Street intransigence and perhaps improper conduct and activity.

Now can you distinguish between cases that we might bring against those on Wall Street who caused the financial crisis or were responsible in large part? Have we an economic system in which we

¹¹ *Patterns of Abuse: Assessing Bank Secrecy Act Compliance and Enforcement: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 113th Cong. 22 (Mar. 7, 2013) [hereinafter, *Senate Banking Committee Hearing*], available at <https://www.gpo.gov/fdsys/pkg/CHRG-113shrg80662/pdf/CHRG-113shrg80662.pdf>.

¹² See e.g., Danielle Douglas, *Holder Concerned Megabanks Too Big to Jail*, THE WASHINGTON POST (Mar. 6, 2013), https://www.washingtonpost.com/business/economy/holder-concerned-megabanks-too-big-to-jail/2013/03/06/6fa2b07a-869e-11e2-999e-5f8e0410cb9d_story.html; Juliet Lapidus, *Banks Above the Law*, THE NEW YORK TIMES (Mar. 7, 2013), <http://takingnote.blogs.nytimes.com/2013/03/07/banks-above-the-law/>; Sarah Childress, *Holder: Big Banks' Clout "Has an Inhibiting Impact" on Prosecutions*, PBS (Mar. 6, 2013), <http://www.pbs.org/wgbh/frontline/article/holder-big-banks-clout-has-an-inhibiting-impact-on-prosecutions/>; Mark Gongloff, *Eric Holder Admits Some Banks Are Just Too Big to Prosecute*, THE HUFFINGTON POST (Mar. 6, 2013), http://www.huffingtonpost.com/2013/03/06/eric-holder-banks-too-big_n_2821741.html; Victoria Finkle and Rob Blackwell, *AG Holder Confirms Some Banks 'Too Big to Jail'*, AMERICAN BANKER (Mar. 6, 2013), http://www.americanbanker.com/issues/178_45/ag-holder-confirms-some-banks-too-big-to-jail-1057296-1.html. See also Letter from the Hon. Charles Grassley, Ranking Member, S. Comm. on the Judiciary, to the Hon. Eric Holder, Att'y Gen., U.S. Dep't of Justice (Dec. 13, 2012); Letter from the Hon. Jeff Merkley, Sen., to the Hon. Eric Holder, Att'y Gen., U.S. Dep't of Justice (Dec. 13, 2012), <https://www.merkley.senate.gov/news/press-releases/merkley-blasts-too-big-to-jail-policy-for-lawbreaking-banks>; *Senate Banking Committee Hearing*, *supra* note 11 at 20 (Senator Mark Warner indicating, "I think what you are hearing from all of us is an enormous concern, coupled with some of the comments the Attorney General made [yesterday] . . . we have got to make sure there is no institution that is too large to prosecute.").

have banks that are too big to prosecute? I mean, the Department of Justice has got to look at this very carefully.

Attorney General HOLDER. Let me make something real clear right away. I made a statement in a Senate hearing that I think has been misconstrued. I said it was difficult at times to bring cases against large financial institutions because of the potential consequences that they would have on the financial system. . . .

Now there are a number of factors that we have to take into consideration as we decide who we're going to prosecute. Innocent people can be impacted by a prosecution brought of a financial institution or any corporation.

But let me be very, very, very clear. Banks are not too big to jail. If we find a bank or a financial institution that has done something wrong, if we can prove it beyond a reasonable doubt, those cases will be brought.¹³

Thus, the Attorney General, in an effort to walk back his March 6th testimony, represented to Congress on May 15, 2013, not only that DOJ is willing to prosecute any guilty bank irrespective of size, including HSBC, but also that HSBC's size was not the decisive factor in DOJ's decision to decline to prosecute the bank for its blatant and egregious criminal violations of U.S. AML and sanctions laws. Rather, the Attorney General's testimony created the impression that it was other factors—such as concerns regarding whether DOJ could prove its case against HSBC beyond a reasonable doubt—that ultimately drove DOJ's decision not to prosecute the bank or any of its executives or employees.

To date, neither the Attorney General nor any other DOJ official has attempted to publicly amend or clarify the Attorney General's May 15th testimony. Rather, since the Attorney General renounced his March 6th testimony before the Senate Judiciary Committee, DOJ has never admitted that it declined to prosecute HSBC—or any other large financial institution—because of the economic impact on the financial system that could flow from such a prosecution.¹⁴

¹³ *Oversight of the U.S. Dep't of Justice: Hearing Before the H. Comm. on the Judiciary*, 113th Cong. 14 (May 15, 2013) [hereinafter, *House Judiciary Committee Hearing*], available at <https://judiciary.house.gov/wp-content/uploads/2016/02/113-43-80973-1.pdf>.

¹⁴ See e.g., *Who Is Too Big to Fail: Are Large Financial Institutions Immune from Federal Prosecution?: Subcomm. on Oversight and Investigations of the H. Comm. on Fin. Servs.*, 113th Cong. 7 (May 22, 2013) [hereinafter, *Oversight Subcommittee Hearing*] (Mythili Raman, DOJ's Acting Assistant Attorney General for the Criminal Division, denying that Attorney General Holder's testimony before the Senate Judiciary Committee on March 6, 2013, implied that some financial institutions "are so large that it is very difficult to make a decision to prosecute them").

The House Financial Services Committee’s Investigation into DOJ’s Exercise of Prosecutorial Discretion Concerning HSBC and Other Large Financial Institutions

The testimony of Attorney General Holder and Under Secretary Cohen on March 6-7, 2013, prompted Chairman Hensarling to send Attorney General Holder and Treasury Secretary Jack Lew a letter on March 8, 2013, requesting, among other things, all records related to the economic impact on the financial system of any actual or potential criminal prosecution of a financial institution.¹⁵ Since that initial inquiry, the Committee has sent each agency 14 letter requests and a subpoena *duces tecum* for records pertaining to the Committee’s investigation of DOJ’s decision not to prosecute HSBC and other large financial institutions. Both DOJ and Treasury resisted the Committee’s efforts to acquire information relevant to this investigation for approximately three years. Finally, in April 2016, Treasury produced records shedding light on the federal government’s investigations and enforcement actions involving HSBC for violating U.S. AML and sanctions laws. The findings of this report are based on the internal Treasury records recently produced to the Committee.

Committee Findings

Notwithstanding the testimony of DOJ officials, including former Attorney General Holder, that HSBC’s size or “systemic importance” was not the dispositive factor in DOJ’s decision to decline to prosecute the bank or any of its executives or employees,¹⁶ internal Treasury documents obtained by the Committee reveal a very different story.

Senior DOJ Leadership, Including Attorney General Holder, Overruled an Internal Recommendation by DOJ’s Asset Forfeiture and Money Laundering Section to Prosecute HSBC Because of DOJ Leadership’s Concern that Prosecuting the Bank Would Have Serious Adverse Consequences on the Financial System

Internal Treasury records reveal that DOJ’s Asset Forfeiture and Money Laundering Section (AFMLS)—the section of DOJ responsible for leading DOJ’s enforcement efforts in anti-money laundering matters—had internally recommended that DOJ prosecute HSBC for criminal BSA violations as early as

¹⁵ See Appendix 1.

¹⁶ See *House Judiciary Committee Hearing*, *supra* note 13 at 15; and *Oversight Subcommittee Hearing*, *supra* note 14 at 8 (Assistant Att’y Gen. Mythili Raman testifying that potential collateral consequences “is never the dispositive factor” in declining to prosecute a corporate entity).

September 2012.¹⁷ For example, in a September 4, 2012, email, Matthew Tuchband, OFAC's Acting Chief Counsel, provided senior Treasury officials, including General Counsel Christopher Meade and Deputy General Counsel Christian Weideman, with the following report concerning an interagency coordination call that took place that morning:

There were developments today in the interagency coordination related to HSBC that I think warrant bringing to your attention. In OFAC's weekly interagency call this morning, which included London's FSA in addition to the several U.S. agencies involved, DOJ (represented by [then-AFMLS Section Chief] Jen Shasky) stated for the first time that it is considering seeking a guilty plea from HSBC (apparently for violations of the Bank Secrecy Act only, not for sanctions violations). DOJ is mulling over the ramifications that could flow from such an approach and plans to finalize its decision this week. The FSA was clearly concerned by this turn of events and by the realization that total monetary penalties being considered by the agencies could approach \$2 billion.

The timing of completion of the HSBC matter now seems dependent on which way DOJ goes. If DOJ seeks only a deferred prosecution agreement, the matter may be resolved in about two weeks. If DOJ seeks a guilty plea, the agencies think closure will be closer to the end of September.

So far, these developments have remained with the agencies and have not made it to the news media, notwithstanding the continuing coverage of the [Standard Chartered Bank] and other bank matters.¹⁸

On September 7, 2012, Dennis Wood, OFAC's Assistant Director for Sanctions Compliance and Evaluation, emailed Adam Szubin, then-OFAC Director, and Barbara Hammerle, OFAC Deputy Director, to inform them that "we should learn whether AFMLS's *internal recommendation* to ask the bank [to] plead guilty to criminal BSA charges was approved by senior DOJ officials" at the interagency

¹⁷ See e.g., Appendix 2 (indicating that DOJ "is considering seeking a guilty plea from HSBC" for its criminal violations of the BSA); and Appendix 3 (indicating that AFMLS internally recommended that DOJ should seek a guilty plea from HSBC for violating the BSA).

¹⁸ See Appendix 2. On August 14, 2012, the New York Department of Financial Services entered into a settlement agreement with Standard Chartered Bank, a London-headquartered financial institution, to resolve claims by the State of New York that Standard Chartered illegally processed at least \$250 billion in transactions with Iran. See Press Release, New York Department of Financial Services, Statement from Benjamin M. Lawsky, Superintendent of the Financial Services, Regarding Standard Chartered Bank (Aug. 14, 2012) [hereinafter DFS Press Release], <http://www.dfs.ny.gov/about/press/pr1208141.htm>.

coordination call scheduled for September 11, 2012.¹⁹ In response to Mr. Wood's email, Mr. Szubin asked whether the FSA would be on the call, and Mr. Wood responded in the affirmative:

Yes. . . and they were on the [September 4th] call. That's why [Jen Shasky's] announcement was such a bombshell. . . Edna [Young, Strategy Specialist for the FSA's Financial Crime and Intelligence Department], and others were quite taken aback both by the implications of a criminal plea and by the sheer amount of the proposed fines and forfeitures. It seemed as if it were the first time they had taken out their calculator.²⁰

But before DOJ could announce at the September 11th interagency call whether its senior leaders had approved AFMLS's recommendation to prosecute HSBC, George Osborne, Chancellor of the Exchequer, the UK's chief financial minister, intervened in the HSBC matter by sending a letter to Federal Reserve Chairman Ben Bernanke (with a copy transmitted to then-Treasury Secretary Timothy Geithner) on September 10, 2012, to express the UK's concerns regarding U.S. enforcement actions against British banks.²¹ Chancellor Osborne insinuated in his letter of September 10th that the U.S. was unfairly targeting UK banks by seeking settlements that were significantly higher than "comparable" settlements with U.S. banks.²² Moreover, the Chancellor's letter warned Chairman Bernanke and Secretary Geithner that prosecuting a "systemically important financial institution" such as HSBC "could lead to [financial] contagion" and pose "very serious implications for financial and economic stability, particularly in Europe and Asia."²³

The day after Chancellor Osborne sent his letter to Chairman Bernanke and Secretary Geithner warning of possible financial calamity if DOJ were to prosecute HSBC, DOJ indicated during the September 11th interagency coordination call that senior DOJ leadership were still "very strongly considering a prosecution" but wanted "to better understand the collateral consequences of a conviction/plea before taking such a dramatic step."²⁴ Tyler Hand, OFAC's Assistant Chief Counsel of Designations, sent Christopher Meade and Christian Weideman an email on September 11th providing the following update about that morning's interagency coordination call:

¹⁹ See Appendix 3 (emphasis added).

²⁰ *Id.* (ellipses in original).

²¹ See Appendix 4.

²² *Id.* at UST-HSBC-112.

²³ *Id.*

²⁴ See Appendix 5.

Jen Shasky reported that DOJ leadership has not yet made a decision on whether it will seek an indictment or just a deferred prosecution agreement. She indicated that DOJ is very strongly considering a prosecution, but that senior leaders want to better understand the collateral consequences of a conviction/plea before taking such a dramatic step. DOJ is looking particularly for additional input from the Fed, the OCC, and the FSA.

The OCC indicated that a guilty plea (or conviction) would require a determination by the Comptroller on whether to hold a hearing to consider revoking the bank's U.S. charter. OCC staff said it could not rule out the possibility of a hearing, and such a decision would likely be made by the Comptroller in consultation with the Deputy Attorney General. The FSA participants weighed in very strongly that any guilty plea would need to be carefully planned and coordinated, with all agencies having contingency plans in place in advance. They emphasized their view that HSBC is the second most systemically important bank in the world with substantial dollar holdings in the U.S. and overseas, and said that even the threat of a charter revocation could result in a global financial disaster. While the FSA folks did not argue specifically against a prosecution, it was clear they were very concerned about the reverberations such an action could have within the financial system, and they asked for urgent high level discussions with DOJ on the matter. Jen Shasky offered to arrange a call with Lanny Breuer, the AAG for the Criminal Division.²⁵

Also on September 11th, Dennis Wood emailed Adam Szubin and Barbara Hammerle to request that he brief them about the "dynamic of a possible HSBC criminal plea" after the interagency call:

Adam and Barbara, it's very important that we brief you re: the dynamic of a possible HSBC criminal plea as it relates to the UK and global markets. David Rule, the FSA's Prudential Head of Large Complex Banking Groups, was very eloquent about the subject during this morning's interagency call. This is something that definitely should be brought to [Secretary Geithner's] personal attention as soon as possible, if he isn't already aware of it from FinCEN and the OCC. Tyler [Hand] is also going to brief it up through his channels.²⁶

²⁵ *Id.*

²⁶ *See* Appendix 6.

The following day, September 12th, Tyler Hand emailed Matthew Tuchband and other OFAC officials concerning the HSBC enforcement matter to update them on what was discussed during the September 11th interagency coordination call:

DOJ is very seriously considering seeking a guilty plea or indictment of the bank for the money laundering activities. Based on statements from U.S. and UK regulatory agencies, we understand that a felony plea or conviction could have very serious collateral consequences for the bank, including a possible revocation of its charter authorizing it to do business in the United States. Needless to say, this information is extremely sensitive.²⁷

In the weeks following the September 11th interagency coordination call, DOJ opted not to participate in the weekly interagency calls, leaving the regulators in the dark for several weeks regarding whether DOJ intended to pursue a guilty plea against HSBC for its criminal violations of the BSA. For example, on September 28, 2012, Dennis Wood informed Adam Szubin and Barbara Hammerle that “[t]he Prosecutors wouldn’t participate on this morning’s interagency conference call regarding HSBC. They said they weren’t yet ready and have given no indication when they will be ready.”²⁸ Likewise, on October 7, 2012, Dennis Wood advised other OFAC officials that “[t]he Prosecutors have NOT been forthcoming regarding HSBC. They have indicated that things are still in discussion among their principals.”²⁹ Similarly, on October 11, 2012, Tyler Hand emailed Jennifer Hershfang, OFAC Assistant Chief Counsel, to inform her that “the interagency process is on hold”:

HSBC – we still do not know whether DOJ (AFMLs) will be asking for a guilty plea with respect to the money laundering activity. The interagency process is on hold while this issue is sorted out, but there continues to be concern on the part of the UK government and the Financial Services Authority (UK regulator) that any threat to the bank’s ability to clear dollars could be destabilizing. The UK also thinks the total penalty numbers that have been discussed, which are close to \$2B, are excessive and unfair. The large penalty numbers related mostly to money laundering activities and not sanctions. We are continuing our work on the OFAC piece so we’re ready to go once the larger DOJ issues are resolved.³⁰

²⁷ See Appendix 23.

²⁸ See Appendix 7.

²⁹ See Appendix 8 at UST-HSBC-126.

³⁰ See Appendix 9.

Finally, on November 5, 2012, DOJ informed Treasury that senior HSBC officials were scheduled to meet with DOJ in Washington, D.C. on November 7, 2012, “to plead their case about not being forced to go the “guilty” route.”³¹ During this meeting with top HSBC executives, Attorney General Holder made an appearance and offered HSBC a “take-it-or-leave-it” DPA offer, with the “catch” being that he wanted the settlement to be finalized and ready to “go public” by no later than Wednesday, November 14, 2012.³²

Dennis Wood described the discussions that took place at this meeting in a November 7th email to Adam Szubin and Barbara Hammerle:

The Prosecutors met with the bank this afternoon. I just got a call from DOJ. . . AG Holder himself put in an appearance in addition to Lanny [Breuer] and others participating. The bank was offered a DPA. DOJ is giving its document[s] to the bank this week on a “take-it-or-leave-it” basis (nothing to discuss). . . They don’t want any leaks. . . Everything is expected to “go public” by Wednesday of next week. We’re scrambling tonight and meeting with Tyler [Hand] (who is on board) first thing in the morning. We’ll need to get our docs to the finish line in the same time frame. Our intent is to get the bank an OFAC Settlement Agreement by no later than Friday with the Settlement and our web-posting finalized by Tuesday and published on Wednesday.³³

The following morning, Tyler Hand updated Christopher Meade and Christian Weideman about DOJ’s DPA deal with HSBC:

We wanted to let you know that we understand DOJ, represented by Eric Holder and Lanny Breuer (AAG for Criminal Division), met with senior HSBC officials yesterday concerning the criminal investigation of the bank’s sanctions and money laundering activities. Per the readout we received, DOJ indicated it would **not** insist on a guilty plea as part of the settlement, but instead would be willing to resolve all counts through a comprehensive deferred prosecution agreement. As you may recall, a guilty plea or conviction was likely to have serious collateral consequences for the bank, including a hearing to consider whether to revoke the bank’s U.S. charter. The current total liability for all criminal and civil fines and forfeiture actions would amount to approximately \$2 billion.

³¹ See Appendix 10.

³² See Appendices 11-12.

³³ See Appendix 11 (emphasis and ellipses in original).

The catch with the DPA is that the Attorney General apparently insisted that the case be wrapped up by Wednesday.³⁴

Thus, despite DOJ's representations to Congress to the contrary, internal Treasury documents appear to show that senior DOJ officials, including Attorney General Holder, declined to pursue AFMLS's internal recommendation to prosecute HSBC because DOJ officials were concerned about the "serious collateral consequences" for the bank and the financial system if DOJ were to prosecute HSBC for its criminal conduct.

Notwithstanding Attorney General Holder's "Catch" that HSBC Agree to DOJ's "Take-It-Or-Leave-It" DPA Deal by November 14, 2012, HSBC Appears to Have Successfully Negotiated with DOJ for Significant Alterations to the DPA's Terms in the Weeks Following the Attorney General's Deadline

Internal Treasury records show that the U.S. agencies "busted" themselves to finalize and transmit their settlement documents to HSBC's counsel before Attorney General Holder's "tight and difficult timeframe" of November 14, 2012—the day by which the Attorney General wanted the settlement to be ready to "go public."³⁵ To meet this deadline, Treasury records indicate that DOJ and OFAC sent their settlement documents to HSBC's counsel on Friday, November 9th, the OCC sent its revised penalty order and stipulation to the bank on the morning of Monday, November 12th, and the Federal Reserve sent its revised enforcement orders to the bank on Tuesday, November 13th.³⁶

However, despite Attorney General Holder's insistence that the DPA agreement be "take-it-or-leave-it" and finalized by no later than November 14th, internal Treasury emails show that the agencies missed the Attorney General's deadline by nearly a month because HSBC and the agencies were not able to agree on the settlement terms until just days before the deal was announced on December 11th.³⁷ For example, on the November 14th deadline, Tyler Hand emailed Brian Egan, then-Treasury Assistant General Counsel for Enforcement and Intelligence, and Mike Maher, then-Treasury Deputy Assistant General Counsel for Enforcement and Intelligence, to advise them that the HSBC agreement would not be finalized that day as the Attorney General had demanded, noting rather that "the bank will be providing comprehensive comments tomorrow morning on all agencies' documents" and that the agencies would therefore have to reassess the timeline.³⁸

³⁴ See Appendix 12 (emphasis in original).

³⁵ See e.g., Appendices 12-14.

³⁶ See Appendices 15-16.

³⁷ See e.g., Appendices 16-20.

³⁸ See Appendix 17; see also Appendix 18.

Two weeks later, on November 27th, the agencies were still negotiating the terms of the DPA and reviewing HSBC's redlines to the settlement documents.³⁹ The back-and-forth between the agencies and HSBC continued into December, with HSBC again transmitting "heavily edited" settlement documents to the agencies as late as December 4th.⁴⁰ Finally, after DOJ informed HSBC that December 11, 2012, would be the firm, fixed settlement resolution date, the bank and the agencies managed to finalize and publicize the DPA's terms on December 11th—nearly a month after the date set by the Attorney General in his meeting with HSBC executives on November 7th.⁴¹

Moreover, internal Treasury records show that, in the weeks following the Attorney General's deadline, DOJ agreed to accept significant edits to the "take-it-or-leave-it" DPA that DOJ transmitted to HSBC's counsel on November 9th. For example, whereas the original DPA indicated that HSBC Group had restructured its executive bonus system such that "successful operation of each affiliate's compliance function accounts for a significant portion of an executive's year-end bonus" and that "a failing compliance score voids the entire year's bonus compensation," the final DPA, among other things, limits this provision to "senior" executives and indicates that a failure to meet compliance standards merely "could" void the senior executives' bonus—a revision to the agreement that apparently leaves open the possibility for executives to get their bonuses, despite failing to meet compliance standards.⁴²

Likewise, the final DPA contains new language that appears to insulate HSBC and its employees, officers, and directors from prosecution for illegally processing certain transactions with persons or entities designated by OFAC at the time of the transaction as Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, and proliferators of Weapons of Mass Destruction (WMDs) (collectively, Special SDN Transactions).⁴³ Whereas the original DPA indicates that the DPA's conditional release from liability "does not provide any protection against prosecution" of HSBC or any of its employees, officers, or directors who knowingly and willfully transmitted or approved Special SDN Transactions, the final DPA conditionally releases from liability those responsible for Special SDN Transactions occurring "during the period set forth in the Statement of Facts that have already been disclosed and documented to the United States."⁴⁴ Significantly for HSBC and any of its executives or employees who may have, as internal Treasury records appear to show, knowingly and

³⁹ See Appendix 21.

⁴⁰ See Appendix 20.

⁴¹ See Appendix 19; see also DOJ Press Release, *supra* note 1.

⁴² Compare Appendix 15 at UST-HSBC-253, with Dec. 11, 2012, DPA at 8, available at <https://www.justice.gov/sites/default/files/opa/legacy/2012/12/11/dpa-executed.pdf>.

⁴³ Compare Appendix 15 at UST-HSBC-260, with Dec. 11, 2012, DPA at 14-15.

⁴⁴ *Id.*

willfully processed transactions during this time period with proliferators of WMDs,⁴⁵ DOJ's final DPA appears to shield from prosecution both the bank and the individuals responsible for these transactions.⁴⁶

Thus, despite the Attorney General's insistence that the DPA deal he offered HSBC be take-it-or-leave-it and finalized by November 14th, DOJ not only missed the Attorney General's settlement deadline but also apparently agreed to accept significant alterations to the DPA's terms during the negotiations with HSBC that took place between November 14th and December 11th.

DOJ and the Federal Financial Regulators Were “Scrambling” at an “Alarming Speed” to Complete Their Investigations and Enforcement Actions Involving HSBC Before the New York Department of Financial Services

On August 14, 2012, the New York Department of Financial Services (DFS) settled its investigation and enforcement action pertaining to Standard Chartered Bank (SCB)—a UK financial institution—for allegedly illegally processing at least \$250 billion in transactions with Iran, notwithstanding the fact that DOJ, OFAC, and the Federal Reserve were also investigating SCB for the same criminal conduct.⁴⁷ As a result, the prosecutors and federal financial regulators involved in the investigation of HSBC for violating AML and sanctions laws were determined not to be “beaten to the punch again” by DFS.⁴⁸ Matthew Tuchband, OFAC's Acting Chief Counsel, voiced his concerns with the pace at which the prosecutors and federal regulators were proceeding in the HSBC matter to Christopher Meade and Christian Weideman on August 24, 2012:

There is a lot of late breaking news with respect to the investigation of HSBC and some late breaking news with respect to Standard Chartered and another bank that I thought I should bring to your attention. The various prosecutors and regulators are scrambling to get their investigations and enforcement actions completed with

⁴⁵ See e.g., Appendix 22 at UST-HSBC-195 (indicating in briefing memorandum to Secretary Geithner that OFAC's review of HSBC's transactions revealed transactions in apparent violation of WMD sanctions programs); Appendix 23 (indicating that an OFAC employee was assigned to review HSBC's apparent violations of Non-Proliferation of Weapons of Mass Destruction sanctions).

⁴⁶ Compare Appendix 15 at UST-HSBC-260, with Dec. 11, 2012, DPA at 14-15.

⁴⁷ See DFS Press Release, *supra* note 18. DOJ, DANY, OFAC, and the Federal Reserve would not settle their claims with SCB until December 10, 2012. See Press Release, U.S. Dep't of Justice, Standard Chartered Bank Agrees to Forfeit \$227 Million for Illegal Transactions with Iran, Sudan, Libya, and Burma (Dec. 10, 2012), <https://www.justice.gov/opa/pr/standard-chartered-bank-agrees-forfeit-227-million-illegal-transactions-iran-sudan-libya-and>. DOJ, DANY, the OCC, and the Federal Reserve ultimately settled with SCB for \$327 million, despite the fact that the prosecutors and federal regulators sought to settle for a total of \$390 million in October 2012. See e.g., Appendix 9.

⁴⁸ See e.g., Appendix 24.

almost alarming speed, apparently in hopes of avoiding being beaten to the punch again by the NY Department of Financial Services. Unfortunately, this appears to be resulting in major fraying of the interagency cooperation on timelines, leaving OFAC and others scrambling to keep up.⁴⁹

In Its Haste to Complete Its Enforcement Action Against HSBC, DOJ Transmitted Settlement Numbers to HSBC Before Consulting with OFAC to Ensure that the Settlement Amount Accurately Reflected the Full Degree of HSBC's Sanctions Violations

In his email of August 24th to Christopher Meade and Christian Weideman, Matthew Tuchband indicated that it was “crazy” for DOJ to be planning to discuss settlement numbers with HSBC before DOJ, DANY, or the federal financial regulators had a full picture of the extent of HSBC’s criminal violations:

OFAC just learned that DOJ’s Asset Forfeiture and Money Laundering Section (AFMLS) plans to call HSBC this coming Monday, August 27, to communicate, on behalf of DOJ and the New York District Attorney’s Office, a proposed number for settlement of both alleged anti-money laundering (“AML”) and sanctions violations. The proposed number is likely to be \$800 million for the AML violations plus \$375 million for the sanctions violations. AFMLS does not have a draft statement of facts or deferred prosecution agreement available yet (which seems a little crazy if they are planning to talk numbers already), but hopes to have one available early next week.

Separately, the OCC has indicated that it hopes to reach a settlement with HSBC by September 17. We understand that the OCC has been working with FinCen on the AML side and coming in at around \$500 million.

Also separately, the Fed Board of Governors is hoping to join with the UK’s FSA in a coordinated cease and desist order and civil monetary penalty (we don’t know the amount) against HSBC requiring, among other things, the establishment of procedures overseas to ensure compliance with U.S. sanctions. The Board of Governors hopes to provide HSBC with a draft this coming Tuesday and also hopes to finalize the action prior to September 17. The Board of Governors is organizing an interagency conference call on Tuesday morning to try to coordinate agency actions (which seems a little late if the prosecutors are going to make a move the day before as noted above).

⁴⁹ *Id.*

From OFAC's point of view, HSBC was still in the process of providing us with a list of all of the alleged violations, so these moves by the other agencies seem premature. That said, we are working with HSBC's counsel (Sullivan and Cromwell) to get the information and voluntary disclosure language as quickly as possible so that we can join with one or more of these other actions if possible.⁵⁰

Three days later, on August 27th, Dennis Wood advised Adam Szubin and Barbara Hammerle that DOJ had in fact disseminated "the" settlement dollar figure to HSBC on August 24th without waiting to hear whether OFAC's investigation would have resulted in HSBC having to pay a higher total amount of fines and forfeitures for its criminal conduct:

The Prosecutors DID pass "the" settlement number to the bank – AML charges at \$800 million and sanctions charges at \$375 million. No matter that our sanctions numbers might come in higher than that. We weren't consulted. We were told. As I mentioned yesterday, we still don't have what we need from the bank to bring our case to closure. . . . Among other things, we're still missing promised data on non-Iranian transactions and don't yet have from the bank satisfactory "language" for OFAC Chief Counsel.⁵¹

On August 30, 2012, Barbara Hammerle also confirmed that OFAC, which had not yet completed its review of HSBC's sanctions violations, could still determine that the figure corresponding to sanctions violations in the HSBC matter should be higher than the settlement number that DOJ proposed to HSBC:

The best estimate of when the case will reach settlement is mid-September. DOJ and DANY jointly proposed to HSBC on August 24 to settle AML charges with a forfeiture of \$800 million and to settle sanctions with a payment of a \$375 million penalty; **there is at least the possibility, however that OFAC will determine the appropriate sanctions figure is higher.**⁵²

By September 12, 2012, OFAC still had not determined whether or not HSBC's sanctions violations merited a higher or lower number than what DOJ had proposed to HSBC on August 24th:

⁵⁰ *Id.*

⁵¹ See Appendix 25 at UST-HSBC-089 (ellipsis in original); see also Appendix 26.

⁵² See Appendix 26 (emphasis in original).

In terms of timing specifics, the Fed, DOJ, FinCEN, and the OCC have already communicated their penalty numbers and intentions to the bank (with the exception of a final DOJ decision on whether to seek a BSA plea). OFAC is hoping to be in a position to settle by the end of the month, which may mean needing to communicate a number to the bank by the end of next week. If our number is higher than the DOJ sanctions number, the bank may push back some—at least this would represent additional money that it would actually have to pay to OFAC.⁵³

Two weeks later, on September 24th and 25th, Matthew Tuchband emailed other OFAC officials to express his concern that OFAC did not have “adequate information on a transaction-by-transaction basis” from HSBC to warrant a final determination on the scope of HSBC’s sanctions violations.⁵⁴ In Mr. Tuchband’s view, OFAC was “not able to review a sample of a very large number of the alleged violations (in the Burma context, I believe approximately 700 out of about 1,100 transactions) because [Sullivan & Cromwell] has provided only very limited information”⁵⁵ By October 7th, internal Treasury records show that OFAC still did not have adequate information from HSBC’s legal counsel to satisfy the concerns of OFAC’s Office of Chief Counsel regarding the extent of HSBC’s violations of U.S. sanctions.⁵⁶

However, after learning of the DPA deal with HSBC proffered by Attorney General Holder on November 7th, which the Attorney General insisted needed to be finalized by November 14th, senior OFAC officials pushed hard to meet the Attorney General’s “tight and difficult timeframe.”⁵⁷ In order to do so, OFAC officials decided to hastily resolve internal concerns about the extent of HSBC’s sanctions violations and “frame” OFAC’s final settlement number to mirror the \$375 million “deemed settled” value proposed by DOJ.⁵⁸ Accordingly, on November 9th—the day on which OFAC determined it would need to send its settlement agreement to HSBC to meet the Attorney General’s deadline—Matthew Tuchband informed Adam Szubin and other senior OFAC officials that he would reluctantly sign off on OFAC’s sanctions findings, “given that we are out of time and there is likely more information out there” and “clearly egregious behavior in other buckets

⁵³ See Appendix 23.

⁵⁴ See Appendix 27 at UST-HSBC-119.

⁵⁵ *Id.* at UST-HSBC-120. Note: this email is cut off in Treasury’s production to the Committee. Despite the Committee’s efforts to acquire the remaining pages in the email chain, Treasury to date has refused to produce the missing pages.

⁵⁶ See Appendix 8.

⁵⁷ See Appendices 12-13.

⁵⁸ See Appendix 11.

of transactions.”⁵⁹ OFAC transmitted its settlement agreement to HSBC later that evening.⁶⁰

Thus, despite the fact that OFAC did not have adequate time or information to fully investigate the extent of HSBC’s sanctions violations, OFAC ultimately decided to frame its settlement numbers to accord with the \$375 million value that DOJ proposed to HSBC, in an effort to meet the Attorney General’s artificial settlement deadline of November 14th.

The FSA’s Involvement in the U.S. Government’s HSBC Investigations and Enforcement Actions Appears to Have Hampered the U.S. Government’s Investigations and Influenced DOJ’s Decision Not to Prosecute HSBC

Internal Treasury documents reveal that shortly after DFS issued a consent order to SCB on August 6, 2012, directing SCB to appear before DFS on August 15, 2012, to defend charges that SCB processed at least \$250 billion in illegal transactions with Iran,⁶¹ an official in the UK government reached out to a U.S. official to complain that U.S. regulators were “taking aggressive action against UK banks in an effort to make british banks less attractive places to do business.”⁶² As a result of these accusations, Rory MacFarquhar, then-Director of the White House’s National Security Council, contacted Treasury on August 13, 2012, to request talking points concerning the U.S.’s enforcement actions against UK banks, including HSBC, Standard Chartered, and Barclays.⁶³ In response to the White House’s request, Treasury officials drafted talking points on August 13th to reassure the UK that “there is no truth to the supposition that enforcement actions against British banks are motivated by a desire to undermine London as a premier global financial center.”⁶⁴ Treasury’s draft talking points also indicated that “Treasury has a history of communicating with the FSA regarding open enforcement matters involving UK-based financial institutions” and that “Treasury intends to keep [the] FSA informed” about these ongoing investigations.⁶⁵

⁵⁹ See Appendix 14.

⁶⁰ See Appendix 16.

⁶¹ See Consent Order to Standard Chartered Bank, NEW YORK DEPARTMENT OF FINANCIAL SERVICES (Aug. 6, 2012), available at <http://www.dfs.ny.gov/about/ea/ea120806.pdf>. See also Jonathan Stempel and Carrick Mollenkamp, *Standard Chartered may lose NY license over Iran ties*, REUTERS (Aug. 6, 2012), <http://www.reuters.com/article/us-standardchartered-iran-idUSBRE8750VM20120806>.

⁶² See Appendices 28-29. Without adequate justification, Treasury produced these subpoenaed records to the Committee with the names of these U.S. and UK officials redacted. Moreover, Treasury has refused to produce the records in unredacted form, as required by the Committee’s subpoena of May 11, 2015.

⁶³ *Id.*

⁶⁴ See Appendix 29 at UST-HSBC-063.

⁶⁵ *Id.*

On August 24, 2012, the FSA's Edna Young emailed Dennis Wood about the HSBC settlement timetable and asked for DOJ settlement documentation and a draft Treasury settlement press release before it was set to be published:

We heard from the Fed today that they understand everything is in place for a global settlement very soon. The detailed timings they gave us suggested that DoJ would be sharing their documents (which they thought, but were not sure, would be a DPA) with HSBC today. The Fed also thought that OFAC were working to the same timetable. Can you confirm if that is right?

In terms of publication, we understand that all the US agencies were aiming to issue press releases simultaneously, possibly as early as the end of next week, but in any case no more than a few days later. Will you be able to send us your draft press release before it is issued? It was extremely helpful when you were able to do this in the Lloyds and Barclays cases. Is there any way you might be able to help us [with] the DoJ documentation? I don't think we have the contacts with them that we had in the past.⁶⁶

Internal Treasury records from October 2012 also indicate that the FSA was on "all" of the recent HSBC interagency coordination calls,⁶⁷ including the September 4th call in which DOJ "stated for the first time that it is considering seeking a guilty plea from HSBC" for BSA violations.⁶⁸ As described in more detail above, during that call, "[t]he FSA was clearly concerned by this turn of events and by the realization that total monetary penalties being considered by the agencies could approach \$2 billion,"⁶⁹ and accordingly elevated what DOJ was considering to Chancellor Osborne, the UK's chief financial minister, who in turn sent a letter to Chairman Bernanke and Secretary Geithner asserting that a financial calamity could occur if DOJ prosecuted HSBC.⁷⁰

On the following interagency call of September 11, 2012—the day after Chancellor Osborne sent his letter to Chairman Bernanke and Secretary Geithner—Treasury documents indicate that "[t]he FSA participants weighed in very strongly...that even the threat of a charter revocation could result in a global financial disaster."⁷¹ The FSA participants then asked for "urgent high level discussions with DOJ on the matter," a request that DOJ granted in the subsequent

⁶⁶ See Appendix 30.

⁶⁷ See Appendix 31.

⁶⁸ See Appendix 2.

⁶⁹ *Id.*

⁷⁰ See Appendix 4.

⁷¹ See Appendix 5.

weeks leading up to DOJ's decision on November 7, 2012, not to prosecute HSBC for any violations of U.S. laws.⁷²

Thus, the FSA's intervention in the HSBC enforcement matter appears to have played a significant role in ultimately persuading DOJ not to prosecute HSBC. For instance, in an email to Barbara Hammerle on October 8, 2012, Dennis Wood indicated that the FSA's participation in the HSBC interagency coordination calls "caused the latest firestorm":

FSA has been on the phone for the criminal discussions. That's what has caused the latest firestorm. The contents of that discussion are included in the Chancellor's letter.⁷³

Likewise, Treasury officials advised Secretary Geithner of Federal Reserve Governor Dan Tarullo's concerns regarding the FSA's role in U.S. enforcement matters:

You should also be aware that in a meeting between [Federal Reserve Governor] Dan Tarullo and [then-Treasury Under Secretary for International Affairs] Lael Brainard last Friday, Dan said that: a) the UK FSA was being particularly problematic on enforcement and adopting a light touch approach at industry's request; and b) he thought that the cross-border framework was insufficient and was skeptical about the extent of progress being made.⁷⁴

Attorney General Holder Misled Congress Concerning DOJ's Reasons for Not Prosecuting HSBC

Notwithstanding Attorney General Holder's testimony before the House Judiciary Committee on May 15, 2013, that "banks are not too big to jail" and that "if we find a bank or a financial institution that has done something wrong, if we can prove it beyond a reasonable doubt, those cases will be brought," it is clear from internal Treasury records that DOJ's decision to decline to prosecute HSBC was not due to a lack of evidence of HSBC's wrongdoing; indeed, based on the strength of its case against HSBC, not only did AFMLS internally recommend that DOJ prosecute HSBC,⁷⁵ but the bank itself admitted to the federal government that it had violated

⁷² *Id.* (indicating that on September 11, 2012, then-AFMLS Section Chief Jen Shasky offered FSA a call with Lanny Breuer, then-Attorney General for the Criminal Division, in response to the FSA's request for urgent, high-level discussions with DOJ officials).

⁷³ See Appendix 32 at UST-HSBC-138.

⁷⁴ See Appendix 22 at UST-HSBC-190.

⁷⁵ See Appendix 3 ("we should learn whether AFMLS's internal recommendation to ask the bank [to] plead guilty to criminal BSA charges was approved by senior DOJ officials" during the September 11, 2012, interagency call).

the law as early as September 2012.⁷⁶ Rather than lacking adequate evidence to prove HSBC's criminal conduct, internal Treasury documents show that DOJ leadership declined to pursue AFMLS's recommendation to prosecute HSBC because senior DOJ leaders were concerned that prosecuting the bank "could result in a global financial disaster"—as the FSA repeatedly warned.⁷⁷

DOJ's and Treasury's Longstanding Efforts to Improperly Impede the Committee's Investigation Appear to Constitute Contempt and Obstruction of Congress

The Committee has been seeking records from both DOJ and Treasury pertaining to DOJ's decision not to prosecute HSBC and other large financial institutions since early 2013. Approximately three years after the Committee's initial requests for records—and more than a year since the Committee authorized and issued subpoenas compelling DOJ and Treasury to produce the long-overdue information—both agencies continue to stonewall the Committee's investigation.

DOJ Stonewalling of the Committee's Information Requests and Subpoena

On March 8, 2013, the Committee sent a letter to both Attorney General Holder and Secretary Lew requesting, among other things, that each agency produce by not later than March 22, 2013, the following information:

- (1) All records related to the economic impact on the financial system of the United States of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party, including without limitation records in the nature of analysis, forecasts, legal or other memoranda, and correspondence, whether or not actually prepared by you or any other individual employed by, or working on behalf of your agency.
- (2) All records related to a request by any division, department, agency, instrumentality, or other authority of the federal or a state government, or by any individual, that the Department of Justice consider the economic impact on the financial system of the United States when determining whether to commence a criminal prosecution,

⁷⁶ See e.g., Appendix 27 at UST-HSBC-120 (indicating that HSBC conceded that it processed transactions in apparent violation of sanctions laws); Appendix 33 (indicating that, by as early as August 2012, HSBC "appears willing to concede" that its violations of sanctions laws were "egregious").

⁷⁷ See Appendix 5.

civil lawsuit, or administrative enforcement action, in a matter in which a financial institution has been or may be a party.⁷⁸

Due to DOJ's failure to comply with the Committee's information request, the Committee sent DOJ six letters between June 2013 and May 2015 urging DOJ to promptly comply with the requests outlined in the Committee's letter of March 8, 2013.⁷⁹ Because DOJ failed to comply or even produce a single page of responsive records in more than two years, the Committee authorized and issued a subpoena *duces tecum* on May 11, 2015, compelling Attorney General Lynch to produce the long-requested records by not later than May 25, 2015.

Notwithstanding the Committee's multiple requests for this information, and a congressional subpoena requiring Attorney General Lynch to timely produce it to the Committee, DOJ to date has failed to produce any records pertaining to its prosecutorial decision making with respect to HSBC or any large financial institution and has not provided a legal basis that might reasonably justify its actions.⁸⁰ Consequently, Attorney General Lynch remains in default on her legal obligation to produce the subpoenaed records to the Committee.

Moreover, as detailed below, DOJ also improperly interfered with the Committee's investigation by redacting subpoenaed Treasury records pertaining to DOJ's prosecutorial decisionmaking concerning HSBC and other large financial institutions.

DOJ's actions to date to improperly impede the Committee's legitimate oversight and investigation efforts appear to constitute contempt of Congress under 2 U.S.C. § 192⁸¹ and obstruction of Congress under 18 U.S.C. § 1505.⁸²

⁷⁸ See Appendix 1.

⁷⁹ See Appendices 34-39.

