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PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Committee on Homeland Security and Governmental Affairs

Carl Levin, Chairman

Norm Coleman, Ranking Minority Member

**TAX HAVEN BANKS
AND U. S. TAX COMPLIANCE**

STAFF REPORT

**PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS**

UNITED STATES SENATE



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**U.S. SENATE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

STAFF REPORT ON

TAX HAVEN BANKS AND U.S. TAX COMPLIANCE

July 17, 2008

Each year, the United States loses an estimated \$100 billion in tax revenues due to offshore tax abuses.¹ Offshore tax havens today hold trillions of dollars in assets provided by citizens of other countries, including the United States.² The extent to which those assets represent funds hidden from tax authorities by taxpayers from the United States and other countries outside of the tax havens is of critical importance.³ A related issue is the extent to which financial institutions in tax havens may be facilitating international tax evasion.

¹ This \$100 billion estimate is derived from studies conducted by a variety of tax experts. See, e.g., Joseph Guttentag and Reuven Avi-Yonah, "Closing the International Tax Gap," in Max B. Sawicky, ed., *Bridging the Tax Gap: Addressing the Crisis in Federal Tax Administration* (2006) (estimating offshore tax evasion by individuals at \$40-\$70 billion annually in lost U.S. tax revenues); Kimberly A. Clausing, "Multinational Firm Tax Avoidance and U.S. Government Revenue" (August 2007) (estimating corporate offshore transfer pricing abuses resulted in \$60 billion in lost U.S. tax revenues in 2004); John Zdanowics, "Who's watching our back door?" *Business Accents* magazine, Volume 1, No.1, Florida International University (Fall 2004) (estimating offshore corporate transfer pricing abuses resulted in \$53 billion in lost U.S. tax revenues in 2001); "The Price of Offshore," Tax Justice Network briefing paper (March 2005) (estimating that, worldwide, individuals have offshore assets totaling \$11.5 trillion, resulting in \$255 billion in annual lost tax revenues worldwide); "Governments and Multinational Corporations in the Race to the Bottom," *Tax Notes* (2/27/06); "Data Show Dramatic Shift of Profits to Tax Havens," *Tax Notes* (9/13/04). See also series of 2007 articles authored by Martin Sullivan in *Tax Notes* (estimating over \$1.5 trillion in hidden assets in four tax havens, Guernsey, Jersey, Isle of Man, and Switzerland, beneficially owned by nonresident individuals likely avoiding tax in their home jurisdictions), *infra* footnote 3.

² See, e.g., "Tax Co-operation: Towards a Level Playing Field – 2007 Assessment by the Global Forum on Taxation," issued by the OECD (October 2007) (estimating a minimum of \$5-\$7 trillion held offshore); "The Price of Offshore," Tax Justice Network briefing paper (March 2005) (estimating offshore assets of high net worth individuals at a total of \$11.5 trillion); "International Narcotics Control Strategy Report," U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs (March 2000), at 565-66 (identifying nearly 60 offshore jurisdictions with assets totaling \$4.8 trillion).

³ See, e.g., "Tax Analysts Offshore Project: Offshore Explorations: Guernsey," *Tax Notes* (10/8/07) at 93 (estimating Guernsey has \$293 billion in assets beneficially owned by nonresident individuals who were likely avoiding tax in their home jurisdictions); "Tax Analysts Offshore Project: Offshore Explorations: Jersey," *Tax Notes* (10/22/07) at 294 (estimating Jersey has \$491 billion in assets beneficially owned by nonresident individuals who were likely avoiding tax in their home jurisdictions); "Tax Analysts Offshore Project: Offshore Explorations: Isle of Man," *Tax Notes* (11/5/07) at 560 (estimating Isle of Man has \$150 billion in assets beneficially owned by nonresident individuals who were likely avoiding tax in their home jurisdictions); "Tax Analysts Offshore Project: Offshore Explorations: Switzerland," *Tax Notes* (12/10/07) (estimating Switzerland has \$607 billion in assets beneficially owned by nonresident individuals who were likely avoiding tax in their home jurisdictions).

In February 2008, a global tax scandal erupted after a former employee of a Liechtenstein trust company provided tax authorities around the world with data on about 1,400 persons with accounts at LGT Bank in Liechtenstein. On February 14, 2008, German tax authorities, having obtained the names of 600-700 German taxpayers with Liechtenstein accounts, executed multiple search warrants and arrested a prominent businessman for allegedly using Liechtenstein bank accounts to evade €1 million (\$1.45 million) in tax.⁴ About a week later, the U.S. Internal Revenue Service (IRS) announced it had “initiat[ed] enforcement action involving more than 100 U.S. taxpayers to ensure proper income reporting and tax payment in connection accounts in Liechtenstein.”⁵ The United Kingdom, Italy, France, Spain, and Australia made similar announcements on the same day.⁶ Altogether since February, nearly a dozen countries have announced plans to investigate taxpayers with Liechtenstein accounts,⁷ demonstrating not only the worldwide scope of the tax scandal, but also a newfound international determination to contest tax evasion facilitated by a tax haven bank.

In May 2008, a second international tax scandal broke when the United States arrested a private banker formerly employed by UBS AG, one of the largest banks in the world, on charges of having conspired with a U.S. citizen and a business associate to defraud the IRS of \$7.2 million in taxes owed on \$200 million of assets hidden in offshore accounts in Switzerland and Liechtenstein. The United States had earlier detained as a material witness in that prosecution a senior UBS private banking official from Switzerland traveling on business in Florida, allegedly seizing his computer and other evidence. In June 2008, the former UBS private banker, Bradley Birkenfeld, pleaded guilty to conspiracy to defraud the IRS.⁸ His alleged co-conspirator, Mario Staggl, part owner of a trust company, remains at large in Liechtenstein. The current UBS senior private banking official, Martin Liechti, remains under travel restrictions. This enforcement

⁴ See, e.g., “LGT: Illegally disclosed data material limited to the client data stolen from LGT Treuhand in 2002,” LGT Group press release (2/24/08) at 1 (disclosing that 600 of the 1,400 named persons were from Germany); “Tax Scandal in Germany Fans Complaints of Inequity,” New York Times (2/18/08).

⁵ IRS News Release, “IRS and Tax Treaty Partners Target Liechtenstein Accounts,” IR-2008-26 (2/26/08) at 1.

⁶ See, e.g., HM Revenue & Customs Press Release, “Tax Commissioners battle against tax evasion,” No. Nat 09/08 (2/26/08); Agenzia Entrate media release, “Agenzia Entrate ha ricevuto informazione su italiani con depositi in Liechtenstein” (2/26/08); Ministère du Budget, des comptes publics et de la fonction publique, “Lutte contre la fraude et l’évasion fiscale” (2/26/08); La Agencia Tributaria media release, “La Agencia Tributaria analiza información sobre ciudadanos españoles incluidos en las cuentas y depósitos bancarios de Liechtenstein” (2/26/08); Australian Taxation Office Media Release, “Tax Commissioners battle against tax evasion,” No. 2008/08 (2/26/08).

⁷ See IRS News Release, “IRS and Tax Treaty Partners Target Liechtenstein Accounts,” IR-2008-26 (2/26/08) at 1 (“The national tax administrations of Australia, Canada, France, Italy, New Zealand, Sweden, United Kingdom, and the United States of America, all member countries of the OECD’s Forum on Tax Administration (FTA), are working together following revelations that Liechtenstein accounts are being used for tax avoidance and evasion.”); Organization for Economic Cooperation and Development (OECD) press release, “Tax disclosures in Germany part of a broader challenge, says OECD Secretary-General” (2/19/08).

⁸ United States v. Birkenfeld, Case No. 08-CR-60099-ZLOCH (S.D.Fla) (hereinafter “United States v. Birkenfeld”), Statement of Facts, (6/19/08). The U.S. citizen had earlier pled guilty to one count of filing a false tax return and agreed to pay back taxes, interest, and penalties totaling \$52 million. See pleadings in United States v. Olenicoff, Case No. SA CR No. 07-227-CJC (C.D.Cal.).

action appears to represent the first time that the United States has criminally prosecuted a Swiss banker for helping a U.S. taxpayer evade payment of U.S. taxes.⁹

On June 30, 2008, the United States took another step. It filed a petition in the U.S. District Court for the Southern District of Florida requesting leave to file an IRS administrative summons with UBS asking the bank to disclose the names of all of its U.S. clients who have opened accounts in Switzerland, but for which the bank has not filed forms with the IRS disclosing the Swiss accounts.¹⁰ The court approved service of the summons on UBS on July 1, 2008.¹¹ The summons has apparently been served, but according to Swiss authorities the Swiss and American governments are negotiating over its execution.¹² This John Doe summons represents the first time that the United States has attempted to pierce Swiss bank secrecy by compelling a Swiss bank to name its U.S. clients.

The U.S. Senate Permanent Subcommittee on Investigations has long had an investigative interest in U.S. taxpayers who use offshore tax havens to hide assets and evade taxes.¹³ As part of this effort, the Subcommittee has undertaken an investigation into the extent to which tax haven banks may be assisting U.S. taxpayers to evade taxes, in particular by urging U.S. clients to open accounts abroad, assisting them in structuring those accounts to avoid disclosure to U.S. authorities, and providing financial services in ways that do not alert U.S. authorities to the existence of the foreign accounts. Of particular concern in this investigation has been the extent to which tax haven banks may be manipulating their reporting obligations under the Qualified Intermediary (QI) Program, which was established by the U.S. Government in 2001, to encourage foreign financial institutions to report and withhold tax on U.S. source income paid to foreign bank accounts. QI participant institutions sign an agreement to report and

⁹ In the mid-1990s, the IRS arrested John Mathewson, the owner and president of an offshore bank in the Cayman Islands, on tax-related charges. Mr. Mathewson agreed to cooperate with U.S. tax investigations of his clients. In 2001 testimony before this Subcommittee, Mr. Mathewson stated that, of the 2,000 clients at his Cayman bank, he estimated that 95% were Americans and virtually all were engaged in tax evasion. “Role of U.S. Correspondent Banking in International Money Laundering,” before the Permanent Subcommittee on Investigations, S. Hrg. 107-84 (March 1, 2 and 6, 2001) at 13.

¹⁰ Ex Parte Petition for Leave to Serve “John Doe” Summons, Case No. 08-21864-MC-LENARD/GARBER (S.D.Fla.)(6/30/08) (The IRS stated that the summons would ask UBS for the names of U.S. clients for whom UBS: “(1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.”). This petition was filed under 26 USC §7609(f), which requires court approval of any IRS administrative summons that does not identify by name the persons for whom tax liability may attach.

¹¹ *Id.*, Order (7/1/08) (court order approving petition to serve John Doe summons on UBS).

¹² Subcommittee meeting with Swiss Embassy (7/10/08).

¹³ See, e.g., the following hearings before the U.S. Senate Permanent Subcommittee on Investigations: “Tax Haven Abuses: The Enablers, The Tools and Secrecy,” S. Hrg. 109-797 (8/1/06) (hereinafter “Subcommittee 2006 Tax Haven Abuse Hearing”); “U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals,” S. Hrg. 108-473 (November 18, 20, 2003) (hereinafter “Subcommittee 2003 Tax Shelter Industry Hearing”); “What is the U.S. Position on Offshore Tax Havens?” S. Hrg. 107-152 (7/18/01) (hereinafter “Subcommittee 2001 Offshore Tax Haven Hearing”); “Crime and Secrecy: The Use of Offshore Banks and Companies,” S. Hrg. 98-151 (March 15, 16 and May 24, 1983).

withhold U.S. taxes on an aggregate basis in return for being freed of the legal obligation to disclose the names of their non-U.S. clients. Evidence is emerging, however, that tax haven banks are taking manipulative and deceptive steps to avoid their QI obligation to disclose their U.S. clients.

To illustrate the issues, this Report presents two case histories showing how banks in Liechtenstein and Switzerland have employed banking practices that can facilitate, and have resulted in, tax evasion by their U.S. clients.

I. EXECUTIVE SUMMARY

A. Subcommittee Investigation

The Subcommittee began this bipartisan investigation into tax haven banks in February 2008. Since then, the Subcommittee has issued more than 35 subpoenas and conducted numerous interviews and depositions with bankers, trust officers, taxpayers, tax and estate planning professionals, and others. The Subcommittee has consulted with experts in the areas of tax, trusts, estate planning, securities, anti-money laundering, and international law, and spoken with domestic and foreign government officials and international organizations involved with tax administration and enforcement. During the investigation, the Subcommittee reviewed hundreds of thousands of pages of documents, including bank account records, internal bank memoranda, trust agreements, incorporation papers, correspondence, and electronic communications, as well as materials in the public domain, such as legal pleadings, court rulings, SEC filings, and information on the Internet. In addition, the Subcommittee has consulted with the governments of Liechtenstein and Switzerland, and expresses appreciation for their cooperation with the Subcommittee.

B. Overview of Case Histories

This Report presents case histories, involving LGT Bank in Liechtenstein and UBS AG of Switzerland, that lend insight into how these banks work with U.S. clients and execute their U.S. tax compliance obligations.