⁸⁰ Rather than producing the subpoenaed records, as the Committee's subpoena *duces tecum* of May 11, 2015, legally requires, DOJ has instead merely offered the Committee the opportunity to review a subset of the subpoenaed records *in camera*. Moreover, the records DOJ provided to the Committee *in camera* revealed little to no information concerning DOJ's decision to decline to prosecute HSBC for serious AML and sanctions violations or any other information that the Committee could reasonably view as helpful for the purposes of its investigation.

⁸¹ 2 U.S.C. § 192. ("Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House . . . or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine . . . and imprisonment in a common jail for not less than one month nor more than twelve months.").

⁸² 18 U.S.C. § 1505 ("Whoever corruptly . . . influences, obstructs, or impedes or endeavors to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by . . . any committee of either House . . . – Shall be fined under this title, imprisoned not more than 5 years . . . or both."). See also, e.g., *United States v. Mitchell*, 877 F.2d 294, 301 (4th Cir. 1989) ("Accordingly, we hold that any endeavor . . . when done

Treasury Stonewalling of the Committee's Information Requests and Subpoena

In response to the Committee's letter of March 8, 2013, Treasury represented to the Committee on March 28, 2013, that it had conducted a search for records responsive to the Committee's request for economic analyses that DOJ may have relied upon in making prosecutorial decisions in cases involving large financial institutions and did not identify "any such analyses."⁸³ Likewise, in a letter dated May 10, 2013, Treasury indicated that "we have not identified any analyses prepared by the Department of the Treasury for the DOJ regarding the potential prosecution of large, complex financial institutions."⁸⁴

However, later that month, on May 29, 2013, the *New York Times* reported that the advocacy group *Public Citizen* had acquired records from Treasury in connection with a Freedom of Information Action (FOIA) request showing that Treasury officials understood the nature and seriousness of the criminal activity allegedly committed by HSBC and SCB.⁸⁵ Because the records released by *Public Citizen* related to the Committee's investigation of DOJ's prosecutorial decision making concerning large financial institutions and, moreover, appeared responsive to the Committee's March 8th request, the Committee sent Treasury a letter on June 7, 2013, requesting that Treasury produce all records responsive to *Public Citizen's* December 28, 2012, FOIA request by not later than June 21, 2013.⁸⁶

Having heard nothing from Treasury in more than a month, the Committee reiterated its request to Treasury in a letter dated July 18, 2013.⁸⁷ In response, Treasury indicated in a letter dated July 26, 2013, that it would not comply with the Committee's request but instead would be only providing the Committee with the information that Treasury transmitted to *Public Citizen* pursuant to FOIA.⁸⁸

On August 22, 2013, the Committee advised Treasury that FOIA in no way proscribes Congress's constitutional right to the requested information and, accordingly, demanded that Treasury promptly comply with the Committee's June

with the requisite intent to corruptly influence a congressional investigation, violates § 1505."). In 1996, Congress defined the requisite intent to corruptly influence, obstruct, or impede or endeavor to influence, obstruct, or impede a congressional investigation as follows: "As used in section 1505, the term 'corruptly' means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information." 18 U.S.C. § 1515.

⁸³ See Appendix 40.

⁸⁴ See Appendix 41.

⁸⁵ Ben Protess, *Documents Show Obama Officials in Tension Over British Banks*, THE NEW YORK TIMES (May 29, 2013), http://dealbook.nytimes.com/2013/05/29/documents-show-obama-officials-in-tension-over-british-banks/?_r=0.

⁸⁶ See Appendix 42.

⁸⁷ See Appendix 43.

⁸⁸ See Appendix 44.

7th request.⁸⁹ Despite the Committee's repeated appeals for Treasury to voluntarily provide the information, Treasury continued for several months to refuse to allow the Committee to review any additional information beyond what Treasury provided to *Public Citizen* for an additional seven months.

Consequently, on March 25, 2014, the Committee advised Treasury that, due to its failure to provide the Committee with the requested records in more than nine months, the Committee intended to issue subpoenas to compel Treasury officials to testify concerning the requested records if Treasury did not produce the requested records by April 8, 2014.⁹⁰ In response, on the reply deadline of April 8, 2014, then-Treasury Assistant Secretary for Legislative Affairs Alastair Fitzpayne indicated that Treasury was finally "now in a position to make available to the Committee [for *in camera* review] several hundred pages of additional documents that we have identified as responsive to the Committee's June 7, 2013 request," albeit with significant redactions by DOJ.⁹¹

After repeated, additional attempts by the Committee to secure the production of the unredacted records originally requested in June 2013, including multiple letters advising Treasury that the Committee would have no choice but to subpoena the records if Treasury continued to impede the Committee's investigation,⁹² the Committee authorized and issued a subpoena *duces tecum* on May 11, 2015, compelling Secretary Lew to produce the unredacted records by May 25, 2015.⁹³ In Treasury's response of May 26, 2015, Treasury's then-Acting Assistant Secretary for Legislative Affairs, Randall Devalk, indicated to the Committee that "it would now be possible to remove some of the redactions" to the subpoenaed records and that "Treasury is prepared to make the updated document set available for [*in camera*] review by the Committee."⁹⁴ While objecting to Treasury's refusal to produce the records as legally required by the subpoena and not waiving the Committee's right to custody and control of the records, the Committee subsequently reviewed these records *in camera*.

Because Treasury failed to produce even a single page of records pertaining to the Committee's HSBC investigation in more than three months since the Committee subpoenaed these records on May 11, 2015, the Committee sent Treasury a letter on August 27, 2015, demanding compliance with the Committee's subpoena and requesting transcribed interviews with Treasury employees within

⁸⁹ See Appendix 45.

⁹⁰ See Appendix 46.

⁹¹ See Appendix 47.

⁹² See Appendices 48-49.

⁹³ In addition to subpoenaing records pertaining to DOJ's prosecutorial decision making concerning HSBC and SCB, the Committee also subpoenaed records in Treasury's custody and control pertaining to the Administration's debt ceiling contingency plans.

⁹⁴ See Appendix 50.

Treasury's Office of Legislative Affairs to explain Treasury's noncompliance with the Committee's subpoena.⁹⁵ In response, Treasury produced certain subpoenaed records pertaining to the debt limit (the subject of another Committee investigation that was also included in the subpoena) but declined to produce any subpoenaed records pertaining to the Committee's investigation of DOJ's decision not to prosecute HSBC and other large financial institutions.

Consequently, the Committee sent Treasury another letter on September 14, 2015, seeking compliance with the subpoena.⁹⁶ When that request was ignored, the Committee advised Treasury in a letter dated December 3, 2015, that the Committee was investigating Treasury's long-established pattern of noncompliance with the Committee's information requests and subpoena to determine whether Treasury's actions constituted criminal obstruction of Congress under 18 U.S.C. § 1505.⁹⁷ The Committee's December 3rd letter also asked Secretary Lew to advise by not later than December 11, 2015, whether he would make Acting General Counsel Priya Ayar, Assistant Secretary for Legislative Affairs Anne Wall, and former Acting Assistant Secretary for Legislative Affairs Randall Devalk available for transcribed interviews with Committee staff to testify concerning Treasury's noncompliance with the Committee's subpoena.⁹⁸

Because Treasury ignored the Committee's request for transcribed interviews with Treasury officials and failed to produce any of the subpoenaed records, the Committee informed Treasury in a letter dated January 14, 2016, that the Committee would consider the use of compulsory process if Secretary Lew declined to make the requested Treasury officials available for transcribed interviews.⁹⁹ Finally, after Treasury declined either to make the requested officials available for transcribed interviews or to produce any of the subpoenaed records, the Committee informed Treasury on March 9, 2016, that the Committee would be soon authorizing and issuing deposition subpoenas compelling the requested Treasury officials to testify concerning Treasury's persistent failure to comply with the Committee's information requests and subpoena.¹⁰⁰

On March 21, 2016, the Committee served subpoenas on Anne Wall, Randall DeValk, and Priya Ayar requiring them to appear for depositions with Committee staff on April 19th, 20th, and 27th, respectively. In response, with more than 34 months having elapsed since the Committee's June 7, 2013, request for the records responsive to *Public Citizen's* December 28, 2012, FOIA request, Treasury finally agreed to produce, among other things, the subpoenaed records pertaining to HSBC

⁹⁵ See Appendix 51.

⁹⁶ See Appendix 52.

⁹⁷ See Appendix 53.

⁹⁸ *Id.*

⁹⁹ See Appendix 54.

¹⁰⁰ See Appendix 55.

that the Committee had reviewed *in camera*, in exchange for the Committee agreeing to continue Anne Wall's and Randall DeValk's depositions to later dates in May. Treasury produced these records on April 14, 2016, albeit with *additional* redactions by DOJ concealing crucial information pertaining to the Committee's investigation.¹⁰¹ Because the additional DOJ redactions to the subpoenaed Treasury records were without adequate basis in law, the Committee pressed Treasury to reproduce the documents in the form previously reviewed *in camera*, i.e., without the new, additional redactions—a request that Treasury eventually agreed to comply with on April 29, 2016, in exchange for continuing Priya Aiyar's deposition to a later date.

Thus, Treasury improperly impeded the Committee's investigation of DOJ's decision not to prosecute HSBC for nearly three years before producing certain subpoenaed records featured in this report. Even now, Treasury has not complied with the Committee's subpoena of May 11, 2015. Among other things, in addition to containing improper redactions, Treasury's production of records pertaining to the HSBC investigation is missing dozens, if not hundreds, of pages, including entire email attachments that are clearly cited in the produced records, which Treasury has refused to produce. In addition, contrary to the subpoena's instructions, Treasury to date has refused to certify that it has produced to the Committee all records responsive to the Committee's subpoena.¹⁰² Accordingly, Secretary Lew remains in default on his obligation to produce all records responsive to the Committee's subpoena of May 11, 2015, in unredacted form and with the required certification that Treasury's production is complete.¹⁰³

¹⁰¹ Among other things, Treasury produced documents with additional redactions, at DOJ's request, designed to conceal facts crucial to the Committee's HSBC investigation concerning DOJ's decision not to prosecute HSBC, such as the fact that AFMLS internally recommended that DOJ prosecute HSBC and that senior DOJ leaders were seriously considering prosecuting HSBC but wanted to receive additional input from the OCC, the Fed, and the FSA before deciding whether to approve AFMLS's recommendation to prosecute the bank.

¹⁰² The subpoena instructions require Secretary Lew, upon completion of the record production, to submit a written certification signed by either Secretary Lew or his counsel, stating that: (1) a diligent search has been completed of all records in Treasury's possession, custody, or control which reasonably could contain responsive records, and (2) all records located during the search that are responsive have been produced to the Committee. The apparent reason that Treasury has declined to certify completion following its April 29th production is that it cannot do so in good faith because, among other reasons, it is clear from Committee staff's review of Treasury's production that various records have been withheld from the Committee.

¹⁰³ In addition to failing to comply with the subpoena schedule item pertaining to the Committee's HSBC investigation, Secretary Lew has also failed to comply with the Committee's subpoena schedule items pertaining to the Committee's debt limit investigation. *See* MAJORITY STAFF OF THE H. COMM. ON FIN. SERVICES, 114TH CONG., THE OBAMA ADMINISTRATION'S DEBT CEILING SUBTERFUGE: SUBPOENAED DOCUMENTS REVEAL TREASURY MISLED PUBLIC IN ATTEMPT TO "MAXIMIZE PRESSURE ON CONGRESS (Feb. 1, 2016), *available at* http://financialservices.house.gov/uploadedfiles/debt_ceiling_report_final_01292015.pdf.

Treasury's actions to date to improperly impede the Committee's legitimate oversight and investigation efforts appear to constitute contempt of Congress under 2 U.S.C. § 192 and obstruction of Congress under 18 U.S.C. § 1505.

The American People and the Congress Deserve to Know the Truth About the Merits of DOJ's Decision Not to Prosecute HSBC or Any of Its Executives or Employees for Violating U.S. AML and Sanctions Laws

As described above, internal Treasury documents acquired by the Committee raise very serious concerns about DOJ's DPA deal with HSBC in late 2012—not the least of which is that DOJ declined to prosecute anyone involved in a massive breach of U.S. anti-money laundering and sanctions laws due to HSBC's large size and “systemic importance.” A nation governed by the rule of law cannot have a two-tiered system of justice—one for the largest banks, and another for everyone else. Accordingly, inasmuch as DOJ continues to believe that certain financial institutions are too large to effectively prosecute, it is imperative that DOJ promptly inform the Congress of this fact, so that Congress can seek to address the problem of “too big to jail” through its legislative function. The American people and their representatives in Congress deserve to know the truth about any difficulties that might exist in prosecuting large financial institutions and their employees who have engaged in serious criminal conduct, so that these difficulties can be properly addressed.

Appendices

Appendix 1

Letter from Chairmen Hensarling and McHenry to Secretary Lew and Attorney General Holder (March 8, 2013)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 8, 2013

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20500

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Secretary Lew and Attorney General Holder:

We write today to express our deep concern regarding recent comments by the Attorney General and the Undersecretary for Terrorism and Financial Intelligence at the Treasury Department, David Cohen, relating to criminal prosecutions of large financial institutions. Yesterday, according to press reports, in testimony before the Senate Banking Committee, Undersecretary Cohen stated that the Treasury Department declined to provide the Justice Department with an opinion on the "impact to the financial system" of filing charges against HSBC. The Justice Department solicited this information in connection with its investigation of violations of federal anti-money laundering laws and related statutes that ultimately resulted in a deferred prosecution agreement and HSBC's payment of \$1.9 billion in fines. Undersecretary Cohen explained that in regard to the HSBC matter, "we [Treasury] weren't in a position to offer any meaningful assessment of what the impact might be."

In testimony on March 6, 2013, before the Senate Judiciary Committee, in response to a question from Senator Grassley regarding the Justice Department's prosecution of high-profile financial companies or individuals, Attorney General Holder testified that the size of certain financial institutions was hindering the Justice Department's ability to prosecute:

I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy. And I think that is a function of the fact that some of these institutions have become too large. . . . I think it has an inhibiting influence – [an] impact on our ability to bring resolutions that I think would be more appropriate.

And on December 19, 2012, in announcing the Justice Department's settlement with UBS for manipulation of the London Inter-Bank Offered Rate (LIBOR), Attorney General Holder noted that the Justice Department was relying on outside experts in making prosecutorial decisions:

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The impact on the stability of the financial markets around the world is something we take into consideration. We reach out to experts outside of the Justice Department to talk about what are the consequences of actions that we might take, what would be the impact of those actions if we want to make particular prosecutive decisions or determinations with regard to a particular institution.

These statements by the Attorney General and Undersecretary Cohen raise important questions regarding our financial system and the economic analyses the Justice Department is relying upon to make its prosecutorial decisions in cases involving large, complex financial institutions. Accordingly, in order to assist the Committee in evaluating these issues and to prepare for possible hearings on this matter, please provide the following:

- (1) All records¹ related to the economic impact on the financial system of the United States of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution² has been or may be a party, including without limitation records in the nature of analysis, forecasts, legal or other memoranda, and correspondence, whether or not actually prepared by you or any other individual employed by, or working on behalf of, your agency.
- (2) All records related to a request by any division, department, agency, instrumentality, or other authority of the federal or a state government, or by any individual, that the Department of Justice consider the economic impact on the financial system of the United States when determining whether to commence a criminal prosecution, civil lawsuit, or administrative enforcement action, in a matter in which a financial institution has been or may be a party.
- (3) All records in your possession generated by the Office of the Comptroller of the Currency ("OCC") related to the economic impact on the financial system of the United States of any actual or potential prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party, within the jurisdiction of the OCC.
- (4) For purposes of this request only, the term "You" means the Secretary of the Treasury in his capacity as Chairperson of the Financial Stability Oversight Council ("FSOC"). All records in the possession of FSOC related to the economic impact on the financial system of the United States of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party, including without limitation records in the nature of analysis, forecasts, legal or other memoranda, and correspondence,

¹ The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

² For purposes of this letter, "financial institution" means any legal entity that is predominantly engaged in financial activities.

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

whether or not actually prepared by you or any other individual employed by, or working on behalf of, FSOC.

Please work with the Financial Services Committee staff to provide the requested documents and communications as soon as practicable but not later than March 22, 2013. We appreciate your prompt attention to this matter. If you have questions regarding this request, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services



PATRICK McHENRY
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Maxine Waters
The Honorable Al Green

Appendix 2

Email Regarding HSBC Developments (September 4, 2012)

From: Maher, Mike Disabled
Sent: Wednesday, September 05, 2012 5:49 AM
To: Bradley, Bill; Clark, Cynthia
Cc: [REDACTED]; [REDACTED]
Subject: Fw: HSBC developments

Bill: pls give me a call this morning.

Vr Mike

----- Original Message -----

From: Tuchband, Matthew
Sent: Tuesday, September 04, 2012 09:37 PM
To: Meade, Christopher; Weideman, Christian
Cc: Maher, Mike; Agrawal, Priti; Hand, Tyler; Hershsfang, Jennifer
Subject: HSBC developments

Chris and Chris,

There were developments today in the interagency coordination related to HSBC that I think warrant bringing to your attention. In OFAC's weekly interagency call this morning, which included London's FSA in addition to the several U.S agencies involved, DOJ (represented by Jen Shasky) stated for the first time that it is considering seeking a guilty plea from HSBC (apparently for violations of the Bank Secrecy Act only, not for sanctions violations). DOJ is mulling over the ramifications that could flow from such an approach and plans to finalize its decision this week. The FSA was clearly concerned by this turn of events and by the realization that total monetary penalties being considered by the agencies could approach \$2 billion.

The timing of completion of the HSBC matter now seems dependent on which way DOJ goes. If DOJ seeks only a deferred prosecution agreement, the matter may be resolved in about two weeks. If DOJ seeks a guilty plea, the agencies think closure will be closer to the end of September.

So far, these developments have remained with the agencies and have not made it to the news media, notwithstanding the continuing coverage of the SCB and other bank matters.

As always, Tyler and I are available if you have any follow-up questions on this or any of the other open OFAC enforcement matters involving foreign banks. I will update you at the time of any further significant developments.

- Matthew

Appendix 3

Emails Regarding the Next “Interagency Coordination Call” on HSBC (September 7, 2012)

From: [Wood, Dennis](#)
To: [Szubin, Adam](#); [Hammerle, Barbara](#)
Cc: [Smith, John](#)
Subject: RE: Just an FYI - The next "Interagency Coordination Call" on HSBC is scheduled for Tuesday
Date: Friday, September 07, 2012 10:42:53 AM

Yes... and they were on the last call. That's why Jen's announcement was such a bombshell... Edna and others were quite taken aback both by the implications of a criminal plea and by the sheer amount of the proposed fines and forfeitures. It seemed as if it was the first time they had taken out their calculator.

From: Szubin, Adam
Sent: Friday, September 07, 2012 10:34 AM
To: Wood, Dennis; Hammerle, Barbara
Cc: Smith, John
Subject: Re: Just an FYI - The next "Interagency Coordination Call" on HSBC is scheduled for Tuesday

Fsa to be on the phone?

From: Wood, Dennis
Sent: Friday, September 07, 2012 10:17 AM
To: Szubin, Adam; Hammerle, Barbara
Cc: Smith, John
Subject: Just an FYI - The next "Interagency Coordination Call" on HSBC is scheduled for Tuesday

at which point we should learn whether AFMLS's internal recommendation to ask the bank plead guilty to criminal BSA charges was approved by senior DOJ officials.

-----Original Appointment-----

From: Jason A Gonzalez/BOARD/FRS
Sent: Friday, September 07, 2012 10:09 AM
To: Jason A Gonzalez/BOARD/FRS; Jason A Gonzalez/BOARD/FRS; Barbara Bouchard/BOARD/FRS; Claire.Haydon@fsa.gov.uk; [REDACTED] Stipano, Daniel P; Wood, Dennis; Gail K Jensen/BOARD/FRS; Hannah.Saffer@fsa.gov.uk; James Nelson/BSR/CHI/FRS; Jennifer.Shasky@usdoj.gov; Thomas, Jonathan; Joseph Abdelnour/BSR/CHI/FRS; [REDACTED] Kwayne Jennings/BOARD/FRS; Yovanoff, Laura; Straus, Lee M; Nancy Oakes/BOARD/FRS; Ashton, Rich; Stearns, Richard C; [REDACTED] Suzanne Williams/BOARD/FRS; Gormley, Thomas; Ryder, Tom; Wendy E Kallery/BSR/CHI/FRS
Subject: HSBC - Interagency Coordination Call
When: Tuesday, September 11, 2012 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where:

Time: 10:00 AM - 11:00 AM ET

Dial in Number: [REDACTED]

International Dial in Number: [REDACTED]

Conference Code: [REDACTED]

Appendix 4

*Letter from Chancellor Osborne to Chairman Bernanke and Secretary Geithner
(September 10, 2012)*



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

10 September 2012

Ben Bernanke
Chairman
The Federal Reserve System
20th and C Streets NW
Washington DC 20551
USA

The ongoing US investigations into HSBC and SCB for breaches of US anti-money laundering (AML) and sanctions regulations have attracted significant market attention in the UK and elsewhere. Following publication of the Order by the New York Department for Financial Services (DFS) on 6 August, Standard Chartered Bank's (SCB) share price fell by almost 30% in a single day of trading. Even though SCB's market value has now recovered much of this loss, the incident raises broader concerns, and gives us an opportunity to reflect more generally on how we might collectively ensure that regulatory and enforcement action does not lead to unintended consequences.

The SCB case raises three main issues. First, it serves as a further illustration of the importance which financial markets attach to access to the US dollar market. It was the perceived threat of SCB's loss of access to this market, rather than any potential financial penalty, that triggered such a significant reaction. To date, the majority of US enforcement action for AML/sanctions breaches has ended in settlements involving a Deferred Prosecution Agreement: the suggestion of a criminal indictment or, worse, conviction implies a problem that is more akin to the Riggs case, and therefore a more severe outcome. Markets price in this risk accordingly.

Second, the reaction was almost certainly more severe in the SCB case because markets were not prepared for the news. While SCB had disclosed that it was under investigation, nobody expected an Order of this sort to be served. Its unannounced publication and some of the language used ("rogue institution") created uncertainty over the magnitude of the offences and what regulatory action would follow, especially as it quickly became evident that the DFS action had not been co-ordinated with the other US agencies involved.

Thirdly, it highlighted the potential financial stability risks of enforcement action. In particular, if such action created a liquidity crisis for the bank concerned – as might have been the case with SCB, and as might still be the case for HSBC – this could jeopardise its stability. For a systemically important financial institution, this could lead to contagion. I do not want to overstate these risks but I think that they bear consideration.

Next steps

It is not my intention to interfere with criminal or regulatory action and procedures in the US. The UK and the US share an extremely strong partnership on AML and sanctions issues, whether through the Financial Action Task Force or in seeking to exert pressure on the Iranian and Syrian regimes. It for you, and your partners in other departments and agencies, to decide how best to supervise, regulate and enforce compliance within your jurisdiction. And Adair Turner, Mervyn King and I are together committed to ensuring that UK financial institutions are fully compliant with global standards and rules.

Going forward, however, I would appreciate your assistance in ensuring that enforcement action does not have unintended consequences. In particular, I would appreciate early warning of such action before it is announced. I know that you recognise the consequences of uncoordinated actions by the authorities, and I appreciate that the SCB Order was not within your control. But, in future, prior sight would help us to manage some of the potential market and stability risks, and consider what (if anything) we should collectively do to manage them.

I would also ask that the outcome of current and future investigations against UK-headquartered banks is consistent with previous settlements, and with US settlements made with banks headquartered throughout the world. I understand, for example, that HSBC is currently facing a series of settlements with US authorities that may cumulate at around \$1.9bn. I have not seen the details of this case, but it has been highlighted to me on a number of occasions that a settlement of this nature would be around three times greater than the largest US settlement to date for comparable AML/sanctions breaches. In HSBC's case, I understand that a criminal conviction would require US regulators to consider whether to revoke its banking authorisations in the US. Questions about HSBC's continued ability to clear US dollars would risk destabilising the bank globally, with very serious implications for financial and economic stability, particularly in Europe and Asia.

The scale of this enforcement action, particularly following the SCB case, is leading many to suggest that UK banks are being unfairly targeted. This narrative is unwelcome, not least given the extremely strong partnership that we continue to enjoy. I would therefore be grateful for your assistance in demonstrating that the US is even handed and consistent in its approach.

I would welcome a discussion of these issues when we see each other next.



I am copying this letter to Treasury Secretary Geithner, with whom I have also discussed this issue.

Best under ,

George

GEORGE OSBORNE

Appendix 5

Email Regarding HSBC Update (September 11, 2012)

Hand, Tyler

From: Hand, Tyler
Sent: Tuesday, September 11, 2012 1:43 PM
To: Meade, Christopher; Weideman, Christian
Cc: Agrawal, Priti; Maher, Mike; Tuchband, Matthew; Hershfang, Jennifer
Subject: HSBC Update

Chris and Chris,

At Matthew's request, I am giving you this update on the multiagency sanctions and money laundering investigation of HSBC. We had a status call this morning with the Fed, the OCC, FinCEN, DOJ (AFMLS), and the UK's Financial Services Authority (FSA). The U.S. regulatory agencies, including OFAC, all reported that they are moving as quickly as possible to put together administrative penalty actions, but it was clear that folks were really looking for DOJ's update as to whether it would be seeking to prosecute the bank for Bank Secrecy Act/money laundering violations.

Jen Shasky reported that DOJ leadership has not yet made a decision on whether it will seek an indictment or just a deferred prosecution agreement. She indicated that DOJ is very strongly considering a prosecution, but that senior leaders want to better understand the collateral consequences of a conviction/plea before taking such a dramatic step. DOJ is looking particularly for additional input from the Fed, the OCC, and the FSA.

The OCC indicated that a guilty plea (or conviction) would require a determination by the Comptroller on whether to hold a hearing to consider revoking the bank's U.S. charter. OCC staff said it could not rule out the possibility of a hearing, and such a decision would likely be made by the Comptroller in consultation with the Deputy Attorney General. The FSA participants weighed in very strongly that any guilty plea would need to be carefully planned and coordinated, with all agencies having contingency plans in place in advance. They emphasized their view that HSBC is the second most systemically important bank in the world with substantial dollar holding in the U.S and overseas, and said that even the threat of a charter revocation could result in a global financial disaster. While the FSA folks did not argue specifically against a prosecution, it was clear they were very concerned about the reverberations such an action could have within the financial system, and they asked for urgent high level discussions with DOJ on the matter. Jen Shasky offered to arrange a call with Lanny Breuer, the AAG for the Criminal Division.

We will let you know as soon as we hear more, but please let us know if you have any questions or concerns.

Thanks.

Tyler Hand
Assistant Chief Counsel for Designations and Enforcement
Office of the Chief Counsel (Foreign Assets Control)
United States Department of the Treasury
tel: [REDACTED]
[REDACTED]

Appendix 6

Email from Dennis Wood Regarding HSBC (September 11, 2012)

Mathis, Linda

From: Wood, Dennis
Sent: Tuesday, September 11, 2012 10:47 AM
To: Mathis, Linda; Hoyt, June
Subject: HSBC

Importance: High
Sensitivity: Confidential

It is important that we speak to Adam/Barbara when they return from across the street.

Thanks!

-----Original Message-----

From: Wood, Dennis
Sent: Tuesday, September 11, 2012 10:42 AM
To: Szubin, Adam; Hammerle, Barbara
Cc: Smith, John; Thomas, Jonathan; Yovanoff, Laura
Subject: HSBC

Adam and Barbara, it's very important that we brief you re: the dynamic of a possible HSBC criminal plea as it relates to the UK and global markets. David Rule, the FSA's Prudential Head of Large Complex Banking Groups, was very eloquent about the subject during this morning's interagency call. This is something that definitely should be brought to TFG's personal attention as soon as possible, if he isn't already aware of it from FinCEN and the OCC. Tyler is also going to brief it up through his channels.

Appendix 7

Email Regarding HSBC (September 28, 2012)

From: [Wood, Dennis](#)
To: [Szubin, Adam](#); [Hammerle, Barbara](#)
Cc: [Smith, John](#); [Tessler, David](#)
Subject: HSBC
Date: Friday, September 28, 2012 1:24:37 PM

The Prosecutors wouldn't participate on this morning's interagency conference call regarding HSBC. They said they weren't yet ready and have given no indication when they will be ready. The Office of the Comptroller of the Currency again indicated that it is ready, willing, and able to go it alone, if necessary.

Appendix 8

*Email Regarding Updated Secretary Travel Schedules to India and Japan Oct. 5
(October 7, 2012)*

From: [Wood, Dennis](#)
To: [Hammerle, Barbara](#)
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5
Date: Sunday, October 07, 2012 6:47:01 PM
Importance: High

PS – We don't have a figure on HSBC because Counsel is still insisting on its position and reviewing. S&C promised us a response to Counsel's "asks" by the end of the week, but as far as I know we hadn't received the material on their HK privacy concerns and the Burma transactions by the time I left on Friday (that was around 7pm).

From: Wood, Dennis
Sent: Sunday, October 07, 2012 6:43 PM
To: Hammerle, Barbara
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5
Importance: High

Brandon and Laura are actually more knowledgeable than Jon on SCB and HSBC respectively, Barbara, but Brandon's DORA is one of those currently messed up. I can only communicate with him via phone and text messaging to his personal cell. Laura still hasn't responded (it is Sunday night). The Prosecutors have NOT been forthcoming regarding HSBC. They have indicated that things are still in discussion among their principals. Jonathan didn't participate on the latest calls.

From: Hammerle, Barbara
Sent: Sunday, October 07, 2012 6:36 PM
To: Wood, Dennis
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

I know you all are a great team, but if only Friday had not been Jonathan's last day!!!

From: Wood, Dennis
Sent: Sunday, October 07, 2012 06:34 PM
To: Hammerle, Barbara; Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Tuchband, Matthew
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

I had just sent an update, Barbara Things are still extremely fluid and much remains undecided. The Prosecutors, we're told, have still not come to closure. Best fudge the language.

From: Hammerle, Barbara
Sent: Sunday, October 07, 2012 6:30 PM
To: Wood, Dennis; Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Tuchband, Matthew
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

Dennis,

Based on the various phone calls, can you all give more clarity on the payment structure:

"HSBC will almost certainly face a record-breaking fine, mainly due to its egregious violations of anti-money laundering laws. In addition, the HSBC settlement/forfeiture may include stand-alone payments to DOJ and the NY DA in addition to a resolution with FinCEN/OCC, and a separate resolution with the Fed (??). That said, USG authorities believe that the conduct at issue in HSBC was qualitatively worse than those of the largest offenders to date, and warrants a commensurate penalty. (FinCEN to add a sentence on the biggest distinguishing factors??)"

Barbara

From: Wood, Dennis
Sent: Sunday, October 07, 2012 06:12 PM
To: Szubin, Adam; Hammerle, Barbara; Smith, John; Demske, Susan; Tessler, David; Tuchband, Matthew
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

SC&E is on it, Adam. I already started editing and reached out urgently to the rest of the team...

From: Szubin, Adam
Sent: Sunday, October 07, 2012 05:31 PM
To: Jensen, Joseph (Andrew); Hammerle, Barbara; Shasky, Jennifer; Alvarado, Peter; Smith, John; Demske, Susan; Wood, Dennis; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

We were asked last week whether fincen or ofac saw concerns with taking this mtg and jen and I said no. I offered that we could draft pts if there was a desire, but no one replied. In any case, here's a start at a memo, with an attached summary of the 2 cases. These will need work from ofac and a bunch of input from fincen, but I will be offline until tues night, and I think this will need to be sent to execsec by monday afternoon, so I wanted to share a draft of what this might look like. I have no pride of authorship, so please edit away.

From: Jensen, Joseph (Andrew)
Sent: Saturday, October 06, 2012 08:25 AM
To: Szubin, Adam; Hammerle, Barbara; Shasky, Jennifer; Alvarado, Peter; Smith, John; Demske, Susan; Wood, Dennis; Tessler, David; Buffardi, Michael
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: Fw: Updated Secretary Travel Schedules to India and Japan Oct. 5

I don't think I saw email traffic on this so I apologize if I am double tracking. It looks like TFG will meet with George Osborne on the margins of Bank/Fund. Are OFAC and FinCEN preparing points

on SCB and HSBC for this memo? Thanks!

From: Maher, Mike
Sent: Saturday, October 06, 2012 07:19 AM
To: Jensen, Joseph (Andrew); Fowler, Jennifer
Subject: Fw: Updated Secretary Travel Schedules to India and Japan Oct. 5

See below re need for talking points. Jen and Adam said they would prep but not sure anyone driving it from your office. Have a great weekend.

From: Das, Himamauli
Sent: Friday, October 05, 2012 07:59 PM
To: Maher, Mike
Subject: Fw: Updated Secretary Travel Schedules to India and Japan Oct. 5

Mike, Pls see below. Following up on Std Chartered and HSBC. Adam volunteered FinCEN and OFAC to draft points on a mtg b/w TFG and OFAC, but not sure if there was follow-up. Could you pls loop then in on request.

Thanks, Him

From: Fazili, Sameera
Sent: Friday, October 05, 2012 07:51 PM
To: Sobel, Mark; Jarpe, Rachel; Douglass, Dora; Baker, Jeffrey; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Thx for that update
Ok to let Him coordinate on that. No need for you to circulate it Rachel

From: Sobel, Mark
Sent: Friday, October 05, 2012 7:50 PM
To: Fazili, Sameera; Jarpe, Rachel; Douglass, Dora; Baker, Jeffrey; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Ok

Him Das as I understand it is coordinating TFI/OFAC/GC input. Happy for TFI to clear.

Rachel – can you make sure they have it. Thanks.

From: Fazili, Sameera
Sent: Friday, October 05, 2012 7:46 PM
To: Jarpe, Rachel; Douglass, Dora; Sobel, Mark; Baker, Jeffrey; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Please have TFI clear as well. Szubin's shop I believe but you or Mark/Bill may know better.

From: Jarpe, Rachel
Sent: Friday, October 05, 2012 5:43 PM
To: Douglass, Dora; Sobel, Mark; Fazili, Sameera; Baker, Jeffrey; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

I've asked the Banking Office, AGC, the Middle East Office, and Tax Policy for talking points. I told them it was OK to get them to me on Tuesday.

From: Douglass, Dora
Sent: Friday, October 05, 2012 5:41 PM
To: Sobel, Mark; Fazili, Sameera; Baker, Jeffrey; Murden, Bill; Jarpe, Rachel
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Looping in Rachel.

From: Sobel, Mark
Sent: Friday, October 05, 2012 5:40 PM
To: Fazili, Sameera; Baker, Jeffrey; Douglass, Dora; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Bill went home sick.

Guess you'll have to deal with me. But I'm adding Him Das for obvious reasons too.

From: Fazili, Sameera
Sent: Friday, October 05, 2012 5:36 PM
To: Baker, Jeffrey; Douglass, Dora; Murden, Bill; Sobel, Mark
Cc: Huot, Lyndsay; Strauss, Michael
Subject: Fw: Updated Secretary Travel Schedules to India and Japan Oct. 5

Need osbourne bilat briefer.

Banking should add points

(Murden, lh or i can give you the guidance on banking. She wants you to add things from today's meeting)

From: Passeri, Carlo
Sent: Friday, October 05, 2012 05:09 PM
To: Zwart, Breanna; Herr, Julie; Hipple, Elizabeth; Morrison, Emily; Reese, Natalie; White, Antonio; Shah, Bhumi; Garner, Brody; McDonald, Gordon; Gathers, Shirley; Matera, Cheryl; Adeyemo, Adewale (Wally); LeCompte, Jenni; Earnest, Natalie W.; Alaimo, Kara; Patterson, Mark (DO); Coffman, Robert; Hunt, Anita Maria; Slomiany, Hanna; Mandelker, Lauren; IOC- Intelligence Operations Center (WATCHOFFICE); TOC; TELOPERATORS; Hopkins, Marissa; Coley, Anthony; ExecSecStaff; Babb, Bruce; Blanton, Eric; IAtasking; Kaczmarek, Matthew; TFItasking
Cc: Fazili, Sameera; Huot, Lyndsay; Strauss, Michael
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Looping in Sameera, Lyndsay and Michael

FYI – new bilat with George Osborne is now on the schedule ahead of Draghi on Thursday.

FYI – de Guindos bilat now confirmed for Friday ahead of Siluonov bilat.

From: Zwart, Breanna

Sent: Friday, October 05, 2012 3:21 PM

To: Zwart, Breanna; Herr, Julie; Hipple, Elizabeth; Morrison, Emily; Reese, Natalie; White, Antonio; Shah, Bhumi; Garner, Brody; McDonald, Gordon; Gathers, Shirley; Matera, Cheryl; Adeyemo, Adewale (Wally); LeCompte, Jenni; Earnest, Natalie W.; Alaimo, Kara; Patterson, Mark (DO); Coffman, Robert; Hunt, Anita Maria; Slomiany, Hanna; Mandelker, Lauren; IOC- Intelligence Operations Center (WATCHOFFICE); TOC; TELOPERATORS; Hopkins, Marissa; Coley, Anthony; ExecSecStaff; Babb, Bruce; Blanton, Eric; IAtasking; Kaczmarek, Matthew; TFItasking

Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Please find attached updated schedules for the Secretary's upcoming travel. We will send another version schedule before wheels up. On the India schedule, the Prime Minister's meeting is still not confirmed.

Best,

Breanna

Appendix 9

Email Regarding AGC Meeting (October 11, 2012)

From: [Hand, Tyler](#)
To: [Hershfang, Jennifer](#)
Subject: RE: AGC meeting
Date: Thursday, October 11, 2012 10:33:00 AM

Sure:

SCB - all agencies are now ready to begin discussions with the bank regarding settlement. OFAC's proposed settlement amount is around \$135M (bank is getting VSD credit), and the draft settlement agreement went to S&C yesterday. DOJ will be seeking a Deferred Prosecution Agreement with a \$290M fine (we've seen the draft statement of facts and it should be going to the bank shortly if it hasn't already). The Fed is seeking a \$100M penalty and has shared a draft cease and desist order with the bank. OFAC's penalty will be deemed satisfied by payment of the DOJ penalty, but the Fed's will not, so the bank will be looking at a total payment of \$390M on top of the \$340 it has already paid DFS.

HSBC - we still do not know whether DOJ (AFMLs) will be asking for a guilty plea with respect to the money laundering activity. The interagency process is on hold while this issue is sorted out, but there continues to be concern on the part of the UK government and the Financial Services Authority (UK regulator) that any threat to the bank's ability to clear dollars could be destabilizing. The UK also thinks the total penalty numbers that have been discussed, which are close to \$2B, are excessive and unfair. The large penalty numbers related mostly to money laundering activity and not sanctions. We are continuing our work on the OFAC piece so we're ready to go once the larger DOJ issues are resolved.

-----Original Message-----

From: Hershfang, Jennifer
Sent: Thursday, October 11, 2012 10:04 AM
To: Hand, Tyler
Subject: AGC meeting

Per Matthew's suggestion, might you be able to send me a sentence on the status of each HSBC and SCB?

Appendix 10

Email Regarding HSBC (November 5, 2012)

From: [Wood, Dennis](#)
To: [Szubin, Adam](#); [Hammerle, Barbara](#)
Cc: [Smith, John](#); [Steele, Charles](#)
Subject: HSBC
Date: Monday, November 05, 2012 5:05:30 PM

We're given to understand that senior HSBC management are flying in to meet with Lanny B. on Wednesday to plead their case about not being forced to go the "guilty" route. Don't know if they've been in touch with Tim G. or whether they would be looking to also meet with him.

Appendix 11

Email Regarding “HSBC Is Now An “Out of Control” Express Train” (November 7, 2012)

From: [Wood, Dennis](#)
To: [Szubin, Adam](#); [Hammerle, Barbara](#)
Cc: [Smith, John](#)
Subject: Re: **PLEASE READ** URGENT :: HSBC is now an "out of control" express train
Date: Wednesday, November 07, 2012 4:35:36 PM

Tyler says he's on board and we're trying to meet with him as early as possible on Thursday. We need to be sure Matthew doesn't suddenly run any interference (there was some Counsel- staff grumbling about your overall "egregiousness" decision, but given the circumstances and those Counsel team members currently engaged with the case, don't foresee that being a problem.) We hope to have a final case memo for your approval and draft Settlement based on that memo by tomorrow morning. We're going to frame it so that our number comes out at 375 "deemed settled," which is where the Prosecutors are.

From: Szubin, Adam
Sent: Wednesday, November 07, 2012 04:21 PM
To: Wood, Dennis; Hammerle, Barbara
Cc: Smith, John
Subject: Re: **PLEASE READ** URGENT :: HSBC is now an "out of control" express train

Thanks Dennis. We'll have to move fast. What should I be doing?

From: Wood, Dennis
Sent: Wednesday, November 07, 2012 04:15 PM
To: Szubin, Adam; Hammerle, Barbara
Cc: Smith, John
Subject: **PLEASE READ** URGENT :: HSBC is now an "out of control" express train

The Prosecutors met with the bank this afternoon. I just got a call from DOJ... AG Holder himself put in an appearance in addition to Lanny and others participating. The bank was offered a DPA. DOJ is giving its document to the bank this week on a "take-it-or-leave-it" basis (nothing to discuss)... They don't want any leaks... Everything is expected to "go public" by Wednesday of next week. We're scrambling tonight and meeting with Tyler (who is on board) first thing in the morning. We'll need to get our docs to the finish line in the same time frame. Our intent is to get the bank an OFAC Settlement Agreement by no later than Friday with the Settlement and our web-posting finalized by Tuesday and published on Wednesday.

Appendix 12

Email Regarding New Developments in HSBC (November 8, 2012)

From: [Maher, Mike](#)
To: [Bradley, Bill](#); [Clark, Cynthia](#); [Sutton, Gary](#); [Yoo, Julia](#); [Ahn, Catherine Sun](#); [Townsend, Brian](#)
Cc: [Egan, Brian](#)
Subject: FW: New Developments in HSBC
Date: Thursday, November 08, 2012 10:51:35 AM

Fysa

From: Hand, Tyler
Sent: Thursday, November 08, 2012 10:31 AM
To: Meade, Christopher; Weideman, Christian
Cc: Agrawal, Priti; Egan, Brian; Maher, Mike; Tuchband, Matthew
Subject: New Developments in HSBC

Chris and Chris,

We wanted to let you know that we understand DOJ, represented by Eric Holder and Lanny Breuer (AAG for the Criminal Division), met with senior HSBC officials yesterday concerning the criminal investigation of the bank's sanctions and money laundering activities. Per the readout we received, DOJ indicated it would **not** insist on a guilty plea as part of the settlement, but instead would be willing to resolve all counts through a comprehensive deferred prosecution agreement. As you may recall, a guilty plea or conviction was likely to have serious collateral consequences for the bank, including a hearing to consider whether to revoke the bank's U.S. charter. The current total liability for all criminal and civil fines and forfeiture actions would amount to approximately \$2 billion.

The catch with the DPA deal is that the Attorney General apparently insisted that the case be wrapped up by Wednesday. As you know, OFAC, FinCEN, the OCC, and the Fed all have concurrent civil investigations into various aspects of the bank's conduct. The objective of all agencies has been to resolve these investigations and roll out a global settlement concurrently, and the hope is that everyone will be in position to accomplish this by Wednesday. We are meeting this morning with OFAC to come up with a plan for getting our civil case to the finish line within this timeframe. The proposed settlement terms and documents still need approval from our office and Adam Szubin, and then they will need to be negotiated with the bank. This will be a tight and difficult timeframe, and we expect DOJ and the other agencies are likely to be similarly pressed to get everything finalized by Wednesday.

DOJ and the bank indicated that they do not intend to make any announcement until the deal is finalized and we have therefore been asked to treat this information as close hold. We will keep you updated as this situation develops, but please let us know if you have any questions or concerns.

Thanks,
Tyler

Tyler Hand
Assistant Chief Counsel for Designations and Enforcement
Office of the Chief Counsel (Foreign Assets Control)
United States Department of the Treasury
tel: [REDACTED]

Appendix 13

Email from Dennis Wood Regarding HSBC (November 9, 2012)

From: [Wood, Dennis](#)
To: [Szubin, Adam](#); [Hammerle, Barbara](#); [Smith, John](#); [Steele, Charles](#)
Subject: Fw: HSBC
Date: Friday, November 09, 2012 4:51:12 AM

We were told the docs would be conveyed on a "take it or leave it" basis. Even if that is the situation, if they don't send them today, I don't see how they'll close things on Wednesday. Monday is a federal holiday...

We've been busting ourselves to get our own proposed Settlement to S&C by cob today.

On a separate note, we also received a rather cute email on SCB from the Prosecutors. One gets tired of "cry wolf"...

----- Original Message -----

From: [REDACTED]
Sent: Thursday, November 08, 2012 04:58 PM
To: 'jason.a.gonzalez@' <[REDACTED]> Straus, Lee M; Wood, Dennis
Cc: [REDACTED] Ramaswamy, Jaikumar
<Jaikumar.Ramaswamy@usdoj.gov>
Subject: HSBC

To clarify, we have NOT given the bank our final documents as they are still being tweaked. We need each of your offices to not discuss the terms of the DOJ proposed DPA when talking to your respective counterparts at the bank until we have presented the docs to bank counsel. While the bank is aware of the DPA decision it is not aware of the terms. We want to ensure that external bank counsel briefs the board with all information and not have portions of the terms of the proposed resolution coming in from different areas of the HSBC organization through its conversations with the regulators as this could lead to leaks. We anticipate getting these docs to the bank before cob tomorrow.

Jason,
Would you please pass this request onto the FSA.

Thanks,

[REDACTED]
Money Laundering & Bank Integrity Unit
Asset Forfeiture & Money Laundering Section
U.S. Department of Justice
[REDACTED]

Appendix 14

Email Chain Regarding HSBC (November 9, 2012)

From: [Wood, Dennis](#)
To: [Szubin, Adam](#); [Hammerle, Barbara](#)
Cc: [Smith, John](#); [Steele, Charles](#)
Subject: HSBC
Date: Friday, November 09, 2012 5:46:57 PM
Importance: High

Adam, the chain below is self-explanatory. If AFMLS and DANY go out tonight or over the weekend, can we send out our Counsel-cleared draft Settlement Agreement to the bank or do you want to personally review it first? If you want to review, would you be available to do that on Sunday? Like yourself, I will be unavailable to process the item until tomorrow night, but could do so late tomorrow or on Sunday.

- Dennis

-----Original Message-----

From: [REDACTED]
Sent: Friday, November 09, 2012 5:38 PM
To: Wood, Dennis; LynchG@dany.nyc.gov
Cc: [REDACTED] Ramaswamy, Jaikumar
Subject: RE: HSBC

Dennis,
We are still working on getting them out tonight and will send your way once complete.

-----Original Message-----

From: Lynch, Garrett [<mailto:LynchG@dany.nyc.gov>]
Sent: Friday, November 09, 2012 5:21 PM
To: Wood, Dennis
Subject: RE: HSBC

Dennis, we've been jamming all day ourselves -- just putting the finishing touches on our DPA. We can circulate shortly to everyone. Not sure if AFMLS is still planning on sending to the bank this evening or not. We'll wait for them.

-----Original Message-----

From: Dennis.Wood@treasury.gov [<mailto:Dennis.Wood@treasury.gov>]
Sent: Friday, November 09, 2012 5:17 PM
To: [REDACTED] LynchG@dany.nyc.gov
Cc: [REDACTED] Ramaswamy, Jaikumar
Subject: RE: HSBC

Are your final docs ready? Have they been sent to the bank? We busted ourselves all day and will have a Settlement doc that can be sent to the bank shortly, but don't intend to go out until all are ready... If not today, will that be a weekend event or a Tuesday event?

Thanks,
- Dennis

From: Tuchband, Matthew
Sent: Friday, November 09, 2012 5:04 PM
To: Szubin, Adam
Cc: Wood, Dennis; Hand, Tyler; Smith, John; Steele, Charles; Dondarski, Michael; Yovanoff, Laura; Blackborow, Davin; Chessick, Peter; Hardaway, Lamine; Hershfang, Jennifer; Kirby, Jimmy
Subject: HSBC legal review

PRIVILEGED
PREDECISIONAL
ATTORNEY-CLIENT COMMUNICATION

Adam,

We are in the final moments of completing our legal review of the HSBC matter. There are a handful of problematic alleged violations that we are identifying and which we do not think will significantly affect the outcome. With respect to the egregiousness determination, we think it is solid for the Iran transactions but less so for others. In particular, we feel that there are some significant gaps in the information that make us less sure of the egregiousness determination in the Burma Hong Kong bucket of transactions. That said, given that we are out of time and there is likely more information out there, and given the context of this matter (a settlement and some clearly egregious behavior in other buckets of transactions), I am comfortable with a finding of egregiousness if that is what you want to do.

We are sending back our specific edits shortly, but as noted above, they do not substantively change the outcome.

- Matthew

Appendix 15

DOJ Settlement Documentation Transmitted to HSBC (November 9, 2012)

Szubin, Adam

From: Wood, Dennis
Sent: Saturday, November 10, 2012 6:13 AM
To: Szubin, Adam
Cc: Hammerle, Barbara; Smith, John; Steele, Charles
Subject: HSBC
Attachments: HSBC DPA.pdf; HSBC DPA Attachment B.pdf; HSBC Information.pdf; HSBC DPA Attachment A.pdf

Importance: High
Sensitivity: Confidential

Follow Up Flag: Follow up
Flag Status: Flagged

Here is the CLOSE HOLD documentation which DOJ sent to HSBC late last night.

[REDACTED]

I will get you our Counsel-cleared draft Settlement Agreement by this evening, which, with your blessing, I intend to send to the bank either tonight or first thing Sunday morning.

Thanks,
- Dennis

-----Original Message-----

From: [REDACTED]
Sent: Friday, November 09, 2012 7:43 PM
To: Straus, Lee M; [jason.a.gonzalez@\[REDACTED\]](mailto:jason.a.gonzalez@[REDACTED]); Wood, Dennis
Subject: HSBC Draft Documents

Gentlemen,
I will be sending these to the bank shortly. Thanks for your patience.

Of course these are highly confidential and not for distribution or discussion outside of your offices.

Thanks and have a good weekend,
[REDACTED]

[REDACTED]
Asset Forfeiture & Money Laundering Section Criminal Division-US Department of Justice
Washington, DC
[REDACTED]

ATTACHMENT A

STATEMENT OF FACTS

1. The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the “Agreement”) between the United States Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section, the United States Attorney’s Office for the Eastern District of New York, and the United States Attorney’s Office for the Northern District of West Virginia (collectively, the “Department”) and HSBC Bank USA, N.A. (“HSBC Bank USA”) and HSBC Holdings plc (“HSBC Group”); and as part of a separate Deferred Prosecution Agreement between the New York County District Attorney’s Office (“DANY”) and HSBC Group.
2. HSBC Bank USA and HSBC Group hereby agree and stipulate that the following information is true and accurate. HSBC Bank USA and HSBC Group admit, accept, and acknowledge that they are responsible for the acts of their respective officers, directors, employees, and agents as set forth below. If this matter were to proceed to trial, the Department would prove beyond a reasonable doubt, by admissible evidence, the facts alleged below and set forth in the criminal Information attached to this Agreement.

Bank Structure

3. HSBC Bank USA is a federally chartered banking institution and subsidiary of HSBC North America Holdings, Inc. (“HSBC North America”). HSBC North America is owned by HSBC Group. HSBC Group is one of the world’s largest banking and financial services organizations with approximately 7,200 offices in 85 countries. The organization is “vertically” structured such that the financial institutions throughout the world that are owned by HSBC Group (“HSBC Group Affiliates”) report to one of a few regional Holding Companies and the regional Holding Companies then report to HSBC Group in London, England. The Department of the Treasury, Office of the Comptroller of the Currency (“OCC”) is HSBC Bank USA’s primary regulator.

Applicable Law

4. Congress enacted the Bank Secrecy Act, Title 31, United States Code, Section 5311 *et seq.* (“BSA”), and its implementing regulations to address an increase in criminal money laundering activity through financial institutions. Among other things, the BSA requires domestic banks, insured banks, and other financial institutions to maintain programs designed to detect and report suspicious activity that might be indicative of money laundering, terrorist financing, and other financial crimes, and to maintain certain records and file reports related thereto that are especially useful in criminal, tax, or regulatory investigations or proceedings.

5. Pursuant to 31 U.S.C. § 5318(h)(1) and 12 C.F.R. § 21.21, HSBC Bank USA was required to establish and maintain an anti-money laundering (“AML”) compliance program that, at a minimum, provides for: (a) internal policies, procedures, and controls designed to guard against money laundering; (b) an individual or individuals to coordinate and monitor day-to-day compliance with the BSA and AML requirements; (c) an ongoing employee training program; and (d) an independent audit function to test compliance programs.
6. Pursuant to 31 U.S.C. § 5318(i)(1), banks that manage private banking or correspondent accounts in the United States for non-U.S. persons must establish due diligence, and in some cases enhanced due diligence, policies, procedures, and controls that are designed to detect and report suspicious activity related to certain specified accounts. For foreign correspondent accounts, the implementing regulations require that the due diligence requirements set forth in 31 U.S.C. § 5318(i)(1) include an assessment of the money laundering risk presented by the account based on all relevant factors, including, as appropriate: (i) the nature of the foreign financial institutions business and the market it serves; (ii) the type, purpose, and anticipated activity of the account; (iii) the nature and duration of the bank’s relationship with the account holder; (iv) the AML and supervisory regime of the jurisdiction issuing the license for the account holder; and (v) information reasonably available about the account holder’s AML record.

Department of Justice Charges

7. The Department alleges, and HSBC Bank USA admits, that HSBC Bank USA’s conduct, as described herein, violated the BSA. Specifically, HSBC Bank USA violated 31 U.S.C. § 5318(h)(1), which makes it a crime to willfully fail to establish and maintain an effective AML program, and 31 U.S.C. § 5318(i)(1), which makes it a crime to willfully fail to establish due diligence for foreign correspondent accounts.

Willful Conduct in Violation of the BSA

8. From 2003 to 2006, HSBC Bank USA operated under a written agreement issued by the Federal Reserve Bank of New York and the New York State Banking Department. A written agreement is a formal supervisory action issued by the Federal Reserve Board that requires a financial institution to correct operational deficiencies. The written agreement in this instance required HSBC Bank USA to enhance its AML compliance with the BSA, and specifically required HSBC Bank USA to enhance its customer due diligence or “know your customer” (“KYC”) profiles and the monitoring of funds transfers for suspicious or unusual activity.
9. From 2006 to 2010, HSBC Bank USA violated the BSA and its implementing regulations. Specifically, HSBC Bank USA ignored the money laundering risks associated with doing business with Mexican customers and failed to implement a BSA/AML program that was

adequate to monitor suspicious transactions from Mexico. At the same time, Grupo Financiero HSBC, S.A. de C.V. (“HSBC Mexico”), one of HSBC Bank USA’s largest Mexican customers, had its own significant AML problems. As a result of these concurrent AML failures, at least \$881 million in drug trafficking proceeds, including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in Colombia, were laundered through HSBC Bank USA. HSBC Group was aware of the significant AML problems at HSBC Mexico, yet inexplicably failed to inform HSBC Bank USA of these problems and their potential impact on HSBC Bank USA’s AML program.

10. There were at least four significant failures in HSBC Bank USA’s AML program that facilitated the laundering of drug trafficking proceeds through HSBC Bank USA:
 - a. Failure to obtain or maintain due diligence or KYC information on HSBC Group Affiliates, including HSBC Mexico;
 - b. Failure to monitor over \$200 trillion in wire transfers between 2006 and 2009 from customers located in countries that HSBC Bank USA classified as “standard” or “medium” risk, including over \$670 billion in wire transfers from HSBC Mexico;
 - c. Failure to monitor billions of dollars in purchases of physical U.S. dollars (“banknotes”) between June 2006 and July 2009 from HSBC Group Affiliates, including over \$10.5 billion from HSBC Mexico; and
 - d. Failure to provide adequate staffing and other resources to maintain an effective AML program.
11. On October 6, 2010, both the OCC and the Board of Governors of the Federal Reserve Board issued Cease and Desist Orders to HSBC Bank USA and HSBC North America based on these BSA/AML deficiencies and others.

HSBC Bank USA

12. HSBC Bank USA, headquartered in McLean, Virginia, with its principal office in New York City, operates throughout the United States and the world. It offers customers a full range of commercial and consumer banking products and related financial services. Its customers include individuals, small businesses, corporations, financial institutions and foreign governments. Some of the products HSBC Bank USA offers are considered high risk by the financial services industry and require stringent AML monitoring and oversight. In addition, HSBC Bank USA conducts business in many high risk international locations, including regions of the world presenting a high vulnerability to the laundering of drug trafficking proceeds.

HSBC Bank USA Failed to Conduct Due Diligence on HSBC Group Affiliates

13. One of HSBC Bank USA's high risk products was its correspondent banking practices and services. HSBC Bank USA maintained correspondent accounts for a number of foreign financial institutions, including HSBC Group Affiliates, within its Payments and Cash Management ("PCM") business. These correspondent accounts were established to receive deposits from, make payments on behalf of, or handle other financial transactions for the foreign financial institutions. In essence, HSBC Bank USA facilitated wire transfers between the foreign financial institution and its customers, and other financial institutions with which the foreign financial institution did not have a direct relationship. These correspondent accounts were high risk because HSBC Bank USA did not have a direct relationship with, and therefore had done no due diligence on, the foreign financial institution's customers who initiated the wire transfers. To mitigate this risk, the BSA requires financial institutions to conduct due diligence on all non-U.S. entities (*i.e.*, the foreign financial institution) for which it maintains correspondent accounts. There is no exception for foreign financial institutions with the same parent company. Therefore, HSBC Bank USA was required under the BSA to conduct due diligence on all HSBC Group Affiliates with correspondent accounts.
14. Despite this requirement, from at least 2006 to 2010, HSBC Bank USA did not conduct due diligence on HSBC Group Affiliates for which it maintained correspondent accounts, including HSBC Mexico. The decision not to conduct due diligence was guided by a formal policy memorialized in HSBC Bank USA's AML Procedures Manuals.

HSBC Bank USA Failed to Adequately Monitor Wire Transfers

15. Another way for financial institutions to mitigate the risks associated with correspondent banking is monitoring the wire transfers to and from these accounts. From 2006 to 2009, HSBC Bank USA monitored wire transfers using an automated system called the Customer Account Monitoring Program ("CAMP"). The CAMP system would detect suspicious wire transfers based on parameters set by HSBC Bank USA. Under the CAMP system, various factors triggered review, in particular, the amount of the transaction and the type and location of the customer. During this period, HSBC Bank USA assigned each customer a risk category based on the country in which it was located. Countries were placed into one of four categories based on the perceived AML risk of doing business in that country (from lowest to highest risk): standard, medium, cautionary, and high. Transactions that met the thresholds for review and the parameters for suspicious activity were flagged for additional review by HSBC Bank USA's AML department. These were referred to as "alerts."
16. From 2006 to 2009, HSBC Bank USA knowingly set the thresholds in CAMP so that wire transfers by customers, including foreign financial institutions with correspondent accounts, located in countries categorized as standard or medium risk would not be reviewed. Only transactions that involved customers in countries rated as cautionary or high risk were

reviewed by CAMP. During this period, HSBC Bank USA processed over 100 million wire transfers totaling over \$300 trillion. Over two-thirds of these transactions involved customers in standard or medium risk countries. Therefore, in this four-year period alone, over \$200 trillion in wire transfers were not reviewed in CAMP.

17. As early as 2000, HSBC Bank USA, and its executives and officers, were aware of numerous publicly available and industry-wide advisories about the money laundering risks inherent to Mexican financial institutions. These included:

- the U.S. State Department’s designation of Mexico as a “jurisdiction of primary concern” for money laundering as early as March 2000;
- the U.S. State Department’s International Narcotics Control Strategy Reports (“INCSR”) from as early as 2002 stating with regard to Mexico that *“the illicit drug trade continues to be the principal source of funds laundered through the Mexican financial system. ... The smuggling of bulk shipments of U.S. currency into Mexico and the movement of the cash back into the United States via couriers, armored vehicles, and wire transfers, remain favored methods for laundering drug proceeds. Mexico’s financial institutions are vulnerable to currency transactions involving international narcotics-trafficking proceeds that include significant amounts of U.S. currency or currency derived from illegal drug sales in the United States. ... According to U.S. law enforcement officials, Mexico remains one of the most challenging money laundering jurisdictions for the United States.”*;
- the April 2006 Financial Crimes Enforcement Network (“FinCEN”)¹ Advisory concerning bulk cash being smuggled into Mexico and deposited with Mexican financial institutions (discussed in paragraph 22 below);
- the federal money laundering investigations involving Sigue, a U.S.-based money services business, and Casa de Cambio Puebla (“Puebla”), a Mexican-based money service business, both of which had accounts at HSBC Mexico; and
- the federal money laundering investigation into Wachovia for its failure to monitor wire transactions originating from the correspondent accounts of certain Mexican money service businesses known as casas de cambio (“CDCs”).²

¹ FinCEN is a bureau of the U.S. Department of Treasury. FinCEN’s mission is to enhance the integrity of financial systems by facilitating the detection and deterrence of financial crime. FinCEN carries out its mission by receiving and maintaining financial transactions data, analyzing and disseminating that data for law enforcement purposes, and building global cooperation with counterpart organizations in other countries and with international bodies.

² CDCs are licensed non-bank currency exchange businesses located in a number of countries, including Mexico. CDCs allow persons in Mexico to exchange one type of currency for other currency, e.g., exchange a value of pesos for an equal value of U.S. dollars or a value of U.S. dollars for an equal value of pesos. Through CDCs, persons in Mexico can use hard currency, such as pesos or U.S. dollars, and wire transfer the value of that currency to U.S. bank accounts

All of these advisories or events were known to numerous HSBC Bank USA AML officers and business executives at or near the time they occurred.

18. Despite this evidence of the serious money laundering risks associated with doing business in Mexico, from at least 2006 to 2009, HSBC Bank USA rated Mexico as standard risk, its lowest AML risk category. As a result, wire transfers originating from Mexico were generally not reviewed in the CAMP system, including transactions from HSBC Mexico. From 2006 until April 2009, when HSBC Bank USA raised Mexico's risk rating to high, over 316,000 transactions worth over \$670 billion from HSBC Mexico alone were excluded from monitoring in the CAMP system.

HSBC Bank USA Failed to Monitor Banknotes' Transactions with HSBC Group Affiliates

19. HSBC Bank USA's Banknotes business ("Banknotes") was another high risk business. Banknotes' business involved the wholesale buying and selling of physical currencies (i.e., bulk cash) throughout the world. Banknotes was the largest volume trader of physical currency in the world, controlling approximately 60 percent of the global market. The business was based in New York with operations centers in London, Hong Kong and Singapore. These operations centers reported to the Head of Global Banknotes in New York. Banknotes customers included central banks, global financial institutions and non-bank entities such as CDCs and other money services businesses. Banknotes sold customers physical currency to be utilized in daily operations and/or purchased excess physical currency the customers did not need to have on hand. Banknotes' largest volume currency was the U.S. dollar. Purchased U.S. dollars were transported by Banknotes back to the United States and deposited with the Federal Reserve. Banknotes derived its revenue from commissions earned in connection with trading, transporting, and storing the physical currency.
20. Banknotes was a high risk business because of the high risk of money laundering associated with transactions involving physical currency and the high risk of money laundering in countries where some of its customers were located. In an attempt to mitigate these risks, Banknotes' AML Compliance monitored customer transactions. The purpose of transaction monitoring was to identify the volume of currency going to or coming from each customer

to purchase items in the United States or other countries. CDCs do not operate in the same manner as banks operate in the United States. CDCs do not hold deposits or maintain checking accounts, savings accounts, or issue lines of credit. Nor do CDCs provide personal and/or commercial banking services. A central function of CDCs is to allow persons or businesses in Mexico to exchange or wire transfer the value of hard currency from Mexico to bank accounts in the United States or other countries to conduct commerce.

and to determine whether there was a legitimate business explanation for buying or selling that amount of physical currency.

21. Despite the high risk of money laundering associated with this business, from 2006 to 2009, Banknotes' AML compliance consisted of just one compliance officer. Unlike the CAMP system for wire transfers, Banknotes did not even have an automated monitoring system. As a result, Banknotes' one compliance officer was responsible for personally reviewing the transactions for approximately 500 to 600 Banknotes customers.
22. On April 28, 2006, FinCEN issued Advisory FIN-2006-A003 entitled *Guidance to Financial Institutions on the Repatriation of Currency Smuggled into Mexico from the United States*. In the Advisory, FinCEN reported, "U.S. law enforcement has observed a dramatic increase in the smuggling of bulk cash proceeds from the sale of narcotics and other criminal activities from the United States into Mexico. Once the U.S. currency is in Mexico, numerous layered transactions may be used to disguise its origins, after which it may be returned directly to the United States or further transshipped to or through other jurisdictions." The Advisory was reviewed by all Banknotes personnel involved with Mexico and by those responsible for AML compliance within HSBC Bank USA.
23. Despite the Advisory from FinCEN just weeks earlier, in June 2006, Banknotes stopped monitoring transactions for HSBC Group Affiliates, including HSBC Mexico. As a result, discrepancies and suspicious activity in HSBC Group Affiliate transactions were not monitored and/or reported. At the time this decision was made, Banknotes purchased approximately \$7 billion in U.S. currency from Mexico each year, with nearly half of that coming from HSBC Mexico. Banknotes' transactions with HSBC Mexico went unmonitored from June 2006 until July 2009. During that time, Banknotes purchased over \$10.5 billion in physical U.S. dollars from HSBC Mexico, including over \$4.1 billion in 2008 alone.

HSBC Bank USA Failed to Provide Adequate Staffing and Other Resources to Maintain an Effective AML Program

24. In the face of known AML deficiencies and high risk lines of business, HSBC Bank USA made an affirmative decision to further reduce the resources available to its AML program in order to increase its profits. By 2007, only a year after the written agreement had been lifted, HSBC Bank USA had fewer AML employees than its own internal plans indicated were necessary. Despite this, beginning in 2007, senior business executives instructed the AML department to "freeze" staffing levels as part of a bank-wide initiative to cut costs and increase the bank's return on equity. This was accomplished by not replacing departing employees, combining the functions of multiple positions into one, and not creating new positions.

25. Even senior compliance officers were not replaced when they left HSBC Bank USA. In 2007, HSBC Bank USA's AML Director, the bank's top AML officer in the United States, left the bank and was not replaced. Instead, HSBC Bank USA's Head of Compliance took on the role while maintaining all of her other responsibilities. A short time later, HSBC North America's Regional Compliance Officer, the top compliance officer in North America who oversaw Compliance and AML at HSBC Bank USA, left and was not replaced. Instead, over objections from HSBC Group's Head of Compliance, HSBC Bank USA's CEO and HSBC Group's Head of Legal asked HSBC North America's General Counsel to take on the role while maintaining all of her other responsibilities. HSBC Group's Head of Legal and HSBC Group's Head of Compliance confirmed that the desire to save costs was the primary justification for merging the two roles.
26. In March 2008, HSBC Bank USA's Chief Operating Officer for Compliance conducted an internal review of the Bank's AML program ("March 2008 AML Review"). The March 2008 AML Review was presented to senior business executives and compliance officers. It found that the AML program in PCM was "behind the times" and needed to be fundamentally changed to meet regulators' expectations and to achieve parity with other banks. Specifically, the March 2008 AML Review noted that AML monitoring in PCM was significantly under-resourced. At the time, only four employees reviewed the 13,000 to 15,000 suspicious wire alerts generated per month. To put this in context, today, following remedial measures undertaken by HSBC, HSBC Bank USA has approximately 430 employees reviewing suspicious wire alerts.
27. Despite the findings in the March 2008 AML Review, HSBC Bank USA failed to address the lack of AML resources. Just one month later, in April 2008, an AML employee told a senior executive in Compliance that "[HSBC Bank USA] Compliance was in the midst of a staffing crisis." During this time, a number of AML employees noted that requests for additional resources were discouraged and ultimately these employees stopped making staffing requests. By October 2009, a senior executive in Compliance remarked that "AML has gone down the hole in the past 18 months." HSBC Bank USA did not begin to address the resource problem until late 2009, well after the OCC had, on multiple occasions, specifically raised concerns about the lack of resources.

HSBC Mexico

28. In 2002, HSBC Group acquired Grupo Financiero Bital ("Bital"). Bital was the fifth-largest bank in Mexico with approximately 1,400 branches and six million customers. After the acquisition, Bital was rebranded as HSBC Mexico. HSBC Mexico offered accounts denominated in Mexican pesos or U.S. dollars. Physical U.S. dollars deposited at HSBC Mexico branches that were not needed for daily operations were sold to HSBC Bank USA through Banknotes.

29. At the time of the acquisition, HSBC Group's Head of Compliance acknowledged there was "no recognizable compliance or money laundering function in Bital at present." HSBC Group Compliance believed it would take one to four years to achieve its required AML standards at HSBC Mexico. However, ten years later, HSBC Mexico's AML program is still not fully up to HSBC Group's required AML standards for HSBC Group Affiliates. Before 2009, many of the AML problems at HSBC Mexico involved U.S. dollar accounts, which ultimately affected HSBC Bank USA.

HSBC Mexico Did Not Maintain Sufficient KYC on U.S. Dollar Customers

30. From 2002 until at least 2009, HSBC Mexico did not maintain sufficient KYC information on many of its customers, including those with U.S. dollar accounts. A financial institution's KYC information should include customer information such as address, the reason for maintaining the account, expected activity and the source of U.S. dollars. The lack of sufficient KYC information at HSBC Mexico was repeatedly raised in internal audits and by HSBC Mexico's regulator, the Comision Nacional Bancaria y Valores ("CNBV"). These concerns were passed up to the CEOs of HSBC Mexico and HSBC Group.
31. One area in which KYC was particularly poor was HSBC Mexico's Cayman Island U.S. dollar accounts. Mexican law prohibited most individuals from maintaining U.S. dollar denominated deposit accounts in Mexico unless they lived near the U.S.-Mexico border or were a corporation that did business in designated tourist areas. However, Mexican law permitted almost any Mexican citizen to maintain offshore U.S. dollar accounts. These accounts were based in the Cayman Islands, but were essentially offshore in name only, because HSBC Mexico had no physical presence in the Cayman Islands and provided the front and back office services for these accounts at its branches in Mexico. Customers holding these accounts did all of their banking, including depositing physical U.S. dollars, at branches in Mexico. Nevertheless, the accounts were legal under Mexican law.
32. In January 2006, HSBC Mexico conducted an internal audit of the Cayman Islands U.S. dollar accounts. At that time, there were only approximately 1,500 of these accounts. Over 50 percent of the accounts that were audited lacked the proper KYC information, while 15 percent of reviewed accounts did not contain any KYC documentation. Over the next two years, nothing was done to address the KYC issues with these accounts. By 2008, there were 35,000 Cayman Island U.S. dollar accounts. At least 2,200 of these accounts were designated high risk due to suspicious activity within the accounts and/or negative information regarding the account owners. The average monthly deposit for these high risk accounts alone was approximately \$205 million. Without adequate KYC information, HSBC Mexico knew very little about who these high risk customers were or why they had such large amounts of U.S. dollars. However, even without the benefit of adequate KYC

information, the risks were obvious. Indeed, one HSBC Mexico compliance officer recognized “the massive misuse of [the HSBC Mexico Cayman Islands U.S. dollar accounts] by organized crime.” One example, identified by HSBC Group’s Head of Compliance in July 2008, involved “significant USD [U.S. dollar] remittances being made by a number of [HSBC Mexico’s Cayman Islands U.S. dollar] customers to a US company alleged to be involved in the supply of aircraft to drug cartels.”

HSBC Mexico Failed to Terminate Suspicious Accounts

33. When suspicious activity was identified, HSBC Mexico repeatedly failed to take action to close the accounts. Senior business executives at HSBC Mexico routinely overruled recommendations from its own AML committee to close accounts with documented suspicious activity. In July 2007, a senior compliance officer at HSBC Group told HSBC Mexico’s Chief Compliance Officer that “[t]he AML committee just can’t keep rubber-stamping unacceptable risks merely because someone on the business side writes a nice letter. It needs to take a firmer stand. It needs some *cojones*. We have seen this movie before, and it ends badly.”
34. Even when HSBC Mexico determined a relationship should be terminated, it often took years for the account to actually be closed. In December 2008, there were approximately 675 accounts that were pending closure based on suspicions of money laundering activity. Closure had been approved for 16 of those accounts in 2005, 130 in 2006, 172 in 2007, and 309 in 2008. All 675 of these accounts remained open into at least 2009, with transactions being actively conducted through them despite facing pending closure based on suspicion of money laundering activity.

HSBC Mexico’s Inordinately High Volume of U.S. Dollar Exports

35. Between 2004 and 2007, HSBC Mexico exported over \$3 billion U.S. dollars per year to the United States through Banknotes. In November 2007, Banco de Mexico, the central bank of Mexico, expressed concerns about the volume of U.S. dollars HSBC Mexico was exporting back to the United States. Specifically, Banco de Mexico wanted an explanation as to why HSBC Mexico’s U.S. dollar exports were significantly larger than its market share would suggest.
36. In February 2008, HSBC Mexico’s CEO met with the head of the CNBV and the head of Mexico’s financial intelligence unit, Unidad de Inteligencia Financiera (“UIF”). Again, the volume of HSBC Mexico’s U.S. dollar exports was raised as a concern. Specifically, HSBC Mexico’s CEO was told that law enforcement in Mexico and the United States were seriously concerned that the U.S. dollars being deposited at HSBC Mexico might represent drug trafficking proceeds. HSBC Mexico’s CEO was also told that Mexican law enforcement possessed a recording of a Mexican drug lord saying that HSBC Mexico was the place to

launder money. HSBC Mexico's CEO immediately raised these issues up to HSBC Group's CEO, Head of Legal, Head of Audit, and Head of Compliance.

37. An HSBC Mexico internal investigation following the February 2008 meeting with the CNBV and UIF revealed that a very small number of customers accounted for a very large percentage of physical U.S. dollar deposits. For example, in January 2008, 312 customers accounted for approximately 32 percent of total physical U.S. dollar deposits.
38. Moreover, a significant amount of the physical U.S. dollar exports came from Culiacan, Sinaloa. Culiacan is home to the Sinaloa drug cartel. HSBC Group and HSBC Mexico were both aware of the money laundering risks in doing U.S. dollar business in Sinaloa. In 2007, HSBC Group learned of what it referred to internally as a "massive money-laundering scheme" executed by HSBC Mexico employees and managers at multiple branches in Sinaloa. Despite this, HSBC Mexico branches continued to accept U.S. dollar deposits in Sinaloa. From 2006 to 2008, HSBC Mexico exported over \$1.1 billion in physical U.S. dollars from Sinaloa to HSBC Bank USA.
39. Despite the warnings from Mexican officials in late 2007 and early 2008, HSBC Mexico exported more physical U.S. dollars in 2008 than in any previous year, over \$4.1 billion. Finally, after the CNBV raised concerns directly with the HSBC Group's CEO in November 2008, HSBC Mexico stopped accepting physical U.S. dollar deposits at its branches.

HSBC Group

40. HSBC Group failed to have a formal mechanism for sharing information horizontally among HSBC Group Affiliates. While informal communication between HSBC Group Affiliates did occur, information generally was reported up through the formal channels to HSBC Group. HSBC Group then decided what information needed to be distributed back down the reporting lines to HSBC Group Affiliates in other parts of the world.
41. As discussed above, from 2002 to 2010, HSBC Mexico reported the AML problems it was having up through the formal reporting lines to HSBC Group. During this time, HSBC Mexico did not communicate – formally or informally – with HSBC Bank USA about its AML problems. Instead, executives at HSBC Mexico believed that by reporting the problems to HSBC Group, they had fulfilled their reporting obligations.
42. After receiving these reports from HSBC Mexico, however, HSBC Group failed to inform HSBC Bank USA. Senior HSBC Group executives including the CEO, Head of Compliance, Head of Audit, and Head of Legal, were all aware that the problems at HSBC Mexico involved U.S. dollars and U.S. dollar accounts, but never reached out to their counterparts at

HSBC Bank USA to explain the significance of the problems or the potential effect on HSBC Bank USA's business.

43. Limited information regarding the AML problems at HSBC Mexico was presented at HSBC Group level management meetings at which the CEO of HSBC North America attended. These were multi-hour, high-level meetings that covered issues throughout the world. The information presented at these meetings regarding HSBC Mexico's AML problems was not discussed in detail and did not indicate that the problems affected HSBC Bank USA or involved the potential laundering of U.S. dollar drug trafficking proceeds.
44. As a result of HSBC Group's failure to communicate, until 2010, no one at HSBC Bank USA was aware of the significant AML problems at HSBC Mexico. HSBC North America's General Counsel/Regional Compliance Officer first learned of the problems at HSBC Mexico and their potential impact on HSBC Bank USA in 2010 as a result of this investigation. Upon learning about potential problems in Mexico, she immediately contacted HSBC Group Compliance. It was not until that point that she learned the full story of what happened at HSBC Mexico. When she asked why she had not been informed earlier, she was told by HSBC Group's Head of Compliance that HSBC does not "air its dirty laundry," even amongst HSBC Group Affiliates.

Drug Trafficking Proceeds Laundered Through HSBC Bank USA

45. HSBC Bank USA's AML violations resulted in at least \$881 million being laundered through the U.S. financial system. A significant amount of the laundered funds were drug trafficking proceeds involved in the Black Market Peso Exchange ("BMPE"). The BMPE is a complex money laundering system that is designed to move the proceeds from the sale of illegal drugs in the United States to the drug cartels outside of the United States, often in Colombia. As set forth below, HSBC Bank USA's facilitation of BMPE transactions was discovered through a narcotics and money laundering investigation conducted by U.S. Immigration and Customs Enforcement's Homeland Security Investigations ("HSI") El Dorado Task Force in New York.
46. Colombian drug cartels selling illegal drugs in the United States receive billions of physical U.S. dollars each year. The cartels, many of which operate in Colombia, need to convert these U.S. dollars to Colombian pesos. The Colombian cartels face two major challenges in doing this: (1) AML laws in the United States make it very difficult for the drug cartels to deposit large amounts of physical U.S. dollars at banks in the United States; and (2) Colombia has very strict currency controls and tax laws making it difficult and expensive to convert U.S. dollars to Colombian pesos in Colombia.

47. To solve the first problem, Colombian drug cartels smuggle U.S. currency across the U.S. border into Mexico. Mexico has traditionally had less stringent AML laws, making it easier for the cartels to deposit large amounts of physical U.S. dollars at Mexican banks and CDCs.
48. To solve the second problem, Colombia's strict currency controls and tax laws, the Colombian cartels use the BMPE. The BMPE operates, using a middle man called a peso broker, to swap U.S. dollars owned by the drug cartels for Colombian pesos owned by Colombian businessmen looking to buy goods with U.S. dollars. The swap takes place in several steps. First, the peso broker receives the U.S. dollars from the drug cartel. Second, the peso broker uses the U.S. dollars to buy goods for the Colombian businessman. Third, when the Colombian businessman sells the goods in Colombia, the businessman gives the peso broker the Colombian pesos he received. Fourth, the peso broker gives the Colombian pesos to the cartel leaders in Colombia. In the end, the Colombian businessman gets U.S. dollars at a significantly lower exchange rate than he would otherwise get in Colombia, the Colombian cartel leaders get Colombian pesos while avoiding the scrutiny and costs associated with depositing the U.S. dollars directly in Colombia, and the peso broker receives a fee as the middle man.
49. Beginning in 2008, HSI agents identified multiple HSBC Mexico U.S. dollar accounts associated with BMPE activity. Specifically, drug traffickers were depositing physical U.S. dollars in accounts at HSBC Mexico. In some cases, hundreds of thousands of dollars in physical U.S. cash was being deposited per day into a single account. In some cases, in order to practically get this volume of physical cash into the HSBC Mexico branches, drug traffickers designed specially shaped boxes that fit the precise dimensions of the teller window. The drug traffickers would send numerous boxes filled with cash through the teller window and then be given a receipt before anyone at HSBC Mexico counted the money. After the cash was deposited in the accounts, peso brokers then wire transferred the U.S. dollars to various exporters located in New York City and other locations throughout the United States to purchase goods for Colombian businesses. The U.S. exporters then sent the goods directly to the businesses in Colombia.
50. The accounts at HSBC Mexico were identified by tracking wire transfers that originated from HSBC Mexico into HSI undercover accounts in the United States and through seizures and analysis of U.S.-based exporters' bank accounts involved in the BMPE. In 2010, the HSI investigation led to the arrest, extradition and conviction of numerous Colombian peso brokers who used accounts at HSBC Mexico to transfer drug trafficking proceeds through the BMPE.
51. The drug trafficking proceeds (in physical U.S. dollars) deposited at HSBC Mexico as part of the BMPE were sold to HSBC Bank USA through Banknotes. In addition, many of the

BMPE wire transfers to exporters in the United States passed through HSBC Mexico's correspondent account with HSBC Bank USA. As discussed above, from 2006 to 2009, HSBC Bank USA did not monitor Banknotes transactions or wire transfers from HSBC Mexico. As a result, the drug trafficking proceeds flowed into the United States undetected as they were laundered in massive quantities through HSBC Bank USA.

Evasion of U.S. Sanctions

52. From the mid-1990s through at least September 2006, HSBC Group violated both U.S. and New York State criminal laws by knowingly and willfully moving or permitting to be moved illegally hundreds of millions of dollars through the U.S. financial system on behalf of banks located in Cuba, Iran, Libya, Sudan, and Burma, and persons listed as parties or jurisdictions sanctioned by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") (collectively, the "Sanctioned Entities") in violation of U.S. economic sanctions.
53. HSBC Group engaged in this criminal conduct by: (a) following instructions from the Sanctioned Entities not to mention their names in U.S. dollar payment messages sent to HSBC Bank USA and other financial institutions located in the United States; (b) amending and reformatting U.S. dollar payment messages to remove information identifying the Sanctioned Entities; (c) deliberately using a non-transparent method of payment messages, known as cover payments; and (d) instructing the Sanctioned Entities how to format payment messages in order to avoid bank sanctions filters that could have caused payments to be blocked or rejected at HSBC Group or HSBC Bank USA.
54. HSBC Group's conduct, which occurred outside the United States, caused HSBC Bank USA and other financial institutions located in the United States to process payments that otherwise should have been held for investigation, rejected, or blocked pursuant to U.S. sanctions regulations administered by OFAC. Additionally, by its conduct, HSBC Group: (a) prevented HSBC Bank USA and other financial institutions in the United States from filing required BSA and OFAC-related reports with the U.S. Government; (b) caused false information to be recorded in the records of U.S. financial institutions located in New York, New York; and (c) caused U.S. financial institutions not to make records that they otherwise would have been required by law to make.

Applicable Law

55. At all times relevant to this matter, various U.S. economic sanctions laws regulated and/or criminalized financial and other transactions involving sanctioned countries, entities, and persons. Those laws applied to transactions occurring within U.S. territorial jurisdiction and to transactions involving U.S. persons, including U.S. corporations, anywhere in the world.

OFAC promulgated regulations to administer and enforce the economic sanctions laws, including regulations for economic sanctions against specific countries, as well as sanctions against Specially Designated Nationals (“SDNs”). SDNs are individuals, groups, and entities that have been designated by OFAC as terrorists, financial supporters of terrorism, proliferators of weapons of mass destruction, and narcotics traffickers.

Cuba Sanctions

56. Beginning with Executive Orders and regulations issued at the direction of President John F. Kennedy, the United States has maintained an economic embargo against Cuba through the enactment of various laws and regulations. These laws, restricting U.S. trade and economic transactions with Cuba, were promulgated under the Trading With the Enemy Act (“TWEA”), 50 U.S.C. app. §§ 1-44. These laws are administered by OFAC, and prohibit virtually all financial and commercial dealings with Cuba, Cuban businesses, and Cuban assets.

Iran Sanctions

57. In 1987, President Ronald W. Reagan issued Executive Order No. 12613, which imposed a broad embargo on imports of Iranian-origin goods and services. United States sanctions against Iran were strengthened in 1995 and 1997 when President William J. Clinton issued Executive Order Nos. 12957, 12959, and 13059. These Executive Orders prohibit virtually all trade and investment activities between the United States and Iran. With the exception of certain exempt or authorized transactions, OFAC regulations implementing the Iranian sanctions generally prohibit the export of services to Iran from the United States.

Libya Sanctions

58. On January 7, 1986, President Reagan issued Executive Order No. 12543 imposing broad economic sanctions against Libya. Subsequently, President Reagan issued Executive Order No. 12544 on January 8, 1986, ordering the blocking of all property and interests in property of the Government of Libya. President George H. W. Bush strengthened those sanctions in 1992, pursuant to Executive Order No. 12801. On September 22, 2004, President George W. Bush issued Executive Order No. 13357, terminating the national emergency with regard to Libya and revoking the sanction measures imposed by the prior Executive Orders.