(1) LGT Bank Case History

The LGT Group (LGT), which includes LGT Bank in Liechtenstein, LGT Treuhand, a trust company, and other subsidiaries and affiliates, is a leading Liechtenstein financial institution that is owned by and financially benefits the Liechtenstein royal family. From at least 1998 to 2007, LGT employed practices that could facilitate, and in some instances have resulted in, tax evasion by U.S. clients. These LGT practices have included maintaining U.S. client accounts which are not disclosed to U.S. tax authorities; advising U.S. clients to open accounts in the name of Liechtenstein foundations to hide their beneficial ownership of the account assets; advising clients on the use of complex offshore structures to hide ownership of assets outside of Liechtenstein; and establishing “transfer corporations” to disguise asset transfers to and from LGT accounts. It was also not unusual for LGT to assign its U.S. clients code words that they or LGT could invoke to confirm their respective identities. LGT also advised clients on how to

structure their investments to avoid disclosure to the IRS under the QI Program. Of the accounts examined by the Subcommittee, none had been disclosed by LGT to the IRS. These and other LGT practices contributed to a culture of secrecy and deception that enabled LGT clients to use the bank's services to evade U.S. taxes, dodge creditors, and ignore court orders.

LGT's trust office in Liechtenstein managed an estimated \$7 billion in assets and more than 3,000 offshore entities for clients during the years 2001 to 2002; it is unclear what percentage was attributable to U.S. clients. Seven LGT accounts help illustrate LGT practices of concern to the Subcommittee.

Marsh Accounts: Hiding \$49 Million Over Twenty Years. James Albright Marsh, a U.S. citizen from Florida in the construction business, formed four Liechtenstein foundation during the 1980s, and transferred substantial sums to them. LGT assisted him in establishing two foundations in 1985, using documents that gave Mr. Marsh and his sons substantial control over the foundations and strong secrecy protections. By 2007, the assets in his four foundations had a combined value of more than \$49 million. Although LGT became a participant in the QI Program in 2001, which requires foreign banks to report information on accounts with U.S. securities, LGT did not report the Marsh accounts. Instead it advised Mr. Marsh to divest his LGT foundations of U.S. securities, and treated the accounts as owned by non-U.S. persons, the Liechtenstein foundations that LGT had formed. After Mr. Marsh's death in 2006, the IRS apparently discovered the Liechtenstein foundations. Mr. Marsh's family is now in negotiation with the IRS over back taxes, interest and penalties owed on the \$49 million in undeclared assets.

Wu Accounts: Hiding Ownership of Assets. William S. Wu is a U.S. citizen who was born in China and has lived for many years with his family in New York. His sister is a U.S. citizen living in Hong Kong. LGT helped Mr. Wu establish a Liechtenstein foundation in 1996, and a second one in 2006, while helping his sister establish a Liechtenstein foundation that operated for four years, from 1997-2001, before transferring its assets to another foundation in Hong Kong. LGT documents indicate that these foundations were used to conceal certain Wu ownership interests. For example, in 1997, three months after forming his foundation, Mr. Wu pretended to sell his home in New York to what appeared to be an unrelated party from Hong Kong. In fact, the buyer, Tai Lung Worldwide Ltd., was a British Virgin Islands company with a Hong Kong address, and it was wholly owned by a Bahamian corporation called Sandalwood International Ltd., which was, in turn, wholly owned by Mr. Wu's Liechtenstein foundation. His sister's foundation was used in a similar manner. In her case, the documents indicate that her Liechtenstein foundation was the sole owner of a bearer share corporation formed in Samoa, called Manta Company Ltd., which owned a Hong Kong corporation called Bowfin Co. Ltd. which, in turn, held real estate, a vehicle, a mobile telephone, and two bank accounts. LGT documentation indicates that the bank was fully aware of these arrangements and expressed no concerns. LGT documents also show that Mr. Wu transferred substantial sums to his foundation and, over the years, withdrew substantial amounts, ranging from \$100,000 to \$1.5 million at a time. In one instance, LGT arranged for Mr. Wu to withdraw \$100,000 using a HSBC bank check drawn on an LGT correspondent account, which made the funds difficult to trace. By 2006, Mr. Wu's first foundation had been dissolved, while his second foundation had assets in excess of \$4.6 million.

Lowy Account: Using a U.S. Corporation to Hide Beneficiaries. Frank Lowy, an Australian citizen, was a pre-existing client of LGT when, in 1996, he formed a new Liechtenstein foundation at LGT to benefit himself and his three sons, David, Peter, and Steven. LGT documents show that Mr. Lowy informed LGT that he wished to hide his ownership of the foundation assets from Australian tax authorities, and rather than express concern, LGT took a number of measures to accomplish that objective. LGT allowed the foundation instruments to be signed, for example, not by the Lowys, but by a Lowy family lawyer, J.H. Gelbard. LGT did not transfer assets from other Lowy-affiliated entities directly to the new foundation, but instead routed them through an offshore corporation, Sewell Services Ltd., to prevent any direct link to other Lowy entities. The foundation instruments did not name the Lowys as beneficiaries. Instead, the foundation instruments included a complex mechanism providing that the beneficiaries would be named by the last corporation in which Beverly Park Corporation, formed in Delaware, held stock. Despite this provision which authorized a future company to name the beneficiaries, internal LGT documents were explicit that Mr. Lowy and his three sons were the true beneficiaries of the foundation. Documents obtained by the Subcommittee indicate that the Lowys exercised control over the Beverly Park Corp. because it was ultimately owned by the Frank Lowy Family Trust, and Peter Lowy, a U.S. citizen living in California, was appointed the company's president and director. In 2001, when the Lowys decided to dissolve the foundation and move its assets to Switzerland, Beverly Park Corp. formed a new British Virgin Islands corporation named Lonas Inc., whose sole director and officer was the Lowy family lawyer, J.H. Gelbard. After receiving instructions from Lonas to send the foundation assets to accounts in Geneva that did not bear the Lowy name, LGT telephoned David Lowy twice to confirm the arrangements, recording one of those conversations. These telephone calls indicate that LGT continued to view the Lowys as the true beneficiaries of the foundation. In December 2001, LGT transferred assets valued at about \$68 million to a Geneva bank and dissolved the foundation.

Greenfield Accounts: Pitching a Transfer to Liechtenstein. Harvey and Steven Greenfield, father and son, are New York businessmen who are longtime participants in the U.S. toy industry. In 1992, LGT helped Harvey Greenfield establish a Liechtenstein foundation, for which he is the sole primary beneficiary and his son holds power of attorney. This foundation used two British Virgin Islands corporations as conduits to transfer funds, and at the end of 2001, had total funds of about \$2.2 million. In March 2001, at its Liechtenstein offices, LGT held a five-hour meeting with the Greenfields attended by three LGT private bankers and Prince Philipp, Chairman of the Board of the LGT Group and brother to the reigning sovereign. The meeting was primarily a sales pitch to convince the Greenfields to transfer to their LGT foundation assets valued at "around U.S. \$30 million" from a Bank of Bermuda office in Hong Kong. An LGT memorandum describing the meeting states:

"The Bank of Bermuda has indicated to the client that it would like to end the business relationship with him as a U.S. citizen. Due to these circumstances, the client is now on the search for a safe haven for his offshore assets. ... There follows a long discussion about the banking location Liechtenstein, the banking privacy law as well as the security and stability, that Liechtenstein, as a banking location and sovereign nation, can guarantee its clients. The Bank ... indicate[s] strong interest in receiving the U.S. \$30

million. ... The clients are very careful and eager to dissolve the Trust with the Bank of Bermuda leaving behind as few traces as possible.”

The LGT memorandum expresses no concern about Bank of Bermuda’s decision to end its relationship with the Greenfields or their desire to move their funds with “as few traces as possible.” The memorandum shows that LGT uses its “banking privacy law” as a selling point, employs the royal family to secure new business, and is more than willing to provide advice and assistance to help U.S. clients move substantial funds in secrecy.

Gonzalez Accounts: Inflating Prices and Frustrating Creditors. Jorge and Conchita Gonzalez, and their son Ricardo, operated a car dealership in the United States for many years. Beginning in 1986, LGT helped them form two Liechtenstein foundations and two Liechtenstein corporations primarily to assist their car dealership, which was located in Puerto Rico and specialized in selling Volvos. Two of these Liechtenstein entities provided financing for the dealership. One of the Liechtenstein corporations, Auto und Motoren AG (AUM), represented itself to Volvo as a “guarantor” of the dealership’s debts, apparently without revealing that AUM and the dealership were both beneficially owned by the Gonzalezes. As a result, Volvo sent AUM copies of the invoices it sent the dealership for the cars being purchased for sale in Puerto Rico. As disclosed in a civil lawsuit asserting that Volvo, the dealership, and the Gonzalezes had fraudulently overcharged for certain cars, AUM had not merely taken receipt of the Volvo invoices, but had sent additional invoices to the dealership for selected cars, specifying a higher cost for them than Volvo had charged. Because of this “double invoicing scheme,” a jury found Volvo liable and assessed damages of \$130 million.¹⁴ The court applied the same damages to the dealership and Gonzalezes. The dealership declared bankruptcy, and the Gonzalezes formed a new Liechtenstein foundation to better hide their assets. LGT documents show that the bank was aware of the litigation and, “[f]or the purpose of protection from creditors, who are litigating the family in Puerto Rico,” helped the Gonzalezes transfer assets from the prior foundation and companies to the new entity. The Gonzalezes eventually settled the lawsuit for much less. At the end of 2001, the new foundation’s accounts held assets with a combined value of about \$4.4 million.

Chong Accounts: Moving Funds Through Hidden Accounts. Richard M. Chong is a U.S. citizen, California resident, and venture capitalist. After his father died and left a Liechtenstein foundation to Mr. Chong’s mother, LGT helped her reorganize it into four funds benefiting herself and her three children. The funds, called “Fund Mother,” “Fund Son R,” “Fund Daughter T,” and “Fund Son C,” held assets that, in 2002, had a combined value of about \$9.4 million. LGT records show that, beginning in 1999, Mr. Chong moved large sums into and out of the foundation accounts in transactions that appear related to his business ventures. In 2004, LGT set up for the foundation’s exclusive use what LGT has sometimes referred to as a “transfer corporation” to help disguise asset flows into and out of a foundation’s accounts. This transfer corporation acts as a pass-through entity that breaks the direct link between the foundation and other persons with whom it is exchanging funds, making it harder to trace those funds. Here, LGT’s Hong Kong office acquired Apex Assets Ltd., using a Hong Kong corporate service provider, arranged a mailing address in Samoa, and opened a new account for Apex at

¹⁴ The fraud charges against Volvo were later dismissed in their entirety by the appellate court.

the bank. Financial documents show that, afterward, virtually all funds deposited into or withdrawn from the foundation accounts were routed through Apex, a practice that continued into 2007. In 2008, LGT notified Chong of the disclosure of some of its accounts by a former employee, apologized, and provided him with the names of several U.S. lawyers.

Miskin Accounts: Hiding Assets from Courts and a Spouse. Michael Miskin, a U.K. citizen, has claimed residency in Bermuda, but lived in California for a decade, from 1991 to 2002. In 2003, after his wife of nearly 40 years filed for divorce, he effectively disappeared from view, ignored court orders to transfer California real estate and £3 million in alimony to his ex-wife, and hid assets from the court in offshore jurisdictions around the world, including possibly at LGT. LGT documents show that, in the early 1990s, LGT helped Mr. Miskin open an account in Liechtenstein and deposit millions of Swiss francs, apparently transferred from another Liechtenstein bank that had been disclosed to his wife's legal counsel. In 1998, having obtained information indicating that Mr. Miskin was hiding assets from his wife and tax authorities, LGT nevertheless helped him form a Liechtenstein foundation and transfer into its account his existing LGT funds, then valued at nearly 10 million Swiss francs or \$6.6 million. Also in 1998, Mr. Miskin purchased a \$700,000 condominium in California, hiding his ownership by making the purchase in the name of a Guernsey corporation owned by a Guernsey trust. Despite evidence that he lived in the condominium for years, Mr. Miskin denied being a U.S. resident; an internal LGT memorandum noted approvingly: "The financial beneficiary has his PLACE OF RESIDENCE IN BERMUDA and not in the U.S. Hence, he pays no taxes in the U.S.!!!!!!" At the end of 2001, \$6 million in assets remained at LGT. In 2003, a U.K. court ordered Mr. Miskin to pay £3 million in alimony and transfer the California realty to his ex-wife. He failed to acknowledge or comply with the court order. When Ms. Miskin filed papers to enforce the U.K. court order in a California court, Mr. Miskin unsuccessfully contested the case. In the end, the U.S. court awarded Ms. Miskin the real estate, but she was unable to obtain the alimony. The existence of the Liechtenstein foundation and funds were not disclosed to the courts or his ex-wife.

These LGT accounts together portray a bank whose personnel too often viewed LGT's role as, not just a guardian of client assets or trusted financial advisor, but also a willing partner to clients wishing to hide their assets from tax authorities, creditors, and courts. In that context, bank secrecy laws have served as a cloak not only for client misconduct, but also for bank personnel colluding with clients to evade taxes, dodge creditors, and defy court orders.

(2) UBS AG Case History

UBS AG of Switzerland is one of the largest financial institutions in the world, and has one of the world's largest private banks catering to wealthy individuals. From at least 2000 to 2007, UBS made a concerted effort to open accounts in Switzerland for wealthy U.S. clients, employing practices that could facilitate, and have resulted in, tax evasion by U.S. clients. These UBS practices included maintaining for an estimated 19,000 U.S. clients "undeclared" accounts in Switzerland with billions of dollars in assets that have not been disclosed to U.S. tax authorities; assisting U.S. clients in structuring their accounts to avoid QI reporting requirements; and allowing its Swiss bankers to market securities and banking services on U.S. soil without an appropriate license in apparent violation of U.S. law and UBS policy. In 2007, after its activities

within the United States came to the attention of U.S. authorities, UBS banned its Swiss bankers from traveling to the United States and took action to revamp its practices.