Sudan Sanctions

59. On November 3, 1997, President Clinton issued Executive Order No. 13067 imposing a trade embargo against Sudan and blocking all property, and interests in property, of the Government of Sudan. President George W. Bush strengthened those sanctions in 2006 pursuant to Executive Order No. 13412. Under these Executive Orders, virtually all trade and investment activities between the United States and Sudan are prohibited. With the

exception of certain exempt or authorized transactions, OFAC regulations implementing the Sudanese sanctions generally prohibit the export of services to Sudan from the United States.

Burma Sanctions

60. On May 20, 1997, President Clinton issued Executive Order No. 13047, which prohibited both new investment in Burma by U.S. persons and U.S. persons' facilitation of new investment in Burma by foreign persons. On July 28, 2003, President George W. Bush signed the Burmese Freedom and Democracy Act of 2003 ("BFDA") to restrict the financial resources of Burma's ruling military junta. To implement the BFDA and to take additional steps, President Bush issued Executive Order No. 13310 on July 28, 2003, which blocked all property and interests in property of certain listed Burmese entities³ and provided for the blocking of property and interest in property of other individuals and entities meeting the criteria set forth in Executive Order No. 13310. Executive Order No. 13310 also prohibited the importation into the United States of articles that are a product of Burma and the exportation or re-exportation to Burma of financial services from the United States, or by U.S. persons, wherever located. On July 11, 2012, President Barack Obama signed an executive order easing restrictions to allow U.S. companies to do business in Burma.

Department of Justice Charges

61. The Department alleges, and HSBC Group admits, that HSBC Group's conduct, as described herein, violated TWEA. Specifically, HSBC Group violated 50 U.S.C. app. §§ 5 and 16, which makes it a crime to willfully violate or attempt to violate any regulation issued under TWEA, including regulations restricting transactions with Cuba. The Department further alleges, and HSBC Group admits, that HSBC Group's conduct, as described herein, violated the International Emergency Economic Powers Act ("IEEPA"). Specifically, HSBC Group violated 50 U.S.C. § 1705, which makes it a crime to willfully violate or attempt to violate any regulation issued under IEEPA, including regulations restricting transactions with Iran, Libya, Sudan, and Burma.

New York State Penal Law Charge

62. DANY alleges, and HSBC Group admits, that its conduct, as described herein, violated New York State Penal Law Sections 175.05 and 175.10, which make it a crime to, "with intent to defraud, . . . (i) make or cause a false entry in the business records of an enterprise [defined as any company or corporation] . . . or (iv) prevent the making of a true entry or cause the omission thereof in the business records of an enterprise." It is a felony under Section 175.10 of the New York State Penal Law if a violation under Section 175.05 is committed and the

³ President Bush subsequently issued Executive Order Nos. 13448 and 13464, expanding the list of persons and entities whose property must be blocked.

person or entity's "intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof."

Willful Conduct in Violation of U.S. Sanctions Laws

63. From at least 2000 through 2006, HSBC Group knowingly and willfully engaged in conduct and practices outside the United States that caused HSBC Bank USA and other financial institutions located in the United States to process payments in violation of U.S. sanctions. To hide these illegal transactions, HSBC Group altered and routed payment messages to ensure that payments violating IEEPA, TWEA, and OFAC regulations cleared without difficulty through HSBC Bank USA and other U.S. financial institutions in New York County and elsewhere. The total value of OFAC-prohibited transactions for the period of HSBC Group's review, from 2000 through 2006, was approximately \$660 million. This includes approximately \$250 million on behalf of Sanctioned Entities in Burma; \$183 million on behalf of Sanctioned Entities in Iran; \$169 million on behalf of Sanctioned Entities in Sudan; \$30 million on behalf of Sanctioned Entities in Cuba; and \$28 million on behalf of Sanctioned Entities in Libya.
64. Financial institutions in the United States are obligated to screen financial transactions, including wire payment processing, to make certain they do not execute transactions that violate U.S. sanctions. OFAC regularly publishes a comprehensive list of Sanctioned Entities that includes names of individuals, entities, their variations, and, if known, addresses, dates of birth, passport numbers, and other identifying information. Because of the vast volume of wire payments processed by financial institutions, most financial institutions employ sophisticated computer software, known as OFAC filters, to automatically screen all wire payments against the official OFAC list (as well as similar lists containing names of individuals and entities sanctioned by the United Nations and the European Union). When the filters detect a possible match to a Sanctioned Entity, the payment is stopped and held for further review. When a financial institution detects a funds transfer that violates sanctions, the institution must refuse to process or execute that payment. This is termed a "rejection." If a party to the payment is an SDN, then the payment must be frozen (or "blocked") and the bank must notify OFAC. The sending bank must then demonstrate to OFAC that the payment does not violate sanctions before the funds can be released and the payment processed. Thus, foreign banks seeking to send illegal payments through U.S. banks must by-pass or subvert the OFAC filters to make sure the illegal payments pass through the U.S. clearing banks. HSBC Group did this using a number of methods.

Amending Payment Messages

65. Specifically, beginning in the 1990s, HSBC Bank plc (“HSBC Europe”), a wholly owned subsidiary of HSBC Group, devised a procedure whereby the Sanctioned Entities put a cautionary note in their SWIFT payment messages including, among others, “care sanctioned country,” “do not mention our name in NY,” or “do not mention Iran.”⁴ Payments with these cautionary notes were placed in what HSBC Europe termed a “repair queue” where HSBC Europe employees manually removed all references to the Sanctioned Entities. The payments were then sent to HSBC Bank USA and other financial institutions in the United States without reference to the Sanctioned Entities, ensuring that the payments would not be blocked or rejected and referred to OFAC.
66. HSBC Group was aware of this practice as early as 2000. In 2003 HSBC Group’s Head of Compliance acknowledged that amending payment messages “could provide the basis for an action against [HSBC] Group for breach of sanctions.” At that time, HSBC Group Compliance instructed HSBC Europe to stop the practice. However, HSBC Europe appealed, and due to the “significant business opportunities” offered by the Sanctioned Entities, HSBC Group’s Head of Compliance granted HSBC Europe a dispensation. Over the next several years, HSBC Europe and HSBC Middle East sought and obtained numerous dispensations, allowing the amendment of payment messages from the Sanctioned Entities to continue until 2006.
67. HSBC Bank USA had express policies requiring full transparency in processing payments involving Sanctioned Entities. In 2001, a senior compliance officer at HSBC Group told HSBC Bank USA that HSBC Group would not permit HSBC Group Affiliates to amend payment messages to avoid detection by sanctions filters in the United States. Yet, contrary to this assurance, HSBC Group Affiliates intentionally hid the practice of amending payments involving Sanctioned Entities from HSBC Bank USA. As a result, during the relevant time period, HSBC Bank USA and other financial institutions in the United States processed hundreds of millions of dollars in transactions involving Sanctioned Entities in violation of U.S. sanctions.

Cover Payments

68. Historically, HSBC Group processed U.S. dollar payment messages from and through numerous global locations. During the relevant time period, HSBC Group consolidated its U.S. dollar payment processing so that the payments were predominately processed at HSBC

⁴ HSBC Group is a member of the Society for Worldwide Interbank Financial Telecommunications (“SWIFT”) and historically has used the SWIFT system to transmit international payment messages with financial institutions around the world, including its U.S. affiliate, HSBC Bank USA.

Europe's Multi-Currency Payment Processing Center in England and later at HSBC Middle East in Dubai.

69. International wire payments generally are executed via the secured communications services provided by SWIFT, and the communications underlying the actual payments are commonly referred to as SWIFT messages. When a bank customer sends an international wire payment, the de facto standard to execute such a payment is the MT 103 SWIFT message (also called a serial payment, or a serial MT 103 payment). When a financial institution sends a bank-to-bank credit transfer, the de facto standard is the MT 202 SWIFT message. The crucial difference, during the relevant time period, was that MT 202 payments typically did not require the bank to identify the originating party to the transactions, and banks typically did not include that information in MT 202 messages.⁵ A “cover payment” typically involves both types of messages: an MT 103 message identifying all parties to the transaction is sent from the originating bank to the beneficiary, but the funds are transferred through the United States via an MT 202 message that lacks that detail. Instead of using MT 103 payment messages for transactions involving the Sanctioned Entities, which would have revealed the identity of the ordering customer and beneficiary, HSBC Group used MT 202 “cover payment” messages, which did not. Consequently, U.S. financial institutions were unable to detect when payments were made to or from a Sanctioned Entity.
70. HSBC Group employees understood that cover payments hid the identity of the ordering customer and beneficiary, and therefore allowed for straight-through processing of OFAC-prohibited transactions. They also knew that using MT 103 payments, as was typically done for non-sanctioned clients, would likely result in the payment being rejected or blocked.
71. Although HSBC Europe instituted nominal processes to screen for SDNs when processing transactions from Sanctioned Entities, they employed untrained payment clerks and untested automated filters in the process. As a result, HSBC Europe could not verify with a sufficient degree of accuracy or reliability whether payments it processed from Sanctioned Entities complied with OFAC restrictions. In processing these payments and sending them to HSBC Bank USA, HSBC Europe provided HSBC Bank USA with no information that the payments involved Sanctioned Entities, and thus prevented HSBC Bank USA from exercising its own due diligence and OFAC screening.⁶

⁵ Subsequent changes to MT 202 messaging formats now generally require the inclusion of originating party information when an MT 202 message is utilized to execute a customer payment.

⁶ Until 2008, OFAC regulations included an exception to the prohibition on Iranian transactions that permitted certain transactions known as “U-Turns.” While HSBC Europe and HSBC Middle East processed approximately \$20 billion in otherwise permissible Iranian U-Turn payments during the period, employees amended payment messages and used cover payments to conceal the nature of the transactions from HSBC Bank USA and other financial institutions in

72. As early as July 2001, HSBC Bank USA told HSBC Group's Head of Compliance that it was concerned that the use of cover payments prevented HSBC Bank USA from confirming whether the underlying transactions met OFAC requirements. From 2001 through 2006, HSBC Bank USA repeatedly told senior compliance officers at HSBC Group that it would not be able to properly screen Sanctioned Entity payments if payments were being sent utilizing the cover method. These protests were ignored.
73. HSBC Europe resisted sending serial payments to HSBC Bank USA because it was concerned that payments would be blocked or rejected, and that Sanctioned Entity banks, specifically those from Iran, would discontinue their relationships with HSBC Europe due to the increased costs associated with serial payments. These Iranian relationships resulted in revenue of millions of dollars per year for HSBC Group Affiliates outside of the United States. It was not until 2006 that HSBC Group ordered all HSBC Group Affiliates to use serial payments for U.S. dollar transactions.

Straight-Through Processing Instructions

74. In April 2001, HSBC Europe instructed an Iranian bank how to evade detection by OFAC filters and ensure its payments would be processed without delay or interference. The HSBC Europe employee wrote, "we have found a solution to processing your payments with minimal manual intervention....the key is to always populate field 52 - if you do not have an ordering party then quote 'One of our Clients'...outgoing payment instruction from HSBC will not quote [Iranian bank] as sender - just HSBC London....This then negates the need to quote 'do not mention our name in New York.'"⁷ Thus, according to the instructions sent by HSBC Europe, if the Iranian bank entered the term "One of our Clients" into Field 52, there would be no interference with the processing of the wire payment, whether it was OFAC-compliant or not.
75. In July 2001, HSBC Bank USA's Chief Compliance Officer confronted HSBC Group's Head of Compliance on this issue and was assured that "Group Compliance would not support blatant attempts to avoid sanctions, or actions which would place [HSBC Bank USA] in a potentially compromising position."

the United States, which deprived the U.S. banks of their ability to filter and review the transactions to determine whether they were legal under OFAC regulations.

⁷ Field 52 is a data code field in a SWIFT payment message that identifies the bank of the ordering customer, or the "originating bank." When the originating bank was Iranian, its inclusion in a payment message could trigger review by the clearing bank in New York. For payments using MT 103 messages, Field 52 was mandatory. For MT 202 cover payments, it was optional.

76. HSBC Europe issued guidelines to deal with transactions that came from the Sanctioned Entities. One of these was to refer flagged payments back to the Sanctioned Entity for “clarification.” In doing so, HSBC Europe was alerting the Sanctioned Entity that the payment message as sent was prohibited by OFAC sanctions. Invariably, the Sanctioned Entities responded by reformatting the payment so that it would be processed through the U.S. clearing banks, including HSBC Bank USA, without being subject to U.S. filters.

HSBC Bank USA’s and HSBC Group’s Cooperation and Remedial Actions

77. From early in this investigation, HSBC Bank USA and HSBC Group have fully cooperated and have provided valuable assistance to law enforcement. With the assistance of outside counsel, HSBC Bank USA has made numerous, detailed, periodic reports to the Department and DANY concerning those findings.
78. To date, HSBC Bank USA has produced more than 9 million pages of documents. A number of these documents were the records of HSBC Group Affiliates located outside of the United States. The bank has provided the Department with its internal investigation memoranda, including the results of over 70 current and former employee interviews. HSBC Bank USA has also made past and present employees, including HSBC Group employees throughout the world, available to be interviewed by the Department and DANY as requested.
79. In addition to the cooperative steps listed above, HSBC Bank USA has assisted the Government in investigations of certain individuals suspected of money laundering and terrorist financing.
80. HSBC Bank USA and HSBC Group have also taken and agreed to continue the following extensive remedial measures to address the shortcomings in their BSA/AML programs:

HSBC Bank USA’s Remedial Measures

- a. HSBC Bank USA has a new leadership team, including a new Chief Executive Officer for the United States, General Counsel, Regional Compliance Officer, AML Director, Deputy Compliance Officer and Deputy Director of its Global Sanctions program.
- b. As a result of its AML violations and program deficiencies, HSBC Bank USA “clawed back” deferred compensation (bonuses) for a number of its most senior AML and compliance officers, to include the Chief Compliance Officer, AML Director and Chief Executive Officer.
- c. In 2011, HSBC Bank USA spent \$244 million on AML, approximately nine times more than what it spent in 2009.

- d. HSBC Bank USA has increased its AML staffing from 92 full time employees and 25 consultants as of January 2010 to approximately 880 full time employees and 267 consultants as of May 2012.
- e. HSBC Bank USA has reorganized its AML department to strengthen its reporting lines and elevate its status within the institution as a whole by (i) separating the Legal and Compliance departments; (ii) requiring that the AML Director report directly to the Chief Compliance Officer; and (iii) providing that the AML Director regularly report directly to the Board and senior management about HSBC Bank USA's BSA/AML program.
- f. HSBC Bank USA now treats HSBC Group Affiliates as third parties that are subject to the same due diligence as all other customers.
- g. HSBC Bank USA has implemented a new customer risk-rating methodology based on a multifaceted approach that weighs the following factors: (1) the country where the customer is located, (2) the products and services utilized by the customer, (3) the customer's legal entity structure, and (4) the customer and business type.
- h. HSBC Bank USA has exited over 109 correspondent relationships due to its new risk-based methodology.
- i. HSBC Bank USA has a new automated monitoring system. The new system monitors every wire transaction that moves through HSBC Bank USA. The system also tracks the originator, sender and beneficiary of a wire transfer, allowing HSBC Bank USA to look at its customer's customer.
- j. HSBC Bank USA is presently remediating all customer KYC files in order to ensure they adhere to the new AML policies discussed above and plans to have completed remediation of 155,554 customers by September 2012.
- k. HSBC Bank USA has exited the Banknotes' business.
- l. HSBC Bank USA has spent over \$290 million on remedial measures.

HSBC Group's Remedial Measures

- a. HSBC Group has mandated that all HSBC Group Affiliates around the world adhere to the strictest regulatory standards available in any location where the HSBC Group operates. This new policy ensures that all HSBC Group Affiliates will, at a minimum, adhere to U.S. regulatory standards.
- b. HSBC Group has elevated the Head of HSBC Group Compliance position to a Group General Manager, which is one of the 50 most senior employees at HSBC globally. HSBC Group has also replaced the individual serving as Head of HSBC Group Compliance.
- c. HSBC Group has replaced eighteen of its twenty-one most senior officers as a result of this investigation.

- d. The Head of HSBC Group Compliance has been given direct oversight over every compliance officer globally, so that both accountability and escalation now flow directly to and from HSBC Group Compliance.
- e. HSBC Group has launched an AML notification system that allows AML officers at all HSBC Group Affiliates to not only escalate problematic matters to HSBC Group Compliance, but also to share information horizontally with one another.
- f. HSBC Group has made its senior leadership team that attends HSBC Group level management meetings “jointly and severally” liable for all information presented at the meetings. In other words, each executive is responsible for reviewing all of the information presented at the meeting, as well as all written documentation provided in advance of the meeting, and determining whether it affects their respective entity or region. In addition, if an executive believes that something occurring within her area of responsibility affects another business or affiliate within HSBC Group, it is that executive’s responsibility to seek out the executives from that business or affiliate and work to address the issue. If something in a particular area of responsibility is missed, all of the senior leadership team will be held responsible.
- g. HSBC Group has restructured its executive bonus system scorecard so that successful operation of each affiliate’s compliance function accounts for a significant portion of an executive’s year-end bonus. The system is set up so that a failing compliance score voids the entire year’s bonus compensation.
- h. HSBC Group has commenced a review of all customer KYC files across the entire Group. The first phase of this remediation will cost an estimated \$700 million to complete over the next five years.
- i. HSBC Group will defer bonus compensation for its 70 most senior officers during the pendency of the deferred prosecution agreement.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

-against-

Cr. No. _____

HSBC BANK USA, N.A. and
HSBC HOLDINGS PLC,

Defendants.

- - - - -X

DEFERRED PROSECUTION AGREEMENT

Defendant HSBC Bank USA, N.A., a federally chartered banking institution and subsidiary of HSBC North America Holdings, Inc., and defendant HSBC Holdings plc, a financial institution organized under the laws of England and Wales (collectively, "the Bank"), by its undersigned representatives, pursuant to authority granted by the Bank's Boards of Directors, and the United States Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section, the United States Attorney's Office for the Eastern District of New York, and the United States Attorney's Office for the Northern District of West Virginia (collectively, the "Department"), enter into this deferred prosecution agreement (the "Agreement"). The terms and conditions of this Agreement are as follows:

Criminal Information and Acceptance of Responsibility

1. The Bank acknowledges and agrees that the Department will file the attached four-count criminal Information in the United States District Court for the Eastern District of New York ("the Court") charging the Bank with (a) Wilfully failing to maintain an effective anti-money laundering program, in violation of Title 31, United States Code, Section 5318(h) and regulations issued thereunder; (b) wilfully failing to conduct and maintain due diligence on correspondent bank accounts held on behalf of foreign persons, in violation of Title 31, United States Code, Section 5318(i) and regulations issued thereunder; (c) wilfully violating and attempting to violate the Trading with the Enemy Act, 50 United States Code Appendix Sections 3, 5, 16, and regulations issued thereunder; and (d) wilfully violating and attempting to violate the International Emergency Economic Powers Act, 50 United States Code Sections 1702 and 1705, and regulations issued thereunder. In so doing, the Bank: (a) knowingly waives its right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives for purposes of this

Agreement any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement.

2. The Bank admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as charged in the Information, and as set forth in the Statement of Facts attached hereto as Attachment A and incorporated by reference into this Agreement, and that the allegations described in the Information and the facts described in Attachment A are true and accurate. Should the Department pursue the prosecution that is deferred by this Agreement, the Bank agrees that it will neither contest the admissibility of nor contradict the Statement of Facts in any such proceeding, including any guilty plea or sentencing proceeding. Neither this Agreement nor the criminal Information is a final adjudication of the matters addressed in such documents.

Term of the Agreement

3. This Agreement is effective for a period beginning on the date on which the Information is filed and ending five (5) years from that date (the "Term"). However, the Bank agrees that, in the event the Department determines, in its sole discretion, that the Bank has knowingly violated any provision

of this Agreement, an extension or extensions of the Term of the Agreement may be imposed by the Department, in its sole discretion, for up to a total additional period of one year, without prejudice to the Department's right to proceed as provided in Paragraphs 16 through 19 below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period. Conversely, in the event the Department finds, in its sole discretion, that the provisions of this Agreement have been satisfied, the Term of the Agreement may be terminated early.

Relevant Considerations

4. The Department enters into this Agreement based on the individual facts and circumstances presented by this case. Among the facts considered were the following: (a) the Bank's willingness to acknowledge and accept responsibility for its actions; (b) the Bank's extensive remedial actions taken to date, which are described in the Statement of Facts and Paragraph 5 below; (c) the Bank's agreement to continue to enhance its anti-money laundering programs; (d) the Bank's agreement to continue to cooperate with the Department in any ongoing investigation of the conduct of the Bank and its current or former officers, directors, employees, agents and

consultants, as provided in Paragraph 6 below; (e) the Bank's willingness to settle any and all civil and criminal claims currently held by the Department for any act within the scope of the Statement of Facts; and (f) the Bank's cooperation with the Department, including conducting multiple extensive internal investigations, voluntarily making U.S. and foreign employees available for interviews, and collecting, analyzing, and organizing voluminous evidence and information for the Department.

5. The Bank has taken, will take, and/or shall continue to adhere to, the following remedial measures:

a. HSBC Bank USA has a new leadership team, including a new Chief Executive Officer for the United States, General Counsel, Regional Compliance Officer, AML Director, Deputy Compliance Officer and Deputy Director of its Global Sanctions program.

b. As a result of its AML violations and program deficiencies, HSBC Bank USA "clawed back" deferred compensation (bonuses) for a number of its most senior AML and compliance officers, to include the Chief Compliance Officer, AML Director and Chief Executive Officer.

c. In 2011, HSBC Bank USA spent \$244 million on AML, approximately nine times more than what it spent in 2009.

d. HSBC Bank USA has increased its AML staffing from 92 full time employees and 25 consultants as of January 2010

to approximately 880 full time employees and 267 consultants as of May 2012.

e. HSBC Bank USA has reorganized its AML department to strengthen its reporting lines and elevate its status within the institution as a whole by (i) separating the Legal and Compliance departments; (ii) requiring that the AML Director report directly to the Chief Compliance Officer; and (iii) providing that the AML Director regularly report directly to the Board and senior management about HSBC Bank USA's BSA/AML program.

f. HSBC Bank USA now treats HSBC Group Affiliates as third parties that are subject to the same due diligence as all other customers.

g. HSBC Bank USA has implemented a new customer risk-rating methodology based on a multifaceted approach that weighs the following factors: (1) the country where the customer is located; (2) the products and services utilized by the customer; (3) the customer's legal entity structure; and (4) the customer and business type.

h. HSBC Bank USA has exited over 109 correspondent relationships due to its new risk-based methodology.

i. HSBC Bank USA has a new automated monitoring system. The new system monitors every wire transaction that moves through HSBC Bank USA. The system also tracks the originator, sender and beneficiary of a wire transfer, allowing HSBC Bank USA to look at its customer's customer.

j. HSBC Bank USA is presently remediating all customer KYC files in order to ensure they adhere to the new AML policies discussed above and plans to have completed remediation of 155,554 customers by September 2012.

k. HSBC Bank USA has exited the Banknotes' business.

l. HSBC Bank USA has spent over \$290 million on remedial measures.

m. HSBC Group has mandated that all HSBC Group Affiliates around the world adhere to the strictest regulatory standards available in any location where the HSBC Group operates. This new policy ensures that all HSBC Group Affiliates will, at a minimum, adhere to U.S. regulatory standards.

n. HSBC Group has elevated the Head of HSBC Group Compliance position to a Group General Manager, which is one of the 50 most senior employees at HSBC globally. HSBC Group has also replaced the individual serving as Head of HSBC Group Compliance.

o. HSBC Group has replaced eighteen of its twenty-one most senior officers as a result of this investigation.

p. The Head of HSBC Group Compliance has been given direct oversight over every compliance officer globally, so that both accountability and escalation now flow directly to and from HSBC Group Compliance.

q. HSBC Group has launched an AML notification system that allows AML officers at all HSBC Group Affiliates to not only escalate problematic matters to HSBC Group Compliance, but also to share information horizontally with one another.

r. HSBC Group has made its senior leadership team that attends HSBC Group level management meetings "jointly and severally" liable for all information presented at the meetings. In other words, each executive is responsible for reviewing all of the information presented at the meeting, as well as all written documentation provided in

advance of the meeting, and determining whether it affects their respective entity or region. In addition, if an executive believes that something occurring within her area of responsibility affects another business or affiliate within HSBC Group, it is that executive's responsibility to seek out the executives from that business or affiliate and work to address the issue. If something in a particular area of responsibility is missed, all of the senior leadership team will be held responsible.

s. HSBC Group has restructured its executive bonus system scorecard so that successful operation of each affiliate's compliance function accounts for a significant portion of an executive's year-end bonus. The system is set up so that a failing compliance score voids the entire year's bonus compensation.

t. HSBC Group has commenced a review of all customer KYC files across the entire Group. The first phase of this remediation will cost an estimated \$700 million to complete over the next five years.

u. HSBC Group will defer bonus compensation for its 70 most senior officers during the term of this Agreement.

Cooperation

6. The Bank shall continue to cooperate fully with the Department in any and all investigations, subject to applicable laws and regulations. At the request of the Department, the Bank shall also cooperate fully with other domestic or foreign law enforcement authorities and agencies in any investigation of the Bank or any of its present and former officers, directors,

employees, agents and consultants, or any other party. The Bank also agrees that it shall:

a. Use its good faith efforts to make available, at its cost, the Bank's current and former officers, directors, employees, agents and consultants, when requested by the Department, to provide additional information and materials concerning any and all investigations; to testify, including providing sworn testimony before a grand jury or in a judicial proceeding; and to be interviewed by law enforcement authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Bank, may have material information regarding these matters;

b. Provide any information, materials, documents, databases, or transaction data in the Bank's possession, custody, or control, or in the possession custody or control of any affiliate, wherever located, requested by the Department in connection with the investigation or prosecution of any current or former officers, directors, employees, agents and consultants;

c. Continue to abide by the terms of the "Consent Cease and Desist Order" entered with the Board of Governors of the Federal Reserve System, dated October 4, 2010;

d. Continue to abide by the terms of the "Consent Cease and Desist Order" entered with the Office of the Comptroller of the Currency ("OCC"), dated October 6, 2010;

e. Abide by the terms of the "Consent Cease and Desist Order" entered with the Board of Governors of the Federal Reserve System, dated _____;

f. Continue to apply the Office of Foreign Assets Control ("OFAC") sanctions list to the same extent as any United Nations ("U.N.") or European Union ("E.U.") sanctions or freeze lists to United States Dollar ("USD") transactions, the acceptance of customers, and all USD cross-border Society for Worldwide Interbank Financial Telecommunications ("SWIFT") incoming and outgoing messages involving payment instructions or electronic transfer of funds;

g. Except as otherwise permitted by United States law, not knowingly undertake any USD cross-border electronic funds transfer or any other USD transaction for, on behalf of, or in relation to any person or entity resident or operating in, or the governments of, Iran, North Korea, Sudan (except for those regions and activities exempted from the

United States embargo by Executive Order No. 13412), Syria or Cuba;

h. Implement compliance procedures and training designed to ensure that the Bank's compliance officer in charge of sanctions is made aware in a timely manner of any known requests or attempts by any entity (including, but not limited to, the Bank's customers, financial institutions, companies, organizations, groups, or persons) to withhold or alter its name or other identifying information where the request or attempt appears to be related to circumventing or evading U.S. sanctions laws. The Bank's Head of Compliance, or his or her designee, shall report to the Department, in a timely manner, the name and contact information, if available to the Bank, of any entity that makes such a request;

i. Maintain the electronic database of SWIFT Message Transfer ("MT") payment messages and all documents and materials produced by the Bank to the Department as part of this investigation relating to USD payments processed during the period from 2001 through 2007 in electronic format for a period of five years from the date of this Agreement;

j. Notify the Department of any criminal, civil, administrative or regulatory investigation or action of the Bank

or its current directors, officers, employees, consultants, representatives, and agents related to the Bank's compliance with U.S. sanctions laws, the Bank's involvement in money laundering, or the Bank's anti-money laundering program;

k. Provide information, materials, and testimony as necessary or requested to identify or to establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence in any criminal or judicial proceeding; and

l. Develop and implement policies and procedures for mergers and acquisitions requiring that the Bank conduct appropriate risk-based due diligence on potential new business entities, including appropriate Bank Secrecy Act ("BSA") and anti-money laundering due diligence by legal, audit, and compliance personnel. If the Bank discovers inadequate anti-money laundering controls as part of its due diligence of newly acquired entities or entities merged with the Bank, it shall report such conduct to the Department as required in Attachment B to this Agreement.

Forfeiture Amount

7. As a result of the Bank's conduct, including the conduct set forth in the Statement of Facts, the parties agree

the Department could institute a civil and/or criminal forfeiture action against certain funds held by the Bank and that such funds would be forfeitable pursuant to Title 18, United States Code, Sections 981 and 982. The Bank hereby acknowledges that at least \$881,000,000 was involved in transactions, in violation of Title 18, United States Code, Sections 1956 and 1957; and that at least \$375,000,000 was involved in transactions in violation of Title 50, United States Code, Appendix, Sections 3, 5 and 16 and the regulations issued thereunder, or Title 50, United States Code, Section 1705 and the regulations issued thereunder. In lieu of a criminal prosecution and related forfeiture, the Bank hereby agrees to pay to the United States the sum of \$1,256,000,000 (the "Forfeiture Amount"). The Bank hereby agrees the funds paid by the Bank pursuant to this Agreement shall be considered substitute res for the purpose of forfeiture to the United States pursuant to Title 18, United States Code, Sections 981 and 982, and the Bank releases any and all claims it may have to such funds. The Bank shall pay the Forfeiture Amount plus any associated transfer fees within five (5) business days of the date on which this Agreement is signed, pursuant to payment

instructions as directed by the Department in its sole discretion.

Conditional Release from Liability

8. In return for the full and truthful cooperation of the Bank, and its compliance with the other terms and conditions of this Agreement, the Department agrees, subject to Paragraphs 16 through 19 below, not to use any information related to the conduct described in the attached Statement of Facts against the Bank in any criminal or civil case, except: (a) in a prosecution for perjury or obstruction of justice; or (b) in a prosecution for making a false statement. In addition, the Department agrees, except as provided herein, that it will not bring any criminal case against the Bank related to the conduct of present and former officers, directors, employees, agents and consultants, as described in the attached Statement of Facts.

a. This Paragraph does not provide protection against prosecution for conduct not disclosed by the Bank to the Department prior to the date on which this Agreement was signed, nor does it provide protection against prosecution for any future involvement by the Bank in criminal activity, including any future involvement in money laundering or any future failure to maintain an effective anti-money laundering program.

b. In addition, this Paragraph does not provide any protection against prosecution of any present or former officers, directors, employees, agents and consultants of the Bank for any violations committed by them, including any conduct described in the Statement of Facts or any conduct disclosed to the Department by the Bank.

c. Finally, this Paragraph does not provide any protection against prosecution of the Bank, or any of its affiliates, successors, related companies, employees, officers or directors, who knowingly and wilfully transmitted or approved the transmission of funds that went to or came from persons or entities designated by OFAC at the time of the transaction as Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, and proliferators of Weapons of Mass Destruction (the "Special SDN Transactions"). Any prosecution related to the Special SDN Transactions may be premised upon any information provided by or on behalf of the Bank to the Department or any investigative agencies, whether prior to or subsequent to this Agreement, or any leads derived from such information, including the attached Statement of Facts.

Corporate Compliance Monitor

9. Within sixty (60) calendar days of the filing of the Agreement and the accompanying Information, or promptly after the Department's selection pursuant to Paragraph 10 below, the Bank agrees to retain an independent compliance monitor (the "Monitor"). In particular, within thirty (30) calendar days after the execution of this Agreement, and after consultation with the Department, the Bank will propose to the Department a pool of three qualified candidates to serve as the Monitor. If the Department, in its sole discretion, is not satisfied with the candidates proposed, the Department reserves the right to seek additional nominations from the Bank. The Monitor candidates shall have, at a minimum, the following qualifications:

- a. demonstrated expertise with respect to the BSA and other applicable anti-money laundering laws;
- b. experience designing and/or reviewing corporate compliance policies, procedures and internal controls, including BSA and anti-money laundering policies, procedures and internal controls;

c. the ability to access and deploy resources as necessary to discharge the Monitor's duties as described in the Agreement; and

d. sufficient independence from the Bank to ensure effective and impartial performance of the Monitor's duties as described in the Agreement.

10. The Department retains the right, in its sole discretion, to accept or reject any Monitor candidate proposed by the Bank, though the Bank may express its preference(s) among the candidates. In the event the Department rejects all proposed Monitors, the Bank shall propose another candidate within ten (10) calendar days after receiving notice of the rejection. This process shall continue until a Monitor acceptable to both parties is chosen. The Department may also propose the names of qualified Monitor candidates for consideration. The term of the monitorship, as set forth in Attachment B, shall commence upon the Department's acceptance of a Monitor candidate proposed by the Bank. If the Monitor resigns or is otherwise unable to fulfill his or her obligations as set out herein and Attachment B, the Bank shall within sixty (60) calendar days recommend a pool of three qualified Monitor candidates from which the Department will choose a replacement.

11. The Monitor will be retained by the Bank for a period of not less than sixty (60) months from the date the Monitor is selected. The term of the monitorship, including the circumstances that may support an extension of the term, as well as the Monitor's powers, duties, and responsibilities, will be as set forth in Attachment B. The Bank agrees that it will not employ or be affiliated with the Monitor for a period of not less than one year from the date of the termination of the monitorship.

12. The Bank agrees that it will not employ or be affiliated with the Monitor for a period of not less than one year from the date on which the Monitor's term expires.

13. The Monitor's term shall be five (5) years from the date on which the Monitor is retained by the Bank, subject to extension or early termination as described in Paragraph 3.

Deferred Prosecution

14. In consideration of: (a) the past and future cooperation of the Bank described in Paragraph 6 above; (b) the Bank's forfeiture, totalling \$1,256,000,000; and (c) the Bank's implementation and maintenance of remedial measures described in the Statement of Facts and Paragraph 5 above, the Department agrees that any prosecution of the Bank for the conduct set

forth in the attached Statement of Facts, and for the conduct that the Bank disclosed to the Department prior to the signing of this Agreement, be and hereby is deferred for the Term of this Agreement.

15. The Department further agrees that if the Bank fully complies with all of its obligations under this Agreement, the Department will not continue the criminal prosecution against the Bank described in Paragraph 1 and, at the conclusion of the Term, this Agreement shall expire. Within thirty (30) days of the Agreement's expiration, the Department shall seek dismissal with prejudice of the criminal Information filed against the Bank described in Paragraph 1.

Breach of the Agreement

16. If, during the Term of this Agreement, the Department determines, in its sole discretion, that the Bank has (a) committed any crime under U.S. federal law subsequent to the signing of this Agreement, (b) at any time provided in connection with this Agreement deliberately false, incomplete, or misleading information, or (c) otherwise breached the Agreement, the Bank shall thereafter be subject to prosecution for any federal criminal violation of which the Department has knowledge, including the charges in the Information described in

Paragraph 1, which may be pursued by the Department in the United States District Court for the Eastern District of New York or any other appropriate venue. Any such prosecution may be premised on information provided by the Bank. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Bank notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Bank agrees the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year.

17. In the event the Department determines the Bank has breached this Agreement, the Department agrees to provide the Bank with written notice of such breach prior to instituting any prosecution resulting from such breach. The Bank shall, within thirty (30) days of receipt of such notice, have the opportunity to respond to the Department in writing to explain the nature and circumstances of such breach, as well as the actions the Bank has taken to address and remediate the situation, which

explanation the Department shall consider in determining whether to institute a prosecution.

18. In the event the Department determines the Bank has breached this Agreement: (a) all statements made by or on behalf of the Bank to the Department or to the Court, including the attached Statement of Facts, and any testimony given by the Bank before a grand jury, a court, or any tribunal, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Department against the Bank; and (b) the Bank shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that statements made by or on behalf of the Bank prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed. The decision whether conduct or statements of any current director or employee, or any person acting on behalf of, or at the direction of, the Bank will be imputed to the Bank for the purpose of determining whether the Bank has violated any provision of this Agreement shall be in the sole discretion of the Department.

19. The Bank acknowledges the Department has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Bank breaches this Agreement and this matter proceeds to judgment. The Bank further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

Sale or Merger of Bank

20. The Bank agrees that in the event it sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, or transfer, it shall include in any contract for sale, merger, or transfer a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement.

Public Statements by Bank

21. The Bank expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Bank make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Bank set forth above or the facts described in the attached Statement of Facts. Any

such contradictory statement shall, subject to cure rights of the Bank described below, constitute a breach of this Agreement, and the Bank thereafter shall be subject to prosecution as set forth in Paragraphs 15-18 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to the Bank for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Department. If the Department determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Department shall so notify the Bank, and the Bank may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. The Bank shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Bank in the course of any criminal, regulatory, or civil

case initiated against such individual, unless such individual is speaking on behalf of the Bank.

22. The Bank agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Bank shall first consult the Department to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Department and the Bank; and (b) whether the Department has no objection to the release.

23. The Department agrees, if requested to do so, to bring to the attention of governmental and other debarment authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, and the nature and quality of the Bank's cooperation and remediation. By agreeing to provide this information to debarment authorities, the Department is not agreeing to advocate on behalf of the Bank, but rather is agreeing to provide facts to be evaluated independently by the debarment authorities.

Limitations on Binding Effect of Agreement

24. This Agreement is binding on the Bank and the Department, but specifically does not bind any other federal

agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Department will bring the cooperation of the Bank and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Bank. Specifically, this Agreement does not bind the Tax Division or the Fraud Section of the Criminal Division of the United States Department of Justice.

Complete Agreement

25. This Agreement sets forth all the terms of the agreement between the Bank and the Department. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Department, the attorneys for the Bank and a duly authorized representative of the Bank.

AGREED:

FOR HSBC Bank USA, N.A. and HSBC Holdings plc:

Date: _____ By: _____
[HSBC Bank USA representative]
[Title]
HSBC Bank USA, N.A.

Date: _____ By: _____
[HSBC Holdings plc representative]
[Title]
HSBC Holdings plc

Date: _____ By: _____
David Kelley
Cahill Gordon & Reindel

Date: _____ By: _____
Samuel Seymour
Sullivan & Cromwell

FOR THE DEPARTMENT OF JUSTICE:

LANNY BREUER
ASSISTANT ATTORNEY GENERAL

LORETTA E. LYNCH
UNITED STATES ATTORNEY
Eastern District of New York

Date: _____

BY: _____
Alexander A. Solomon
Daniel S. Silver
Assistant United States Attorneys

JAIKUMAR RAMASWAMY
Chief, Asset Forfeiture and
Money Laundering Section
Criminal Division
United States Department of Justice

Date: _____

BY: _____
Joseph K. Markel
Craig M. Timm
Trial Attorneys
Asset Forfeiture and Money
Laundering Section

WILLIAM J. IHLENFELD II
UNITED STATES ATTORNEY
Northern District of West Virginia

Date: _____

BY: _____
Michael Stein
Assistant United States Attorney

BANK OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for HSBC Bank USA, N.A. (the "Bank"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Bank, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Bank. Counsel fully advised me of the rights of the Bank, of possible defenses, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of the Bank. I have advised and caused outside counsel for the Bank to advise the Board of Directors fully of the rights of the Bank, of possible defenses, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Bank, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the [POSITION OF REPRESENTATIVE] for the Bank and that I have been duly authorized by the Bank to execute this Agreement on behalf of the Bank.

Date: _____, 2012

HSBC BANK USA, N.A.

By: _____
[NAME OF REPRESENTATIVE]
[POSITION]
HSBC Bank USA, N.A.

BANK OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for HSBC Holdings plc (the "Bank"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Bank, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Bank. Counsel fully advised me of the rights of the Bank, of possible defenses, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of the Bank. I have advised and caused outside counsel for the Bank to advise the Board of Directors fully of the rights of the Bank, of possible defenses, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Bank, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the [POSITION OF REPRESENTATIVE] for the Bank and that I have been duly authorized by the Bank to execute this Agreement on behalf of the Bank.

Date: _____, 2012

HSBC Holdings plc

By: _____
[NAME OF REPRESENTATIVE]
[POSITION]
HSBC Holdings plc

CERTIFICATE OF COUNSEL

I am counsel for HSBC Bank USA, N.A. and HSBC Holdings plc (collectively, the "Bank") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Bank documents and have discussed the terms of this Agreement with the Bank's Boards of Directors. Based on our review of the foregoing materials and discussions, I am of the opinion that the representatives of the Bank have been duly authorized to enter into this Agreement on behalf of the Bank and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Bank and is a valid and binding obligation of the Bank. Further, I have carefully reviewed the terms of this Agreement with the Boards of Directors and the [POSITION OF REPRESENTATIVES] of the Bank. I have fully advised them of the rights of the Bank, of possible defenses, and of the consequences of entering into this Agreement. To my knowledge, the decision of the Bank to enter into this Agreement, based on the authorization of the Boards of Directors, is an informed and voluntary one.

Date: _____, 2012

By: _____
David Kelley
Cahill Gordon & Reindel
Counsel for HSBC Bank USA, N.A. and HSBC
Holdings plc

By: _____
Samuel Seymour
Sullivan & Cromwell
Counsel for HSBC Bank USA, N.A. and HSBC
Holdings plc

CBD:DSS/AAS
F.#2009R02380

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

I N F O R M A T I O N

- against -

HSBC BANK USA, N.A. and
HSBC HOLDINGS PLC,

Defendants.

Cr. No. _____
(T. 18, U.S.C., §§ 2 and
3551 et seq.; T. 31,
U.S.C., §§ 5318(h),
5318(i), 5322(b) and
5322(d); T. 50, U.S.C.,
§§ 1702 and 1705; T. 50,
U.S.C. App., §§ 3, 5 and
16)

- - - - -X

THE UNITED STATES CHARGES:

INTRODUCTION

At all times relevant to this Information, unless
otherwise indicated:

1. Defendant HSBC Bank USA, N.A. was a federally
chartered banking institution and subsidiary of HSBC North
America Holdings, Inc. HSBC North America Holdings, Inc. was
owned by defendant HSBC Holdings plc.

2. Defendant HSBC Holdings plc was a financial
institution registered and organized under the laws of England
and Wales.

3. Defendant HSBC Holdings plc conducted United

States Dollar ("USD") clearing at defendant HSBC Bank USA, N.A., as well as other financial institutions located in the United States.

4. Defendant HSBC Bank USA N.A. was subject to oversight and regulation by the Department of the Treasury, Office of the Comptroller of the Currency ("OCC").

THE BANK SECRECY ACT

5. The Bank Secrecy Act ("BSA"), Title 31 U.S.C. Sections 5311 et seq., and its implementing regulations, which Congress enacted to address an increase in criminal money laundering activities utilizing financial institutions, required domestic banks, insured banks and other financial institutions to maintain programs designed to detect and report suspicious activity that might be indicative of money laundering and other financial crimes, and to maintain certain records and file reports related thereto that are especially useful in criminal, tax or regulatory investigations or proceedings.