The information obtained by the Subcommittee about UBS practices in the United States was obtained, in part, from former UBS employee, Bradley Birkenfeld, a U.S. citizen who worked as a private banker in Switzerland from 1996, until his arrest in the United States in 2008. Mr. Birkenfeld worked for UBS in its private banking operations in Geneva from 2001 to 2005, until he resigned from the bank. In 2007, while in the United States, Mr. Birkenfeld provided documentation and testimony to the Subcommittee related to his employment as a private banker. In a sworn deposition before Subcommittee staff, Mr. Birkenfeld provided detailed information about a wide range of issues related to UBS business dealings with U.S. clients. In 2008, Mr. Birkenfeld was arrested, indicted, and pled guilty to conspiring with a U.S. taxpayer, Igor Olenicoff, to hide \$200 million in assets in Switzerland and Liechtenstein, and to evade \$7.2 million in U.S. taxes.

Maintaining Undeclared Accounts with Billions in Assets. From at least 2000 to 2007, UBS maintained Swiss accounts for thousands of U.S. clients with billions of dollars in assets that have not been disclosed to U.S. tax authorities. Although UBS AG signed a QI agreement with the United States in 2001, UBS has never filed 1099 Forms reporting these accounts to the IRS, contending that these U.S. client accounts fall outside its QI reporting obligations. UBS refers to these accounts internally as “undeclared accounts.”

In response to Subcommittee inquiries, UBS has estimated that it today has accounts in Switzerland for about 20,000 U.S. clients, of which roughly 1,000 hold declared accounts and 19,000 hold undeclared accounts that have not been disclosed to the IRS. UBS also estimates that those accounts contain assets with a combined value of about 18.2 billion in Swiss francs or about \$17.9 billion. UBS was unable to specify the breakdown in assets between the undeclared and declared accounts, except to note that the amount of assets in the undeclared accounts would be much greater.

These figures suggest that the number of U.S. client accounts in Switzerland and the amount of assets contained in those accounts have increased significantly since 2002, when a UBS document reported that the Swiss private banking operation then had more than 11,000 accounts for clients in the United States and Canada, with combined assets in excess of 20 billion Swiss francs or about \$13.3 billion.

The UBS figures for 2008 are also consistent with internal UBS documents from 2004 and 2005, which suggest that a substantial portion of the UBS Swiss accounts opened for U.S. clients at that time were undeclared, and that these undeclared accounts held more assets, brought in more new money, and were more profitable for the bank than the declared accounts. This information is contained in a set of monthly reports for select months in 2004 and 2005, which tracked key information for the Swiss accounts opened for U.S. clients, breaking down the data for both declared and undeclared accounts. Each report appears to show substantially greater assets in the undeclared accounts than in the declared accounts. In October 2005, for example, the data indicates a total of about 18.5 billion Swiss francs of assets in the undeclared accounts and 2.6 billion Swiss francs in the declared accounts. The October 2005 report also

suggests that the undeclared accounts had acquired 1 billion Swiss francs in net new money for UBS, while the declared accounts had collectively lost 333 million Swiss francs over the same time period. The monthly reports also indicate that UBS earned significantly more in revenues from the undeclared accounts. For example, the October 2005 data shows that UBS obtained year-to-date revenues of about 180 million Swiss francs from the undeclared accounts versus 22.1 million Swiss francs from the declared accounts. These statistics suggest that the undeclared U.S. client accounts were more popular and more lucrative for the bank.

In the recent U.S. criminal prosecution of Mr. Birkenfeld, the U.S. Government filed a Statement of Facts, signed by Mr. Birkenfeld, stating that UBS in Switzerland had “\$20 billion of assets under management in the United States undeclared business, which earned the bank approximately \$200 million per year in revenues.”

Ensuring Bank Secrecy. UBS has not only opened undeclared Swiss accounts for U.S. clients, UBS has assured its U.S. clients with undeclared accounts that U.S. authorities would not learn about them, because the bank is not required to disclose them; UBS procedures, practices and services protect against disclosure; and the account information is further shielded by Swiss bank secrecy laws. In November 2002, for example, senior officials in the UBS private banking operations in Switzerland sent the following letter to U.S. clients about their Swiss accounts which states in part:

“[W]e should like to underscore that a Swiss bank which runs afoul of Swiss privacy laws will face sanctions by its Swiss regulator. ... [I]t must be clear that information relative to your Swiss banking relationship is as safe as ever and that the possibility of putting pressure on our U.S. units does not change anything. ...

“UBS (as all other major Swiss banks) has asked for and obtained the status of a Qualified Intermediary under U.S. tax laws. The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in US securities but under no circumstances will his/her identity be revealed. Consequently, UBS’s entire compliance with its QI obligations does not create the risk that his/her identity be shared with U.S. authorities.”

This letter plainly asserts that UBS will not disclose to the IRS a Swiss account opened by a U.S. client, so long as that account contains no U.S. securities, even if UBS knows the account holder is a U.S. taxpayer obligated under U.S. law to report the account and all income to the IRS.

UBS not only maintained secret, undeclared accounts for U.S. clients, it also took steps to assist its U.S. clients to structure their Swiss accounts to avoid QI reporting requirements. UBS informed the Subcommittee that, after it joined the QI Program in 2001, and informed its U.S. clients about its QI disclosure obligations, many U.S. clients elected to sell their U.S. securities so that their identities would not be disclosed to the IRS under the QI agreement. UBS told the Subcommittee that, in 2001, these U.S. clients sold over \$2 billion in U.S. securities from their Swiss accounts to avoid QI reporting. UBS allowed these U.S. clients to continue to maintain accounts in Switzerland, and helped them reinvest in other types of assets that did not trigger

reporting obligations to the IRS, despite evidence that the U.S. clients were using the accounts to hide assets from the IRS. In addition, UBS told the Subcommittee that, in 2001, at least 250 of its U.S. clients with Swiss accounts opened new accounts in the names of offshore corporations, trusts, foundations, or other entities, and transferred assets including, in a number of instances, U.S. securities from their personal accounts to those new accounts. UBS treated the new accounts as held by non-U.S. persons whose identities did not have to be disclosed to the IRS, even though UBS knew that the true beneficial owners were U.S. persons. UBS was unable to estimate for the Subcommittee by the time this Report was prepared the total volume of assets that were transferred to these new accounts in 2001, although it said it was working to gather that data.

The Subcommittee also asked UBS whether, after 2001, its Swiss employees had assisted any U.S. clients to avoid QI reporting requirements, either by opening accounts with no U.S. securities or opening accounts in the names of foreign entities that, as non-U.S. persons, were not required to be disclosed to the IRS. UBS told the Subcommittee that it did not have reliable data on the extent to which its Swiss employees may have continued to engage in this conduct from 2002 to the present.

These facts indicate that, soon after it joined the QI Program, UBS helped its U.S. clients structure their Swiss accounts to avoid reporting billions of dollars in assets to the IRS. Among other actions, UBS allowed U.S. clients to establish offshore structures to assume nominal ownership of their assets and allowed U.S. clients to continue to hold undisclosed accounts that were not reported to the IRS. Such actions, while not per se violations of the QI Program, were aimed at circumventing its intended purpose of increasing disclosure of U.S. client accounts, and led to the formation of offshore structures and undeclared accounts that could facilitate, and have resulted in, tax evasion by U.S. clients.

The Statement of Facts in the Birkenfeld criminal case characterizes these actions as follows: “By concealing the U.S. clients’ ownership and control in the assets held offshore, defendant Birkenfeld, the Swiss Bank, its managers and bankers evaded the requirements of the Q.I. program, defrauded the IRS and evaded United States income taxes.”¹⁵

Targeting U.S. Clients. Although UBS has extensive banking and securities operations in the United States that could accommodate its U.S. clients, from at least 2000 to 2007, UBS directed its Swiss bankers to target U.S. clients to open more bank accounts in Switzerland. Until recently, UBS encouraged its Swiss bankers to travel to the United States to recruit new U.S. clients, organized events to help them meet wealthy U.S. individuals, and set annual performance goals for obtaining new U.S. business. UBS Swiss bankers also marketed securities and banking products and services while in the United States, and accepted orders for securities transactions from clients in the United States, without an appropriate license and in apparent violation of U.S. law and UBS policy.

U.S. securities law prohibits persons from advertising securities products or services or executing securities transactions within the United States, unless registered with the Securities

¹⁵ United States v. Birkenfeld,” Statement of Facts, (6/19/08).

and Exchange Commission (SEC). In addition, securities products offered to U.S. persons must comply with U.S. securities laws, which generally means they must be registered with the SEC, a condition that may not be met by non-U.S. securities, mutual funds, and other investment products. State securities laws may have similar prohibitions. Moreover, U.S. tax laws may require foreign financial institutions to report sales of non-U.S. securities on 1099 Forms if the sales are effected in the United States, such as through a broker physically in the United States or telephone calls or emails originating in the United States. In addition, although UBS AG is itself licensed to operate as a bank and broker-dealer in the United States, its banking and securities licenses do not extend to its non-U.S. offices or affiliates providing services to U.S. residents.

To avoid violating U.S. law, exceeding their licenses, or triggering 1099 reporting requirements, since at least 2002, UBS has maintained written policies restricting the marketing and client-related activities that may be undertaken in the United States by UBS bankers from outside of the country. For example, 2002 UBS guidelines instruct its Swiss bankers to ensure that there is “no use of US mails, e-mail, courier delivery or facsimile regarding the client’s securities portfolio;” “no use of telephone calls into the US regarding the client’s securities portfolio;” “no account statements, confirmations, performance reports or any other communications” while in the United States; “no further instructions ... from ... clients while they are in the US;” “no marketing of advisory or brokerage services regarding securities;” “no discussion of or delivery of documents concerning the client’s securities portfolio while on visits in the US;” “no discussion of performance, securities purchased or sold or changes in the investment mandate for the client” while in the United States; and “no delivery of documents regarding performance, securities purchased or sold or changes in the investment mandate for the client.” The 2004 and 2007 versions of this UBS policy are even more restrictive.

Despite these explicit and extensive restrictions on allowable U.S. activities, from at least 2000 to 2007, UBS routinely authorized and paid for its Swiss bankers to travel to the United States to develop new business and service existing clients. In his deposition, Mr. Birkenfeld told the Subcommittee that, during his four years at UBS, the private bankers from Switzerland who targeted U.S. clients typically traveled to the United States four to six times per year, using their trips to recruit new clients and provide financial services to existing clients. He estimated: “As I remember, there [were] around 25 people in Geneva, 50 people in Zurich, and five to ten in Lugano. This is a formidable force.”

Mr. Birkenfeld testified that UBS also provided its Swiss bankers with tickets and funds to go to events attended by wealthy U.S. individuals, so that they could solicit new business for the bank in Switzerland. He said that UBS sponsored U.S. events likely to attract wealthy clients, such as the Art Basel Air Fair in Miami; performances in major U.S. cities by the UBS Vervier Orchestra featuring talented young musicians; and U.S. yachting events attended by the elite Swiss yachting team, Alinghi, which was also sponsored by UBS. A UBS document laying out marketing strategies to attract U.S. clients confirms that the bank “organized VIP events” and engaged in the “Sponsorship of Major Events” such as “Golf, Tennis Tournaments, Art, Special Events.” This document even identified the 25 most affluent housing areas in the United States to provide “targeted locations where to organize events.”

To gauge the extent of UBS efforts to target U.S. clients while on U.S. soil, the Subcommittee conducted an analysis of more than 500 travel records compiled by the Department of Homeland Security, at the Subcommittee's request, of persons travelling from Switzerland to the United States from 2001 to 2008, to identify UBS Swiss bankers who serviced U.S. clients. The Subcommittee determined that, from 2001 to 2008, roughly 20 UBS Swiss client advisors made an aggregate total of over 300 visits to the United States. Only two of these visits took place from 2001 to 2002; the rest occurred from 2003 to 2008. On several occasions, the visits appear to have involved multiple client advisors travelling together to UBS-sponsored events in the United States. Some of these client advisors designated their visits as travel for a non-business purpose on the I-94 Customs declaration forms that all visitors must complete prior to entry into the United States. Closer analysis, however, reveals that the dates and ports of entry for such trips coincided with the UBS-sponsored events, suggesting the visits were, in fact, business-related. The data also disclosed UBS bankers who made regular U.S. visits. One UBS employee, for example, travelled to the United States three times per year, at roughly four-month intervals, from 2003 to 2007. Another senior UBS Swiss private bank official – Michel Guignard – visited the United States nearly every other month for a significant portion of the period examined by the Subcommittee. Martin Liechti, an even more senior Swiss private banking official who heads Wealth Management Americas, visited the United States up to eight times in a year.

NNM Performance Goals. UBS not only encouraged its Swiss bankers to travel to the United States to recruit new U.S. clients, it also assigned its Swiss bankers specific performance goals for bringing new money into the bank from the United States. Mr. Birkenfeld told the Subcommittee that, during his tenure at the bank, his superiors at UBS assigned him a specific monetary goal, referred to as a “net new money” (NNM) target, that he was expected to bring into the bank by the end of the year from U.S. clients. He said that a NNM target was assigned to each Swiss Client Advisor who dealt with U.S. clients, depending upon their seniority and past performance. He told the Subcommittee that it was his “job as a private banker ... to bring in net new money ... probably \$50 million a year or \$40 million.”