6. Pursuant to Title 31, United States Code, Section 5318(h)(1) and Title 12, Code of Federal Regulations, Section 21.21, defendant HSBC Bank USA, N.A. was required to establish and maintain an anti-money laundering ("AML") compliance program that, at a minimum:

- (a) provided internal policies, procedures, and controls designed to guard against money laundering;
- (b) provided for a compliance officer to coordinate and monitor day-to-day compliance with the BSA and AML requirements;
- (c) provided for an ongoing employee training program; and
- (d) provided for independent audit function programs.

7. Pursuant to Title 31, United States Code, Section 5318(i), defendant HSBC Bank USA, N.A. was required to establish due diligence, and in some cases enhanced due diligence, policies, procedures, and controls that were reasonably designed to detect and report suspicious activity for correspondent accounts it maintained in the United States for non-U.S. persons.

THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

8. The International Emergency Economic Powers Act ("IEEPA"), Title 50, United States Code, Sections 1701 through 1706, authorized the President of the United States (the "President") to impose economic sanctions on a foreign country in response to an unusual or extraordinary threat to the national security, foreign policy, or economy of the United States, when the President declared a national emergency with respect to that threat.

The Iranian Sanctions

9. On March 15, 1995, President William J. Clinton issued Executive Order No. 12957, finding that "the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States" and declaring "a national emergency to deal with that threat."

10. On May 6, 1995, President Clinton issued Executive Order 12959 to take additional steps with respect to the national emergency declared in Executive Order 12957 and impose comprehensive trade and financial sanctions on Iran. These sanctions prohibited, among other things, the exportation, re-exportation, sale, transportation, directly or indirectly, to Iran or the Government of Iran of any goods, technology or services from the United States or United States persons, wherever located. This prohibition included any transactions or financing of transactions by United States persons relating to goods or services of Iranian origin, and further prohibited any "transaction by any United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding" such sanctions. On August 19, 1997, President Clinton issued Executive Order 13059 consolidating and clarifying Executive Orders 12957 and 12959 (collectively, the "Executive

Orders"). The Executive Orders authorized the United States Secretary of the Treasury to promulgate rules and regulations necessary to carry out the Executive Orders. Pursuant to this authority, the Secretary of the Treasury promulgated the Iranian Transaction Regulations ("ITRs"), Title 31, Code of Federal Regulations, Part 560, implementing the sanctions imposed by the Executive Orders.

11. With the exception of certain exempt transactions, the ITRs prohibited, among other things, U.S. depository institutions from servicing Iranian accounts and directly crediting or debiting Iranian accounts. The ITRs also prohibited transactions by any U.S. person who evaded or avoided, had the purpose of evading or avoiding, or attempted to evade or avoid the restrictions imposed under the ITRs. The ITRs were in effect at all times relevant to the Information.

The Libyan Sanctions

12. On January 7, 1986, President Ronald W. Reagan issued Executive Order No. 12543, which imposed broad economic sanctions against Libya. One day later, President Reagan issued Executive Order No. 12544, which also ordered the blocking of all property and interests in property of the Government of Libya in the United States or under the possession or control of United States persons. President George H.W. Bush strengthened those

sanctions in 1992 pursuant to Executive Order No. 12801. These sanctions remained in effect until September 22, 2004, when President George W. Bush issued Executive Order 13357, which terminated the national emergency with regard to Libya and revoked the sanction measures imposed by the prior Executive Orders.

The Sudanese Sanctions

13. On November 3, 1997, President Clinton issued Executive Order No. 13067, which imposed a trade embargo against Sudan and blocked all property and interests in property of the Government of Sudan in the United States or under the possession or control of United States persons. President George W. Bush strengthened those sanctions in 2006 pursuant to Executive Order No. 13412 (collectively, the "Sudanese Executive Orders"). The Sudanese Executive Orders prohibited virtually all trade and investment activities between the United States and Sudan, including, but not limited to, broad prohibitions on: (a) the importation into the United States of goods or services of Sudanese origin; (b) the exportation or re-exportation of any goods, technology, or services from the United States or by a United States person, wherever located, to Sudan; (c) trade and service related transactions with Sudan by United States persons, including financing or facilitating such transactions; and (d)

the grant or extension of credits or loans by any United States person to the Government of Sudan. The Sudanese Executive Orders further prohibited "[a]ny transaction by a United States person or within the United States that evades or avoids, has the purposes of evading or avoiding, or attempts to violate any of the prohibitions set forth in [these orders]." With the exception of certain exempt or authorized transactions, the United States Department of Treasury, Office of Foreign Assets Control ("OFAC") regulations implementing the Sudanese Sanctions generally prohibited the export of services to Sudan from the United States.

The Burmese Sanctions

14. On May 20, 1997, President Clinton issued Executive Order No. 13047, which prohibited both new investment in Burma by United States persons and the approval or other facilitation by a United States person, wherever located, of a transaction by a foreign person where the transaction would constitute new investment in Burma.

15. On July 28, 2003, President George W. Bush signed the Burmese Freedom and Democracy Act of 2003 ("BFDA") to restrict the financial resources of Burma's ruling military junta. To implement the BFDA and to take additional steps, President Bush issued Executive Order No. 13310 on July 28, 2003,

which blocked all property and interest in property of other individuals and entities meeting certain criteria. President Bush subsequently issued Executive Order Nos. 13448 and 13464, expanding the list of persons and entities whose property must be blocked. Executive Order No. 13310 also prohibited the exportation or re-exportation, directly or indirectly, to Burma of financial services from the United States, or by United States persons, wherever located, as well as the financing or facilitation, by a United States person, of any prohibited transaction with Burma by a foreign person.

THE TRADING WITH THE ENEMY ACT

16. Beginning with Executive Orders and regulations issued at the direction of President John F. Kennedy, the United States has maintained an economic embargo against Cuba through the enactment of various laws and regulations. These laws, which prohibited virtually all financial and commercial dealings with Cuba, Cuban businesses and Cuban assets, were promulgated under the Trading With the Enemy Act ("TWEA"), Title 50, United States Code Appendix, Sections 1-44, and were generally administered by OFAC.

17. Unless authorized by OFAC, the Cuban Assets Control Regulations ("CACRs") prohibited persons subject to the jurisdiction of the United States from engaging in financial

transactions involving or benefiting Cuba or Cuban nationals, including all "transfers of credit and all payments" and "transactions in foreign exchange." Title 31, Code of Federal Regulations, Sections 515.201(a)(1) and 515.201(a)(2).

Furthermore, unless authorized by OFAC, persons subject to the jurisdiction of the United States were prohibited from engaging in transactions involving property in which Cuba or Cuban nationals have any direct or indirect interest, including "[a]ll dealings in . . . any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States" and "[a]ll transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States." 31 C.F.R. §§ 515.201(b)(1), 515.201(b)(2). The CACRs also prohibited "[a]ny transaction for the purpose or which had the effect of evading or avoiding any of the prohibitions set forth [regulations]." 31 C.F.R. § 515.201(c).

COUNT ONE

(Failure to Maintain an Effective Anti-Money Laundering Program)

18. The allegations contained in paragraphs one through seven are realleged and incorporated as if fully set forth in this paragraph.

19. In or about and between January 2006 and December

2010, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant HSBC Bank USA, N.A., a domestic financial institution, wilfully violated the Bank Secrecy Act, Title 31, United States Code, Sections 5318 (h) and 5322 (b), by failing to develop, implement, and maintain an effective anti-money laundering program.

20. Specifically, the defendant HSBC Bank USA, N.A. knowingly and wilfully failed to implement, and maintain effective policies, procedures, and internal controls to: (a) obtain and maintain due diligence or "know your customer" information on financial institutions owned by HSBC Holdings plc; (b) monitor wire transfers from customers located in countries which it classified as "standard" or "medium" risk; (c) monitor purchases of physical U.S. dollars ("banknotes") from financial institutions owned by HSBC Holdings plc; and (d) provide adequate staffing and other resources to maintain an effective anti-money laundering program.

(Title 31, United States Code, Sections 5318(h) and 5322(b); Title 18 United States Code, Sections 3551 et seq.)

COUNT TWO

(Failure to Conduct Due Diligence on Correspondent Bank Accounts
Involving Foreign Persons)

21. The allegations contained in paragraphs one through seven are realleged and incorporated as if fully set forth in this paragraph.

22. In or about and between January 2006 and December 2010, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant HSBC Bank USA, N.A., a domestic financial institution, wilfully violated the Bank Secrecy Act, Title 31, United States Code, Sections 5318(i) and 5322(b), by failing to conduct due diligence on correspondent bank accounts for non-United States persons.

23. As part of this offense, the defendant HSBC Bank USA, N.A. knowingly and wilfully failed to obtain and maintain due diligence or "know your customer" information on foreign financial institutions owned by HSBC Holdings plc for which it maintained correspondent accounts, information that if collected and maintained would have reasonably allowed for the detection and reporting of instances of money laundering and other suspicious activity.

(Title 31, United States Code, Sections 5318(i) and 5322(d); Title 18 United States Code, Sections 3551 et seq.)

COUNT THREE

(International Emergency Economic Powers Act)

24. The allegations contained in paragraphs one through four and eight through fifteen are realleged and incorporated as if fully set forth in this paragraph.

25. In or about and between January 2001 and December 2006, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant HSBC Holdings plc, together with others, knowingly, intentionally and wilfully facilitated prohibited transactions for sanctioned entities in Iran, Libya, Sudan and Burma.

(Title 50, United States Code, Sections 1702 and 1705; Title 18 United States Code, Sections 2 and 3551 et seq.)

COUNT FOUR

(Trading with the Enemy Act)

26. The allegations contained in paragraphs one through four and sixteen through seventeen are realleged and incorporated as if fully set forth in this paragraph.

27. In or about and between January 2001 and December 2006, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant HSBC Holdings plc, together with others, knowingly, intentionally and wilfully facilitated transactions for sanctioned entities in Cuba.

(Title 50, United States Code Appendix, Sections 3, 5
and 16; Title 18 United States Code, Sections 2 and 3551 et seq.)

DATE

LORETTA E. LYNCH
United States Attorney
Eastern District of New York

DATE

JAIKUMAR RAMASWAMY
Chief, Asset Forfeiture and
Money Laundering Section
Criminal Division
Department of Justice

DATE

WILLIAM J. IHLENFELD II
United States Attorney
Northern District of West Virginia

ATTACHMENT B

CORPORATE COMPLIANCE MONITOR

The duties and authority of the Corporate Compliance Monitor (the "Monitor"), and the obligations of HSBC Holdings plc (the "Bank"), on behalf of itself and its subsidiaries and affiliates, with respect to the Monitor and the Department, are as described below:

1. The Monitor will for a period of up to five (5) years from the date of his engagement (the "Term of the Monitorship") evaluate, in the manner set forth in Paragraphs 2 through 8 below, the effectiveness of the internal controls, record-keeping and financial reporting policies and procedures of the Bank as they relate to the Bank's current and ongoing compliance with the Bank Secrecy Act, International Emergency Economic Powers Act, Trading With The Enemy Act and other applicable anti-money laundering laws (collectively, the "anti-money laundering laws"), as well as the enumerated remedial measures identified in paragraph 80 of Attachment A of the Agreement, and take such reasonable steps as, in his or her view, may be necessary to fulfill the foregoing mandate (the "Mandate").

2. The Bank shall cooperate fully with the Monitor and the Monitor shall have the authority to take such reasonable steps as, in his view, may be necessary to be fully informed about the Bank's compliance program within the scope of the

Mandate in accordance with the principles set forth herein and applicable law, including applicable data protection and labor laws and regulations. To that end, the Bank shall: facilitate the Monitor's access to the Bank's documents and resources; not limit such access, except as provided in this paragraph; and provide guidance on applicable local law (such as relevant data protection and labor law). The Bank shall provide the Monitor with access to all information, documents, records, facilities and/or employees, as reasonably requested by the Monitor, that fall within the scope of the Mandate of the Monitor under this Agreement. Any disclosure by the Bank to the Monitor concerning possible violations of the anti-money laundering laws shall not relieve the Bank of any otherwise applicable obligation to truthfully disclose such matters to the Department.

a. The parties agree that no attorney-client relationship shall be formed between the Bank and the Monitor.

b. In the event that the Bank seeks to withhold from the Monitor access to information, documents, records, facilities and/or employees of the Bank which may be subject to a claim of attorney-client privilege or to the attorney work-product doctrine, or where the Bank reasonably believes production would otherwise be inconsistent with applicable law, the Bank shall work cooperatively with the Monitor to resolve the matter to the satisfaction of the Monitor. If the matter

cannot be resolved, at the request of the Monitor, the Bank shall promptly provide written notice to the Monitor and the Department. Such notice shall include a general description of the nature of the information, documents, records, facilities and/or employees that are being withheld, as well as the basis for the claim. The Department may then consider whether to make a further request for access to such information, documents, records, facilities and/or employees. To the extent the Bank has provided information to the Department in the course of the investigation leading to this action pursuant to a non-waiver of privilege agreement, the Bank and the Monitor may agree to production of such information to the Monitor pursuant to a similar non-waiver agreement.

3. To carry out the Mandate, during the Term of the Monitorship, the Monitor shall conduct an initial review and prepare an initial report, followed by at least four (4) follow-up reviews and report as described below. With respect to each review, after meeting and consultation with the Bank and the Department, the Monitor shall prepare a written work plan, which shall be submitted no fewer than sixty (60) calendar days prior to commencing each review to the Bank and the Department for comment, which comment shall be provided no more than thirty (30) calendar days after receipt of the written work plan. The Monitor's work plan for the initial review shall include such

steps as are reasonably necessary to conduct an effective initial review in accordance with the Mandate, including by developing an understanding, to the extent the Monitor deems appropriate, of the facts and circumstances surrounding any violations that may have occurred before the date of filing of this Agreement with the Court, but in developing such understanding the Monitor is to rely to the extent possible on available information and documents provided by the Bank, and it is not intended that the Monitor will conduct his own inquiry into those historical events. In developing each work plan and in carrying out the reviews pursuant to such plans, the Monitor is encouraged to coordinate with Bank personnel including auditors and compliance personnel and, to the extent the Monitor deems appropriate, the Monitor may rely on the Bank processes, on the results of studies, reviews, audits and analyses conducted by or on behalf of the Bank and on sampling and testing methodologies. The Monitor is not expected to conduct a comprehensive review of all business lines, all business activities or all markets. Any disputes between the Bank and the Monitor with respect to the work plan shall be decided by the Department in its sole discretion.

4. The initial review shall commence no later than ninety (90) calendar days from the date of the engagement of the Monitor (unless otherwise agreed by the Bank, the Monitor and

the Department), and the Monitor shall issue a written report within ninety (90) calendar days of initiating the initial review, setting forth the Monitor's assessment and making recommendations reasonably designed to improve the effectiveness of the Bank's program for ensuring compliance with the anti-money laundering laws as well as the Bank's implementation and adherence to the remedial measures in paragraph 80 of Attachment A of the Agreement. The Monitor is encouraged to consult with the Bank concerning his findings and recommendations on an ongoing basis, and to consider and reflect the Bank's comments and input to the extent the Monitor deems appropriate. The Monitor need not in its initial or subsequent reports recite or describe comprehensively the Bank's history or compliance policies, procedures and practices, but rather may focus on those areas with respect to which the Monitor wishes to make recommendations for improvement or which the Monitor otherwise concludes merit particular attention. The Monitor shall provide the report to the Board of Directors of the Bank and contemporaneously transmit copies to the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, U.S. Department of Justice, at 1400 New York Avenue N.W., Bond Building, Fourth Floor, Washington, DC 20530; the Board of Governors of the Federal Reserve System, and the United Kingdom's Financial Services Authority. After consultation with

the Bank, the Monitor may extend the time period for issuance of the report for up to thirty (30) calendar days with prior written approval of the Department.

5. Within ninety (90) calendar days after receiving the Monitor's report, the Bank shall adopt all recommendations in the report; provided, however, that within sixty (30) calendar days after receiving the report, the Bank shall notify the Monitor and the Department in writing of any recommendations that the Bank considers unduly burdensome, inconsistent with local or other applicable law or regulation, impractical, costly or otherwise inadvisable. With respect to any recommendation that the Bank considers unduly burdensome, inconsistent with local or other applicable law or regulation, impractical, costly or otherwise inadvisable, the Bank need not adopt that recommendation within that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which the Bank and the Monitor do not agree, such parties shall attempt in good faith to reach an agreement within thirty (30) calendar days after the Bank serves the written notice. In the event the Bank and the Monitor are unable to agree on an acceptable alternative proposal, the Bank shall promptly consult with the Department, which will make a determination as to whether the Bank should adopt the Monitor's recommendation or an

alternative proposal, and the Bank shall abide by that determination. Pending such determination, the Bank shall not be required to implement any contested recommendation(s). With respect to any recommendation that the Monitor determines cannot reasonably be implemented within ninety (90) calendar days after receiving the report, the Monitor may extend the time period for implementation with prior written approval of the Department.

6. The Monitor shall undertake four (4) follow-up reviews to carry out the Mandate. Within ninety (90) calendar days of initiating each follow-up review, the Monitor shall:

(a) complete the review; (b) certify whether the compliance program of the Bank, including its policies and procedures, is reasonably designed and implemented to detect and prevent violations within the Bank of the anti-money laundering laws; (c) certify whether the Bank is implementing and adhering to the remedial measures set forth in paragraph 80 of Attachment A of the Agreement; and (d) report on the Monitor's findings in the same fashion as set forth in paragraph 4 with respect to the initial review. The first follow-up review shall commence one year after the initial review commenced. The second follow-up review shall commence one year after the first follow-up review commenced. The third follow-up review shall commence one year after the second follow-up review commenced. The fourth follow-up review shall commence one year after the third follow-up

review commenced. After consultation with the Bank, the Monitor may extend the time period for these follow-up reviews for up to sixty (60) calendar days with prior written approval of the Department.

7. In undertaking the assessments and reviews described in Paragraphs 3 through 6 of this Agreement, the Monitor shall formulate conclusions based on, among other things:

(a) inspection of relevant documents, including the Bank's current anti-money laundering policies and procedures; (b) on-site observation of selected systems and procedures of the Bank at sample sites, including internal controls and record-keeping and internal audit procedures; (c) meetings with, and interviews of, relevant employees, officers, directors and other persons at mutually convenient times and places; and (d) analyses, studies and testing of the Bank's compliance program with respect to the anti-money laundering laws.

8. Should the Monitor, during the course of his engagement, discover that the Bank or any individual within the Bank has engaged in questionable, improper or illegal practices with respect to the anti-money laundering laws (a) after the date on which this Agreement is signed or (b) that have not been adequately dealt with by the Bank (collectively "improper activities"), the Monitor shall promptly report such improper activities to the Bank's General Counsel for further action. If

the Monitor believes that any improper activity or activities may constitute a significant violation of law, the Monitor should also report such improper activity to the Department. The Monitor should disclose improper activities in his discretion directly to the Department, and not to the General Counsel, only if the Monitor believes that disclosure to the General Counsel would be inappropriate under the circumstances, and in such case should disclose the improper activities to the General Counsel of the Bank as promptly and completely as the Monitor deems appropriate under the circumstances. The Monitor shall address in his reports the appropriateness of the Bank's response to all improper activities, whether previously disclosed to the Department or not. Further, in the event that the Bank, or any entity or person working directly or indirectly within the Bank, refuses to provide information necessary for the performance of the Monitor's responsibilities, if the Monitor believes that such refusal is without just cause the Monitor shall disclose that fact to the Department. The Bank shall not take any action to retaliate against the Monitor for any such disclosures or for any other reason. The Monitor may report any criminal or regulatory violations by the Bank or any other entity discovered in the course of performing his duties, in the same manner as described above.

9. The Monitor shall meet with the Department within thirty (30) days after providing each report to the Department to discuss the report. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the Monitorship. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Department determines in its sole discretion that disclosure would be in furtherance of the Department's discharge of its duties and responsibilities or is otherwise required by law.

10. At least annually, and more frequently if appropriate, representatives from the Bank and the Department will meet together to discuss the Monitorship and any suggestions, comments or improvements the Bank may wish to discuss with or propose to the Department.

Appendix 16

Emails Regarding New Developments in HSBC (November 13-14, 2012)

From: [Hand, Tyler](#)
To: [Egan, Brian](#)
Subject: RE: New Developments in HSBC
Date: Wednesday, November 14, 2012 8:51:09 AM

Brian,

Not much new to report over the last 24 hours. The Fed sent revised enforcement orders to the bank yesterday afternoon (these will be approved at the same time the settlements are signed) and is trying to orchestrate an interagency call for later today. We still don't have a response from the bank on our draft documents, and we're not aware of any responses provided to the other agencies. At this point, it seems virtually impossible for the global resolution to happen today. I'll give you a readout if there is a call later today.

Tyler

From: Egan, Brian
Sent: Tuesday, November 13, 2012 11:02 AM
To: Hand, Tyler
Subject: RE: New Developments in HSBC

Ok, thanks again.

From: Hand, Tyler
Sent: Tuesday, November 13, 2012 10:58 AM
To: Egan, Brian
Subject: RE: New Developments in HSBC

Per discussions with OFAC, the group is still shooting for tomorrow. As far as we know, however, the bank has not responded to any of the agencies regarding the draft documents, and it would be unprecedented in my experience to get through negotiations with a bank this quickly. To get there, HSBC will pretty much need to be willing to sign the documents as they are.

From: Egan, Brian
Sent: Tuesday, November 13, 2012 10:34 AM
To: Hand, Tyler
Subject: RE: New Developments in HSBC

Ok, thanks Tyler.

From: Hand, Tyler
Sent: Tuesday, November 13, 2012 9:47 AM
To: Egan, Brian
Subject: RE: New Developments in HSBC

As of late yesterday, yes, but I am asking our folks now whether there have been any changes in plans in the last 12 hours. OFAC and DOJ sent their draft documents to the bank late Friday night. The OCC sent its revised penalty order and stipulation to the bank yesterday morning (FinCEN's action is tied to this). I think the Fed's cease and desist order has been with the bank for several weeks. I have not seen any response yet from the bank on the draft documents – the criminal component is likely to be the most highly negotiated.

This is a pretty compressed timeframe, but so far everyone has been on schedule.

I will give you another update as soon as I can get a status report from OFAC.

Thanks,
Tyler

From: Egan, Brian
Sent: Tuesday, November 13, 2012 9:32 AM
To: Hand, Tyler
Subject: RE: New Developments in HSBC

Tyler, At this point is the goal still to wrap this up by Wednesday? Thanks, Brian

From: Hand, Tyler
Sent: Thursday, November 08, 2012 10:31 AM
To: Meade, Christopher; Weideman, Christian
Cc: Agrawal, Priti; Egan, Brian; Maher, Mike; Tuchband, Matthew
Subject: New Developments in HSBC

Chris and Chris,

We wanted to let you know that we understand DOJ, represented by Eric Holder and Lanny Breuer (AAG for the Criminal Division), met with senior HSBC officials yesterday concerning the criminal investigation of the bank's sanctions and money laundering activities. Per the readout we received, DOJ indicated it would **not** insist on a guilty plea as part of the settlement, but instead would be willing to resolve all counts through a comprehensive deferred prosecution agreement. As you may recall, a guilty plea or conviction was likely to have serious collateral consequences for the bank, including a hearing to consider whether to revoke the bank's U.S. charter. The current total liability for all criminal and civil fines and forfeiture actions would amount to approximately \$2 billion.

The catch with the DPA deal is that the Attorney General apparently insisted that the case be wrapped up by Wednesday. As you know, OFAC, FinCEN, the OCC, and the Fed all have concurrent civil investigations into various aspects of the bank's conduct. The objective of all agencies has been to resolve these investigations and roll out a global settlement concurrently, and the hope is that everyone will be in position to accomplish this by Wednesday. We are meeting this morning with OFAC to come up with a plan for getting our civil case to the finish line within this timeframe. The proposed settlement terms and documents still need approval from our office and Adam Szubin, and then they will need to be negotiated with the bank. This will be a tight and difficult timeframe, and we expect DOJ and the other agencies are likely to be similarly pressed to get everything finalized by Wednesday.

DOJ and the bank indicated that they do not intend to make any announcement until the deal is finalized and we have therefore been asked to treat this information as close hold. We will keep you updated as this situation develops, but please let us know if you have any questions or concerns.

Thanks,
Tyler

Tyler Hand

Assistant Chief Counsel for Designations and Enforcement
Office of the Chief Counsel (Foreign Assets Control)
United States Department of the Treasury
tel: [REDACTED]

Appendix 17

Email from Tyler Hand Regarding New Developments in HSBC (November 14, 2012)

From: [Egan, Brian](#)
To: [Hand, Tyler](#); [Maher, Mike](#)
Cc: [Tuchband, Matthew](#)
Subject: RE: New Developments in HSBC
Date: Wednesday, November 14, 2012 3:24:00 PM

Thanks for the further update, Tyler. I think that it's worth your sending the Chrisses a brief update (with a cc to Mike and me), along the lines of your email to me. Brian

From: Hand, Tyler
Sent: Wednesday, November 14, 2012 12:10 PM
To: Egan, Brian; Maher, Mike
Cc: Tuchband, Matthew
Subject: RE: New Developments in HSBC

Brian and Mike,

HSBC is officially off for today. Per the New York DA's office, the bank will be providing comprehensive comments tomorrow morning on all agencies' documents. We'll likely have an interagency call tomorrow afternoon to reassess the timeline. Although this is pure speculation on my part, I would expect folks will now want to shoot for the last week of November and avoid trying finalize the deal during Thanksgiving week.

I have not updated the Chrisses since the email below. Given the uncertainty, I'm not sure another email update is warranted until we have a revised timeline, but please let me know if you would like me to send a quick update just to let folks know that the settlement won't be happening today.

Thanks,
Tyler

From: Hand, Tyler
Sent: Thursday, November 08, 2012 10:31 AM
To: Meade, Christopher; Weideman, Christian
Cc: Agrawal, Priti; Egan, Brian; Maher, Mike; Tuchband, Matthew
Subject: New Developments in HSBC

Chris and Chris,

We wanted to let you know that we understand DOJ, represented by Eric Holder and Lanny Breuer (AAG for the Criminal Division), met with senior HSBC officials yesterday concerning the criminal investigation of the bank's sanctions and money laundering activities. Per the readout we received, DOJ indicated it would **not** insist on a guilty plea as part of the settlement, but instead would be willing to resolve all counts through a comprehensive deferred prosecution agreement. As you may recall, a guilty plea or conviction was likely to have serious collateral consequences for the bank, including a hearing to consider whether to revoke the bank's U.S. charter. The current total liability for all criminal and civil fines and forfeiture actions would amount to approximately \$2 billion.

The catch with the DPA deal is that the Attorney General apparently insisted that the case be wrapped up by Wednesday. As you know, OFAC, FinCEN, the OCC, and the Fed all have concurrent civil investigations into various aspects of the bank's conduct. The objective of all agencies has been to resolve these investigations and roll out a global settlement concurrently, and the hope is that everyone will be in position to accomplish this by Wednesday. We are meeting this morning with OFAC to come up with a plan for getting our civil case to the finish line within

this timeframe. The proposed settlement terms and documents still need approval from our office and Adam Szubin, and then they will need to be negotiated with the bank. This will be a tight and difficult timeframe, and we expect DOJ and the other agencies are likely to be similarly pressed to get everything finalized by Wednesday.

DOJ and the bank indicated that they do not intend to make any announcement until the deal is finalized and we have therefore been asked to treat this information as close hold. We will keep you updated as this situation develops, but please let us know if you have any questions or concerns.

Thanks,
Tyler

Tyler Hand
Assistant Chief Counsel for Designations and Enforcement
Office of the Chief Counsel (Foreign Assets Control)
United States Department of the Treasury
tel: [REDACTED]
[REDACTED]

Appendix 18

*Email to Christopher Meade and Christian Weideman Regarding HSBC Status
(November 14, 2012)*

From: [Maher, Mike](#)
To: [Bradley, Bill](#)
Cc: [Egan, Brian](#)
Subject: Fw: HSBC Status
Date: Wednesday, November 14, 2012 7:44:05 PM

Bill, fysa.

From: Hand, Tyler
Sent: Wednesday, November 14, 2012 05:31 PM
To: Meade, Christopher; Weideman, Christian
Cc: Agrawal, Priti; Egan, Brian; Maher, Mike; Tuchband, Matthew
Subject: HSBC Status

Chris and Chris,

Following up on my email of last Thursday, I wanted to let you know that although we made a lot of progress over the last week, the HSBC global settlement will not be happening today. The bank received draft documents from all the settling agencies before or over the weekend and, per the New York DA's office, will be providing comprehensive comments tomorrow morning on all of those documents. The folks at the Fed are working to schedule an interagency call tomorrow afternoon to reassess the timeline. Although this is pure speculation on my part, I would expect folks will now want to shoot for the last week of November and avoid trying finalize the deal during Thanksgiving week.

We will update you when we hear more, but please don't hesitate to call if you have any questions.

Thanks,

Tyler (2-8948)

From: Hand, Tyler
Sent: Thursday, November 08, 2012 10:31 AM
To: Meade, Christopher; Weideman, Christian
Cc: Agrawal, Priti; Egan, Brian; Maher, Mike; Tuchband, Matthew
Subject: New Developments in HSBC

Chris and Chris,

We wanted to let you know that we understand DOJ, represented by Eric Holder and Lanny Breuer (AAG for the Criminal Division), met with senior HSBC officials yesterday concerning the criminal investigation of the bank's sanctions and money laundering activities. Per the readout we received, DOJ indicated it would **not** insist on a guilty plea as part of the settlement, but instead would be willing to resolve all counts through a comprehensive deferred prosecution agreement. As you may recall, a guilty plea or conviction was likely to have serious collateral consequences for the bank, including a hearing to consider whether to revoke the bank's U.S. charter. The current total liability for all criminal and civil fines and forfeiture actions would amount to approximately \$2 billion.

The catch with the DPA deal is that the Attorney General apparently insisted that the case be wrapped up by Wednesday. As you know, OFAC, FinCEN, the OCC, and the Fed all have concurrent civil investigations into various aspects of the bank's conduct. The objective of all agencies has been to resolve these investigations and roll out a global settlement concurrently, and

the hope is that everyone will be in position to accomplish this by Wednesday. We are meeting this morning with OFAC to come up with a plan for getting our civil case to the finish line within this timeframe. The proposed settlement terms and documents still need approval from our office and Adam Szubin, and then they will need to be negotiated with the bank. This will be a tight and difficult timeframe, and we expect DOJ and the other agencies are likely to be similarly pressed to get everything finalized by Wednesday.

DOJ and the bank indicated that they do not intend to make any announcement until the deal is finalized and we have therefore been asked to treat this information as close hold. We will keep you updated as this situation develops, but please let us know if you have any questions or concerns.

Thanks,
Tyler

Tyler Hand
Assistant Chief Counsel for Designations and Enforcement
Office of the Chief Counsel (Foreign Assets Control)
United States Department of the Treasury
tel: [REDACTED]
[REDACTED]

Appendix 19

Email Regarding HSBC Update (November 30, 2012)

Szubin, Adam

From: Wood, Dennis
Sent: Friday, November 30, 2012 6:05 PM
To: Szubin, Adam; Hammerle, Barbara; Smith, John; Dondarski, Michael; Yovanoff, Laura; Manfull, Alexandre
Subject:Fw: HSBC Update

Christmas or Chanukkah?

----- Original Message -----

From: [REDACTED]
Sent: Friday, November 30, 2012 05:21 PM
To: [REDACTED]; Wood, Dennis; Straus, Lee M;
jason.a.gonzalez@fbi.gov <jason.a.gonzalez@fbi.gov>
Cc: Tim [REDACTED] <Tim[REDACTED]> Lynch, Garrett <LynchG@dny.nyc.gov>; Solomon [REDACTED]
Subject: RE: HSBC Update

We will be going back to the bank with our documents this wknd. We have set a resolution date of 11 December and have informed the bank this date will not be pushed.

Please let me know if you have any questions.

Thanks,
[REDACTED]

From: [REDACTED]
Sent: Tuesday, November 27, 2012 11:21 AM
To: 'Dennis.Wood@[REDACTED]'; 'Lee.Straus@[REDACTED]'; 'jason.a.gonzalez@[REDACTED]';
Cc: [REDACTED] 'Lynch, Garrett'; [REDACTED]
Subject: HSBC Update

We are currently reviewing the bank's redlines of our DPA and SOF. We are awaiting the redline of the Monitor Agreement. Once we are in a position to respond to the bank (as early as late this week if we get the final document) we will provide a further update.

Thanks,
[REDACTED]

[REDACTED]
Asset Forfeiture & Money Laundering Section Criminal Division-US Department of Justice
Washington, DC
[REDACTED]

Appendix 20

Email Regarding HSBC (December 4, 2012)

From: [Wood, Dennis](#)
To: [Sullivan, John](#); [Szubin, Adam](#)
Cc: [Cohen, David](#); [Fowler, Jennifer](#); [Rosenberg, Elizabeth](#); [Hammerle, Barbara](#); [Smith, John](#); [Steele, Charles](#); [Tessler, David](#)
Subject: Re: HSBC
Date: Tuesday, December 04, 2012 7:46:51 PM

The bank returned heavily edited documents to us today, and I understand from DANY that they did the same with the Prosecutors. We also have an interagency call in the morning to coordinate response and roll out... We expect to "go back" to S&C and the bank on Thursday, after we have had a chance to review all of the proposed changes.

----- Original Message -----

From: Sullivan, John
Sent: Tuesday, December 04, 2012 07:37 PM
To: Szubin, Adam
Cc: Cohen, David; Fowler, Jennifer; Rosenberg, Elizabeth; Hammerle, Barbara; Wood, Dennis; Smith, John; Steele, Charles; Tessler, David
Subject: RE:

Not yet, I have a call with them tomorrow AM to discuss roll out details. They said they were still finalizing plans this afternoon.

From: Szubin, Adam
Sent: Tuesday, December 04, 2012 7:36 PM
To: Sullivan, John
Cc: Cohen, David; Fowler, Jennifer; Rosenberg, Elizabeth; Hammerle, Barbara; Wood, Dennis; Smith, John; Steele, Charles; Tessler, David
Subject:

John-

Have you heard anything from DOJ public affairs on a possible HSBC press conference next Tuesday in EDNY?

Appendix 21

Email from DOJ Regarding HSBC Update (November 27, 2012)

From: [Wood, Dennis](#)
To: [Szubin, Adam](#); [Hammerle, Barbara](#)
Cc: [Smith, John](#)
Subject: FW: HSBC Update
Date: Tuesday, November 27, 2012 11:33:56 AM

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, November 27, 2012 11:21 AM
To: Wood, Dennis; Straus, Lee M; [jason.a.gonzalez@](#)[REDACTED]
Cc: [REDACTED]; Lynch, Garrett; [REDACTED]
Subject: HSBC Update

We are currently reviewing the bank's redlines of our DPA and SOF. We are awaiting the redline of the Monitor Agreement. Once we are in a position to respond to the bank (as early as late this week if we get the final document) we will provide a further update.

Thanks,
[REDACTED]

[REDACTED]
Asset Forfeiture & Money Laundering Section Criminal Division-US Department of Justice Washington,
DC
[REDACTED]

Appendix 22

*Secretary Geithner Memorandum Regarding Meeting with Chancellor Osborne
(October 9, 2012)*

Yoo, Julia

From: Jensen, Joseph (Andrew)
Sent: Tuesday, October 09, 2012 6:05 PM
To: Sutton, Gary; Wood, Dennis; El-Hindi, Jamal; Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; Keller, Barbara; Maher, Mike Disabled; Yoo, Julia; Townsend, Brian
Cc: Fowler, Jennifer; O'Reilly, DeAnna; Bradley, Bill
Subject: RE: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5
Attachments: TFG-Osborne-Bernanke Oct 2012 545pm.docx

Attached is the memo that went to Exec Sec, which we incorporated into IA's shell. Note that we had to reformat some of the points to be consistent with the organization of the broader memo.

Thanks again, everyone, for your work over the weekend and today!

From: Sutton, Gary
Sent: Tuesday, October 09, 2012 3:51 PM
To: Wood, Dennis; Jensen, Joseph (Andrew); El-Hindi, Jamal; Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; Keller, Barbara; Maher, Mike; Yoo, Julia; Townsend, Brian
Cc: Fowler, Jennifer; O'Reilly, DeAnna; Bradley, Bill
Subject: RE: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

Dennis, it looks good to me. I have only a typo on Attachment 1 and a comment on Attachment 2.
Gary

From: Wood, Dennis
Sent: Tuesday, October 09, 2012 2:57 PM
To: Jensen, Joseph (Andrew); El-Hindi, Jamal; Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; Keller, Barbara; Maher, Mike; Yoo, Julia; Sutton, Gary; Townsend, Brian
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: RE: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5
Importance: High

Andrew, here is the draft briefing memo, including edits from Barbara. Please note, again, Barbara's suggestion that Tim might want to see the language that the group worked hard on developing throughout the weekend.

Best,
- Dennis

From: Jensen, Joseph (Andrew)
Sent: Tuesday, October 09, 2012 11:38 AM
To: El-Hindi, Jamal; Wood, Dennis; Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; Keller, Barbara; Maher, Mike; Yoo, Julia; Sutton, Gary; Townsend, Brian
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: RE: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

Looping E&I for awareness.

From: Jensen, Joseph (Andrew)
Sent: Tuesday, October 09, 2012 10:07 AM
To: El-Hindi, Jamal; Wood, Dennis; Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; Keller, Barbara
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: RE: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

Also attached is the letter from Osborne to Bernanke. Not sure how widely it was circulated, but it should help with memo prep.

From: Jensen, Joseph (Andrew)
Sent: Tuesday, October 09, 2012 10:00 AM
To: El-Hindi, Jamal; Wood, Dennis; Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; Keller, Barbara
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: RE: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

Thanks, everyone.

Are there specific points that we want TFG to convey during the meeting with Osborne? According to Exec Sec and IA, the SCB and HSBC issues are probably going to drive the meeting. I attached a memo that IA drafted for the meeting, but given the focus on our issues, we will probably have to redraft and include the SCB and HSBC points up front.

OFAC—will you put our information into a Briefing Memo format with an overview and key points to raise? Sorry for the quick turnaround, but can we see a draft by early afternoon?

Thanks!

Andrew

-----Original Message-----

From: El-Hindi, Jamal [[mailto:\[REDACTED\]@fincen.gov](mailto:[REDACTED]@fincen.gov)]
Sent: Monday, October 08, 2012 6:00 PM
To: Wood, Dennis; Jensen, Joseph (Andrew); Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; Keller, Barbara
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: RE: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

All,

All,

Attached is a redline to show Barbara's changes with corresponding edits, as well as some changes I added to clean up use of DFS as an acronym in the attachment. The clean version should be ready to go barring further comment.

Note, even though everything is in one document right now, when presented in hard copy the attachment will look like a separate attachment. I made reference to the attachment at the end of the main discussion.)

Jamal

-----Original Message-----

From: [Dennis.Wood@\[REDACTED\]](mailto:Dennis.Wood@[REDACTED]) [mailto:[Dennis.Wood@\[REDACTED\]](mailto:Dennis.Wood@[REDACTED])]
Sent: Monday, October 08, 2012 4:36 PM
To: El-Hindi, Jamal; [Joseph.Jensen@\[REDACTED\]](mailto:Joseph.Jensen@[REDACTED]); Shasky Calvery, Jennifer; [Adam.Szubin@\[REDACTED\]](mailto:Adam.Szubin@[REDACTED]); [Barbara.Hammerle@\[REDACTED\]](mailto:Barbara.Hammerle@[REDACTED]); Alvarado, Peter; [John.Smith@\[REDACTED\]](mailto:John.Smith@[REDACTED]); [Susan.Demske@\[REDACTED\]](mailto:Susan.Demske@[REDACTED]); [David.Tessler@\[REDACTED\]](mailto:David.Tessler@[REDACTED]); Buffardi, Michael; [Charles.Steele@\[REDACTED\]](mailto:Charles.Steele@[REDACTED]); [Matthew.Tuchband@\[REDACTED\]](mailto:Matthew.Tuchband@[REDACTED]); Keller, Barbara
Cc: [Jennifer.Fowler@\[REDACTED\]](mailto:Jennifer.Fowler@[REDACTED]); DeAnna.O'Reilly@[REDACTED]
Subject: Re: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

Thanks, Jamal! Go team!

----- Original Message -----

From: El-Hindi, Jamal [mailto:[\[REDACTED\]@fincen.gov](mailto:[REDACTED]@fincen.gov)]
Sent: Monday, October 08, 2012 04:27 PM
To: Wood, Dennis; Jensen, Joseph (Andrew); Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; Keller, Barbara
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: Re: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

I will be back home around 5 and can do it then. Should not take too long.

Jamal

----- Original Message -----

From: [Dennis.Wood@\[REDACTED\]](mailto:Dennis.Wood@[REDACTED]) [mailto:[Dennis.Wood@\[REDACTED\]](mailto:Dennis.Wood@[REDACTED])]
Sent: Monday, October 08, 2012 03:57 PM
To: [Joseph.Jensen@\[REDACTED\]](mailto:Joseph.Jensen@[REDACTED]) <[Joseph.Jensen@\[REDACTED\]](mailto:Joseph.Jensen@[REDACTED])>; Shasky Calvery, Jennifer; [Adam.Szubin@\[REDACTED\]](mailto:Adam.Szubin@[REDACTED]) <[Adam.Szubin@\[REDACTED\]](mailto:Adam.Szubin@[REDACTED])>; [Barbara.Hammerle@\[REDACTED\]](mailto:Barbara.Hammerle@[REDACTED]) <[Barbara.Hammerle@\[REDACTED\]](mailto:Barbara.Hammerle@[REDACTED])>; Alvarado, Peter; [John.Smith@\[REDACTED\]](mailto:John.Smith@[REDACTED]) <[John.Smith@\[REDACTED\]](mailto:John.Smith@[REDACTED])>; [Susan.Demske@\[REDACTED\]](mailto:Susan.Demske@[REDACTED]) <[Susan.Demske@\[REDACTED\]](mailto:Susan.Demske@[REDACTED])>; [David.Tessler@\[REDACTED\]](mailto:David.Tessler@[REDACTED]) <[David.Tessler@\[REDACTED\]](mailto:David.Tessler@[REDACTED])>; Buffardi, Michael; [Charles.Steele@\[REDACTED\]](mailto:Charles.Steele@[REDACTED]) <[Charles.Steele@\[REDACTED\]](mailto:Charles.Steele@[REDACTED])>; [Matthew.Tuchband@\[REDACTED\]](mailto:Matthew.Tuchband@[REDACTED]) <[Matthew.Tuchband@\[REDACTED\]](mailto:Matthew.Tuchband@[REDACTED])>; El-Hindi, Jamal; Keller, Barbara
Cc: [Jennifer.Fowler@\[REDACTED\]](mailto:Jennifer.Fowler@[REDACTED]) <[Jennifer.Fowler@\[REDACTED\]](mailto:Jennifer.Fowler@[REDACTED])>; DeAnna.O'Reilly@[REDACTED] <[DeAnna.O'Reilly@\[REDACTED\]](mailto:DeAnna.O'Reilly@[REDACTED])>
Subject: Re: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

Like, Jamal, I'm currently away from my laptop (at a Doctor's appt). If you, or anyone else with LAN/DORA access could pick up the pen that would be great, Andrew! I was never actually "charged" with editing Adam's draft. I just did it to keep things moving along for the group, but, at the moment am stuck with only my BB.

Thanks!
- Dennis

----- Original Message -----

From: Jensen, Joseph (Andrew)
Sent: Monday, October 08, 2012 03:23 PM
To: Wood, Dennis; Shasky, Jennifer; Szubin, Adam; Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; El-Hindi, Jamal; Keller, Barbara
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: Re: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

Thanks. Who will incorporate Barbara's edits?

----- Original Message -----

From: Wood, Dennis

Sent: Monday, October 08, 2012 03:07 PM

To: Shasky, Jennifer; Szubin, Adam; Jensen, Joseph (Andrew); Hammerle, Barbara; Alvarado, Peter; Smith, John; Demske, Susan; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew; El-Hindi, Jamal; Keller, Barbara

Cc: Fowler, Jennifer; O'Reilly, DeAnna

Subject: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

Current base document is attached. Barbara's suggested edits/comments still need to be incorporated. In the interest of time, we are forwarding the doc to the larger group.

-----Original Message-----

From: Hammerle, Barbara

Sent: Monday, October 08, 2012 2:58 PM

To: Wood, Dennis; El-Hindi, Jamal; Shasky, Jennifer

Cc: Hand, Tyler; Smith, John

Subject: Re: Combined doc: Updated Secretary Travel Schedules to India and Japan Oct. 5

A few suggestions. Note the memo says descriptions of the cases are attached, but in fact they are part of the same memo.

"Second, the extraordinarily severe step of threatening license revocation for SCB . . . "

Instead of making this a stand alone sentence, change it to read: ", and OFAC will be extending a Voluntary Self-Disclosure credit to the bank."

I understand the desire to detail the AML violations for HSBC, but I think in terms of balance with the rest of the memo, this could use a little shortening:

"As to HSBC, it will almost certainly face a record-breaking fine/forfeiture, mainly due to its egregious violations of AML laws (((delete--. That said, USG authorities believe that the conduct at issue with respect to AML violations in HSBC was))) which far exceed those of the largest offenders to date (((delete--, and warrants a commensurate penalty.)) For example, against the backdrop of a warning from FinCEN of the risks associated with U.S.-Mexico cross border cash and additional warnings of the drug trafficking and money laundering risks associated with Mexico, HSBC Bank USA, N.A. ("HBUS") gave Mexico its lowest risk rating, did not perform any customer due diligence on the correspondent account it held for its Mexican affiliate (((--delete(which, itself, had substantial AML breakdowns))), performed nearly no transaction monitoring on wire transfers emanating from Mexico, and failed to conduct any transaction monitoring on bulk U.S. dollars returned to HBUS from Mexico through its bank notes product line from mid-2006 to mid-2009. The Department of Justice settlement is expected to state that these failures resulted in at least \$881 million in drug trafficking-related funds being laundered through HBUS.

-----Original Message-----

From: Shasky Calvery, Jennifer [mailto:██████████@fincen.gov]

Sent: Monday, October 08, 2012 2:49 PM

To: El-Hindi, Jamal

Cc: Wood, Dennis

Subject: Re: errands

Looks good.

From: El-Hindi, Jamal
Sent: Monday, October 08, 2012 02:13 PM
To: Shasky Calvery, Jennifer
Cc: [Dennis.Wood@](#) <>
Subject: errands

I will be away from laptop, but will monitor blackberry. I think Dennis is good to forward to the broader group for any further comments. (Jen, you need to weigh in on my addition re FinCEN and SCB.)

Jamal

BRIEFING MEMORANDUM FOR SECRETARY GEITHNER

Event: Meeting with George Osborne, UK Chancellor of the Exchequer, and Ben Bernanke, Federal Reserve Chairman
Date/Loc: TBD
Press: Closed

PRIMARY OBJECTIVE

To discuss Chancellor Osborne's letter dated September 10, 2012, LIBOR reform, and other bilateral issues.

OVERVIEW

Chancellor Osborne requested this meeting with you and Chairman Bernanke to discuss his letter dated September 10, 2012 regarding his concerns over pending enforcement matters. Chancellor Osborne addressed a September 10 letter to Chairman Bernanke, copied to you, following the New York Department of Financial Services' ("DFS") issuance of an order threatening to withdraw the state banking license of Standard Chartered Bank ("SCB"). Noting the close collaboration between our two governments on financial issues, especially combating money laundering and financial crime, Osborne raised two primary concerns. First, the lack of advance notice of the DFS action deprived the UK Government of the ability to prepare and mitigate negative consequences. Second, the extraordinarily severe step of threatening license revocation for SCB – and a reportedly impending \$1.9 billion settlement with HSBC Bank plc ("HSBC") over anti-money laundering and sanctions violations – seemed to Osborne to entail significantly tougher measures than recent major enforcement actions against other foreign banks, raising unwanted questions about potential U.S. hostility to London as a financial center. While acknowledging the importance of regulatory enforcement, Osborne sought Bernanke's assistance to ensure that future actions involving British banks would be conveyed in advance and be fair.

The team of U.S. regulators and prosecutors jointly pursuing investigations of SCB and HSBC are drawing close to resolutions. In addition to OFAC (SCB, HSBC) and FinCEN (HSBC), the SCB and HSBC investigations involve a range of federal and state prosecutorial and regulatory offices, most notably the Department of Justice (SCB, HSBC), the Manhattan District Attorney's Office ("DANY") (SCB, HSBC), the Federal Reserve Board of Governors (SCB, HSBC), and the Office of the Comptroller of the Currency (HSBC).

You should also be aware that in a meeting between Dan Tarullo and Lael Brainard last Friday, Dan said that: a) the UK FSA was being particularly problematic on enforcement and adopting a light touch approach at industry's request; and b) he thought that the cross-border framework was insufficient and was skeptical about the extent of progress being made.

KEY POINTS TO MAKE

- **Open Enforcement Matters against UK Banks:** We share the view that resolutions of regulatory matters involving British banks should be fair (i.e. appropriate in relation to the alleged wrongdoing and proportionate to prior cases), and that U.S. and British

regulators should coordinate and communicate in advance to the greatest extent possible.

- **Standard Chartered Bank:** Treasury considers SCB's conduct surrounding sanctions violations to be reckless and egregious but not the worst we have encountered. The global settlement, involving all but the DFS, will be above that of Lloyds (\$350 million) but below Credit Suisse (\$536 million). **It is expected that the settlement/forfeiture amount will be shared with SCB and the UK Government this week.** This settlement/forfeiture will be levied on top of the \$340 million SCB has already paid to DFS. SCB will effectively be paying twice for the same conduct as a consequence of DFS breaking from the other enforcement agencies that have been working in tandem throughout the investigation. Treasury and the other agencies involved would not find it appropriate to deem the payment to DFS as satisfying what are primarily federal offenses.
- **HSBC: HSBC is facing a record-breaking fine/forfeiture, predominantly due to its egregious violations of anti-money laundering (AML) laws.** For example, against the backdrop of a warning from FinCEN of the risks associated with U.S.-Mexico cross border cash transfers and additional warnings of the drug trafficking and money laundering risks associated with Mexico, HSBC Bank USA, N.A. ("HBUS") gave Mexico its lowest risk rating, did not perform any customer due diligence on the correspondent account it held for its Mexican affiliate, performed nearly no transaction monitoring on wire transfers emanating from Mexico, and failed to conduct any transaction monitoring on bulk U.S. dollars returned to HBUS from Mexico through its banknotes product line from mid-2006 to mid-2009. The combined amount of fines/forfeitures that are being contemplated to be assessed against HSBC is **\$1.932 billion**, broken down as follows:
 - **DOJ and DANY:** \$881 million to settle AML charges and \$375 to settle sanctions charges;
 - **OCC:** \$500 million to settle AML charges (in addition to the DOJ/DANY figure); a FinCEN penalty of \$500 million would be deemed satisfied by the OCC fine;
 - **FBG:** \$165 million; the FBG has already delivered a draft Cease & Desist Order to the bank;
 - **OFAC:** Is reviewing additional information supplied by the bank on October 9 and expects to finalize a proposed settlement figure shortly. That figure is likely to be deemed satisfied by payment of the sanctions-related criminal penalties.
- **Coordination with the UK Government:** The USG has coordinated and worked closely with the UK's Financial Services Authority ("FSA") on cases involving British banks (for example, Lloyds and Barclays) and intends to continue to do so. The FSA is aware of the settlement amount being discussed in the HSBC case, and will be informed this week of the settlement amount under discussion for SCB. The FSA has played a role in OFAC's past settlement agreements, monitoring the remedial steps that have been agreed to by British banks. DFS notified USG authorities only hours before its public announcement on SCB, so OFAC was not in a position to give advance notice to HMT or the FSA.

Model Agreement released by the Treasury in July. The agreement addresses legal barriers to financial institutions in complying with FATCA and reduces burdens imposed on U.K. financial institutions. The agreement provides for FATCA implementation through reporting by U.K. financial institutions to the U.K. government, coupled with automatic exchange of that information with the United States under the existing U.S.-U.K. tax treaty. The agreement requires reciprocal exchange of information currently collected by the United States with respect to U.K. residents, with a commitment by the U.S. government to pursue equivalent levels of information exchange in the future. The agreement also sets out U.K. institutions and products which will be exempt from FATCA requirements because they present a low risk of being used to evade U.S. tax.

PARTICIPANTS

- George Osborne, UK Chancellor of the Exchequer
- Ben Bernanke, Federal Reserve Chairman

ATTACHMENTS

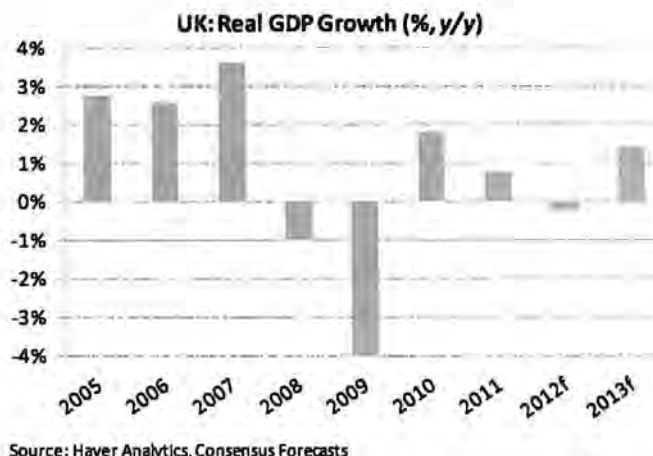
1. United Kingdom Economic and Political Background
2. Background on Standard Chartered Bank sanctions
3. Background on HSBC Bank sanctions and AML violations
4. Osborne Letter to Chairman Bernanke
5. Background on Libor Reform
6. Background on Intergovernmental Agreements to Implement FATCA

United Kingdom

The economic recovery that began in 2010 waned last year, weighed down by fiscal austerity and flagging consumption and investment. The UK has fallen back into a recession, with output contracting on a seasonally adjusted annualized basis in the fourth quarter of 2011 and the first two quarters of 2012, by 1.4 percent, 1.3 percent, and 1.8 percent, respectively.

The IMF projects a modest pick up in the economy in the second half of the year as the drag from fiscal consolidation and commodity price shocks is reduced, assuming strains in the euro area are eased, and with a boost from the Olympics, and expects full-year growth of 0.2 percent and 1.4 percent in 2012 and 2013, respectively.

While maintaining its commitment to austerity, the government announced initiatives aimed at stimulating growth, investment, and jobs, including additional investments in infrastructure, a National Loan Guarantee program, and a Funding for Lending (FLS) scheme to improve banks' access to liquidity. Under the FLS, the BOE lends UK treasury bills to banks, which banks can use to borrow at lower rates, with banks providing loans as collateral in exchange. Unemployment, which surpassed the previous high (8.0 percent in Q1-2010) to reach 8.4 percent in the fourth quarter of 2011, remains a challenge at 8.0 percent.



The UK entered the recession with one of the largest structural deficits among OECD countries. Due to the impact of fiscal stimulus measures and economic contraction, the fiscal deficit increased from 2.3 percent of GDP in 2007 to a record 11.1 percent in 2009. General government debt increased from 43.6 percent of GDP to 71.2 percent over the same period. As markets grew wary of high deficits and sovereign debt, the UK introduced an ambitious fiscal consolidation plan, which currently aims to balance the cyclically-adjusted current budget by 2016-17, puts the gross debt-to-GDP ratio on a declining path after peaking at 76.3 percent in 2014-2015, and reduces the headline deficit to under 3.0 percent by 2015-16. The government slashed departmental and welfare expenditures, while protecting spending in areas such as health, education, foreign aid, and defense, and introduced corporate income tax cuts and a bank levy. Chancellor Osborne presented the UK's FY2012-13 budget to parliament in March, with new measures designed to attract investment and create growth and employment, but without significant change to the overall trajectory.

The BOE cut its policy rate sharply from 5.0 percent in October 2008 to a record-low rate of 0.5 percent in March 2009, and has since maintained this level. Inflation has exceeded the target over the past two years largely due to the rise in commodity prices, the VAT increase, and currency weakness. However, inflation has fallen steadily since peaking at 5.2 percent in September 2011 and stood at 2.6 percent year-on-year in July, with the effect of the VAT hike fading. During the crisis, the BOE also implemented a £200 billion quantitative easing (QE) program, with the aim of boosting broad money growth to encourage private spending. Since October 2011, the BOE has increased its QE program three times – each time by £50 billion – to

reach £375 billion at its July 2012 meeting. The rationale for all decisions was similar: the weaker global environment (particularly slower euro area growth), tight credit conditions, weak real household incomes, and fiscal tightening.

United Kingdom: Economic Indicators						
	2008	2009	2010	2011	2012f	2013f
Real GDP growth (% y/y)	-1.0	-4.0	1.8	0.8	-0.2	1.4
Inflation (cpi, %y/y)	3.6	2.2	3.3	4.5	2.6	1.9
Fiscal Balance (% GDP, fiscal year)	-6.7	-11.1	-9.3	-8.3	-5.8	-5.9
Public Debt (Maastricht, % GDP, fiscal year)	43.3	52.7	60.5	67.3	71.9	75.0
Current Account Balance (% GDP)	-1.6	-1.7	-3.2	2.7	2.3	2.3
Industrial Production (% y/y)	-2.5	-9.7	3.8	2.1	-1.2	1.6
Unemployment (%)	5.7	7.7	7.9	N/A	N/A	N/A
Credit growth (% y/y)	-1.9	6.9	5.1	N/A	N/A	N/A

Source: IMF, Haver, Office for Budget Responsibility

Background on HSBC Bank plc violations

The case against HSBC and/or its subsidiaries is currently pending with the Office of Foreign Assets Control ("OFAC"), the New York County District Attorney's Office ("DANY"), various sections of the Department of Justice ("DOJ"), the Board of Governors of the Federal Reserve System ("FBG")/Federal Reserve Bank of New York ("FRBNY"), the Financial Crimes Enforcement Network ("FinCEN"), and the Office of the Comptroller of the Currency ("OCC"). The UK's Financial Services Authority ("FSA") has also been involved, and had been asked to assist in any final action to ensure remediation in London. It is difficult to say when the case will come to closure, but it will hopefully be by the end of October or beginning of November. On August 24, DOJ and DANY jointly proposed to HSBC to settle AML charges with a forfeiture of \$881 million and to settle sanctions charges with a payment of a \$375 million penalty. Issues subsequently arose however, as to whether the bank ought to be told that a guilty plea is expected with regard to the AML charges rather than addressing the matter through a Deferred Prosecution Agreement. Such an outcome could adversely impact the bank's charter. OFAC is reviewing additional information just supplied to it by the bank and is expecting to be able to finalize a proposed settlement figure shortly. OCC separately proposed a \$500 million AML settlement to HSBC on August 28, which would come in addition to the DOJ/DANY action; FinCEN's number is the same and will be deemed satisfied by payment of the OCC fine, which is to be deposited into the Treasury General Fund. The FBG also delivered a draft Cease & Desist Order and Penalty Assessment to HSBC on August 28. It intends to assess a \$165 million fine of its own payable to the General Fund. Thus, the combined amount of fines and forfeitures that will be assessed against HSBC if there are no further changes is \$1.921 billion.

Sanctions Facts: In March 2010, DANY commenced an investigation into payments processed by the HSBC Group that appeared to violate U.S. sanctions regulations. Shortly thereafter OFAC, DOJ, FRBNY, and the OCC initiated similar investigations. At the direction of the investigating agencies, HSBC conducted a transaction review of its major payment processing gateways in the UK, Hong Kong, and Canada. By April 2012, OFAC's review of the transactions revealed approximately 2,500 transactions, valued at more than \$439 million involving potential violations of the Burmese, Cuban, Iranian, Sudanese, WMD, and the now-repealed Libya, sanctions programs. HSBC in London and Dubai obscured or removed references to Iran in payment instructions sent through the United States. HSBC's conduct was also the topic of recent hearings and a report published by the U.S. Senate Homeland Security & Government Affairs Permanent Subcommittee on Investigations.

AML Facts: FinCEN, OCC, and DOJ have recently concluded investigations of HSBC Bank USA, N.A. ("HBUS"). FBG/FRBNY has recently concluded a related investigation of the holding company for HBUS, HSBC North America Holdings, Inc. ("HNAH"). The investigations revealed that the AML failures of HBUS were pervasive and systemic and included: inadequate risk ratings for countries, customers, and products; failures to monitor large volumes of high risk transactions and related failures to file suspicious activity reports; clearance of large numbers of alerts without any review; and failure to perform any customer due diligence on foreign affiliates holding U.S. correspondent accounts. The failures of HBUS were exacerbated by the stove piping of information between the parent (HSBC, plc), its holding

companies (including HNAH), and affiliates (including HBUS and HSBC Mexico S.A. Banco). Among other things, the AML failures resulted in \$60 trillion in wire transactions through the United States being excluded from monitoring each year, \$15 billion in bulk U.S. currency entering the United States from abroad being excluded from monitoring over a three year period, and related failures to timely file at least 7000 suspicious activity reports. Moreover, as a result of the DOJ criminal investigation, we know criminals took advantage of the lax AML program at HBUS to launder at least \$881 million in drug trafficking-related funds through the bank.

Background on LIBOR Reform

Briefing Memo Clearance Sheet

Event: Meeting with George Osborne, Chancellor of the Exchequer
Drafted: ICN – Rachel Jarpe, [REDACTED]
Approved: Under Secretary for International Affairs Lael Brainard
Assistant Secretary for International Finance Charles Collins
Cleared: ICN – Jeff Baker (x/x/12) ok
ExecSec – David Clunie (x/x/12) ok
GC – Himamauli Das (x/x/12) ok
PA – Kara Alaimo (x/x/12) ok
TFI – Andrew Jensen (10/9/12) ok
OFAC – Dennis Wood (10/9/12) ok
FinCEN – Jen Shasky-Calvery (10/9/12) ok
IMB – Alicia Krebs (10/9/12) ok
Tax Policy – Danielle Rolfes (10/9/12) ok
MENA – Mary Svenstrup (10/9/12) ok

Appendix 23

Email Regarding HSBC Team (September 12, 2012)

Hand, Tyler

From: Hand, Tyler
Sent: Wednesday, September 12, 2012 3:07 PM
To: Tuchband, Matthew; Hershfang, Jennifer; Kirby, Jimmy; Chessick, Peter; Hardaway, Lamine
Cc: Blackborow, Davin; Schisa, Michael (Will); Stetson, David; Broeker, Ann; Palluconi, Lisa; Lomba, Alicia
Subject: RE: HSBC team
Attachments: HSBC; FW: HSBC Group; FW: HSBC Group; FW: password

Thanks, everyone!

Attached are the email from Compliance with an electronic version of the memo and spreadsheets, an email from Dennis attaching a letter from HSBC's counsel concerning the non-Iranian transactions, and an email from Dennis attaching the spreadsheets OFAC received from the bank as well as the letter representing that the transactions in the spreadsheet did not appear to be licensed or exempt under then-applicable regulations. The fourth email is just a password that is needed to access some of the documents in the in the third email.

All of these documents should all also be in hard copy in the binder. Jen got a bit of a head start (which is only fair since I think Burma has the highest number of transactions), and has already inserted some comments in an electronic version of the memo. If possible, I think we should try to consolidate comments into one redline that we send back to Compliance.

In terms of timing and general atmospherics –

The Fed, the OCC, FinCEN, DANY, and DOJ (AFMLS) are all currently investigating HSBC for potential sanctions and money laundering violations and the desire of all agencies is to act jointly in the very near future. Although the sanctions conduct is a significant part of the investigation, the potential liability for the money laundering activities appears to be even higher at this point. The total non-concurrent sanctions/money laundering penalty (that is, what the bank would actually have to pay) at this point stands at approximately \$2 billion. Of this, OFAC's portion is currently set at \$416 million, with dollar for dollar credit being given for any IEEPA criminal penalty paid to DOJ. Currently, DOJ's sanctions number stands at \$375 million.

In addition, DOJ is very seriously considering seeking a guilty plea or indictment of the bank for the money laundering activities. Based on statements from U.S. and UK regulatory agencies, we understand that a felony plea or conviction could have very serious collateral consequences for the bank, including a possible revocation of its charter authorizing it to do business in the United States. Needless to say, this information is extremely sensitive.

In terms of timing specifics, the Fed, DOJ, FinCEN, and the OCC have already communicated their penalty numbers and intentions to the bank (with the exception of a final DOJ decision on whether to seek a BSA plea). OFAC is hoping to be in a position to settle by the end of the month, which may mean needing to communicate a number to the bank by the end of next week. If our number is higher than the DOJ sanctions number, the bank may push back some – at least this would represent additional money that it would actually have to pay to OFAC.

I would be happy to meet and discuss this further now if folks think that would be helpful. We might also consider using a small portion of our time on file Friday to discuss the case after folks have had a chance to start reviewing the documents.

Again, thanks to everyone for jumping on this one.

Tyler

From: Tuchband, Matthew
Sent: Wednesday, September 12, 2012 2:21 PM
To: Hand, Tyler; Hershfang, Jennifer; Kirby, Jimmy; Chessick, Peter; Hardaway, Lamine
Cc: Blackborow, Davin; Schisa, Michael (Will); Stetson, David; Broeker, Ann; Palluconi, Lisa; Lomba, Alicia
Subject: HSBC team

Now that I've had the chance to speak with each of you, I can announce the HSBC team:

Jen	Burma
Peter	Sudan and Cuba
Lamine	Iran
Jimmy	NPWMD and Libya

Thanks in advance for each of you for the work this will entail this week and next week. I hope to send around shortly a guide for determining how many entries you need to review on the spreadsheet in order to adequately spot-check and not have to go through every apparent violation. Tyler may follow up with you regarding the atmospherics and other aspects of this matter.

- Matthew

Appendix 24

Email Regarding Update on Iran Sanctions-Related Actions Against Banks (August 24, 2012)

From: [Hammerle, Barbara](#)
To: [Tuchband, Matthew](#)
Cc: [Hand, Tyler](#)
Subject: FW: Update on Iran sanctions-related actions against banks
Date: Monday, August 27, 2012 5:25:00 PM

Matthew,

There are yet newer developments. Can you give me a ring?

Thanks.

Barbara

From: Maher, Mike
Sent: Monday, August 27, 2012 10:04 AM
To: Cohen, David; Hammerle, Barbara
Cc: Fowler, Jennifer
Subject: Fw: Update on Iran sanctions-related actions against banks

From: Tuchband, Matthew
Sent: Friday, August 24, 2012 05:35 PM
To: Meade, Christopher; Weideman, Christian
Cc: Maher, Mike; Hand, Tyler; Hershfang, Jennifer
Subject: Update on Iran sanctions-related actions against banks

Chris and Chris,

There is a lot of late breaking news with respect to the investigation of HSBC and some late breaking news with respect to Standard Chartered and another bank that I thought I should bring to your attention. The various prosecutors and regulators are scrambling to get their investigations and enforcement actions completed with almost alarming speed, apparently in hopes of avoiding being beaten to the punch again by the NY Department of Financial Services. Unfortunately, this appears to be resulting in a major fraying of the interagency cooperation on timelines, leaving OFAC and others scrambling to keep up. I apologize in advance if this is too much information at once. I know you are interested in these matters, so I am erring on the side of over-inclusion. Please let me know if this level of detail is not helpful to you.

HSBC. OFAC just learned that DOJ's Asset Forfeiture and Money Laundering Section (AFMLS) plans to call HSBC this coming Monday, August 27, to communicate, on behalf of DOJ and the New York District Attorney's Office, a proposed number for settlement of both alleged anti-money laundering ("AML") and sanctions violations. The proposed number is likely to be \$800 million for the AML violations plus \$375 million for the sanctions violations. AFMLS does not have a draft statement of facts or deferred prosecution agreement available yet (which seems a little crazy if they are planning to talk numbers already), but hopes to have one available early next week.

Separately, the OCC has indicated that it hopes to reach a settlement with HSBC by September 17. We understand that the OCC has been working with FinCen on the AML side and coming in at around \$500 million.

Also separately, the Fed Board of Governors is hoping to join with the UK's FSA in a coordinated cease and desist order and civil monetary penalty (we don't know the amount) against HSBC requiring, among other things, the establishment of procedures overseas to ensure compliance with U.S. sanctions. The Board of Governors hopes to provide HSBC with a draft this coming Tuesday and also hopes to finalize the action prior to September 17. The Board of Governors is organizing an interagency conference call on Tuesday morning to try to coordinate agency actions (which seems a little late if the prosecutors are going to make a move the day before as noted above).

From OFAC's point of view, HSBC was still in the process of providing us with a list of all of the alleged violations, so these moves by the other agencies seem premature. That said, we are working with HSBC's counsel (Sullivan and Cromwell) to get the information and voluntary disclosure language as quickly as possible so that we can join with one or more of these other actions if possible.

Standard Chartered Bank ("SCB"). The New York District Attorney's Office intends to meet with SCB on September 10 to discuss accusations that SCB lied to the regulators, with the expectation of reaching closure on the entire case shortly thereafter. So September 10 may end up being the date for interagency completion of SCB issues. OFAC and my office continue to work with SCB's counsel (Sullivan and Cromwell again) to get all of the needed information to complete our work on this case. My guess is that we can meet a September 10 target date.

BNP Paribas. OFAC has heard that DOJ and the New York District Attorney's Office are planning to meet with BNP Paribas this coming Monday, August 27. We are not clear on what will be discussed, and OFAC was not invited to join this meeting. OFAC has an open investigation of BNP Paribas that may result in being the biggest case yet, but OFAC and the other regulators were in the process of getting a final submission for the bank, so the prosecutors appear to be jumping the gun.

Appendix 25

Email Regarding "By the way . . . on HSBC" (August 27, 2012)

From: [Wood, Dennis](#)
To: [Hammerle, Barbara](#)
Cc: [Szubin, Adam](#); [Smith, John](#)
Subject: RE: By the way... on HSBC
Date: Monday, August 27, 2012 9:24:07 AM

That's what we were given to understand by S&C yesterday... I have an email that just came in from Beth Davy on proposed "OFAC language," so I can easily confirm in my acknowledgement.

From: Hammerle, Barbara
Sent: Monday, August 27, 2012 8:30 AM
To: Wood, Dennis
Cc: Szubin, Adam; Smith, John
Subject: Re: By the way... on HSBC

Based on our conversation with Jen on Friday, did AFMLS pass the number on sanctions?

From: Wood, Dennis
Sent: Monday, August 27, 2012 07:45 AM
To: Hammerle, Barbara
Cc: Szubin, Adam; Smith, John
Subject: By the way... on HSBC

The Prosecutors DID pass "the" settlement number to the bank – AML charges at \$800 million and sanctions charges at \$375 million. No matter that our sanctions number may come in higher than that. We weren't consulted. We were told. As I mentioned yesterday, we still don't have what we need from the bank to bring our case to closure.... Among other things, we're still missing promised data on non-Iranian transactions and don't yet have from the bank satisfactory "language" for OFAC Chief Counsel.

From: [Wood, Dennis](#)
To: [Hammerle, Barbara](#)
Cc: [Smith, John](#); [Szubin, Adam](#)
Subject: HSBC & DOJ
Date: Monday, August 27, 2012 10:54:06 AM

----- Original Message -----

From: Davy, Elizabeth T. [mailto:[\[REDACTED\]](#)]
Sent: Monday, August 27, 2012 10:48 AM
To: Wood, Dennis
Subject: HSBC

Dennis,
DOJ/DANY gave us a number that included their assessment of the AML case as well as the sanctions case (from their perspective).
Thanks,
Beth

Elizabeth T. Davy
SULLIVAN & CROMWELL LLP

Appendix 26

Email Regarding Proposed Language for Memo (August 30, 2012)

From: [Cohen, David](#)
To: [Hammerle, Barbara](#); [Wood, Dennis](#); [Jensen, Joseph \(Andrew\)](#)
Subject: RE: proposed language for memo
Date: Thursday, August 30, 2012 5:43:16 PM

OK with me.

From: Hammerle, Barbara
Sent: Thursday, August 30, 2012 5:42 PM
To: Cohen, David; Wood, Dennis; Jensen, Joseph (Andrew)
Subject: proposed language for memo

On HSBC. How about adding the following language after the semicolon:

“The best estimate of when the case will reach settlement is mid-September. DOJ and DANY jointly proposed to HSBC on August 24 to settle AML charges with a forfeiture of \$800 million and to settle sanctions charges with a payment of a \$375 million penalty; **there is at least the possibility, however that OFAC will determine the appropriate sanctions figure is higher.**”

Appendix 27

Email Regarding “HSBC Legally Privileged” (September 24-25, 2012)

Szubin, Adam

From: Hammerle, Barbara
Sent: Tuesday, September 25, 2012 3:51 PM
To: Wood, Dennis; Steele, Charles; Smith, John; Szubin, Adam
Subject: HSBC LEGALLY PRIVILEGED

LEGALLY PRIVILEGED
PRE-DECISIONAL

I talked briefly with Matthew about this, without much progress, and then Dennis, but had to head to MT. Our interagency conference call is on Friday. Dennis, see bolded text below, which is different than your and Laura's understanding.

Thanks.

From: Wood, Dennis
Sent: Tuesday, September 25, 2012 3:18 PM
To: Hammerle, Barbara; Steele, Charles; Smith, John
Subject: FW: Significant HSBC issue that we need to resolve immediately
Importance: High

From: Tuchband, Matthew
Sent: Tuesday, September 25, 2012 3:10 PM
To: Thomas, Jonathan; Wood, Dennis
Cc: Yovanoff, Laura; Manfull, Alexandre; Chessick, Peter; Hand, Tyler; Hershfang, Jennifer; Kirby, Jimmy; Hardaway, Lamine
Subject: RE: Significant HSBC issue that we need to resolve immediately
Importance: High

This is all news to me, so I will need to check in with folks here about your suggestion that OFAC has a past practice of not having an administrative record that contains information on a transactions-by-transaction basis supporting a penalty amount calculated and agreed to in settlement. I can't say that, as legal counsel, I would be comfortable with such a practice. **It also would suggest that our recent agreement to engage in sampling in certain narrow circumstances was OBE'd before it was created.** I'll definitely look into this.

For now, however, I have to say that I am not comfortable with the HSBC amount being based on any transactions for which we do not have adequate information on a transaction-by-transaction basis in our administrative record (even if our sampling process precludes us from viewing every single transaction). If there are steps OFAC can take to get HSBC to remedy this situation, I suggest taking them immediately. And I also want to underscore the need to bring this to Adam (and please include us when you do) if HSBC really cannot provide anything more.

- Matthew

From: Thomas, Jonathan
Sent: Tuesday, September 25, 2012 3:00 PM
To: Tuchband, Matthew; Wood, Dennis
Cc: Yovanoff, Laura; Manfull, Alexandre; Chessick, Peter; Hand, Tyler; Hershfang, Jennifer; Kirby, Jimmy; Hardaway,

Lamine

Subject: RE: Significant HSBC issue that we need to resolve immediately

Matthew, thanks for raising this to us. I have to admit, having been out of the office for three of five days last week, I'm just catch up on this issue. I did want to point out, though, that for both the original ING PPN, which we were prepared to issue before DOJ issued its own subpoena, and the vast majority of the apparent violations in the Credit Suisse PPN, we relied on aggregate numbers of violations and values represented to us by the banks.

With regard to the more than 4,700 Iran violations we charged in Credit Suisse, for example, we relied on the second slide of the attached deck (which consists of a total of three slides). We never saw any actual transactional data whatsoever. Again, it was simply a statement that there were 4,721 payments averaging \$99,971 within the applicable statute of limitations and tolling period that involved Iran and the U.S., and for which Homburger/King & Spaulding/Deloitte/Credit Suisse could find no applicable OFAC authorization. In ING, with respect to apparent violations by ING Curacao made through its JPMC account on behalf of NCB for Cuban customers, for example, we relied on a statement that "between 2003 and 2005, [ING] identified (i) 18,178 outgoing USD payments with an aggregate USD value of approximately \$1.4 billion..." Again, we never saw the underlying transactions. I'd also point out, that in both of those cases, the banks were pushing back on OFAC's determination that any violation existed at all, whereas in HSBC, they've actually conceded that those transactions they've presented constitute apparent violations.

So, again with apologies if my comments are off the mark, are there substantive differences between the situation we were in with ING and Credit Suisse that drive the need to get this information now with HSBC?

Thanks,
Jonathan

From: Tuchband, Matthew

Sent: Monday, September 24, 2012 11:48 PM

To: Wood, Dennis; Thomas, Jonathan

Cc: Yovanoff, Laura; Manfull, Alexandre; Chessick, Peter; Hand, Tyler; Hershfang, Jennifer; Kirby, Jimmy; Hardaway, Lamine

Subject: Significant HSBC issue that we need to resolve immediately

Importance: High

Dennis and Jonathan,

I wanted to follow up on an issue that Jen flagged in the attached email and that my office discussed with your team today related to the lack of transactional information regarding a significant number of the alleged Burma and other country violations in the HSBC matter (specifically, the transactions reflected in the tab titled "Payments – non-disclosed ctry"). This issue presents an immediate risk to at least a quarter, if not more, of the total apparent violations contained in this matter, so it is one I think we need to resolve immediately. If we can't resolve it, given the significant effect this issue will have on this matter, I think we should bring it to Adam as soon as possible so that he is aware of it.

As you know, we recently agreed to a practice in cases involving large numbers of transactions where we are comfortable relying on a combination of (1) a letter from counsel to the alleged violator explaining the review process and making certain representations supporting a reasonable determination that the transactions involve violations of OFAC sanctions programs, and (2) reviewing the detailed transaction data for a representative sample of the transactions.

While counsel in this case (Sullivan & Cromwell) has provided the letter, we are not able to review a sample of a very large number of the alleged violations (in the Burma context, I believe approximately 700 out of about 1,100 transactions) because S&C has provided only very limited information (in the "Payments – non-

Appendix 28

Emails Regarding Talking Points (August 13, 2012)

From: [Hammerle, Barbara](#)
To: [Hand, Tyler](#); [Thomas, Jonathan](#); [Reddington, Brandon](#)
Subject: FW:
Date: Monday, August 13, 2012 5:31:00 PM

-----Original Message-----

From: Clunie, David
Sent: Monday, August 13, 2012 5:30 PM
To: Adeyemo, Adewale (Wally); Black, Laura; Strauss, Michael; Szubin, Adam; Murden, Bill; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel; Cushman, Benjamin; Collyns, Charles; Amir-Mokri, Cyrus; Hammerle, Barbara; Tessler, David
Cc: Rosen, Katheryn; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera
Subject: RE:

OFAC will draft the points per Wally's guidance below and circulate them to this group later this evening. They should be relatively short and straight forward, so if the necessary folks from DF and IA could comment and clear on them by tonight, or as early as possible tomorrow morning, we should be in good shape.

Thanks in advance.

-----Original Message-----

From: Adeyemo, Adewale (Wally)
Sent: Monday, August 13, 2012 4:29 PM
To: Black, Laura; Strauss, Michael; Szubin, Adam; Murden, Bill; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel; Cushman, Benjamin; Collyns, Charles; Amir-Mokri, Cyrus
Cc: Rosen, Katheryn; Clunie, David; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera
Subject: Re:

I think we just need three high level points.

1. No they are not
2. We are treating institutions regardless of jurisdiction equally
3. We plan to continue working closely with your regulatory agencies.

Could you fill in some more detail. Would be great if you could get me something tonight or tomorrow morning.

Thanks,

Wally

----- Original Message -----

From: Cushman, Benjamin
Sent: Monday, August 13, 2012 04:24 PM
To: Black, Laura; Strauss, Michael; Adeyemo, Adewale (Wally); Szubin, Adam; Murden, Bill; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel
Cc: Rosen, Katheryn; Clunie, David; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera
Subject: RE:

The answer to Rory's question at bottom is much more narrow than the potential responses to the issues that Wally raises. Not sure if Wally got add'l context/details about the conversation?

With some more clarity on the questions we need to address, we can more clearly determine who

should answer.

-----Original Message-----

From: Black, Laura

Sent: Monday, August 13, 2012 3:35 PM

To: Strauss, Michael; Adeyemo, Adewale (Wally); Szubin, Adam; Murden, Bill; Cushman, Benjamin; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel

Cc: Rosen, Katheryn; Clunie, David; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera

Subject: RE:

Minus Cyrus and Charles.

Plus Bill and Ben and a few others who have been working on these issues.

-----Original Message-----

From: Strauss, Michael

Sent: Monday, August 13, 2012 3:31 PM

To: Adeyemo, Adewale (Wally); Amir-Mokri, Cyrus; Collyns, Charles; Szubin, Adam

Cc: Rosen, Katheryn; Clunie, David; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Black, Laura; Fazili, Sameera

Subject: RE:

Looping in Laura Black and Sameera Fazili

-----Original Message-----

From: Adeyemo, Adewale (Wally)

Sent: Monday, August 13, 2012 3:06 PM

To: Amir-Mokri, Cyrus; Collyns, Charles; Szubin, Adam

Cc: Strauss, Michael; Rosen, Katheryn; Clunie, David; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer

Subject: FW:

Cyrus, Charles & Adam,

Looks like [REDACTED] raised with [REDACTED] the idea that U.S. regulators are taking actions in order to make London a less attractive place for banking. Can your team's draft a few points in response. The first point should of course be that the accusation is not true, but we should also include something on our efforts to coordinate with UK regulators and our similar treatment of U.S. institutions.

Thanks,

Wally

-----Original Message-----

From: Bowler, Timothy

Sent: Monday, August 13, 2012 2:26 PM

To: MacFarquhar, Rory

Cc: Adeyemo, Adewale (Wally)

Subject: RE:

Rory

Looping in Wally - we will coordinate

TJB

-----Original Message-----

From: MacFarquhar, Rory [mailto:[REDACTED]@who.eop.gov]
Sent: Monday, August 13, 2012 2:06 PM
To: Bowler, Timothy
Subject:

[REDACTED] - question is: what can [REDACTED] tell [REDACTED] about the recent regulatory actions against UK banks (HSBC/StanChart/Barclays etc.)? This is something that [REDACTED] raised in passing on a call yesterday, and which we expect to receive more questions about in the near future.

thanks

Appendix 29

Email Chain Regarding Talking Points (August 13-14, 2012)

From: [Black, Laura](#)
To: [Strauss, Michael](#); [Hammerle, Barbara](#); [Clunie, David](#); [Rosen, Katheryn](#)
Subject: Re: talking points (SBU)
Date: Tuesday, August 14, 2012 8:51:16 AM

Marisa will likely weigh in. She is getting intermittent BB reception. I sent her the points and some background info.

----- Original Message -----

From: Strauss, Michael
Sent: Tuesday, August 14, 2012 08:35 AM
To: Hammerle, Barbara; Clunie, David; Rosen, Katheryn; Black, Laura
Subject: Re: talking points (SBU)

Minus Charles and Cyrus, plus Laura Black.

We'll work to get changes from Charles and Cyrus this morning. Laura, will Marisa weigh in, or is she OK with Charles and Cyrus handling?

----- Original Message -----

From: Hammerle, Barbara
Sent: Tuesday, August 14, 2012 08:33 AM
To: Clunie, David; Collyns, Charles; Strauss, Michael; Amir-Mokri, Cyrus; Rosen, Katheryn
Subject: Re: talking points (SBU)

That's fine. Noting the obvious -- that these are based on different constellations of facts, and Congressional interest as well as regulators'.

----- Original Message -----

From: Clunie, David
Sent: Tuesday, August 14, 2012 08:12 AM
To: Hammerle, Barbara; Collyns, Charles; Strauss, Michael; Amir-Mokri, Cyrus; Rosen, Katheryn
Subject: Re: talking points (SBU)

Dropping most, just responding to your question, Barbara.

I think what Charles meant by [REDACTED] issues is the increasingly publicized sentiment out of London that U.S. regulators are taking aggressive action against UK banks in an effort to make British banks less attractive places to do business. This includes recent actions against HSBC, Standard Chartered, and Barclays. I agree that our TPs should respond to such an allegation, and not focus so narrowly on the Standard Chartered action.

Looks like Cyrus and others are working some edits, so we'll see where we are after they come back.

Thanks.

----- Original Message -----

From: Hammerle, Barbara
Sent: Tuesday, August 14, 2012 07:33 AM
To: Collyns, Charles; Clunie, David; Adeyemo, Adewale (Wally); Black, Laura; Strauss, Michael; Szubin, Adam; Murden, Bill; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel; Cushman, Benjamin; Amir-Mokri, Cyrus; Tessler, David; Reddington, Brandon; Thomas, Jonathan; Wood, Dennis; Lago, Marisa

Cc: Rosen, Katheryn; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera
Subject: Re: talking points (SBU)

Charles,

Could you provide a little more detail on the [REDACTED] issues? Also, I take your point about OFAC, which is why I started with "Treasury." I was trying to balance that as against the issue of keeping the regulatory issue in the proper lane. Open to any edits you may have.