A 2007 email from Mr. Liechti indicates that the bank's focus on net new money continued after Mr. Birkenfeld left UBS in 2005. His email wishes his colleagues a “Happy New Year” and then urges them to increase their NNM efforts. He states:

“The markets are growing fast, and our competition is catching up. ... The answer to guarantee our future is GROWTH. We have grown from CHF 4 million per Client Advisor in 2004 to 17 million in 2006. We need to keep up with our ambitions and go to 60 million per Client Advisor! ...

“In the Chinese Horoscope, 2007 is the year of the pig. In many cultures, the pig is a symbol for ‘luck’. While it's always good to have [a] bit of luck, it is not luck that leads to success. Success is the result of vision and purpose, hard work and passion. ... Together as a team I am convinced we will succeed!”¹⁶

¹⁶ Email from Martin Liechti re “Happy New Year”; addressees not specified (undated).

The Liechti email indicates that in two years, from 2004 to 2006, UBS Swiss bankers had quadrupled the amount of net new money being drawn into UBS from the “Americas,” and that the bank’s management sought to quadruple that figure again in a single year, 2007. This email helps to convey the pressure that UBS placed on its Swiss private bankers to bring in new money from the United States into Switzerland.

Mr. Birkenfeld told the Subcommittee that the overall effort of the UBS Swiss private banking operation to secure U.S. clients was the most extensive he had observed in his 12 years working in Swiss private banking. He said the Swiss bankers he worked with typically had an “existing book of business,” with numerous U.S. clients, and “a very regimented cycle of going out and acquiring new clients, taking care of your existing clients, make sure the revenue was there.” He described one private banker who would see as many as 30 or 40 existing clients on a single trip. He said, “This was a massive machine. I had never seen such a large bank making such a dedicated effort to market to the U.S. market.”

A UBS business plan for the years 2003 through 2005, provides context for the Swiss focus on obtaining U.S. clients. This document observes that “31% of World’s UHNWIs [Ultra High Net Worth Individuals] are in North America (USA + Canada).” It also observes that the United States has 222 billionaires with a combined net worth of \$706 billion. This type of information helps explain why UBS dedicated significant resources to obtaining U.S. clients for its private banking operations in Switzerland. It also explains why the Swiss effort to attract billions to their tax haven may have contributed to the huge tax loss to the U.S. treasury.

Servicing U.S. Clients with Swiss Accounts. UBS not only allowed U.S. clients to open undeclared accounts in Switzerland, it also took steps to ensure that its Swiss bankers serviced their U.S. clients in ways that minimized disclosure of information to U.S. authorities. Mr. Birkenfeld told the Subcommittee that UBS private bankers were supposed to keep a low profile during their business trips to avoid attracting attention from U.S. authorities. He noted, for example, that UBS business cards did not include a reference to a private banker’s involvement in “wealth management.” He also said that some UBS Swiss private bankers who visited the United States on business told U.S. customs officials that they were instead in the country for non-business reasons. UBS also provided its private bankers with explicit training on how to detect – and avoid – surveillance by U.S. customs agents and law enforcement officers, and how to react if confronted.

Protecting client-specific account information was also a concern. Mr. Birkenfeld explained, for example, that client account statements were normally kept in Switzerland rather than mailed to the United States. He said that Swiss bankers traveling to the United States to meet with specific clients took elaborate measures to disguise or encrypt the account information they brought with them, to prevent it from falling into the wrong hands. He said, for example, some bankers took “cryptic notes” of the account information, created handwritten spreadsheets with no identifying information other than a code name, or used computers equipped to receive only highly encrypted information that, allegedly, “[e]ven if the [U.S.] Customs opened it, for instance, they wouldn’t see anything.”

Mr. Birkenfeld also told the Subcommittee that, despite U.S. laws and UBS policies restricting securities activities that could be undertaken in the United States by non-U.S. personnel, some UBS Swiss bankers communicated with their U.S. clients by telephone, fax, mail and email, to market securities products and services, and to carry out securities transactions. The facts suggest, until recently, UBS was not enforcing its own policies. This lack of enforcement, in turn, raises concerns that UBS Swiss bankers with U.S. clients may have been routinely violating UBS policy and U.S. law.

Olenicoff Accounts. These concerns are further illustrated by the recent criminal prosecution involving UBS accounts opened in Switzerland by Mr. Birkenfeld for Igor Olenicoff. Mr. Olenicoff is a billionaire real estate developer, U.S. citizen, and resident of Florida and California. From 2001 until 2005, Mr. Birkenfeld and Mario Staggl, a trust officer from Liechtenstein, helped Mr. Olenicoff open multiple bank accounts in the names of offshore companies he controlled at UBS in Switzerland and Neue Bank in Liechtenstein. For a time, Mr. Olenicoff was Mr. Birkenfeld's largest private banking client. To service these accounts, Mr. Birkenfeld met with Mr. Olenicoff in the United States and elsewhere, communicated with him by telephone, fax, and email in the United States, and advised him on how to avoid disclosure of his accounts and assets to the IRS. In 2007, Mr. Olenicoff pled guilty to one criminal count of filing a false income tax return by failing to disclose the foreign bank accounts he controlled. He was sentenced to two years probation and 120 hours of community service, and paid six years of back taxes, interest, and penalties totaling \$52 million. In 2008, Mr. Birkenfeld pled guilty to conspiring with Mr. Olenicoff to defraud the IRS and avoid payment of taxes owed on \$200 million in assets hidden in accounts in Switzerland and Liechtenstein. Their alleged co-conspirator, Mr. Staggl, remains at large in Liechtenstein.

2007 Overhaul. In November 2007, after its U.S. activities had come to the attention of U.S. authorities, UBS imposed a travel ban prohibiting its Swiss bankers from going to the United States. In addition, UBS re-issued a policy statement with more extensive restrictions on allowable activities within the United States by its non-U.S. personnel. UBS is currently under investigation by the SEC, IRS, and Department of Justice.

C. Report Findings and Recommendations

Based upon its investigation, the Subcommittee staff makes the following findings of fact and recommendations.

Report Findings

Based upon its investigation, the Subcommittee staff makes the following findings of fact.

1. **Bank Secrecy.** Bank secrecy laws and practices are serving as a cloak, not only for client misconduct, but also for misconduct by banks colluding with clients to evade taxes, dodge creditors, and defy court orders.

2. **Bank Practices That Facilitate Tax Evasion.** From at least 2000 to 2007, LGT and UBS employed banking practices that could facilitate, and have resulted in, tax evasion by their U.S. clients, including assisting clients to open accounts in the names of offshore entities; advising clients on complex offshore structures to hide ownership of assets; using client code names; and disguising asset transfers into and from accounts.
3. **Billions in Undeclared U.S. Client Accounts.** Since 2001, LGT and UBS have collectively maintained thousands of U.S. client accounts with billions of dollars in assets that have not been disclosed to the IRS. UBS alone has accounts in Switzerland for an estimated 19,000 U.S. clients with assets valued at \$18 billion. The IRS has identified at least 100 accounts with U.S. clients at LGT.
4. **QI Structuring.** LGT and UBS have assisted their U.S. clients in structuring their foreign accounts to avoid QI reporting to the IRS, including by allowing U.S. clients who sold their U.S. securities to continue to hold undisclosed accounts and by opening accounts in the name of non-U.S. entities beneficially owned by U.S. clients. While these banking practices did not technically violate the banks' QI agreements, the result is that the banks helped keep accounts secret from the IRS and thereby facilitated tax evasion by their U.S. clients.

Report Recommendations

Based upon its investigation and factual findings, the Subcommittee staff makes the following recommendations.

1. **Strengthen QI Reporting of Foreign Accounts Held by U.S. Persons.** In addition to prosecuting misconduct under existing law, the Administration should strengthen the Qualified Intermediary Agreement by requiring QI participants to file 1099 Forms for: (1) all U.S. persons who are clients (whether or not the client has U.S. securities or receives U.S. source income); and (2) accounts beneficially owned by U.S. persons, even if the accounts are held in the name of a foreign corporation, trust, foundation, or other entity. The IRS should also close the "QI-KYC Gap" by expressly requiring QI participants to apply to their QI reporting obligations all information obtained through their Know-Your-Customer procedures to identify the beneficial owners of accounts.
2. **Strengthen 1099 Reporting.** Congress should strengthen the statutory 1099 reporting requirements by requiring any domestic or foreign financial institution that obtains information that the beneficial owner of a foreign-owned financial account is a U.S. taxpayer to file a 1099 Form reporting that account to the IRS.
3. **Strengthen QI Audits.** The IRS should broaden QI audits to require bank auditors to report evidence of fraudulent or illegal activity.

4. **Penalize Tax Haven Banks That Impede U.S. Tax Enforcement.** Treasury should penalize tax haven banks that impede U.S. tax enforcement or fail to disclose accounts held directly or indirectly by U.S. clients by terminating their QI status, and Congress should amend Section 311 of the Patriot Act to allow Treasury to bar such banks from doing business with U.S. financial institutions.
5. **Attribute Presumption of Control to U.S. Taxpayers Using Tax Havens.** Congress should amend U.S. tax laws to create a presumption in enforcement proceedings that legal entities, such as corporations, trusts, and foundations, are under the control of the U.S. persons who formed them, sent them assets, or received assets from them, where those entities are located or operating in an offshore secrecy jurisdiction.
6. **Allow More Time to Combat Offshore Tax Abuses.** Congress should extend from three years to six years the amount of time the IRS has after a return is filed to investigate and propose assessments of additional tax if the case involves an offshore tax haven with secrecy laws and practices.
7. **Enact Stop Tax Haven Abuse Act.** Congress should enact the Stop Tax Haven Abuse Act to strengthen the United States' ability to combat offshore tax abuse.

II. BACKGROUND

A. The Problem of Offshore Tax Abuse

Each year, the United States loses an estimated \$100 billion in tax revenues due to offshore tax abuses.¹⁷ These funds represent a substantial portion of the annual U.S. tax gap, which is the difference between what U.S. taxpayers owe and what they pay, most recently estimated by the IRS at \$345 billion.¹⁸

In 2006, the Subcommittee released a report and held a hearing on six case studies showing how a mature offshore industry, using an armada of tax attorneys, accountants, bankers, brokers, corporate service providers, trust administrators, and others, aggressively promotes the use of tax havens to U.S. citizens as a means to avoid U.S. taxes.¹⁹ In one case history, from 1992 to 2005, two brothers from Texas created a network consisting of 58 offshore trusts and corporations, transferred \$190 million in assets to that network, and directed the investment of those offshore assets, without paying taxes on either the initial transfers or the offshore income of more than \$600 million subsequently generated.²⁰ Three other case histories showed how

¹⁷ See footnote 1, *supra*, explaining the basis for this \$100 billion estimate.

¹⁸ "Using Data from the Internal Revenue Service's National Research Program to Identify Potential Opportunities to Reduce the Tax Gap," Government Accountability Office, Report No. GAO-07-423R (3/15/07) at 1 (conveying the IRS estimate of the annual U.S. tax gap at \$345 billion).

¹⁹ See Subcommittee 2006 Tax Haven Abuse Hearing.

²⁰ *Id.* (see case history involving Sam and Charles Wyly).

U.S. businessmen used offshore trusts and shell companies to hide substantial funds and other assets from U.S. tax authorities.²¹ The remaining two case histories focused on how a U.S. offshore promoter helped U.S. citizens open offshore accounts and establish offshore structures, while a U.S. securities firm used offshore entities and a phony offshore securities portfolio in an abusive tax shelter that offset billions of dollars in taxable income within the United States.²²

The 2006 Subcommittee hearing focused primarily on the roles played by U.S. professionals, such as tax attorneys, accountants, investment advisors, and bankers, in assisting U.S. taxpayers in moving assets offshore and using those offshore assets to further their personal or business aims. The roles played by tax haven professionals and financial institutions received less extensive review. The Liechtenstein tax scandal and the arrest of a former UBS private banker, however, demonstrate anew the key role played by tax haven financial institutions in facilitating, knowingly or unknowingly, U.S. tax dodges.

B. Initiatives To Combat Offshore Tax Abuse

Concerns about offshore tax abuses and the role of tax havens in facilitating tax evasion are longstanding. This Subcommittee held a hearing in 1983 on U.S. taxpayers using offshore secrecy jurisdictions to hide assets and evade U.S. taxes.²³ Over the years, the United States and the international community have undertaken an array of initiatives to combat offshore tax abuses. In recent years, this effort has intensified. A brief summary of major initiatives over the last ten years to combat offshore tax abuses follows.

Tax Information Exchange Agreements. One major effort undertaken by the United States to combat offshore tax abuse is its ongoing work to obtain tax treaties or tax information exchange agreements (TIEAs) with foreign countries.²⁴ A major objective of these treaties and agreements is to establish arrangements for the United States to obtain information from its counterpart to advance its tax enforcement efforts.²⁵

²¹ *Id.* (see case histories involving Robert Holliday, Kurt Greaves, and Walter Anderson).

²² *Id.* (see case histories involving the Equity Development Group and the POINT Strategy).

²³ “Crime and Secrecy: The Use of Offshore Banks and Companies,” hearing before the U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 98-151 (March 15, 16 and May 24, 1983).

²⁴ The United States generally enters into a tax treaty with a country to establish maximum rates of tax for certain types of income, protect persons from double taxation, arrange for tax information exchange, and resolve other tax issues. In the case of a country with nominal or no taxes, however, the United States may forego addressing a full range of tax issues and instead seek to enter into simply a tax information exchange agreement. See “Offshore Tax Evasion: Stashing Cash Overseas,” hearing before the Senate Committee on Finance (5/3/07) (hereinafter “Finance Committee 2007 Hearing on Offshore Tax Evasion”), prepared testimony of Treasury Acting International Tax Counsel John Harrington, at 3.

²⁵ The United States has identified three primary forms of information exchange: (1) exchange of information on request, in which the tax authorities of one country request specific information about specific taxpayers from the tax authorities of the second country; (2) automatic exchange of information, in which the tax authorities of one country routinely provide detailed information about a class of taxpayers, such as information detailing the interest, dividends, or royalties payments made to those taxpayers during a specified period; and (3) spontaneous exchange of information, in which the tax authorities of one country pass on information obtained in the course of administering its own tax laws to the tax authorities of another country without having been asked. *Id.* U.S. tax treaties typically encompass all three types of information exchange. *Id.*

The United States has entered into more than 60 tax treaties with other countries.²⁶ A U.S. Model Income Tax Convention establishes the basic format and provisions that the United States seeks to include in its tax treaties.²⁷ Article 26 of the Model Convention focuses on tax information exchange. The model Article 26 states that the treaty partners “shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind ... including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes.” Article 26 requires the treaty partners to protect the confidentiality of the information received from the other country and to disclose the information only to persons, administrative bodies, and courts involved in tax administration. Article 26 also allows a treaty partner to refuse to share information in certain limited circumstances, such as if obtaining the information would be at variance with the country’s laws.

In addition, the United States has entered into more than 20 TIEAs, many with known tax havens. TIEAs first came into use about 20 years ago, after Congress enacted a 1983 law authorizing the U.S. Treasury Department to negotiate bilateral or multilateral tax information exchange agreements with certain countries in the Caribbean and Central America.²⁸ TIEAs received another boost in 2000, when the Organization for Economic Cooperation and Development (OECD) began obtaining written commitments from a number of offshore jurisdictions promising to enter into tax information exchange agreements with other countries in order to avoid being identified as an uncooperative tax haven.²⁹

TIEAs, by their nature, are more limited than tax treaties, since they deal with only one issue, tax information exchange. Typically, TIEAs require the tax authorities of the two countries to agree to exchange information upon request in both criminal and civil tax matters. The parties also typically promise to provide the requested information whether or not the person at issue is a resident or citizen of either country, and whether or not the matter would constitute a violation of the tax laws of the country being asked to supply the information. In addition, the parties typically promise to provide each other with the requested information regardless of laws or practices relating to bank secrecy.

For many years, few offshore tax havens would agree to enter into a tax treaty or TIEA with the United States requiring the exchange of tax information. During the Bush Administration, however, the Treasury Department made a concerted effort to obtain TIEAs with known tax havens, in an effort to strengthen their cooperation with U.S. tax enforcement efforts. Since 2000, the Bush Administration has signed more than a dozen TIEAs. Many of these

²⁶ See list of tax treaties on IRS website at www.irs.gov (viewed 6/17/08).

²⁷ See copy of this Model Convention on IRS website (viewed 6/17/08).

²⁸ See Caribbean Basin Initiative of 1983, P.L. 98-67, 97 Stat. 396, at § 222. See also 26 U.S.C. §§ 274(h)(6)(C) and 927(e). This statutory framework initially authorized the Treasury Secretary to conclude agreements with countries in the Caribbean Basin (thereby qualifying such countries for certain benefits under the Caribbean Basin Initiative) but later expanded this authority to conclude TIEAs with any country.

²⁹ See discussion of OECD initiative on uncooperative tax havens, [infra](#).

TIEAs have only recently gone into effect, and opinion is divided on whether tax havens are fully complying with the agreements.³⁰

A few countries that have resisted signing either a tax treaty or TIEA with the United States have instead entered into tax information exchange arrangements as part of a Mutual Legal Assistance Treaty (MLAT).³¹ MLATs typically establish the parameters for the signatory countries to cooperate in criminal investigations and prosecutions. By using this mechanism to respond to tax information requests, the signatory country agrees to provide tax information only in criminal tax matters. Since most U.S. tax matters are handled in civil rather than criminal proceedings, this approach severely restricts tax information exchanges between the two countries.³²

Liechtenstein has never entered into either a tax treaty or TIEA with the United States.³³ In 2002, Liechtenstein did enter into a MLAT with the United States, and agreed to participate in tax information exchanges in the context of criminal proceedings.³⁴ Under the MLAT, Liechtenstein agreed to provide assistance in U.S. criminal matters where the conduct at issue “constitutes tax fraud, defined as tax evasion committed by means of the intentional use of false, falsified or incorrect business records or other documents, provided the tax due ... is substantial.”³⁵ Diplomatic notes exchanged in connection with the MLAT list five types of intentional conduct that presumptively qualify as “tax fraud” entitled to assistance under the treaty, including the preparation or filing of false documents, the destruction of records, or the concealment of assets.³⁶

Switzerland has a longer history of cooperation with the United States on tax matters, although, like Liechtenstein, that cooperation has been limited to criminal tax matters.

³⁰ For example, the OECD noted last year that some tax havens that made written commitments to enter into TIEAs have not done so, and that countries that signed a TIEA have sometimes refused or delayed producing requested information. Finance Committee 2007 Hearing on Offshore Tax Evasion, prepared testimony of OECD Center for Tax Policy Director Jeffrey Owens, at 9; “OECD Signals Plan to Renew Efforts Against Non-Cooperative Jurisdictions,” BNA Report on International Tax & Accounting, No. ISSN 1522-8800 (10/15/07).

³¹ Some countries have both a MLAT and a tax treaty or tax information exchange agreement with the United States.

³² A 2007 assessment by the OECD of 82 countries found that 17 countries, all known tax havens, have limited their participation in tax information exchanges to criminal tax matters. See “Tax Co-operation: Towards a Level Playing Field – 2007 Assessment by the Global Forum on Taxation,” Report No. ISBN-978-92-64-03902-5 (October 2007).

³³ Liechtenstein is currently in negotiation with the United States regarding a possible tax treaty or tax information exchange agreement.

³⁴ “Treaty between the United States of America and the Principality of Liechtenstein on Mutual Legal Assistance in Criminal Matters,” (signed 7/8/02) (hereinafter “United States-Liechtenstein MLAT”), reprinted in a Message from the President of the United States to the U.S. Senate transmitting the MLAT, Treaty Doc. 107-16 (9/5/02). Prior to the MLAT, Liechtenstein had provided legal assistance to the United States in criminal matters on the basis of a diplomatic agreement. After the attack on the United States on 9/11/01, however, the United States made a concerted effort to obtain formal MLAT agreements with a number of countries, including Liechtenstein.

³⁵ Letter of Submittal by the U.S. Secretary of State to the President regarding the United States-Liechtenstein MLAT (8/14/02), reprinted in Treaty Doc. 107-16 (9/5/02), at VI.

³⁶ *Id.*

Switzerland first entered into a tax treaty with the United States in 1951.³⁷ Under that treaty, Switzerland agreed to exchange information only in criminal cases involving “tax fraud,” a criminal offense narrowly defined in Swiss law.³⁸ In 1996, Switzerland and the United States updated the tax treaty and, among other changes, modernized the tax information exchange provisions.³⁹ A revised Article 26 now states that the treaty partners “shall exchange such information ... as is necessary for carrying out the provisions of the present Convention or for the prevention of tax fraud or the like.”⁴⁰ A Protocol agreed to in connection with the revised tax treaty provides a new definition of “tax fraud” than what was applied in the earlier tax treaty or in Swiss law. The Protocol states that “the term ‘tax fraud’ means fraudulent conduct that causes or is intended to cause an illegal and substantial reduction in the amount of the tax paid.”⁴¹ The Protocol also states: “Fraudulent conduct is assumed in situations when a taxpayer uses, or has the intention to use a forged or falsified document ... or, in general, a false piece of documentary evidence, and in situations where the taxpayer uses, or has the intention to use a scheme of lies (‘Lugengebäude’) to deceive the tax authority.” The U.S. State Department, when submitting the new treaty for ratification by the U.S. Senate, stated that the new provisions had “significantly expand[ed] the scope of the exchange of information between the United States and Switzerland.”⁴² Other observers, while conceding the improvements achieved in the 1996 tax treaty, remain critical of Swiss assistance in U.S. tax matters.

Qualified Intermediary Program. In addition to its systematic effort to obtain tax treaties or tax information exchange agreements with foreign governments, the United States launched a new initiative in 2000, which took effect in 2001, called the Qualified Intermediary (QI) Program.⁴³ The QI Program is intended to encourage foreign financial institutions to report

³⁷ In addition to this tax treaty, in 1973, Switzerland entered into a Mutual Legal Assistance Treaty with the United States. That MLAT, however, by its terms, generally excludes “violations with respect to taxes,” and so is not used for assistance in tax matters. Treaty between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, (1/23/77), 273 UST 2019, at Article 2. Switzerland also has a 1981 domestic law allowing “International Mutual Assistance in Criminal Matters,” but that law is difficult to use since it is confined to criminal cases, is limited to document and testimony requests, and allows multiple appeals within Switzerland. Subcommittee meeting with the Embassy of Switzerland (7/10/08).

³⁸ See, e.g., J. Springer, “An Overview of International Evidence and Asset Gathering in Civil and Criminal Tax Cases,” 22 *Geo. Wash. J. Int'l L. & Econ.* 277, 303-8 (1988); Aubert, “The Limits of Swiss Banking Secrecy Under Domestic and International Law,” 273 *Int'l Tax & Bus. Law.* 273, 286-88 (1984); J. Knapp, “Mutual Legal Assistance Treaties as a Way to Pierce Bank Secrecy,” *Case W. Res. J. Int'l L.* 405-8, 418-20 (1988). Tax evasion is an administrative offense, not a criminal offense in Switzerland. The only tax-related crime in Switzerland is for “tax fraud,” which is difficult to establish.

³⁹ See “Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income,” (signed 10/2/96) (hereinafter “United States-Switzerland Tax Convention”), reprinted in a Message from the President of the United States to the U.S. Senate transmitting the Convention and a related Protocol, Treaty Doc. 105-8 (6/25/97).

⁴⁰ *Id.*, Article 26 (1).

⁴¹ *Id.*, Protocol (10).

⁴² Letter of Submittal by the U.S. Secretary of State to the President regarding the United States-Switzerland Tax Convention (10/2/96), reprinted in Treaty Doc. 105-8 (6/25/97), at VII.

⁴³ For more information about the QI Program, see 26 U.S.C. §§1441-43; Treas. Reg. §1.1441-1(e)(5); Revenue Procedure 2000-12, 2000-4 I.R.B. 387.

U.S. source income to the IRS and withhold taxes on that income as required by U.S. tax law. Thousands of foreign financial institutions have become voluntary QI participants.⁴⁴

The QI Program is focused primarily on U.S. source income.⁴⁵ U.S. source income refers to income that originates in the United States, such as dividends paid on U.S. stock; capital gains paid on sales of U.S. stock or real estate; royalties paid on U.S. assets; rent paid on U.S. property; interest paid on U.S. deposits; and other types of “fixed, determinable, annual, or periodic income.”⁴⁶ Most of this income, when paid to a U.S. person, is taxable; most of it is not taxable when paid to a non-U.S. person, in an apparent effort to attract foreign investment to the United States. But a few categories of U.S. source income, such as U.S. stock dividends, are taxable even when paid to a non-U.S. person.

The QI Program seeks to enlist foreign financial institutions in the U.S. effort to collect and remit U.S. taxes owed primarily on U.S. source income, by offering participating institutions reduced paperwork and disclosure obligations. The QI Program applies only to foreign financial institutions that buy and sell U.S. securities on behalf of their clients through securities accounts opened at U.S. financial institutions. Treasury regulations, which took effect in 2001, require U.S. financial institutions to withhold 30 percent of the income earned on U.S. investments maintained in a foreign financial account, unless the foreign financial institution provides the U.S. withholding agent with the names of the beneficial owners of the accounts.⁴⁷ In effect, these regulations require foreign financial institutions doing business with U.S. financial institutions to disclose their clients by name or risk 30 percent of their client’s income being withheld by the U.S. financial institution. Even with this 30 percent penalty, many foreign financial institutions were reluctant to provide their client names, not only because it opened the door to competition from the U.S. financial institution over the clients, but also because it undermined bank secrecy. The QI Program was designed, in part, to resolve this dilemma for foreign financial institutions.

To participate in the QI Program, a foreign financial institution must voluntarily sign a 65-page standardized agreement with the IRS.⁴⁸ By signing the agreement, the foreign financial institution agrees to act as the U.S. withholding agent and comply with the withholding obligations set out in U.S. tax law for certain clients. In addition, it must have “Know-Your-Customer” (KYC) procedures in place that ensure the foreign financial institution verifies and documents the beneficial owner of any account at its institution.

⁴⁴ IRS briefing on the QI Program provided to the Subcommittee (5/9/08).