Barbara

----- Original Message -----

From: Collyns, Charles

Sent: Tuesday, August 14, 2012 07:29 AM

To: Clunie, David; Hammerle, Barbara; Adeyemo, Adewale (Wally); Black, Laura; Strauss, Michael; Szubin, Adam; Murden, Bill; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel; Cushman, Benjamin; Amir-Mokri, Cyrus; Tessler, David; Reddington, Brandon; Thomas, Jonathan; Wood, Dennis; Lago, Marisa

Cc: Rosen, Katheryn; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera

Subject: Re: talking points (SBU)

Looping in Marisa too, since I am not directly involved. But I wonder if these TPs are not too narrow, focused on OFAC and standard chartered bank, rather than taking on the broader issues about US regulators raised by [REDACTED] with [REDACTED]?

----- Original Message -----

From: Clunie, David

Sent: Monday, August 13, 2012 06:30 PM

To: Hammerle, Barbara; Adeyemo, Adewale (Wally); Black, Laura; Strauss, Michael; Szubin, Adam; Murden, Bill; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel; Cushman, Benjamin; Collyns, Charles; Amir-Mokri, Cyrus; Tessler, David; Reddington, Brandon; Thomas, Jonathan; Wood, Dennis

Cc: Rosen, Katheryn; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera

Subject: RE: talking points (SBU)

Thanks Barbara and others in OFAC for drafting. I pasted these into a word document (attached) in case anybody wants to make edits in redline. My only suggestion would be to move the last point to the top, but I defer to the group.

We'll look out for other comments and clearance tonight, and if necessary, first thing tomorrow morning.

Thanks.

-----Original Message-----

From: Hammerle, Barbara

Sent: Monday, August 13, 2012 6:12 PM

To: Clunie, David; Adeyemo, Adewale (Wally); Black, Laura; Strauss, Michael; Szubin, Adam; Murden, Bill; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel; Cushman, Benjamin; Collyns, Charles; Amir-Mokri, Cyrus; Tessler, David; Reddington, Brandon; Thomas, Jonathan; Wood, Dennis

Cc: Rosen, Katheryn; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera

Subject: talking points (SBU)

These are the proposed points:

-- Treasury has a history of communicating with the FSA regarding open enforcement matters involving

UK-based financial institutions.

-- Treasury's OFAC and the FSA have been in contact regarding the ongoing investigation with respect to Standard Chartered Bank, and Treasury intends to keep FSA informed as the matter develops.

-- Treasury treats all domestic and foreign institutions being investigated for potential sanctions violations in the same manner, and there is no truth to the supposition that enforcement actions against British banks are motivated by a desire to undermine London as a premier global financial center.

-----Original Message-----

From: Adeyemo, Adewale (Wally)

Sent: Monday, August 13, 2012 4:29 PM

To: Black, Laura; Strauss, Michael; Szubin, Adam; Murden, Bill; Wyeth, Natalie; Douglass, Dora; Baker, Jeffrey; Jarpe, Rachel; Cushman, Benjamin; Collyns, Charles; Amir-Mokri, Cyrus

Cc: Rosen, Katheryn; Clunie, David; Bowler, Timothy; Rosenberg, Elizabeth; Fowler, Jennifer; Fazili, Sameera

Subject: Re:

I think we just need three high level points.

1. No they are not
2. We are treating institutions regardless of jurisdiction equally
3. We plan to continue working closely with your regulatory agencies.

Could you fill in some more detail. Would be great if you could get me something tonight or tomorrow morning.

Thanks,

Wally

Appendix 30

Email Regarding HSBC Settlement Timetable (August 24, 2012)

Szubin, Adam

From: Hammerle, Barbara
Sent: Saturday, August 25, 2012 9:25 AM
To: Wood, Dennis
Cc: Szubin, Adam; Smith, John; Thomas, Jonathan
Subject: Re: HSBC - settlement timetable

Thanks, and agree.

----- Original Message -----

From: Wood, Dennis
Sent: Saturday, August 25, 2012 07:29 AM
To: Hammerle, Barbara
Cc: Szubin, Adam; Smith, John; Thomas, Jonathan
Subject: Fw: HSBC - settlement timetable

Not pretty...

----- Original Message -----

From: Edna Young [mailto:██████████@fsa.gov.uk]
Sent: Saturday, August 25, 2012 05:50 AM
To: Wood, Dennis
Subject: Re: HSBC - settlement timetable

Dennis,

Thanks so much for giving me this fuller picture. I have told the other key members of the team on the HSBC case (Claire and Hannah are in the HSBC supervision team). If there is a call I would be included at our end anyway, as I co-ordinate across FSA. But I have to be out of the office on Tuesday afternoon our time, which may be when the call will be. Either way, FSA will be well represented.

If there are further developments before Tuesday, I would be really grateful if you could keep me in the loop. I won't be in the office on Monday (public holiday) but will have the BB with me.

Best,

Edna

----- Original Message -----

From: Dennis.Wood@██████████ <██████████>
To: Edna Young
Sent: Fri Aug 24 23:41:16 2012
Subject: RE: HSBC - settlement timetable

It's all a huge mess, Edna, which needs to be sorted out next week... We don't even have what we need from the bank to bring the case to closure and, to the extent that the Fed is relying on the data we passed to it, have not yet even made a determination about what items would be considered sanctions violations. There may be a "coordination" phone call on Tuesday (I notice that Claire Haydon and Hannah Saffer are on that email chain). If there is a call, should I insist that you be on the list?

Best,
- Dennis

-----Original Message-----

From: Edna Young [mailto:ma[REDACTED]@fsa.gov.uk]
Sent: Friday, August 24, 2012 2:06 PM
To: Wood, Dennis
Subject: HSBC - settlement timetable

Dennis,

We heard from the Fed today that they understand everything is in place for a global settlement very soon. The detailed timings they gave us suggested that DoJ would be sharing their documents (which they thought, but were not sure, would be a DPA) with HSBC today. The Fed also thought that OFAC were working to the same timetable. Can you confirm if that is right?

In terms of publication, we understood that all the US agencies were aiming to issue press releases simultaneously, possibly as early as the end of next week, but in any case no more than a few days later. Will you be able to send us your draft press release before it is issued? It was extremely helpful when you were able to do this in the Lloyds and Barclays cases. Is there any way you might be able to help us the DoJ documentation? I don't think we have the contacts with them that we had in the past.

Many thanks,

Edna

Edna Young
Strategy Specialist
Financial Crime and Intelligence Department Financial Services Authority

tel [REDACTED]
email [REDACTED]@fsa.gov.uk

PS Monday will be a public holiday in the UK. Normal service will be resumed on Tuesday.

This communication and any attachments contains information which is confidential and may be subject to legal privilege. It is for intended recipients only. If you are not the intended recipient you must not copy, distribute, publish, rely on or otherwise use it without our consent. Some of our communications may contain confidential information which it could be a criminal offence for you to disclose or use without authority. If you have received this email in error please notify postmaster@fsa.gov.uk immediately and delete the email from your computer.

The FSA reserves the right to monitor all email communications for compliance with legal, regulatory and professional standards.

This email is not intended to nor should it be taken to create any legal relations or contractual relationships. This email has originated from

The Financial Services Authority (FSA)
25 The North Colonnade,
Canary Wharf,
London
E14 5HS
United Kingdom

Registered as a Limited Company in England and Wales No.1920623.
Registered Office as above

Switchboard: 020 7066 1000

Web Site: <http://www.fsa.gov.uk>

Appendix 31

Email Regarding “Just for Your Awareness” (October 4, 2012)

From: [Wood, Dennis](#)
To: [Szubin, Adam](#); [Hammerle, Barbara](#)
Cc: [Smith, John](#)
Subject: Just for your awareness...
Date: Thursday, October 04, 2012 4:34:55 PM

Given the sensitivities regarding TFG and Osborne.

The FSA has been on all of the recent interagency calls regarding HSBC... It has not been on any interagency calls regarding SCB because the prosecutors have opposed its participation.

FRBNY, the FBG, and OFAC will be discussing SCB remediation with the FSA at the staff level tomorrow.

Appendix 32

Email Regarding Updated Secretary Travel Schedules (October 8, 2012)

From: [Wood, Dennis](#)
To: [Hammerle, Barbara](#)
Cc: [Szubin, Adam](#); [Smith, John](#); [Demske, Susan](#); [Tessler, David](#); [Hand, Tyler](#); [Tuchband, Matthew](#)
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5
Date: Monday, October 08, 2012 11:02:32 AM
Importance: High

K

Digging up the global settlement amounts on past cases. Once I incorporate those, you'll have a final doc...

Thanks,
- Dennis

From: Hammerle, Barbara
Sent: Monday, October 08, 2012 11:00 AM
To: Wood, Dennis
Cc: Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Hand, Tyler; Tuchband, Matthew
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

This is fine as is.

One nit -- remove the quote marks around "guilty plea"

On item 1 below, resolve as you think appropriate

Item 2, so be it

Item 3, got it

From: Wood, Dennis
Sent: Monday, October 08, 2012 10:45 AM
To: Hammerle, Barbara
Cc: Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Hand, Tyler; Tuchband, Matthew
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Barbara,

- (1) "less than Credit Suisse (mention dollar figure) and ING (mention dollar figure)" ~ Our figure or the global?
- (2) This memo needs to be concise, but can we briefly explain why there are three separate federal settlements for HSBC? That is a likely question. ~ OFAC doesn't have the answer to that... Aside from AML vs Sanctions, SC&E finds it to be troubling...
- (3) Finally, should we note that FSA is not part of the HSBC criminal discussions? ~ FSA has been on the phone for the criminal discussions. That's what has caused the latest firestorm. The contents of that discussion are included in the Chancellor's letter.

How would you like us to handle those items? The other edits are attached as well as edits from Brandon.

Thanks!

- Dennis

From: Hammerle, Barbara
Sent: Monday, October 08, 2012 9:46 AM
To: Wood, Dennis
Cc: Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Hand, Tyler; Tuchband, Matthew
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

This reads very well. Thanks for all this work on a holiday weekend. A few comments and nits:

Comment DM1 has a typo ("than" should be "then this is accurate")

Should we mention SCB was more forthcoming with prosecutors, if this is correct?

"less than Credit Suisse (mention dollar figure) and ING (mention dollar figure)"

"We are unable to control DFS" -- change to something like, "DFS acts independently of federal control"

Show a transition from SCB to HSBC paragraphs: "As to HSBC, it will face . . ."

This memo needs to be concise, but can we briefly explain why there are three separate federal settlements for HSBC? That is a likely question.

Finally, should we note that FSA is not part of the HSBC criminal discussions?

Thanks.

From: Wood, Dennis
Sent: Monday, October 08, 2012 04:06 AM
To: Hammerle, Barbara
Cc: Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Hand, Tyler; Tuchband, Matthew
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Barbara, here are the cumulative SC&E changes to the doc from myself, Laura, Mike, and Alex... (I had already sent you my initial edits as well as Laura's. This doc builds on those). There's a possibility Brandon may catch a few nits when he gets into the office this morning. At your discretion, this could be used as the new base doc.

Thanks,

- Dennis

From: Tuchband, Matthew
Sent: Sunday, October 07, 2012 11:39 PM
To: Wood, Dennis; Hammerle, Barbara; Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Hand, Tyler
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

Again, just adding Tyler to the latest emails.

From: Wood, Dennis
Sent: Sunday, October 07, 2012 06:36 PM
To: Hammerle, Barbara; Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Tuchband, Matthew
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

I'll have folks on site in the AM. Apparently DORA is malfunctioning for some.

From: Hammerle, Barbara
Sent: Sunday, October 07, 2012 6:30 PM
To: Wood, Dennis; Szubin, Adam; Smith, John; Demske, Susan; Tessler, David; Tuchband, Matthew
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

Dennis,

Based on the various phone calls, can you all give more clarity on the payment structure:

"HSBC will almost certainly face a record-breaking fine, mainly due to its egregious violations of anti-money laundering laws. In addition, the HSBC settlement/forfeiture may include stand-alone payments to DOJ and the NY DA in addition to a resolution with FinCEN/OCC, and a separate resolution with the Fed (??). That said, USG authorities believe that the conduct at issue in HSBC was qualitatively worse than those of the largest offenders to date, and warrants a commensurate penalty. (FinCEN to add a sentence on the biggest distinguishing factors??)"

Barbara

From: Wood, Dennis
Sent: Sunday, October 07, 2012 06:12 PM
To: Szubin, Adam; Hammerle, Barbara; Smith, John; Demske, Susan; Tessler, David; Tuchband, Matthew
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

SC&E is on it, Adam. I already started editing and reached out urgently to the rest of the team...

From: Szubin, Adam
Sent: Sunday, October 07, 2012 05:31 PM

To: Jensen, Joseph (Andrew); Hammerle, Barbara; Shasky, Jennifer; Alvarado, Peter; Smith, John; Demske, Susan; Wood, Dennis; Tessler, David; Buffardi, Michael; Steele, Charles; Tuchband, Matthew
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: Re: Updated Secretary Travel Schedules to India and Japan Oct. 5

We were asked last week whether fincen or ofac saw concerns with taking this mtg and jen and I said no. I offered that we could draft pts if there was a desire, but no one replied. In any case, here's a start at a memo, with an attached summary of the 2 cases. These will need work from ofac and a bunch of input from fincen, but I will be offline until tues night, and I think this will need to be sent to execsec by monday afternoon, so I wanted to share a draft of what this might look like. I have no pride of authorship, so please edit away.

From: Jensen, Joseph (Andrew)
Sent: Saturday, October 06, 2012 08:25 AM
To: Szubin, Adam; Hammerle, Barbara; Shasky, Jennifer; Alvarado, Peter; Smith, John; Demske, Susan; Wood, Dennis; Tessler, David; Buffardi, Michael
Cc: Fowler, Jennifer; O'Reilly, DeAnna
Subject: Fw: Updated Secretary Travel Schedules to India and Japan Oct. 5

I don't think I saw email traffic on this so I apologize if I am double tracking. It looks like TFG will meet with George Osborne on the margins of Bank/Fund. Are OFAC and FinCEN preparing points on SCB and HSBC for this memo? Thanks!

From: Maher, Mike
Sent: Saturday, October 06, 2012 07:19 AM
To: Jensen, Joseph (Andrew); Fowler, Jennifer
Subject: Fw: Updated Secretary Travel Schedules to India and Japan Oct. 5

See below re need for talking points. Jen and Adam said they would prep but not sure anyone driving it from your office. Have a great weekend.

From: Das, Himamauli
Sent: Friday, October 05, 2012 07:59 PM
To: Maher, Mike
Subject: Fw: Updated Secretary Travel Schedules to India and Japan Oct. 5

Mike, Pls see below. Following up on Std Chartered and HSBC. Adam volunteered FinCEN and OFAC to draft points on a mtg b/w TFG and OFAC, but not sure if there was follow-up. Could you pls loop then in on request.

Thanks, Him

From: Fazili, Sameera

Sent: Friday, October 05, 2012 07:51 PM
To: Sobel, Mark; Jarpe, Rachel; Douglass, Dora; Baker, Jeffrey; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Thx for that update

Ok to let Him coordinate on that. No need for you to circulate it Rachel

From: Sobel, Mark
Sent: Friday, October 05, 2012 7:50 PM
To: Fazili, Sameera; Jarpe, Rachel; Douglass, Dora; Baker, Jeffrey; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Ok

Him Das as I understand it is coordinating TFI/OFAC/GC input. Happy for TFI to clear.

Rachel – can you make sure they have it. Thanks.

From: Fazili, Sameera
Sent: Friday, October 05, 2012 7:46 PM
To: Jarpe, Rachel; Douglass, Dora; Sobel, Mark; Baker, Jeffrey; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Please have TFI clear as well. Szubin's shop I believe but you or Mark/Bill may know better.

From: Jarpe, Rachel
Sent: Friday, October 05, 2012 5:43 PM
To: Douglass, Dora; Sobel, Mark; Fazili, Sameera; Baker, Jeffrey; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

I've asked the Banking Office, AGC, the Middle East Office, and Tax Policy for talking points. I told them it was OK to get them to me on Tuesday.

From: Douglass, Dora
Sent: Friday, October 05, 2012 5:41 PM
To: Sobel, Mark; Fazili, Sameera; Baker, Jeffrey; Murden, Bill; Jarpe, Rachel
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Looping in Rachel.

From: Sobel, Mark
Sent: Friday, October 05, 2012 5:40 PM
To: Fazili, Sameera; Baker, Jeffrey; Douglass, Dora; Murden, Bill
Cc: Huot, Lyndsay; Strauss, Michael; Das, Himamauli
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Bill went home sick.

Guess you'll have to deal with me. But I'm adding Him Das for obvious reasons too.

From: Fazili, Sameera
Sent: Friday, October 05, 2012 5:36 PM
To: Baker, Jeffrey; Douglass, Dora; Murden, Bill; Sobel, Mark
Cc: Huot, Lyndsay; Strauss, Michael
Subject: Fw: Updated Secretary Travel Schedules to India and Japan Oct. 5

Need osbourne bilat briefer.

Banking should add points

(Murden, lh or i can give you the guidance on banking. She wants you to add things from today's meeting)

From: Passeri, Carlo
Sent: Friday, October 05, 2012 05:09 PM
To: Zwart, Breanna; Herr, Julie; Hipple, Elizabeth; Morrison, Emily; Reese, Natalie; White, Antonio; Shah, Bhumi; Garner, Brody; McDonald, Gordon; Gathers, Shirley; Matera, Cheryl; Adeyemo, Adewale (Wally); LeCompte, Jenni; Earnest, Natalie W.; Alaimo, Kara; Patterson, Mark (DO); Coffman, Robert; Hunt, Anita Maria; Slomiany, Hanna; Mandelker, Lauren; IOC- Intelligence Operations Center (WATCHOFFICE); TOC; TELOPERATORS; Hopkins, Marissa; Coley, Anthony; ExecSecStaff; Babb, Bruce; Blanton, Eric; IAtasking; Kaczmarek, Matthew; TFItasking
Cc: Fazili, Sameera; Huot, Lyndsay; Strauss, Michael
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Looping in Sameera, Lyndsay and Michael

FYI – new bilat with George Osborne is now on the schedule ahead of Draghi on Thursday.

FYI – de Guindos bilat now confirmed for Friday ahead of Siluonov bilat.

From: Zwart, Breanna
Sent: Friday, October 05, 2012 3:21 PM
To: Zwart, Breanna; Herr, Julie; Hipple, Elizabeth; Morrison, Emily; Reese, Natalie; White, Antonio; Shah, Bhumi; Garner, Brody; McDonald, Gordon; Gathers, Shirley; Matera, Cheryl; Adeyemo, Adewale (Wally); LeCompte, Jenni; Earnest, Natalie W.; Alaimo, Kara; Patterson, Mark (DO); Coffman, Robert; Hunt, Anita Maria; Slomiany, Hanna; Mandelker, Lauren; IOC- Intelligence Operations Center (WATCHOFFICE); TOC; TELOPERATORS; Hopkins, Marissa; Coley, Anthony; ExecSecStaff; Babb, Bruce; Blanton, Eric; IAtasking; Kaczmarek, Matthew; TFItasking
Subject: RE: Updated Secretary Travel Schedules to India and Japan Oct. 5

Please find attached updated schedules for the Secretary's upcoming travel. We will send another version schedule before wheels up. On the India schedule, the Prime Minister's meeting is still not confirmed.

Best,

Breanna

Appendix 33

Email from Jonathan Thomas Regarding HSBC (August 15, 2012)

From: [Szubin, Adam](#)
To: [Thomas, Jonathan](#); [Wood, Dennis](#)
Cc: [Hammerle, Barbara](#); [Smith, John](#)
Subject: Re: HSBC
Date: Wednesday, August 15, 2012 9:04:42 PM

Supremely helpful. Thank you Jonathan.

----- Original Message -----

From: Thomas, Jonathan
Sent: Wednesday, August 15, 2012 08:54 PM
To: Szubin, Adam; Wood, Dennis
Cc: Hammerle, Barbara; Smith, John
Subject: Re: HSBC

Assuming the preliminary estimate of 2,500 apparent violations declines slightly as we review and eliminate transactions, and the case remains egregious (which HSBC appears willing to concede), then the statutory maximum would be just over \$550 million. The remaining very significant factor would be whether or not case was voluntarily self-disclosed, but that is not a determination we've made yet. If it is not a VSD, and we extend similar mitigation credit to what we've done in past cases, then AFMLS' number is probably right on. If it turns out to be a VSD, then our base penalty number would be halved.

As for timing, the documents are not yet with Counsel for review, but the bank is very motivated to settle, and we are expediting within Compliance.

----- Original Message -----

From: Szubin, Adam
Sent: Wednesday, August 15, 2012 08:27 PM
To: Wood, Dennis; Thomas, Jonathan
Cc: Hammerle, Barbara; Smith, John
Subject: Fw: HSBC

See below q. Do we even have a basis to come to an estimate?

----- Original Message -----

From: Shasky, Jennifer [<mailto:Jennifer.Shasky@usdoj.gov>]
Sent: Wednesday, August 15, 2012 05:43 PM
To: Szubin, Adam
Subject: HSBC

We are preparing to potentially share a statement of facts with HSBC's counsel next week. Can you tell us where you are on your timing and number?

We are thinking of a number in the \$375 million range (although we have yet to talk to DANY, EDNY, our or bosses about it). Can you give us an estimate of where you think you guys might land?

Appendix 34

Letter from Chairmen Hensarling and McHenry to Attorney General Holder (June 10, 2013)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 10, 2013

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

We write to express our deep disappointment that the Department of Justice has not timely produced certain documents requested by the Committee on Financial Services ("the Committee") as requested in our letter of March 8, 2013. As you know, we requested these documents to better understand your public statements that the Justice Department considers the size of a financial institution when deciding whether to prosecute. The requested documents fall squarely within the Committee's jurisdiction relating to the application of financial services laws and the possible need to legislate in these areas. Accordingly, we respectfully insist that the Justice Department respond to the Committee's March 8, 2013 letter by producing all requested documents without delay and providing written certification that it has conducted an appropriate search to identify all such documents in its possession.¹ If it is the Justice Department's position that it will not produce records related to certain "pending" matters, please provide a log that describes each and every withheld record that is responsive to the Committee's March 8, 2013 letter.²

Please provide responses as requested in this letter as soon as practicable but not later than June 24, 2013. Any questions regarding this request should be directed to Joseph Clark of the Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services



PATRICK McHENRY
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Maxine Waters
The Honorable Al Green

¹ Among other things, the Committee's March 8, 2013 letter requests the production of any records related to the economic impact on the financial system of the United States of any actual or potential prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party. Thus, a document would be responsive if it related to the economic impact of prosecuting such an institution, whether or not any understanding about that impact proximately influenced the Justice Department's decision-making in a particular case.

² In requesting such a "withheld documents log," the Committee does not agree that the Justice Department has identified a constitutionally-sufficient basis on which it may decline to produce the records sought by the Committee. Accordingly, the Committee reserves the right to request any such records in the future and/or to obtain the records by compulsory process.

Appendix 35

Letter from Chairman McHenry to Attorney General Holder (August 27, 2013)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

August 27, 2013

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

This is in response to the Department of Justice's letters of July 26, 2013 and August 2, 2013, relating to the Committee on Financial Services' ongoing investigation of the Justice Department's prosecutorial decision-making in cases involving large, complex financial institutions. The Committee has repeatedly requested that the Justice Department produce, among other things, "all records related to the economic impact on the financial system of the United States of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has or may be a party[.]"¹ In its August 2nd letter, the Justice Department represented to the Committee that it "has not located decision-making memoranda in closed matters that included . . . discussion or references" to the potential economic impact of law enforcement actions against financial institutions. In addition, the Justice Department characterized a matter involving HSBC Bank USA, N.A. and HSBC Holdings PLC (collectively, "HSBC") as "pending" and represented that it is "limited" in its ability to discuss that case.

Based on its August 2nd letter, the Justice Department is evidently refusing to provide the Committee with any records relating to economic analysis performed by or provided to the Department in the HSBC matter. In particular, the Justice Department has asserted that it is "vitally important" to keep such records confidential to the extent that they reflect economic analysis provided by outside domestic or foreign regulators; providing such information, the Department has claimed, would impair "the continued free-flowing and candid exchange of views that it has had with its regulatory colleagues" and would pose "unacceptable" risks to the Department's law enforcement efforts. The Justice Department has further represented that it could not produce responsive records provided by HSBC itself, stating that, "consistent with the interests underlying Federal Rule of Criminal Procedure 11 and Federal Rule of Evidence 410, and in order to encourage frank and open communications that are critical to the Department's ability to exercise its law enforcement responsibilities, the Department treats as confidential discussions with and advocacy presentations by representatives of subject corporations."

Because the President has not invoked "presidential communications privilege" (otherwise known as "executive privilege") with respect to the records sought by the Committee, this is to inform you that the Justice Department has not stated a basis on which it may withhold records from the Committee. I first address the Justice Department's assertion that it cannot provide records derived from its discussions with HSBC because doing so would impair

¹ Letter from the Hon. Jeb Hensarling and Patrick McHenry to the Hon. Eric Holder, March 8, 2013.

interests protected by certain federal procedural and evidentiary rules. Next, I address the Justice Department's assertion that providing the requested records would impair the Department's communications with regulators and/or its law enforcement function. I then address the Justice Department's July 26, 2013 letter, objecting to the production of information relating to certain meetings with financial institutions referenced by former Assistant Attorney General Lanny Breuer. I conclude by renewing our demand that the Justice Department make available all requested records and information without delay.

I. Federal Rule of Criminal Procedure 11 and Federal Rule of Evidence 410

Rule 11 of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence do not limit the circumstances in which the Justice Department can produce information to Congress, either expressly or by implication. Rule 11 governs court approval of a plea agreement while Rule 410 governs the extent to which evidence relating to such an agreement is admissible against the defendant in a civil or criminal trial. By their plain terms, the rules do not prohibit or otherwise condition the release of information to Congress or its committees. In addition, Rules 11 and 410 do not impliedly bar disclosure of records to Congress. A statute does not restrict Congress's constitutionally-grounded right to investigate unless the statute does so unambiguously.² Far from containing a clear statement, Rules 11 and 410, which were adopted pursuant to the Rules Enabling Act or were otherwise directly enacted by Act of Congress, are completely silent on the subject of congressional access to information.

Producing the requested records would not undermine the purposes of Rules 11 and 410 of facilitating plea negotiations by protecting defendants from the adverse use of statements made during such negotiations if a plea agreement is not reached or a plea is withdrawn.³ Indeed, these rules are so inapposite to the Committee's request that I can only conclude that the Justice Department's reliance on them constitutes nothing more than a transparent effort to delay producing responsive records to this Committee.⁴

II. Deliberative Process and Other Claims

In its letter, the Justice Department appears to make a deliberative process claim ("Disclosure . . . would undoubtedly have a substantial chilling effect on the willingness of regulators to

² "Congressional Oversight Manual," Congressional Research Service at 69 (2013) ("According to the courts, to the extent that Congress seeks to enact a self-imposed bar on its ability to access information, it cannot do so by implication").

³ *United States v. Barrow*, 400 F.3d 109, 116 (2d Cir. 2005).

⁴ For example, the Justice Department has failed to demonstrate how producing the requested records would chill communications between it and defendants by making it more likely that statements made during plea negotiations could be used against the defendant in the event a plea is withdrawn or an agreement is not reached. This is perhaps not surprising; the Justice Department cannot plausibly make this claim because statements made during failed plea negotiations are not automatically made admissible into evidence against the defendant by virtue of the fact of their production to congressional committees. In fact, because Rule 410 remains the law, records of any such statements produced to committees would be admissible as evidence only if permitted by the rule. Defendants' incentives under the rule are therefore preserved intact. *Cf. United States v. Testa*, 33 F.3d 747, 751-752 (7th Cir. 1994) (rejecting claim that introducing evidence of plea negotiation in case against third party had impermissible chilling effect on plea negotiations between defendant and government).

provide us with . . . input in the future”) and also argues that producing the requested records could impair the Executive’s ability to perform its constitutional duties (“frank and open communications [are] critical to the Department’s ability to exercise its law enforcement responsibilities”). First, the Committee disagrees that providing the requested records would have a “chilling effect” on communications between the Justice Department and regulators. As part of its investigation, the Committee requested that several government authorities provide their communications with the Justice Department relating to this matter; they have promptly and fully complied with the Committee’s requests, suggesting that the Department’s fears of a chilling effect are not well-founded. Second, congressional committees do not recognize deliberative process claims as sufficient to override their own constitutionally-grounded right to investigate matters within the legislative power of Congress.⁵ The Committee’s authority to require the production of information in circumstances like those presented here — an investigation relating to the administration of existing financial services laws as well as proposed or possibly needed statutory remedies — is well settled.⁶ Third, producing the requested records would not inhibit the Justice Department’s law enforcement efforts. In approving the Deferred Prosecution Agreement (“DPA”) entered into by the Justice Department with HSBC, the U.S. District Court for the Eastern District of New York observed that it could not compel the Department to continue its prosecution of HSBC upon rejecting the DPA.⁷ Similarly, the Committee’s review of the requested records could not force the Justice Department’s hand with respect to prosecuting a case, settling the matter, or terminating an investigation before bringing a case; the Department therefore retains full discretion to discharge its constitutional duties as it deems appropriate notwithstanding the Committee’s investigation.

III. The Justice Department’s July 26, 2013 Letter

In its letter dated July 26, 2013, the Justice Department refused to provide the Committee with the “dates and attendees of meetings between Department prosecutors and representatives of subject financial institutions [referred to by former Assistant Attorney General Lanny Breuer in a September 13, 2012 speech], at which the institutions’ representatives addressed the potential collateral consequences of an indictment against their client,” arguing that it would be “virtually impossible” to identify such dates and attendees. The Justice Department further refused to provide the requested information on the ground that it treats such information as confidential “consistent with the interests underlying Federal Rules of Criminal Procedure 11 and Federal Rule of Evidence 410, and in order to encourage frank and open communications which are critical to the Department’s ability to exercise its law enforcement responsibilities[.]” First, the Committee disagrees that it is not possible to identify responsive information by examining pertinent records in the

⁵ See, e.g., *Mercury Pollution and Enforcement of the Refuse Act of 1899: Hearings Before the Subcomm. On Conservation and Natural Resources of the House Comm. On Government Operations*, Part I, 92d Cong., 1st Sess. 26, 1208 (1971) (“You do not have any absolute right to withhold information from the Congress, under any conditions, if we want it. We can give you that right by statute, and then you do, but you do not otherwise have it”) (statement of subcommittee chairman).

⁶ *Watkins v. United States*, 354 U.S. 178, 187 (1957); Rules of the House of Representatives, 113th Congress, Rule X (delimiting Committee’s jurisdiction) and Rule XI (conferring House’s subpoena power on Committee).

⁷ *United States v. HSBC USA, N.A. and HSBC Holdings PLC*, 12-cr-763-JG, slip op. at 14 (E.D.N.Y. July 1, 2013).

8/27/2013

Department's possession and consulting current or former Department personnel. Second, the Committee disagrees that providing the requested information would undermine the purposes of Rules 11 and 410, or would otherwise inhibit the Justice Department's law enforcement efforts, for the same reasons as set forth in the preceding sections above.⁸

IV. Conclusion

In light of the foregoing, the Committee renews its demand that the Justice Department make available for review all records and information that are responsive to the Committee's requests.

Please produce all responsive records and information as soon as practicable but not later than September 10, 2013. If you have questions regarding this request, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



PATRICK McHENRY

Chairman

Subcommittee on Oversight
and Investigations

cc: The Honorable Al Green, Ranking Member

⁸ The rules relied upon by the Justice Department do not afford a general right of confidentiality with respect to the meetings referenced by Mr. Breuer. *See, e.g., United States v. Testa*, 33 F.3d at 751-752, *supra* Footnote 4 (affirming lower court's order providing for the introduction into evidence of plea bargain negotiations). Rules 11 and 410 do not govern the release of information to Congress, and the Justice Department fails to demonstrate how providing the requested information would undermine plea negotiations by allowing for the adverse use of such information against the defendant. Moreover, the Justice Department cannot reasonably claim that providing the requested information would inhibit its prosecutorial decision-making in criminal matters. As indicated previously, parties remain free to discuss the potential collateral consequences of an indictment with the Justice Department without fear that such discussions will be used against them in litigation, provided that such discussions take place during "plea negotiations." Fed. R. Evidence 410. The Committee's investigation of this matter in no way bears on the Justice Department's discretion to dispose of cases as it sees fit.

Appendix 36

Letter from Chairmen Hensarling and McHenry to Attorney General Holder (March 25, 2014)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 25, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

Over the course of the last year, the Committee on Financial Services has investigated whether the Department of Justice ("Department") has settled or otherwise declined to prosecute criminal matters involving large financial institutions due to concerns that any prosecution could impair the financial system's ability to provide essential functions and services. The Department has failed to provide records as requested by the following:

- 1) Letter from Chairmen Hensarling and McHenry to the Attorney General dated March 8, 2013; and
- 2) Letter from Chairman McHenry to the Attorney General dated August 21, 2013.

In addition, the Department has failed to provide written answers to questions posed by the following:

- 1) Letter from Chairman McHenry to the Attorney General dated April 3, 2013;
- 2) Letter from Chairman McHenry to the Attorney General dated June 7, 2013; and
- 3) Letter from Chairman McHenry to the Attorney General dated August 21, 2013.

Finally, the Committee has investigated the proposed issuance of a high denomination platinum coin to cover the costs of U.S. government obligations in the event of a failure to raise the federal debt ceiling. Unfortunately, the Department has failed to provide records relating to this issue as requested by the Committee in a letter dated December 20, 2013 from Chairmen Hensarling and McHenry to you.

By not later than April 8, 2014, please provide the records and written responses that the Committee is seeking. Any failure by the Department to produce the requested materials would frustrate the Committee's legitimate oversight efforts and impair the separation of powers by depriving Congress of information necessary to the exercise of the legislative power. Accordingly, if the Department does not comply with this request, the Committee will authorize and issue a subpoena *duces tecum* to compel the production of the requested records. In addition, the Committee will authorize and issue a subpoena *ad testificandum* to compel the testimony of the Deputy Attorney General (and all other appropriate Departmental witnesses) concerning the questions posed by the Committee's

The Honorable Eric H. Holder
Page 2
March 25, 2014

letters, the records requested therein, and any other matters deemed appropriate and within the Committee's jurisdiction.

If you have questions regarding this matter, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,


JEB HENSARLING
Chairman


PATRICK McHENRY
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Maxine Waters,
Ranking Member

The Honorable Al Green
Ranking Member
Subcommittee on Oversight and Investigations

Appendix 37

Letter from Chairmen Hensarling and McHenry to Attorney General Holder (May 23, 2014)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

May 23, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

This is to inform you that on Thursday, May 29, 2014, the Committee on Financial Services will meet to authorize the issuance of subpoenas to compel the production of outstanding documents as identified by the Committee by letter dated March 25, 2014. Please advise whether the Department is prepared to produce the documents as requested by no later than 5:00 p.m. on Wednesday, May 28, 2014. If you have questions regarding this matter, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services



PATRICK McHENRY
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Maxine Waters
The Honorable Al Green

Appendix 38

Letter from Chairman McHenry to Attorney General Holder (December 5, 2014)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

December 5, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

Honoring a commitment to provide requested records¹ and information is an inherent responsibility of executive branch representatives testifying before Congress. Our records indicate that the U.S. Department of Justice ("DOJ") has not provided the following records or information requested by Members of the Subcommittee on Oversight and Investigations at two hearings held on May 22, 2013² and July 15, 2014³:

1. An accounting of the number of lawyers employed at DOJ during the 1980s Savings and Loans crisis versus the number working there today.⁴
2. All records relating to the economic impact on the U.S. financial system of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party, including, without limitation, records in the nature of analysis, forecasts, legal or other memoranda, and correspondence, whether or not actually prepared by Ms. Mythili Raman, Acting Assistant General, Criminal Division, DOJ, or any other individual employed by, or working on behalf of, DOJ.⁵
3. A complete list of cases, both open and closed, in the past ten years in which a financial institution ever engaged in such egregious, orchestrated, and

¹ The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

² Oversight and Investigations hearing entitled "Who is Too Big to Fail: Are Large Financial Institutions Immune from Federal Prosecution?" (May 22, 2013), available at <http://financialservices.house.gov/uploadedfiles/113-25.pdf>.

³ Oversight and Investigations hearing entitled "The Department of Justice's 'Operation Choke Point'" (July 15, 2014), available at <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=387064>.

⁴ See note 2, *supra* during questioning by Representative Keith Ellison of Ms. Mythili Raman, Acting Assistant Attorney General, Criminal Division, DOJ, p. 12.

⁵ *Id.* during questioning by Representative Ann Wagner of Ms. Raman, p. 24; See letter from the Hon. Patrick McHenry, Chairman, Oversight & Investigations, to Jacob Lew, Treasury Secretary, and Eric Holder, U.S. Attorney General, (March 8, 2013).

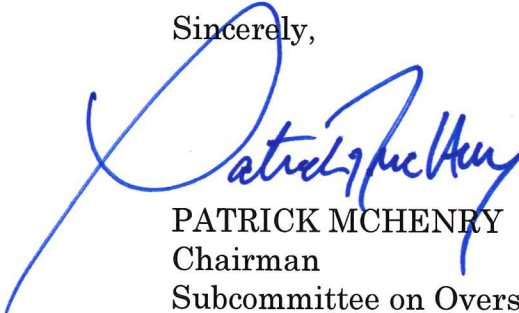
The Hon. Eric Holder
December 5, 2014
Page 2

widespread criminal conduct as to merit prosecution.⁶ (With regard to the closed files, please identify and describe any case involving a financial institution where, due to collateral damage, DOJ did not assert the strongest possible charges or impose the maximum possible penalty).⁷

4. Please confirm whether or not cases settled through DOJ's "Operation Choke Point" contribute to DOJ's "three percent fund," and, if so, the exact quantity of settlements to date as well as the dollar amount that has gone into the fund.⁸

Please provide all requested records and information by no later than 5:00 p.m. on Friday, December 19, 2014. Any questions regarding this request should be directed to Katelyn Christ of the Majority staff at (202) 225-7502.

Sincerely,



PATRICK MCHENRY
Chairman
Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member

⁶ *Id.* during questioning by Representative Randy Hultgren of Ms. Raman, p. 34.

⁷ *Id.* during questioning by Representative Brad Sherman of Ms. Raman, p. 38.

⁸ *See* note 3, *supra*, during questioning by Representative Michael Fitzpatrick of the Hon. Stuart Delery, Assistant Attorney General, DOJ, p. 18.

Appendix 39

Letter from Chairman Hensarling to Attorney General Holder (March 10, 2015)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

March 10, 2015

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

The Department of Justice (Department) has not complied with the following information requests from the Committee on Financial Services (Committee):

1. Letter from Chairmen Hensarling and McHenry dated March 8, 2013.
2. Letter from Chairman McHenry dated August 21, 2013.
3. Letter from Chairman McHenry dated May 27, 2014.

Your failure to comply with these requests constitutes the improper withholding of information that will aid the Committee's examination of the operation and effectiveness of laws or programs within the Committee's jurisdiction. To allow the Committee to fulfill its oversight responsibilities under the House Rules,¹ please provide the Committee with unredacted copies of all previously requested records by March 24, 2015.² If you do not fully comply with this request by the specified date, I will authorize and issue a subpoena *duces tecum* to compel the production of the requested information pursuant to Committee Rule 3.

If you have any questions regarding this request, please contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services

cc: The Hon. Maxine Waters, Ranking Member

¹ Rule X, Rules of the House of Representatives, 114th Cong.

² The Committee will not consider the Department's production as complete until a representative of the Department certifies in writing that the Department conducted a search reasonably calculated to locate all responsive records and that the Department produced to the Committee all known responsive records in its or any agent's custody or control. In addition, the Department's obligation to produce records is continuing in nature; if, after tendering the written certification required herein, the Department becomes aware of any responsive record in its or any agent's custody or control, the record should be promptly produced.

Appendix 40

Letter from Assistant Secretary Fitzpayne to Chairman Hensarling (March 28, 2013)



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

March 28, 2013

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hensarling:

I am writing in response to your recent letter to Secretary Lew regarding criminal prosecutions of large financial institutions. We appreciate your interest in these important issues. As Under Secretary Cohen testified before the Senate Banking Committee, the Department of the Treasury strongly supports vigorous enforcement of the law.

Treasury believes that no individual or institution is above the law. Although Treasury does not have statutory authority to prosecute criminal misconduct—that authority rests exclusively with the Department of Justice (DOJ)—we do have authority to enforce U.S. economic sanctions, as well as certain anti-money laundering laws and regulations, through civil actions. Treasury has a clear record of aggressively pursuing investigations and enforcement actions against both U.S. and foreign financial institutions that violate those laws and regulations. For example, over the past year, Treasury's Office of Foreign Assets Control and its Financial Crimes Enforcement Network entered into record-setting civil settlements with various financial institutions for violations of U.S. sanctions programs and the Bank Secrecy Act, respectively.

Treasury also has key responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act is designed to make sure American taxpayers never again have to rescue large financial firms. It provides regulators with critical tools and authorities—which did not exist before the financial crisis—including authorities to resolve large firms whose failures would have serious adverse effects on financial stability. The Act expressly prohibits taxpayer bailouts, while protecting American taxpayers and the U.S. economy. Treasury is committed to this purpose, and we will continue to work with the independent regulators to finish implementing the Act.


Your letter specifically inquires about economic analyses that the DOJ may have relied upon to make prosecutorial decisions in cases involving large, complex financial institutions. We have conducted a search of Treasury records and have not identified any such analyses. We have identified, however, an analysis that was prepared in a context unrelated to the HSBC matter—an informal presentation prepared by staff of a Financial Stability Oversight Council (FSOC)

member agency for the Deputies Committee of the FSOC that describes the potential impact on the financial system of certain recent regulatory investigations. The presentation was not provided to the DOJ nor to the FSOC, and it was prepared more than two months after the first civil settlement of those investigations was announced. The document contains market-sensitive information, but we are prepared to make it available for review by you or your staff. Please contact me to arrange a convenient time for such a review.

In addition, your letter seeks similar records generated by the Office of the Comptroller of the Currency (OCC). We have not identified any such records in our possession. As you know, the OCC is a bureau of Treasury, but it operates independently in its role as a financial regulator.

Thank you for your letter. We look forward to working with you and the Committee on these important issues.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alastair Fitzpayne". The signature is fluid and cursive, with the first name "Alastair" being more prominent than the last name "Fitzpayne".