⁴⁵ The QI Agreement also requires the reporting of two other categories of income: (1) proceeds from the sale of non-U.S. securities if the sale was effected by a broker within the United States; and (2) foreign source income, such as dividends, interest, rents, royalties or other fixed, determinable, annual, or periodic income, if that foreign income is paid in the United States. See Treas. Reg. §§ 1.6045-1(a)(1), 1.6042-3(b), 1.6049-5(b)(6); “U.S. Tax and Reporting Obligations for Foreign Intermediaries’ Non-U.S. Securities,” 47 Tax Notes Int’l 913 (9/3/07).

⁴⁶ See, e.g., Treas. Reg. §1.6042-3 (a) and (b) on dividends, Treas. Reg. §§1.6049-1(a)(1) and 1.6049-5(b)(6) on interest payments.

⁴⁷ Treasury Regulations 1.1441-1, et seq., adopted in T.D. 8881, 2000-1 C.B. 1158 (5/15/2000).

⁴⁸ For a copy of the standardized agreement and country-specific forms, see the IRS website at www.irs.gov; or Rev. Proc. 2000-12, 200-4 IRB 387, which includes a model QI agreement.

To carry out its withholding obligations, the foreign financial institution agrees to obtain a W-9 or W-8BEN Form from all of its clients who buy or sell U.S. securities through any account for which the foreign financial institution is a designated QI participant. These forms, which each client must fill out and provide to the foreign financial institution, identify the client as either a U.S. or non-U.S. person.⁴⁹ For every client who completes a W-9 Form – indicating the client is a U.S. person – the foreign financial institution agrees to file an annual, individualized 1099 Form with the IRS, reporting the client’s name, taxpayer identification number, and all “reportable payments” made to the client’s accounts.⁵⁰ In contrast, for every non-U.S. person filing a W-8BEN Form, the foreign financial institution is not required to file an individualized 1042S Form reporting account information to the IRS. Instead, QI participants calculate the “reportable amounts” of U.S. source income paid to all of their non-U.S. accounts in the QI Program, file a single 1042 Form for each category of U.S. source income paid to those accounts – also called “pooled reporting” – and remit any withheld taxes to the IRS on an aggregated basis.

The 1042 Forms filed by QI participants for non-U.S. accountholders do not contain any client names or client-specific information; instead each form contains a single aggregate figure for a single category of U.S. source income paid by the foreign financial institution during the year to all of its non-U.S. accountholders that traded U.S. securities. The foreign financial institution is also allowed to remit the withheld taxes in aggregated amounts to the IRS, with no breakdown for individual clients. For example, in the case of U.S. stock dividends, the QI participant would report the total amount of dividend payments made to all of its non-U.S. accountholders during the year on a single 1042 Form, and would remit 30 percent of that total to the IRS, without providing any client-specific information. The practical effect, in the words of one Liechtenstein bank, was to preserve bank secrecy for non-U.S. accountholders, since the foreign financial institution was under no obligation to disclose any client names.⁵¹

Because U.S. securities transactions are configured, bought, and sold in U.S. dollars, foreign financial institutions are required to execute U.S. securities transactions through dollar accounts at U.S. financial institutions. If a foreign financial institution participates in the QI

⁴⁹ W-9 Forms must be filed for “U.S. persons,” defined as U.S. citizens and U.S. resident aliens; corporations, partnerships, and associations organized under U.S. law; domestic estates; and domestic trusts. See W-9 Form, Request for Taxpayer Identification Number and Certification (Rev. 10-2007), General Instructions. W-9 Forms ask an accountholder to provide their name, address, account numbers, and Taxpayer Identification Number (TIN). W-8 Forms are filed for non-U.S. persons. W-8BEN Forms are filed for non-U.S. persons who beneficially own an account opened in the name of an intermediary, such as a bank, attorney, trustee, corporation, trust, or foundation. See W-8BEN Form, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Rev. 2-2006). These forms ask the accountholder to provide their name, address, and the country where they reside.

⁵⁰ “Reportable payments” include several categories of income: (1) “reportable amounts,” which are U.S. source payments such as interest, dividends, rents, royalties and other fixed, determinable, annual, or periodic income; (2) sales of foreign securities if effected in the United States; and (3) foreign-source interest, dividends, rents, royalties, or other fixed, determinable, annual, or periodic income, if paid in the United States. See, e.g., “U.S. Tax and Reporting Obligations for Foreign Intermediaries’ Non-U.S. Securities,” 47 Tax Notes Int’l 913 (9/3/07).

⁵¹ See “Qualified Intermediary (QI)” presentation prepared by Brigitte Arnold of LGT Bank of Liechtenstein, (September 14-15, 2001) at 11 (“Conclusion[:] The application of the QI Rules from the banking perspective; was it worth it? Yes, because there is No Banking Secrecy without QI Status.”).

Program, it can designate these accounts as “QI Accounts.” If the foreign financial institution does not participate in the program, it has only “Non-QI” or “NQI Accounts.” Foreign financial institutions are required to designate each securities account they maintain with a U.S. financial institution as either a QI or NQI Account. With both types of accounts, the foreign financial institution internally tracks the dividends derived from U.S. securities and other U.S. source income paid to individual client accounts. With a NQI Account, the foreign financial institution must provide those individual client names to the U.S. financial institution, which in turn reports and remits withholding taxes to the IRS. But with a QI Account, the foreign financial institution may submit to the IRS forms using pooled reporting and aggregate withholdings, without disclosing the names of any non-U.S. persons holding U.S. securities. These financial institutions are thus allowed to withhold their client names from the IRS (and their American competitors) while maintaining the same access to the U.S. securities market – one of the world’s most lucrative – as U.S. financial institutions.

To ensure that the program is operating as intended, QI participants agree to an auditing regime. Generally, audits under the QI Program are conducted by external auditors chosen by the QI participant. Audits are intended to ensure that QI participants adhere to the standards and procedures set forth in the QI agreement. So that QIs are able to maintain client secrecy, the IRS does not have access to the raw information reviewed by the external auditor, although the IRS sets the audit parameters, reviews the qualifications of the external auditor, and determines whether the auditor faces any impediments such that they cannot accurately review the QI participant’s performance. Audits are conducted in the second and fifth years of the QI agreement, with audit reports remitted to the IRS. If an audit report raises concerns within the IRS, a second phase audit is ordered, focusing on the areas of concern. Should the concerns continue, a third phase is ordered. According to a December 2007 review of the QI Program by the U.S. Government Accountability Office (GAO), “high rates of documentation failure, underreporting of U.S. source income, and underwithholding” are the three most common reasons for third phase reviews.⁵² Failure to satisfactorily resolve the concerns – or submit timely-filed audit reports – results in termination of the relevant QI agreement.

In its review of the QI Program, GAO found that the QI agreement is silent on whether external auditors must perform additional procedures “if information indicating that fraud or illegal acts that could materially affect the results of the [audit] come to their attention.”⁵³ GAO’s analysis indicates that, under the current QI agreement, auditors are not required to, and generally do not, follow-up on indications of fraud or illegal acts by the QI participant.⁵⁴

⁵² “Tax Compliance: Qualified Intermediary Program Provides Some Assurance That Taxes on Foreign Investors are Withheld and Reported, but Can Be Improved,” (December 2007), GAO Report No. GAO-08-99 (hereinafter “2007 GAO Report on QI Program”) at 26.

⁵³ *Id.* at 27.

⁵⁴ Last week, the IRS held a teleconference with major accounting firms to discuss the QI Program and QI audits. The IRS spokesperson was quoted as saying IRS officials, including the IRS Commissioner, “had a good discussion about the role the accounting community plays with qualified intermediaries.” “IRS Commissioner Shulman, LMSB Officials Discuss QI Program with Accounting Firms,” Daily Report for Executives, BNA (7/9/08), No. ISSN 1523-567X, at 1.

Since the inception of the QI program, about 7,000 foreign financial institutions have signed QI agreements and participated in the program.⁵⁵ Due to mergers, withdrawals, and terminations, the IRS estimates that about 5,500 QI agreements are now active. The IRS estimates that about 100 foreign financial institutions have been involuntarily terminated from the QI program since its inception, for inadequate compliance, failed audits, or similar problems.⁵⁶ In Liechtenstein, 13 of its 15 banks have signed QI agreements; in Switzerland, virtually all major banks are QI signatories.

The QI Program has now been in effect for seven years, and evidence is emerging that some foreign financial institutions have been manipulating their QI reporting obligations to avoid reporting U.S. client accounts to the IRS. In its December 2007 study, for example, GAO discusses foreign accounts held in the name of foreign corporations, noting that “establishing a foreign corporation provides a mechanism for shielding the identity of the owner.”⁵⁷ GAO explains further:

“U.S. tax law enables the owners of offshore corporations to shield their identities from IRS scrutiny, thereby providing U.S. persons a mechanism to exploit for sheltering their income from U.S. taxation. Under current U.S. tax law, corporations, including foreign corporations, are treated as the taxpayers and the owners of assets of their assets and income. Because the owners of the corporation are not known to [the] IRS, individuals are able to hide behind the corporate structure.”⁵⁸

GAO warns that the consequence under the QI Program is that “U.S. persons may evade taxes by masquerading as foreign corporations.”⁵⁹

GAO states: “Even if withholding agents learn the identities of the owners of foreign corporations while carrying out their due diligence responsibilities, they do not have a responsibility to report that information to IRS.”⁶⁰ To the contrary, GAO observes that “IRS regulations permit withholding agents (domestic and QIs) to accept documentation declaring corporations’ ownership of income at face value, unless they have ‘a reason to know’ that the documentation is invalid.”⁶¹ GAO observes that the QI agreement “implicitly” requires foreign financial institutions to use their Know-Your-Customer documentation to assess the validity of a W-8 certificate, but concludes there is no requirement that foreign corporations beneficially owned by U.S. persons be treated as U.S. accountholders that have to be disclosed to the IRS.⁶²

⁵⁵ IRS briefing on the QI Program provided to the Subcommittee (5/9/08).

⁵⁶ Id.

⁵⁷ 2007 GAO Report on QI Program, at 21 (initial caps removed).

⁵⁸ Id. at 3.

⁵⁹ Id. in “Highlights” section summarizing report.

⁶⁰ Id. at 22.

⁶¹ Id.

⁶² Id. at 12, 22.

GAO notes that where a foreign corporation is owned by a U.S. person, the U.S. person has the legal obligation to report the corporate ownership and any taxable income to the IRS on their personal tax returns. GAO also notes that “compliance in reporting income to IRS is poor when there is no third party reporting to IRS.”⁶³ The GAO report determines that, in 2003, foreign corporations received roughly \$200 billion in U.S. source income, representing nearly 70% of all U.S. source income reported that year. GAO calculates that only about \$2 billion in tax revenue was paid on that income, reflecting a withholding rate of 1.4% and treaty benefits of \$57 billion.⁶⁴ GAO concludes that it is unclear what proportion of the beneficial owners of these foreign corporations were U.S. persons who had failed to report their income.

These and other QI abuses⁶⁵ have led the IRS to consider strengthening the QI agreement to ensure that more foreign accounts beneficially owned by U.S. persons are disclosed to the IRS.

OECD Uncooperative Tax Haven Initiative. The United States has used tax treaties, TIEAs, and the QI Program to improve tax enforcement outside of the United States. A number of multilateral initiatives to curb international tax evasion have also been undertaken over the past ten years.

One of the most visible of recent international efforts to curb international tax evasion has been led by the OECD, a coalition of 30 nations, including the United States, committed to democratic governments and market economies. In 1996, in part at the urging of the United States, the OECD formed a working group called the Forum on Harmful Tax Competition to curb “harmful preferential tax regimes” and “harmful tax practices” that hurt efforts by individual countries to enforce their tax laws.

In 1998, the OECD issued a report which, among other matters, criticized tax havens that failed to cooperate with international tax enforcement efforts by refusing to provide requested information.⁶⁶ In 2000, the OECD published a second report focused in particular on how bank secrecy laws in many tax havens impeded their cooperation with international tax information requests. The report stated that all OECD countries should “permit tax authorities to have access to bank information, directly or indirectly, for all tax purposes so that tax authorities can fully discharge their revenue raising responsibilities and engage in effective exchange of information.”⁶⁷

⁶³ *Id.* at 22.

⁶⁴ *Id.* at 23-24.

⁶⁵ See, e.g., *id.* at 20 (identifying additional QI abuses such as \$11 billion in payments made to accounts in “undisclosed jurisdictions” and \$7 billion in payments to “unknown recipients” that should have led to 30% withholding, but actually resulted in withholding rates of about 3%).

⁶⁶ “Harmful Tax Competition: An Emerging Global Issue,” issued by the OECD (1998).

⁶⁷ “Improving Access to Bank Information for Tax Purposes,” issued by the OECD (2000), at ¶ 20. In 2004, this standard was incorporated into paragraph 5 of Article 26 of the OECD Model Tax Convention on Income and on Capital.

As a result of these two reports, in mid-2000, the OECD published a list of 35 offshore jurisdictions that it planned to include in a subsequent list of “uncooperative tax havens,” unless the countries made written commitments to exchange information in international criminal tax matters by December 2003, and in international civil tax matters by December 2005.⁶⁸ The OECD defined a “tax haven” as a country with no or nominal taxation, ineffective tax information exchange with other countries, and a lack of transparency in its tax or regulatory regime, including excessive bank or beneficial ownership secrecy.⁶⁹

Many countries did not want to appear on either the OECD’s list of 35 offshore jurisdictions or its subsequent list of uncooperative tax havens. To avoid being included on the list of 35 offshore jurisdictions, six countries, Bermuda, the Cayman Islands, Cyprus, Malta, Mauritius, and San Marino, gave the OECD signed commitment letters in early 2000, promising to provide effective tax information exchange in criminal and civil matters by the specified deadlines.⁷⁰ In response, the OECD omitted these countries from the list of 35. To avoid appearing on the list of uncooperative tax havens, other countries provided similar commitment letters to the OECD in 2000 and 2001, and the OECD agreed to omit them from the list of uncooperative tax havens being prepared.

Despite wavering support from the United States for the OECD effort,⁷¹ by 2002, 28 of the original 35 offshore jurisdictions identified by the OECD had committed to providing effective information exchange in criminal and civil tax matters by the specified dates.⁷² The result was that only seven countries were actually named on the OECD’s official list of uncooperative tax havens made public in mid-2002.⁷³ Over time, four of the seven countries made the required commitments, so that, by 2008, the OECD list had shrunk to just three countries, Liechtenstein, Monaco, and Andorra. To date, these three countries have continued to refuse to agree to provide tax exchange information with other countries in civil and criminal matters.⁷⁴

Over the same period it was developing the lists of offshore jurisdictions and uncooperative tax havens, the OECD took a number of steps to advance global tax information exchange. In 2000, it established the Global Forum on Taxation, with participants drawn from

⁶⁸ See OECD report, “Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practices,” (June 2000), reprinted in the Subcommittee 2001 Offshore Tax Haven Hearing record, 125-152, at 140; and chart prepared by the Subcommittee entitled, “2000 OECD List of Offshore Tax Havens,” at 91.

⁶⁹ Finance Committee 2007 Hearing on Offshore Tax Evasion, prepared testimony of OECD Center for Tax Policy Director Jeffrey Owens, at 5.

⁷⁰ Id.

⁷¹ See Subcommittee 2001 Offshore Tax Haven Hearing.

⁷² These 28 countries were in addition to the 6 countries that, in early 2000, had committed to tax information exchange in civil and criminal matters to avoid being included in the list of 35 offshore jurisdictions.

⁷³ “List of Unco-operative Tax Havens,” issued by OECD (April 2002).

⁷⁴ In June 2008, however, Liechtenstein announced that it had concluded negotiation on an anti-fraud agreement with the European Union and its member states. The agreement would strengthen information exchange related to tax offenses. See press release, “Liechtenstein Strengthens European Tax Cooperation with Anti-Fraud Agreement,” Liechtenstein Government Press Office (6/27/08).

OECD member countries and non-member offshore jurisdictions, to discuss transparency and tax information exchange issues. In 2002, the OECD issued a model tax information exchange agreement that countries could sign on a bilateral or multilateral basis to meet their commitments to tax information exchange.⁷⁵ In 2004, to further promote the OECD's work, the G20 Finance Ministers issued a communiqué supporting the OECD's tax information exchange initiative and model agreement.⁷⁶

In 2006, the OECD issued a new report assessing the legal and administrative frameworks for tax transparency and tax information exchange in 82 countries.⁷⁷ The purpose of this assessment was to help the OECD determine "what is required to achieve a global level playing field in the areas of transparency and effect exchange of information for tax purposes."⁷⁸ In October 2007, the OECD updated its 82-country assessment.⁷⁹ The OECD wrote:

"Significant restrictions on access to bank [information] for tax purposes remain in three OECD countries (Austria, Luxembourg, Switzerland) and in a number of offshore financial centres (e.g. Cyprus, Liechtenstein, Panama and Singapore). Moreover, a number of offshore financial centres that committed to implement standards on transparency and the effective exchange of information standards developed by the OECD's Global Forum on Taxation have failed to do so."⁸⁰

OECD-led efforts to promote tax information exchange are ongoing. In March 2007, the OECD sponsored a series of meetings among more than 100 tax inspectors from 36 countries to discuss aggressive tax planning schemes seen within their jurisdictions. According to top OECD officials, the meetings indicated that key elements in most of these tax dodges could be traced to tax havens.⁸¹ In January 2008, the OECD held discussions among its members on taking "defensive measures" against tax havens that refuse to cooperate with tax information requests.⁸² Some OECD members have also recently called for a reinvigorated list of uncooperative tax

⁷⁵ See OECD Model Agreement on Exchange of Information on Tax Matters (April 2002), text available at www.oecd.org/ctp/http. This model agreement, with revisions adopted in 2004, is also included in Article 26 of the OECD Model Tax Convention on Income and on Capital, which is similar to the U.S. Model Income Tax Convention.

⁷⁶ G20 Communiqué (October 2005) issued in association with November 2004 meeting of G20 Finance Ministers. See also Gleneagles Communiqué, paragraph 14(i), issued by the G/8 Heads of Government at the Gleneagles Summit (July 2005); communiqué issued in association with the Saint Petersburg Summit (July 2006).

⁷⁷ "Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the OECD Global Forum on Taxation," Report No. ISBN-92-64-024077 (May 2006).

⁷⁸ *Id.* at 7.

⁷⁹ "Tax Co-operation: Towards a Level Playing Field – 2007 Assessment by the Global Forum on Taxation," Report No. ISBN-978-92-64-03902-5, issued by the OECD (October 2007).

⁸⁰ *Id.*

⁸¹ See, e.g., "Offshore Financial Centers Playing Key Role In Aggressive Tax Plans, OECD Official Says," BNA Daily Report for Executives (3/27/07).

⁸² "OECD Signals Plan to Renew Efforts Against Non-Cooperative Jurisdictions," BNA Report on International Tax & Accounting, No. ISSN 1522-8800 (10/15/07).

havens to include countries that, despite a written commitment, have failed to provide tax information upon request in criminal and civil matters.⁸³

EU Savings Directive. In addition to the OECD initiative, another highly visible multinational effort to promote tax information exchange and international tax enforcement cooperation is the European Union Savings Directive. This EU Directive focuses on the problem of European Union (EU) residents who open up a savings account in an EU country other than their home jurisdiction, in an attempt to hide assets and dodge taxes.

In essence, the EU Directive establishes a legal framework for EU countries to participate in automatic exchanges of information to identify EU residents with savings accounts in EU countries other than their home jurisdiction and to disclose the amount of interest payments made to those savings accounts. The aim of the EU Directive is to implement a European Commission principle that “all citizens resident in a Member State of the European Union should pay the tax due on all their savings income.”⁸⁴

The EU Savings Directive was formally adopted by the European Commission in 2003, took effect on July 1, 2005, and sponsored the first automated exchange of information among EU countries in 2006.⁸⁵ Of the 27 EU Member States, 24 participate in the automatic exchanges of information, which take place at least once per year.⁸⁶ Information is exchanged in a standardized format that specifies the identity and country of residence of the individual who received the interest payments, the amount of interest paid, and the types of debt claims that gave rise to the interest. Reportable payments include interest paid on cash deposits, corporate or government bonds, negotiable debt securities, and investment funds. Other types of payments are not covered, such as stock dividend payments, income paid from insurance or pension products, or interest payments from certain bonds.⁸⁷ In addition, the EU Directive applies only to savings accounts held by individuals; it does not apply to accounts held by corporations, trusts, foundations, or other legal entities.

Three EU members, Austria, Belgium, and Luxembourg, currently do not participate in the EU Directive’s automatic information exchanges. Instead, under a special arrangement approved as part of the Directive, these three EU countries levy a withholding tax on the interest payments made to nonresident individuals and, once per year, remit 75% of the amounts withheld to the individuals’ reported state of residence.⁸⁸ The three countries are allowed to retain 25% of the amount withheld to cover their administrative costs of applying the

⁸³ See *id.*; Finance Committee 2007 Hearing on Offshore Tax Evasion, prepared testimony of OECD Center for Tax Policy Director Jeffrey Owens, at 9.

⁸⁴ Rules applicable to the EU Savings Directive, European Commission Taxation and Customs Union Directorate website, http://ec.europa.eu/taxation_customs/taxation/personal_tax/savings_tax/rules_applicable/index_en.htm referencing 1999 European Council meeting in Helsinki (viewed 6/11/08)(hereinafter “ECTCU Website”).

⁸⁵ See Council Directive 2003/48/EC (adopting the Savings Directive); Council Decision 2004/587/EC (setting a July 1, 2005 deadline for compliance).

⁸⁶ “Savings Taxation: frequently asked questions,” MEMO/05/228 (6/30/05), ECTCU Website (viewed 6/11/08).

⁸⁷ *Id.*

⁸⁸ Council Directive 2003/48/EC.

withholding tax.⁸⁹ The three countries are not required to provide client-specific information to any other country, such as the names of the individuals who received the interest payments or the amounts of interest paid; they are thereby able to preserve bank secrecy.

The option provided to these three countries of providing withheld taxes instead of information about the nonresident individuals who received interest payments is described in EU materials as a temporary arrangement during a “transitional period.”⁹⁰ During the transitional period, the three countries are supposed to impose a 15% withholding tax on the interest payments for the first three years the EU Directive is in effect, a period that ended on June 30, 2008. For the next three years, until June 30, 2011, the three countries are supposed to impose a 20% withholding tax. Thereafter, they are supposed to impose a 35% withholding tax which is intended to be sufficiently high to discourage international tax evasion.⁹¹

The transitional period does not have a specified ending date, but is designed to continue until the three EU countries, Austria, Belgium, and Luxembourg, as well as six other countries, Andorra, Liechtenstein, Monaco, San Marino, Switzerland, and the United States, agree to exchange tax information upon request, as set out in the OECD Model Agreement for exchanging information in tax matters.⁹²

The EU Savings Directive applies to all 27 countries in the European Union. By agreement, it also applies to a number of countries outside the European Union, including ten overseas dependent territories associated with the United Kingdom and the Netherlands,⁹³ as well as Andorra, Liechtenstein, Monaco, San Marino, and Switzerland. Four of these non-EU countries, Anguilla, Aruba, the Cayman Islands, and Montserrat, have agreed to participate in the Directive’s automatic information exchanges.⁹⁴ The rest, however, comply with the EU Savings Directive in the same manner as Austria, Belgium, and Luxembourg, by applying a withholding tax during the specified transitional period rather than by supplying information about nonresident individuals who received interest payments on savings accounts within their jurisdictions.

The EU is currently in discussions to extend the Savings Directive to Hong Kong, Macao, and Singapore as well.⁹⁵

⁸⁹ “Savings Taxation: frequently asked questions,” MEMO/05/228 (6/30/05), ECTCU Website (viewed 6/11/08).

⁹⁰ Id.

⁹¹ Id.

⁹² Id.

⁹³ These countries are Anguilla, Aruba, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Jersey, Montserrat, the Netherlands Antilles, and the Turks & Caicos Islands. Id.

⁹⁴ Id.

⁹⁵ Id. In 2001 and 2002, the United States proposed regulations to require U.S. financial institutions to report to the IRS payments made to accounts held by residents of other countries in the same manner they report payments made to accounts held by U.S. persons. Treasury Proposed Rule No. 126100-00, “Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens,” 66 Fed. Reg. 3925 (2001); corrected by 66 Fed. Reg. 15820 and 66 Fed. Reg. 16019; withdrawn and replaced by Treasury Proposed Rule No. 133254-02, “Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens,” 67 Fed. Reg. 50386 (2002). These regulations, if finalized, would have

The EU Savings Directive is required to be reviewed every three years. After the Liechtenstein tax scandal erupted, Germany requested that the review examine whether the Directive should be expanded to cover more types of payments, such as stock dividends and capital gains; and more types of accountholders such as shell companies, trusts, foundations, and other legal entities being used by individuals to hide assets and dodge taxes.⁹⁶ This discussion is ongoing.

Joint International Tax Enforcement Efforts. A final set of international tax initiatives that have intensified in recent years involve joint initiatives among various groups of countries to coordinate and enhance their tax enforcement efforts.

In 2004, for example, four countries, Australia, Canada, the United Kingdom, and the United States, established a Joint International Tax Shelter Information Centre (JITSIC) to identify, develop, and share information on a real-time basis about cross-border abusive tax schemes. A Washington, D.C. office was established to house tax personnel from all four countries. In May 2007, Japan accepted an invitation to become the fifth member of JITSIC, and a second JITSIC office was opened in London. JITSIC personnel exchange information on an ongoing basis about abusive tax schemes, their promoters, and participants. Among other actions, JITSIC has tackled abusive tax schemes involving retirement account withdrawals, highly structured financing transactions designed to generate inappropriate foreign tax credit benefits, and futures and options transactions designed to generate phony tax losses.⁹⁷ The IRS has testified that JITSIC has “sharply improved” IRS knowledge and understanding of these complex crossborder tax schemes.⁹⁸

In 2006, the tax administrators of ten countries formed the “Leeds Castle Group” to meet regularly and discuss issues of global and national tax administration, including mutual compliance challenges. The countries participating in this effort are Australia, Canada, China, France, Germany, India, Japan, South Korea, the United Kingdom, and the United States. This group is actively promoting international tax cooperation.