Alastair M. Fitzpayne
Assistant Secretary for Legislative Affairs

Identical letter sent to:
The Honorable Patrick McHenry

cc: The Honorable Maxine Waters
The Honorable Al Green
The Honorable Eric Holder

Appendix 41

Letter from Assistant Secretary Fitzpayne to Chairman McHenry (May 10, 2013)



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

May 10, 2013

The Honorable Patrick McHenry
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McHenry:

I am writing in response to your recent letter to Secretary Lew regarding economic analyses relied upon by the Department of Justice (DOJ) in criminal cases involving large, complex financial institutions. We appreciate your continued interest in these important matters. As we noted in previous correspondence, however, we have not identified any analyses prepared by the Department of the Treasury for the DOJ regarding the potential prosecution of large, complex financial institutions.

The DOJ has exclusive statutory authority to prosecute criminal misconduct. Nonetheless, Treasury believes that no individual or institution is above the law. Treasury has authority to enforce U.S. economic sanctions, as well as certain anti-money laundering laws and regulations, through civil actions. And we have a clear record of aggressively pursuing investigations and enforcement actions in those areas.

Your letter references recent testimony by Treasury Under Secretary David Cohen before the Senate Judiciary Committee. In response to questions about DOJ's investigation of HSBC, Under Secretary Cohen stated:

[T]he Justice Department contacted us, asked whether we could provide guidance on what the impact to the financial system may be of a criminal disposition in the HSBC case. We informed the Justice Department that given the complexity of the potential dispositions, given the fact that we're not the prudential regulator, given the fact that we're not privy to the different charges that the Justice Department may bring and we're not privy to the responses that the regulators may have to the variety of different ways that the Justice Department may resolve the case, that we were not in a position to offer any meaningful guidance to the Justice Department in that matter.

Your letter asks us to identify the offices within Treasury that “were involved in conducting the requested analysis” for the DOJ. As Under Secretary Cohen noted above, Treasury considered DOJ’s request and concluded that we could not offer any meaningful guidance. Treasury did not conduct any economic analysis regarding a potential criminal prosecution of HSBC, nor did we provide any such analysis to the DOJ.

Thank you for your letter. Treasury strongly supports vigorous enforcement of the law, and we look forward to working with you in the future.

Sincerely,



Alastair M. Fitzpayne
Assistant Secretary for Legislative Affairs

cc: The Honorable Al Green

Appendix 42

Letter from Chairman McHenry to Secretary Lew (June 7, 2013)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 7, 2013

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

I write today to obtain additional information about the analyses relied upon by the Justice Department and other federal authorities in making prosecutorial and/or enforcement decisions in cases involving large, complex financial institutions.

As you know, on December 28, 2012, pursuant to the Freedom of Information Act (P.L. 89-487) ("FOIA"), the advocacy group Public Citizen requested that the Treasury Department disclose certain records related to the Justice Department's investigation of HSBC Holdings plc and HSBC Bank USA, N.A. (collectively, "HSBC") for violations of federal anti-money laundering laws and related offenses. Specifically, Public Citizen requested that the Treasury Department produce records related to whether the Justice Department declined to prosecute HSBC because of the adverse economic effects that could flow from a conviction. Recently, the Treasury Department produced certain records in partial response to Public Citizen's FOIA request.

The records produced by the Treasury Department may be responsive to this Subcommittee's March 8, 2013 letter to you and Attorney General Holder. That letter requested, among other things, records related to the economic impact of prosecutions or other actions in matters in which large financial institutions have been or may be parties, as well as records related to any request that the Justice Department consider the economic consequences of its prosecutive decisions in matters involving such entities. In particular, though heavily redacted, the records released to Public Citizen show that Treasury Department officials understood the nature and seriousness of the criminal activity allegedly committed by HSBC and another financial institution, Standard Chartered, and that these officials were apprised of efforts to assess penalties commensurate with the institutions' alleged conduct. At a minimum, to the extent that the released records reflect a discussion of the appropriateness of these penalties, they are probative of whether federal officials resolved the HSBC and Standard Chartered matters based in whole or in part on their understanding of potential economic and other collateral consequences. Accordingly, please produce, without redactions:

- (1) all records previously produced by the Treasury Department to Public Citizen pursuant to Public Citizen's December 28, 2012 FOIA request letter; and
- (2) all other records responsive to Public Citizen's December 28, 2012 FOIA request letter.

The Honorable Jacob Lew
June 7, 2013
Page 2 of 2

Please work with the Financial Services Committee staff to provide the requested records as soon as practicable but not later than June 21, 2013. We appreciate your prompt attention to this matter. If you have questions regarding this request, please contact Joseph Clark of the Committee staff at (202) 225-7502.

Sincerely,



PATRICK MCHENRY

Chairman

Subcommittee on Oversight
and Investigations

cc: The Hon. Al Green, Ranking Member

Appendix 43

Letter from Chairman McHenry to Secretary Lew (July 18, 2013)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

July 18, 2013


The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

On June 7, 2013, I requested that you provide the Committee on Financial Services with information relating to a Freedom of Information Act request by the advocacy group Public Citizen. On June 10, 2013, I requested that you provide the Committee with information relating to the Treasury Department's disposition of fees collected pursuant to the Temporary Guarantee Program for Money Market Funds. The first letter requested a response by June 21, 2013 while the second letter requested a response by July 1, 2013. The Treasury Department's responses are now overdue by several weeks. Accordingly, I respectfully insist that the Department respond in full to the Committee's letters as soon as practicable but not later than July 26, 2013.

If you have questions regarding this request, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



PATRICK McHENRY
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Al Green

Appendix 44

Letter from Assistant Secretary Fitzpayne to Chairman McHenry (July 26, 2013)



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

July 26, 2013

The Honorable Patrick McHenry
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
U.S. House of Representative
Washington, DC 20515

Dear Chairman McHenry:

I write in response to your recent letter regarding criminal cases involving large, complex financial institutions and our production to Public Citizen pursuant to its request under the Freedom of Information Act (FOIA). We appreciate your interest in these important issues.

The Department of the Treasury strongly supports vigorous enforcement of the law. We believe that no individual or institution is above the law. Although the exclusive statutory authority to prosecute criminal misconduct lies with the Department of Justice, Treasury has authority to enforce U.S. economic sanctions and certain anti-money laundering laws and regulations through civil actions. We have a clear record of using our authority to aggressively pursue investigations and enforcement actions in this area.

In response to your inquiry, we have been reviewing the relevant materials. These materials involve the interests of agencies beyond just the Department of the Treasury. Consistent with longstanding Executive Branch practice, we have consulted with those agencies about their interests in these materials. One of those agencies – the Department of Justice – has advised us that it has significant prosecutorial interests in these materials. For example, the materials pertain to internal deliberations about charging decisions. Based on our consultation, the Department of Justice has requested that we not release additional text in the documents beyond what has already been produced.

Further, we are still processing Public Citizen's FOIA request. We would be happy to share with you any additional materials we produce in response to that FOIA.

Thank you for your letter. Treasury strongly supports vigorous enforcement of the law, and we look forward to working with you and the Committee on these important issues. As always, please feel free to contact me if you have any additional questions or concerns.

Sincerely,

Alastair Fitzpayne

Alastair M. Fitzpayne
Assistant Secretary for Legislative Affairs

cc: The Honorable Al Green
The Honorable Eric Holder

Appendix 45

Letter from Chairman McHenry to Secretary Lew (August 22, 2013)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

August 22, 2013

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

This is in response to the Department of the Treasury's letter dated July 26, 2013, responding to the Committee on Financial Services' request that the Treasury Department produce unredacted copies of all records responsive to a Freedom of Information Act ("FOIA") request by the advocacy group Public Citizen. In its letter, the Treasury Department refused to produce the unredacted records, offering instead to transmit copies of materials redacted consistent with FOIA as the Department processes Public Citizen's request.

I reject the Treasury Department's offer to produce only records redacted consistent with FOIA. FOIA does not proscribe or in any way limit Congress's right to government information.¹ Congress's oversight authority derives from the grant of legislative power contained within Article I of the U.S. Constitution, and the House of Representatives has delegated that authority to this Committee on matters relating to financial services.²

Because the President has not invoked "presidential communications privilege" (otherwise known as "executive privilege") with respect to the requested records, the Treasury Department has not stated a basis on which it may withhold the requested records from the Committee. Accordingly, I renew the Committee's request that the Treasury Department produce all responsive records without redactions.

Please work with the Financial Services Committee staff to provide the requested records not later than September 5, 2013. If you have questions regarding this request, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,


PATRICK McHENRY
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Al Green

¹ Freedom of Information Act of 1966, 5 U.S.C. §552(d) (2009).

² *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 505 (1975); Rules of the House of Representatives, 113th Congress, Rules X and XI.

Appendix 46

Letter from Chairmen Hensarling and McHenry to Secretary Lew (March 25, 2014)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 25, 2014

VIA FIRST CLASS MAIL

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

As you know, the Committee on Financial Services is investigating whether the United States can continue to make payments on government debt in the event the statutory debt limit is not raised when it has been reached. The Treasury Department has failed to provide records and responses to questions as requested by the Committee in the following:

- 1) Letter from Chairmen Hensarling and McHenry to the Treasury Secretary dated December 6, 2013.

In addition, the Committee is investigating whether the Department of Justice has settled or otherwise declined to prosecute criminal matters involving large financial institutions due to concerns that any prosecution could impair the financial system's ability to provide essential functions and services. The Treasury Department has failed to provide records relating to this investigation as requested by the Committee in the following:

- 2) Letter from Chairman McHenry to the Treasury Secretary dated June 7, 2013.

By not later than April 8, 2014, please provide the records and written responses that the Committee is seeking. Any failure by the Treasury Department to produce the requested materials would frustrate the Committee's legitimate oversight efforts and impair the separation of powers by depriving Congress of information necessary to the exercise of the legislative power. Accordingly, if the Treasury Department does not comply with this request, the Committee will authorize and issue a subpoena *duces tecum* to compel the production of all requested records. In addition, the Committee will authorize and issue a subpoena *ad testificandum* to compel the testimony of all appropriate Treasury Department witnesses relating to the questions posed by the Committee's letters, the records requested therein, and any other matters deemed appropriate and within the Committee's jurisdiction.

Honorable Jacob Lew

Page 2


March 25, 2014

If you have questions regarding this request, please contact J.W. Verret or Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman



PATRICK McHENRY
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Maxine Waters,
Ranking Member

The Honorable Al Green
Ranking Member
Subcommittee on Oversight and Investigations

Appendix 47

Letter from Assistant Secretary Fitzpayne to Chairman Hensarling (April 8, 2014)



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

April 8, 2014

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hensarling:

I write in response to your March 25, 2014 letter regarding two separate matters—first, the Department of Justice’s decision not to criminally prosecute HSBC Holdings Plc. and HSBC Bank USA N.A. (collectively HSBC), and second, the Department of the Treasury’s planning in the event that Congress had failed to raise the debt limit. We appreciate your important oversight role, and we have worked to satisfy your questions in each of these areas. This letter lays out those efforts, and the documents we are prepared to make available. We remain committed to working cooperatively with the Committee.

I. Requests Regarding DOJ’s Prosecutorial Decisions

Over the course of the past year, Treasury has consistently cooperated with the Committee’s examination of DOJ’s prosecutorial decisions in matters involving large financial institutions. The Committee’s initial inquiries to Treasury, dated March 8 and March 20, 2013, requested economic analyses prepared by Treasury for DOJ regarding the potential effect that prosecutions of large financial institutions would have on the financial system’s ability to provide essential functions and services. In response, we conducted a search of Treasury records and informed the Committee, in letters dated March 28 and May 10, 2013, that we had not identified any such analyses.

On June 7, 2013, the Committee sent a new and different request to Treasury for records responsive to a FOIA request regarding DOJ’s decision not to criminally prosecute HSBC for money laundering and violations of U.S. sanctions law. As you know, Treasury and DOJ were part of the combined federal, local, and international government action against HSBC that amounted to \$1.9 billion in assessed penalties, the largest bank settlement in U.S. history. Treasury’s Office of Foreign Assets Control had provided an interim production of documents to the FOIA requester in May 2013. In a July 26, 2013 letter to the Committee, Treasury stated that we were reviewing additional relevant materials in consultation with the other agencies that had interests in the documents, and we were committed to providing materials to the Committee as we processed them in connection with the FOIA request.

Treasury is now in a position to make available to the Committee several hundred pages of additional documents that we have identified as responsive to the Committee's June 7, 2013 request. Please contact Kathleen Mellody, Deputy Assistant Secretary for Legislative Affairs, to arrange a mutually agreeable time to review the material.

We recognize that requests from Congressional committees are not subject to the same exemptions that apply to FOIA requesters, and these documents do not contain FOIA redactions. Certain information in the documents, however, has been redacted by DOJ to protect prosecutorial deliberations, as has information pertaining to pending enforcement matters that are unrelated to the HSBC action. Consistent with established third-agency practice, we have deferred to DOJ's judgment about those redactions.

II. Requests Regarding Debt Limit Planning

Your recent letter references a December 6, 2013 request to Treasury for information and documents regarding planning by Treasury in the event of Congress's failure to raise the debt limit. We are aware that you sent a similar request for documents to the Federal Reserve Bank of New York, which serves as Treasury's fiscal agent in this context. We are responding today to your requests on behalf of both Treasury and the New York Fed.

As Treasury stated in our letter of March 14, 2014, we remain hopeful that Congress's recent bipartisan action to extend the government's borrowing authority represents a new approach in which the full faith and credit of the United States is not subject to brinksmanship. This bipartisan action has helped provide certainty and stability to businesses and financial markets, and we remain concerned that continued speculation about debt limit contingency planning could diminish needed confidence in the economic recovery. As previous Administrations of both parties have acknowledged, the notion that Congress could fail to raise the debt limit in a timely manner should remain unthinkable.

Nevertheless, in recognition of the Committee's oversight interest, we included in our March 14, 2014 letter information about Treasury's prior planning efforts. We also provided a copy of a letter from the Council of Inspectors General on Financial Oversight (CIGFO) that contained additional responsive information. Your March 25, 2014 letter indicates that the Committee is interested in receiving additional responses and records. We address below each of your questions to Treasury and each of your document requests to Treasury and the New York Fed.

Your first two questions concern the operations of the Fedwire Securities Service that enables participants to hold, maintain, and transfer U.S. Treasury-issued securities. The New York Fed provided answers to those questions as an attachment to its December 5, 2013 response to the Committee.

Your remaining question to Treasury concerns debt limit contingency planning. As we stated previously, Treasury has considered a range of options with respect to how we might operate if the nation's borrowing authority was not extended. As prior Administrations have concluded, no option was identified – other than raising the debt limit – that could reasonably protect the full faith and credit of the United States and the American people from serious harm. Specifically, the idea of “prioritization” has been viewed as unacceptably risky and unfair to the American people by every President and Treasury Secretary who has considered it. We stress that no final decisions were made during recent debt limit impasses because Congress ultimately took action to extend the debt limit.

In response to your document requests to Treasury and the New York Fed, enclosed with this letter are communications relating to Secretary Lew's October 10, 2013 testimony before the Senate Finance Committee. We have not identified any consultation between Treasury and the New York Fed regarding the preparation of the Secretary's testimony.

You also request documents regarding meetings of the Federal Open Market Committee (FOMC) that relate to debt limit contingency planning and the names and titles of Treasury staff who briefed the FOMC on these matters. We are not aware of Treasury staff attending or providing briefings during any FOMC meetings that may have covered this topic, including the video conference meetings of August 1, 2011 and October 16, 2013.

Finally, with respect to your request for documents pertaining to any plan for whether or how to continue making principal and interest payments on Treasury debt had the nation's borrowing authority not been raised by Congress, we again note that no final decision was ever made. We are nonetheless working to identify and review documents that may be responsive to the Committee's requests. We would be happy to discuss this matter further with the Committee and provide you with an update on our efforts.

III. Conclusion

Treasury has been working to accommodate the Committee's requests on these topics. We remain firmly committed to cooperating with you as you perform your oversight role, while also protecting the legitimate law enforcement and other interests of the Executive Branch. Please contact Kathleen Mellody at (202) 622-1900 if you or your staff have any questions regarding this letter.

Sincerely,



Alastair M. Fitzpayne

Assistant Secretary for Legislative Affairs

Enclosure

Identical letter sent to:

The Honorable Patrick McHenry

cc: The Honorable Maxine Waters

The Honorable Al Green

Mr. William C. Dudley, Federal Reserve Bank of New York

Appendix 48

Letter from Chairmen Hensarling and McHenry to Secretary Lew (May 23, 2014)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

May 23, 2014

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Secretary Lew:

This is to inform you that on Thursday, May 29, 2014, the Committee on Financial Services will meet to authorize the issuance of subpoenas to compel the production of all documents requested by the Committee by letter dated June 7, 2013. As the Committee related by letter dated April 25, 2014, the Department has failed to produce all documents requested by the Committee in a manner that preserves the Committee's Article I oversight prerogatives. Please advise whether the Department is prepared to produce the records as requested by the Committee by no later than 5:00 p.m. on Wednesday, May 28, 2014. If you have questions regarding this matter, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services



PATRICK McHENRY
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable Maxine Waters
The Honorable Al Green

Appendix 49

Letter from Chairman Hensarling to Secretary Lew (March 10, 2015)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

March 10, 2015

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

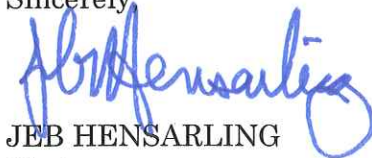
The U.S. Department of the Treasury (Treasury) has not complied with the following information requests from the Committee on Financial Services (Committee):

1. Letter from Chairman McHenry dated June 7, 2013.
2. Letter from Chairmen Hensarling and McHenry dated December 6, 2013.

Your failure to comply with these requests constitutes the improper withholding of information that will aid the Committee's examination of the operation and effectiveness of laws or programs within the Committee's jurisdiction. To allow the Committee to fulfill its oversight responsibilities under the House Rules,¹ please provide the Committee with unredacted copies of all previously requested records by March 24, 2015.² If you do not fully comply with this request by the specified date, I will authorize and issue a subpoena *duces tecum* to compel the production of the requested information pursuant to Committee Rule 3.

If you have any questions regarding this request, please contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



JEB HENSARLING
Chairman
Committee on Financial Services

cc: The Hon. Maxine Waters, Ranking Member

¹ Rule X, Rules of the House of Representatives, 114th Cong.

² The Committee will not consider the (Treasury's) production as complete until a representative of Treasury certifies in writing that Treasury conducted a search reasonably calculated to locate all responsive records and that Treasury produced to the Committee all known responsive records in its or any agent's custody or control. In addition, Treasury's obligation to produce records is continuing in nature; if, after tendering the written certification required herein, Treasury becomes aware of any responsive record in its or any agent's custody or control, the record should be promptly produced.

Appendix 50

*Letter from Acting Assistant Secretary Randall DeValk to Chairman Hensarling
(May 26, 2015)*



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

May 26, 2015

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hensarling:

I write on behalf of the Department of the Treasury and its statutory fiscal agent, the Federal Reserve Bank of New York, in response to your May 11, 2015 subpoenas to Treasury for documents related to the Department of Justice's prosecutorial decision-making with respect to HSBC Bank, and to Treasury and the New York Fed for documents related to the debt limit. Since 2013, Treasury has been addressing the Committee's interest in these matters through numerous letters and, on behalf of itself and the New York Fed, has been cooperating with the Committee to provide relevant documents and answers to the Committee's information requests.

We are continuing our efforts to work with your staff to address the Committee's needs. Treasury has invited the Committee to review the approximately 400 pages we identified as responsive to the HSBC inquiry. Treasury has also invited the Committee to discuss any questions concerning the debt limit the Committee considers unresolved by Treasury's in camera production of over 1,300 pages. Both of these offers still stand. Moreover, Treasury remains committed to cooperating with the Committee, and as described below, we are taking further steps to make documents available to the Committee.

I. Requests Regarding Prosecutorial Decisions

Over the course of the past two years, Treasury has consistently cooperated with the Committee's examination of DOJ's prosecutorial decisions in matters involving large financial institutions. The Committee's initial inquiries to Treasury, dated March 8 and March 20, 2013, requested economic analyses prepared by Treasury for DOJ regarding the potential effect that prosecutions of large financial institutions would have on the financial system's ability to provide essential functions and services. Treasury conducted a search of its records and informed the Committee, in letters dated March 28 and May 10, 2013, that we had not identified any such analyses. On May 2, 2014, the Committee confirmed that it was satisfied with Treasury's response.

On June 7, 2013, the Committee sent a new and different inquiry to Treasury for records responsive to a FOIA request regarding DOJ's decision not to criminally prosecute HSBC for money laundering and violations of U.S. sanctions law. As you know, in a landmark action, Treasury secured a civil settlement and DOJ secured a deferred prosecution agreement with HSBC that amounted to \$1.9 billion in assessed penalties for Bank Secrecy Act and sanctions violations, the largest such resolution in U.S. history at that time.

While your subpoena to Treasury reiterated the June 7, 2013 request, the Committee has in fact had access for over a year to the documents Treasury identified as responsive. In letters dated April 8 and May 6, 2014, and March 24, 2015, Treasury informed the Committee that those materials numbered several hundred pages and were available for in camera review. The Committee has not examined them to determine whether they satisfy its oversight interest.

As we have previously noted, DOJ made limited redactions to those documents in 2014 to protect then-pending law enforcement matters and prosecutorial deliberations. Treasury deferred to DOJ's judgment about the scope of the redactions. While Treasury has authority to pursue certain civil actions for money laundering offenses and U.S. sanctions violations, exclusive authority to prosecute criminal misconduct lies with DOJ. Accordingly, only DOJ can determine what materials can be released without compromising critical law enforcement activities.

Consistent with our commitment to cooperating with the Committee, Treasury recently asked DOJ to review its redactions and consider whether the passage of time has reduced law enforcement interests such that it would now be possible to remove some of the redactions. As a result, we expect that a substantial majority of the approximately 400 responsive pages will contain no redactions. Treasury is prepared to make the updated document set available for review by the Committee. If after that review, the Committee has questions about any remaining redactions, we would encourage the Committee address them to DOJ.

II. Requests Regarding the Debt Limit

As we detailed in our March 24, 2015 letter, Treasury has been similarly responsive to the Committee's inquiries concerning, among other things, whether Treasury could prioritize certain payments in the event that Congress failed to raise the debt ceiling, while also being transparent about the risks associated with prioritization. Your initial letter to Treasury, dated December 6, 2013, contained three questions about debt limit contingency planning and the operations of the Fedwire Securities Service, which enables participants to hold, maintain, and transfer U.S. Treasury-issued securities. Treasury answered each of these questions in writing on April 8, 2014.

Treasury also responded to the various requests for documents contained in your December 6, 2013 letter on behalf of itself and the New York Fed, which received a similar letter from the Committee on November 6, 2013. The Committee has been seeking materials related to services that the New York Fed performs for Treasury as its fiscal agent pursuant to an Act of Congress. Accordingly, we have advised the New York Fed that Treasury will continue to address the Committee's requests to Treasury and the New York Fed for information.

Your recent subpoenas to Treasury and the New York Fed substantially repeat the document requests contained in your November 6 and December 6, 2013 letters. First, you request records associated with meetings of the Federal Open Market Committee since April 2011 concerning contingencies in the event the debt limit was not raised or related plans regarding the processing of federal payments. As we stated in our letters dated April 8 and May 7, 2014, we are not aware of Treasury staff having provided briefings to, or attended meetings of, the FOMC on these matters.

Second, you request certain documents regarding Secretary Lew's testimony before the Senate Finance Committee on October 10, 2013. In response, on April 8, 2014, Treasury provided you with communications by the New York Fed that are responsive to that request. We further noted that we had not identified any consultation between Treasury and the New York Fed regarding the preparation of the Secretary's testimony.

Finally, you request documents relating to making payments in the event that Congress failed to raise the nation's borrowing limit. On June 2 and June 5, 2014, Treasury provided over 1,300 pages of documents for the Committee's in camera review. These materials evidence that, assuming Treasury had sufficient cash on hand, the New York Fed's systems would be technologically capable of continuing to make principal and interest payments while Treasury was not making other kinds of payments, although this approach would be entirely experimental and create unacceptable risk to both domestic and global financial markets. The Committee subsequently sent Treasury a four-page letter describing certain of these documents as painstakingly and exhaustively detailed and summarizing the information the Committee had obtained. Eight months then elapsed without the Committee corresponding with Treasury on this issue.

Prior to the issuance of the subpoenas, Treasury invited the Committee to identify any questions that remained unresolved and committed to working with Committee staff to address them cooperatively. While that offer has not been accepted or acknowledged, we continue to welcome the opportunity for our staffs to discuss the particulars of the Committee's oversight interest, and we will contact your staff with the aim of scheduling a time.

In the meantime, we understand that the Committee is interested in obtaining hardcopies of the documents that Treasury previously provided in camera. In response, we are prepared to produce them, but we again emphasize that the documents contain potentially market sensitive and operationally sensitive material, the disclosure of which could result in serious harm. Consequently, we urge the Committee to keep this material confidential. Treasury is currently reviewing the documents in order to redact information that may be sensitive from a security perspective, such as access codes and bank routing and account numbers.

As part of our continued effort to address the Committee's oversight interests, Treasury has also identified an additional set of documents related in part to the New York Fed's technological capabilities that we will include with the hardcopy production. We similarly urge the Committee to keep these materials confidential.

While Treasury remains intent on working with the Committee, we note that the Committee's correspondence on this matter alludes to a hypothetical situation that can and should remain unthinkable—that Congress would, for the first time in history, fail to raise the nation's borrowing authority in order to meet our country's commitments. That the Committee is raising this possibility is deeply troubling. Any decision by the federal government to pay bondholders instead of others would result in default, such as on our commitments to senior citizens, veterans, and members of the military. As you know, in February of 2014, Congress acted to protect the full faith and credit of the United States by temporarily extending the debt limit. However, Treasury is again at the debt limit. Only Congress can address this matter, and we encourage action without controversy or brinkmanship to increase the debt limit as soon as possible.

III. Conclusion

We look forward to continuing Treasury's history of cooperation with the Committee. Please contact Sandra Salstrom, Office of Legislative Affairs, at (202) 622-1900, if you or your staff have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink that reads "Randall DeValk". The signature is written in a cursive, flowing style.

Randall DeValk
Acting Assistant Secretary for Legislative Affairs

Appendix 51

Letter from Chairman Duffy to Secretary Lew (August 27, 2015)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

August 27, 2015

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

On May 11, 2015, the Committee subpoenaed records within the possession, custody, or control of the U.S. Department of the Treasury (Treasury) and required that you produce those records by May 25, 2015. In the Treasury's response of May 26, 2015, Randall DeValk, Acting Assistant Secretary for Legislative Affairs, stated that "we are prepared to produce" to the Committee the records pertaining to the debt limit.¹ To date, no subpoenaed records have been produced. Please immediately provide all subpoenaed records.

Additionally, please make the following employees available for transcribed interviews with Committee staff to testify regarding the Treasury's noncompliance with the Committee's subpoena and other records requests:

1. Randall DeValk, Acting Assistant Secretary for Legislative Affairs
2. Glen Sears, Deputy Assistant Secretary for Legislative Affairs
3. Pat Maloney, Senior Advisor, Office of Legislative Affairs

By not later than September 3, 2015, please confirm that you will make the requested employees available for transcribed interviews.

Please have your staff contact Joe Gammello of the Committee staff at (202) 225-7502 if you have any questions regarding this request.

Sincerely,



SEAN DUFFY
Chairman
Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member

¹ See Letter from Randall DeValk, Acting Assistant Secretary for Legislative Affairs, U.S. Department of the Treasury, to the Hon. Sean Duffy, Chairman, Subcmte. On Oversight and Investigations, H. Comm. on Fin. Serv., May 26, 2015.

Appendix 52

Letter from Chairman Duffy to Secretary Lew (September 14, 2015)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

September 14, 2015

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

On May 11, 2015, the Committee subpoenaed records within the possession, custody, or control of the U.S. Department of the Treasury (Treasury) and required that you produce those records by May 25, 2015. Due to Treasury's failure to produce even a single subpoenaed record to the Committee in more than three months, I sent you a letter on August 27, 2015, asking you to timely comply with the Committee's subpoena.¹ In Treasury's response letter of September 3, 2015, Anne Wall, Assistant Secretary for Legislative Affairs, indicated that Treasury would be producing records to the Committee on September 4, 2015.² However, to date, Treasury has not produced any of the subpoenaed records to the Committee in a reasonably usable form, let alone in the manner required by the subpoena instructions.³ Please fully and promptly comply with the Committee's subpoena by not later than September 18, 2015.

If you have any questions regarding this matter, please have your staff contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



SEAN DUFFY
Chairman
Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member

¹ See Letter from the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv., to the Hon. Jacob Lew, Secretary, U.S. Department of the Treasury (August 27, 2015).

² See Letter from the Hon. Anne Wall, Assistant Secretary for Legislative Affairs, U.S. Department of the Treasury, to the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv. (September 3, 2015).

³ Despite being compelled by the Committee's May 11th subpoena to produce all of the requested records, Treasury has failed to produce even a single record to the Committee to date pertaining to the Department of Justice's decisions in matters involving large financial institutions. On September 4, 2015, Treasury provided the Committee with a secured, read-only PDF containing records pertaining to the debt limit. However, because the Committee cannot print, efficiently examine via the Clearwell eDiscovery platform, or otherwise use the records for any purpose besides reading on a computer screen, Treasury has yet to produce any of the subpoenaed records to the Committee in a reasonably usable form, let alone in the manner required by the subpoena. Moreover, Treasury has not certified that the records viewable on the secured PDF delivered to the Committee on September 4th constitute all of the subpoenaed records pertaining to the debt limit that Treasury has located after conducting a search reasonably calculated to locate all of the responsive records.

Appendix 53

Letter from Chairman Duffy to Secretary Lew (December 3, 2015)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

December 3, 2015

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

In addition to failing to fully comply with the Committee's subpoena of May 11, 2015, the Department of the Treasury (Treasury) has not complied with the following overdue requests:

1. Letter from Chairman McHenry dated November 17, 2014, pertaining to Treasury's tools used to identify and produce electronically-stored information.
2. Letter from Chairmen Hensarling, Garrett, Neugebauer, Luetkemeyer, Huizenga, and Duffy dated May 26, 2015, pertaining to the Financial Stability Oversight Council.
3. Letter from Chairman Hensarling dated June 9, 2015, pertaining to Consumer Financial Protection Bureau renovation decisions.
4. Letter from Chairman Duffy dated June 12, 2015, pertaining to Treasury rules and regulations.
5. Letter from Chairman Duffy dated August 27, 2015, pertaining to the Committee on Foreign Investment in the United States.
6. Letter from Chairman Duffy dated August 27, 2015, pertaining to the Risky Business Project.

Your failure to comply with the Committee's requests constitutes the improper withholding of information the Committee is entitled to review to aid the Committee's examination of Treasury's operations, including its administration of laws or programs within the Committee's jurisdiction. To allow the Committee to carry out its oversight responsibilities under the House Rules,¹ please provide the Committee with unredacted copies of all subpoenaed and requested information by not later than December 17, 2015.²

Because of Treasury's longstanding pattern of failing to timely comply with the Committee's information requests and subpoena, the Committee is initiating an investigation to determine whether Treasury's actions constitute obstruction of Congress.³ Accordingly, please advise by

¹ Rule X, Rules of the House of Representatives, 114th Cong.

² The Committee will not consider Treasury's production as complete until a representative of Treasury certifies in writing that Treasury conducted a search reasonably calculated to locate all responsive records and that Treasury produced to the Committee all known responsive records in its or any agent's custody or control. In addition, Treasury's obligation to produce records is continuing in nature; if, after tendering the written certification required herein, Treasury becomes aware of any responsive record in its or any agent's custody or control, the record should promptly be produced

³ See 18 U.S.C. § 1505.

The Hon. Jacob Lew
December 3, 2015
Page 2 of 2

not later than December 11, 2015, whether you will make the following employees available for transcribed interviews with Committee staff:

1. Priya Aiyar, Acting General Counsel
2. Anne Wall, Assistant Secretary for Legislative Affairs
3. Randall DeValck, Counselor and Former Acting Assistant Secretary for Legislative Affairs

If you have any questions regarding this request, please have your staff contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



SEAN DUFFY
Chairman
Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member

Appendix 54

Letter from Chairman Duffy to Secretary Lew (January 14, 2016)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

January 14, 2016

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

On December 3, 2015, the Committee on Financial Services (Committee) requested that you (1) fully comply with the Committee's subpoena of May 11, 2015, and six additional outstanding information requests and (2) advise by not later than December 17, 2015, whether you will make three Treasury employees available for transcribed interviews with Committee staff concerning Treasury's noncompliance with the Committee's subpoena and information requests.¹ In Treasury's response letter of December 17, 2015, Treasury completely ignored the Committee's request for transcribed interviews with Treasury officials and failed to produce even a single page of requested or subpoenaed records.² Accordingly, please fully and promptly comply with the Committee's requests and advise by not later than January 21, 2016, whether you will make the requested Treasury employees available for transcribed interviews with Committee staff concerning Treasury's noncompliance with the Committee's subpoena and information requests.

Additionally, to allow the Committee to examine the processes used by the Financial Stability Oversight Council to designate and de-designate nonbank financial institutions as Systematically Important Financial Institutions and to carry out the Committee's oversight responsibilities under the House Rules,³ please advise by not later than January 21, 2016, whether you will make Patrick Pinschmidt, Deputy Assistant Secretary for the Financial Stability Oversight Council, available for a transcribed interview with Committee staff. If you

¹ Letter from the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv., to the Hon. Jacob Lew, Secretary, U.S. Department of the Treasury (Dec. 3, 2015). The Committee's letter specifies that "[t]he Committee will not consider the Treasury's production as complete until a representative of Treasury certifies in writing that Treasury conducted a search reasonably calculated to locate all responsive records and that Treasury produced to the Committee all known responsive records in its or any agent's custody or control."

² Letter from the Hon. Anne Wall, Assistant Secretary for Legislative Affairs, U.S. Department of the Treasury, to the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv. (Dec. 17, 2015). In addition to failing either to produce any subpoenaed or requested records or to make the requested Treasury employees available for transcribed interviews, Treasury's December 17th letter failed to certify that Treasury had fully complied with the Committee's subpoena or any of the information requests outlined in the Committee's December 3rd letter.

³ Rule X, Rules of the House of Representatives, 114th Cong.

The Hon. Jacob Lew
January 14, 2016
Page 2 of 2

decline to make the requested employees available, the Committee will consider the use of compulsory process.⁴

If you have any questions regarding this request, please have your staff contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



SEAN DUFFY
Chairman
Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member

⁴ As an alternative to Treasury making the requested employees available for transcribed interviews with Committee staff, the Committee will accept a Treasury representative's written certification that Treasury conducted a search reasonably calculated to locate all responsive records to the Committee's subpoena and information requests and that Treasury produced to the Committee all known responsive records in its or any agent's custody or control.

Appendix 55

Letter from Chairman Duffy to Secretary Lew (March 9, 2016)

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 9, 2016

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Secretary Lew:

On December 3, 2015, the Committee requested that you (1) fully comply with the Committee's subpoena of May 11, 2015, and six additional outstanding information requests and (2) advise by not later than December 17, 2015, whether you will make three Treasury employees available for transcribed interviews with Committee staff concerning Treasury's noncompliance with the Committee's subpoena and information requests.¹ Because Treasury's response of December 17, 2015, completely ignored the Committee's request for transcribed interviews with Treasury officials and failed to produce even a single page of subpoenaed or requested records,² the Committee on January 15, 2016, again requested that you make these three Treasury employees, as well as Patrick Pinschmidt, Deputy Assistant Secretary for the Financial Stability Oversight Council, available for transcribed interviews with Committee staff.³ In Treasury's response of January 21, 2016, you not only failed to produce any of the requested or subpoenaed records but also failed to commit to making any of the four requested Treasury employees available for transcribed interviews.⁴

¹ Letter from the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv., to the Hon. Jacob Lew, Secretary, U.S. Department of the Treasury (Dec. 3, 2015). The Committee's letter specifies that "[t]he Committee will not consider the Treasury's production as complete until a representative of Treasury certifies in writing that Treasury conducted a search reasonably calculated to locate all responsive records and that Treasury produced to the Committee all known responsive records in its or any agent's custody or control."

² Letter from the Hon. Anne Wall, Assistant Secretary for Legislative Affairs, U.S. Department of the Treasury, to the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv. (Dec. 17, 2015).

³ Letter from the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv., to the Hon. Jacob Lew, Secretary, U.S. Department of the Treasury (requesting that (1) Mr. Pinschmidt appear for transcribed interviews with Committee staff concerning the processes used by the Financial Stability Oversight Council to designate and re-designate Systematically Important Financial Institutions and related matters; and (2) Acting General Counsel Priya Aiyar, Assistant Secretary for Legislative Affairs Anne Wall, and Counselor and former Acting Assistant Secretary for Legislative Affairs Randall DeValk appear for transcribed interviews with Committee staff concerning Treasury's failure to comply with the Committee's subpoena and information requests) (Jan. 14, 2016).

⁴ Letter from the Hon. Anne Wall, Assistant Secretary for Legislative Affairs, U.S. Department of the Treasury, to the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv. (Jan. 21, 2016). An offer of a briefing is not an alternative to a transcribed interview. To date, Treasury has failed to advise whether it would make any of the requested Treasury employees available for a transcribed interview with Committee staff.

Your failure to comply with the Committee's requests constitutes the improper withholding of information the Committee is entitled to review to aid the Committee's examination of Treasury's operations, including its administration of laws or programs within the Committee's jurisdiction.⁵ Moreover, the longstanding and persistent nature of Treasury's refusal to comply with this Committee's constitutionally authorized oversight may constitute contempt of Congress under 2 U.S.C. § 192⁶ and obstruction of Congress under 18 U.S.C. § 1505.⁷ Accordingly, the Committee intends to identify the Treasury officials who are improperly impeding the Committee's oversight efforts and, if appropriate, make referrals to the Department of Justice for further investigation.⁸ To facilitate its inquiry, the Committee directs you to preserve all records⁹ subpoenaed or requested by the Committee as well as all records relating to Treasury's noncompliance with the Committee's subpoena and requests, to

⁵ In addition to failing either to make the requested Treasury employees available for transcribed interviews or to produce the subpoenaed or requested records, Treasury to date has failed to certify that it has fully complied with the Committee's subpoena or the information requests outlined in the Committee's December 3rd letter. Moreover, Treasury has unjustifiably failed to provide a response to any of the Questions for the Record from Representatives Duffy, Garrett, Guinta, Hill, Hinojosa, Hurt, Lynch, Ross, Neugebauer, Rothfus, Stivers, Wagner, and Williams that the Committee transmitted to Treasury on July 9, 2015—more than 7 months ago—in connection with the Committee's June 17, 2015, hearing on the annual report of the Financial Stability Oversight Council.

⁶ 2 U.S.C. § 192. ("Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House . . . or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine . . . and imprisonment in a common jail for not less than one month nor more than twelve months.").

⁷ 18 U.S.C. § 1505 ("Whoever corruptly . . . influences, obstructs, or impedes or endeavors to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by . . . any committee of either House . . . – Shall be fined under this title, imprisoned not more than 5 years . . . or both."). *See also, e.g.,* United States v. Mitchell, 877 F.2d 294, 301 (4th Cir. 1989) ("Accordingly, we hold that any endeavor . . . when done with the requisite intent to corruptly influence a congressional investigation, violates § 1505."). In 1996, Congress defined the requisite intent to corruptly influence, obstruct, or impede or endeavor to influence, obstruct, or impede a congressional investigation as follows: "As used in section 1505, the term 'corruptly' means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information." 18 U.S.C. § 1515.

⁸ The Committee advised you in its letter of December 3, 2015, that the Committee is initiating an investigation to determine whether Treasury's actions constitute obstruction of Congress under 18 U.S.C. § 1505. Letter from the Hon. Sean Duffy, Chairman, Subcomm. on Oversight and Investigations, H. Comm. on Fin. Serv., to the Hon. Jacob Lew, Secretary, U.S. Department of the Treasury (Dec. 3, 2015). *See also* UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES MAJORITY STAFF, THE OBAMA ADMINISTRATION'S DEBT CEILING SUBTERFUGE: SUBPOENAED DOCUMENTS REVEAL TREASURY MISLED PUBLIC IN ATTEMPT TO "MAXIMIZE PRESSURE ON CONGRESS," at 22 (finding that Treasury officials willfully misled Congress and that "Treasury's actions to date [with respect to the Committee's investigation of the Administration's debt ceiling contingency plans] appear to constitute obstruction of the Committee's legitimate oversight and investigation efforts.") (Feb. 1, 2016), available at http://financialservices.house.gov/uploadedfiles/debt_ceiling_report_final_01292015.pdf.

⁹ The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

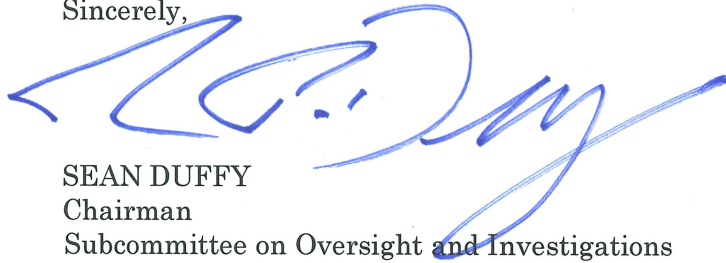
The Hon. Jacob Lew
March 9, 2016
Page 3 of 3

ensure that they remain available for future review by both the Congress and the Department of Justice.¹⁰

Finally, please be advised that the Committee intends to issue subpoenas to those Treasury officials who the Committee believes either have engaged in, or have knowledge of, conduct constituting contempt of Congress or obstruction of the Committee's investigations, to compel their appearance for sworn depositions.

If you have any questions regarding this request, please have your staff contact Joe Gammello of the Committee staff at (202) 225-7502.

Sincerely,



SEAN DUFFY
Chairman
Subcommittee on Oversight and Investigations

cc: The Hon. Al Green, Ranking Member

¹⁰ See 18 U.S.C. § 1519; 18 U.S.C. § 1512(c). See also Letter from the Hon. Henry Waxman, Chairman, H. Comm. on Oversight and Government Reform, to the Hon. Marc Racicot, Former Chairman, Bush Cheney '04 ("The Committee also directs you to preserve all such records because of their potential relevance to congressional investigations.") (Mar. 26, 2007), available at <http://www.democraticleader.gov/newsroom/chairman-waxman-on-preservation-of-campaign-emails/>.