In addition, since 2002, the OECD has sponsored the Forum on Tax Administration, a group consisting of the tax administrators from its 30 member nations and several other countries. This Forum has promoted dialogue between tax administrators to identify good tax administration practices and promote tax enforcement. The Forum has focused to date on: (1) developing a directory of aggressive tax planning schemes to help identify trends and

enabled the IRS to participate in automatic exchanges of information with 16 countries to identify accounts held by U.S. citizens in those countries for tax purposes, including a number of EU countries. The proposed regulations, however, have never been finalized. At the current time, the only country with which the United States engages in routine, automatic information exchanges on financial accounts for tax purposes is Canada. 26 CFR §1.6049-8(a).

⁹⁶ See, e.g., Bertrand Benoit, “Germany seeks EU tax haven crackdown,” *Financial Times*, (3/2/08).

⁹⁷ See, e.g., “Joint International Tax Shelter Information Centre Expands and Opens a Second Office in the United Kingdom,” IRS Press Release No. IR-2007-104, (5/23/07).

⁹⁸ Finance Committee 2007 Hearing on Offshore Tax Evasion, prepared statement of IRS Commissioner Mark Everson, at 9.

countermeasures; (2) examining the role of tax intermediaries, such as lawyers and accountants, in facilitating tax evasion; (3) expanding 2004 Corporate Governance Guidelines to encourage companies to issue a set of tax principles to guide their tax activities; and (4) improving the training of tax officials, especially on international tax matters.

C. Tax Haven Banks and Offshore Tax Abuse

Over the past 30 years, dozens of countries have declared themselves tax havens and have authorized nominal or no taxation of assets transferred to their financial institutions by residents of other countries. These countries have enacted laws enabling nonresidents to form at minimal cost companies, trusts, foundations, and other legal entities to hold their assets in financial accounts protected by secrecy laws and practices enforced with criminal and civil penalties. Trillions of dollars in individual and corporate assets have since been deposited at financial institutions within these tax havens, too often as part of an effort by the beneficial owner to hide assets and dodge taxes in their home jurisdictions.

Increasingly, countries facing substantial tax evasion have taken actions to protect themselves from tax haven financial institutions that, knowingly or unknowingly, are facilitating tax dodging by nonresidents. These actions include participation in a wide range of international tax initiatives, from tax information exchange agreements, to the QI Program for foreign financial institutions, the OECD uncooperative tax haven initiative, the European Union Savings Directive, and various cooperative multinational tax enforcement initiatives.

The Liechtenstein tax scandal and the recent U.S. indictment of a Swiss banker and a Liechtenstein trust officer illustrate the scope of the problems facing countries trying to enforce their tax laws. They also demonstrate the need to strengthen existing international tax initiatives.

III. LGT BANK CASE HISTORY

The first case history examined in the Subcommittee investigation involves LGT Bank, a leading Liechtenstein financial institution that is owned by and financially benefits the Liechtenstein royal family. The evidence indicates that from at least 1998 to 2007, LGT has established practices and financial structures that could facilitate, and in some instances have resulted in, tax evasion by U.S. clients. These LGT practices include allowing U.S. citizens to maintain billions of dollars in assets in accounts not disclosed to U.S. tax authorities; advising U.S. clients on the use of complex offshore structures to hide their ownership of assets; and arranging client accounts and assets to avoid reporting requirements under the QI Program that would otherwise disclose the accounts and assets to U.S. authorities.

A. LGT Bank Profile

LGT Bank in Liechtenstein Ltd. (LGT Bank) is the largest indigenous bank in Liechtenstein.⁹⁹ It specializes in providing wealth management services to high net worth

⁹⁹ LGT Bank was formerly known as the Liechtenstein Global Trust Bank.

individuals and families, and currently manages about €63 billion in client assets.¹⁰⁰ It has subsidiaries and affiliates in about a dozen countries, including Austria, the Cayman Islands, Germany, Ireland, Singapore, and Switzerland. The Chief Executive Officer of the bank is Prince Max von und zu Liechtenstein, the second son of Prince Hans-Adam II, current reigning sovereign of Liechtenstein.¹⁰¹

LGT Bank is part of the LGT Group Foundation (LGT Group), which is the “Wealth & Asset Management Group of the Princely House of Liechtenstein.”¹⁰² LGT Group is owned and controlled by the royal family in Liechtenstein, which has managed it for more than 70 years as a family business.¹⁰³ The LGT Group currently administers assets valued at about 100 billion Swiss francs.¹⁰⁴

LGT Group offers a wide range of banking, investment, and trust services. Its primary components include LGT Bank, LGT Treuhand AG, LGT Trust Management Company, LGT Capital Management Ltd., LGT Capital Partners Ltd., LGT Private Equity Advisers Ltd., and LGT Financial Services Ltd.¹⁰⁵ LGT Capital Management, LGT Capital Partners, and LGT Private Equity Advisers offer investment services. LGT Treuhand AG and LGT Trust Management Company, along with multiple subsidiaries and affiliates, offer formation and management services such as establishing trusts, companies, or foundations; providing trustees, trust protectors, company officers and directors, or foundation board members; and administering the structures set up by LGT clients.¹⁰⁶

Altogether, LGT Group has more than 1,600 employees at 29 locations in Europe, Asia, the Middle East, and the United States.¹⁰⁷ In the United States, its key financial institution is LGT Capital Partners (USA) Inc. located in New York City. LGT Capital Partners (USA) Inc. is characterized in the LGT Group Annual Report as offering “research services,” and is not registered with the U.S. Securities and Exchange Commission (SEC) as either a broker-dealer or investment advisor.¹⁰⁸

¹⁰⁰ “Tax Haven Liechtenstein,” public television documentary produced by Frontal 21 in Germany (3/25/08).

¹⁰¹ The full name of Prince Max is His Serene Highness Maximilian Nikolaus Maria von und zu Liechtenstein. The full name of Prince Hans-Adam is His Serene Highness Johannes Adam Ferdinand Alois Josef Maria Marko d’Aviano Pius von und zu Liechtenstein.

¹⁰² LGT Group Annual Report 2007.

¹⁰³ *Id.* at 5, 7. LGT Group is wholly owned by the Prince of Liechtenstein Foundation, whose beneficiaries are members of the royal family, primarily Prince Hans-Adams. *Id.* at 7. The Chairman of the Board of Trustees of the LGT Group is Prince Philipp von und zu Liechtenstein, brother of Prince Hans-Adam. The Chief Executive Officer of LGT Group is Prince Max von und zu Liechtenstein, the second son of Prince Hans-Adam.

¹⁰⁴ *Id.* at 3; www.lgt.com, “Business performance and strategic outlook,” “LGT Group: key data as at 31 December 2007” (viewed 5/27/08).

¹⁰⁵ LGT Group Annual Report 2007, at 44-45, 78-79.

¹⁰⁶ LGT Group Portrait brochure (2007) at 15.

¹⁰⁷ LGT Group Annual Report 2007, at 5; www.lgt.com, “Business performance and strategic outlook,” “LGT Group: key data as at 31 December 2007” (viewed 5/27/08).

¹⁰⁸ LGT Group Annual Report 2007, at 45.

In a recent brochure entitled “The Liechtenstein Trust Enterprise,” apparently issued by members of the LGT Group, one page near the end of the brochure lists “Arguments in favour of Liechtenstein and the Liechtenstein Trust Enterprise.”¹⁰⁹ The page states that the Principality of Liechtenstein has “[e]conomic and political stability,” “[h]igh-quality financial services,” “[d]ecades of tradition in asset management and asset structuring,” “a liberal legal framework,” and “[s]trict laws on professional secrecy for banks and trustees.” It also notes that the Liechtenstein trust enterprise is an “[e]fficient instrument for protecting assets from undesirable access” while offering “[d]iscretion and anonymity.”

B. LGT Accounts With U.S. Clients

The Liechtenstein tax scandal became public after a former LGT employee provided tax authorities around the world with data on about 1,400 persons with accounts at LGT Bank in Liechtenstein. The Subcommittee was able to obtain copies of more than 12,000 pages of internal LGT documents, dated from the mid-1990s to 2002, relating to clients connected to the United States. Some of these clients were U.S. citizens or permanent residents; some lived or worked in the United States; some owned real estate or a business in the United States; and some had children or close relatives who were U.S. citizens or residents and were also beneficial owners or beneficiaries of LGT account assets. While some of these clients appear to have opened LGT accounts that served a legitimate purpose, others appear to have used the accounts to hide assets and dodge U.S. taxes.

The Subcommittee investigated a number of LGT accounts with U.S. beneficial owners or beneficiaries. To investigate these accounts, the Subcommittee reviewed the internal LGT documentation it had obtained, and spoke with the former LGT employee who had released the documentation. The Subcommittee also contacted some of the U.S. clients named in the documents, and asked them to supply additional documentation and information. While some clients cooperated with the Subcommittee’s inquiries, supplying documents and submitting to interviews or depositions, others asserted their Constitutional rights under the Fifth Amendment, and declined to provide any information. In addition, LGT informed the Subcommittee that it was unable to provide specific information about any of its clients, citing Liechtenstein laws prohibiting the disclosure of financial information about individuals.

LGT also declined to provide general information about accounts opened for U.S. clients, advising the Subcommittee that such disclosures, even if they did not reference specific clients, would violate Liechtenstein secrecy laws.¹¹⁰ For example, LGT declined to disclose the total

¹⁰⁹ “The Liechtenstein Trust Enterprise,” issued by LGT Treuhand AG and LGT Trust Management AG (undated), at 11.

¹¹⁰ LGT cited the following laws as the basis for their refusal to provide the information requested by the Subcommittee: Article 14 of the Banking Act (“The members of the organs of banks and their employees as well as other persons acting on behalf of such banks shall be obliged to maintain the secrecy of facts that they have been entrusted to or have been made available to them pursuant to their business relationships with clients. The obligation to maintain secrecy shall not be limited in time.”); Article 11 of the Trustee Act (“Trustees are obliged to secrecy on the matters entrusted to them and on the facts which they have learned in the course of their professional capacity and whose confidentiality is in the best interest of their client. They shall have the right to such secrecy subject to the applicable rules of procedure in court proceedings and other proceedings before Government authorities.”); Processing of Personal Data - § 1173a, Art. 28a ABGB (General Civil Code) (“The employer may not

number of accounts it had opened for U.S. clients, the total amount of assets in those accounts, or the total amount of revenues produced by those accounts for LGT. It also declined to disclose how many LGT private bankers or trust officers work with U.S. clients, what percentage of their accounts are for U.S. clients versus clients from other countries, or what percentage of the accounts opened for U.S. clients had been disclosed to the United States.

LGT did, however, provide the Subcommittee with sample forms it requires new account holders to complete (such as W-8BEN certificates), a memorandum detailing its obligations under the QI Program, a copy of the External Auditor's Report on LGT's compliance with its QI obligations, and copies of some of its marketing and promotional materials. LGT also made its Head of Group Compliance, Ivo Klein, available for an interview a few days before the Subcommittee's scheduled hearing on this matter. LGT took the position that Mr. Klein could discuss only matters associated with LGT's actions under the QI Program and that disclosures on any other matters were prohibited by Liechtenstein law.¹¹¹ This restriction greatly limited the issues that Mr. Klein could address.

LGT's limited cooperation with the Subcommittee's inquiries impeded the Subcommittee's efforts to gain a full understanding of LGT's activities and practices regarding accounts opened for U.S. clients. The internal LGT documentation provided to the Subcommittee, however, and the information obtained from several LGT clients and others were sufficient to develop a partial picture of LGT's administration of accounts with U.S. clients.

The Subcommittee's investigation identified numerous LGT accounts with U.S. beneficial owners or beneficiaries with substantial assets. From at least 1998 to 2007, LGT employed practices that could facilitate, and in some instances have resulted in, tax evasion by

process data relating to the employee unless such data concern his or her qualification for the employment or are indispensable for the performance of the employment contract. In addition, the provisions of the Data Protection Act shall apply."); Article 10 – Data Confidentiality ("Whoever processes data or has data processed must keep data from applications entrusted to him or made accessible to him based on his professional activities secret, notwithstanding other legal confidentiality obligations, unless lawful grounds exist for the transmission of the data entrusted or made accessible to him."); Article 8 – Transborder Data Flows ("No personal data may be transferred abroad if the personal privacy of the persons affected could be seriously endangered, in particular where there is a failure to provide protection equivalent to that provided under Liechtenstein law. This shall not apply to states which are party to the EEA Agreement. Whoever wishes to transmit data abroad must notify the Data Protection Commissioner beforehand in cases where: a) there is no legal obligation to disclose the data and b) the persons affected have no knowledge of the transmission."); Prohibited Acts of a Foreign State - Art. 2 of the Liechtenstein State Security law ("b) Prohibited Acts for a Foreign State: Whoever, without being authorized, performs acts for a foreign state on Liechtenstein territory that are reserved to an authority or an official, whoever aids and abets such acts, shall be punished by the Liechtenstein court (Landgericht) with imprisonment up to three years."); Prohibited Acts for a Foreign State – Art. 271 of the Swiss Penal Code ("1. Whoever, without being authorized, performs acts for a foreign state on Swiss territory that are reserved to an authority or an official, whoever performs such acts for a foreign party or another foreign organization, whoever aids and abets such acts, shall be punished with imprisonment up to three years or a fine, in serious cases with imprisonment of no less than one year."); Economic Intelligence Service (Art. 273 SPC) ("Whoever seeks out a manufacturing or business secret in order to make it accessible to a foreign official agency, a foreign organization, a private enterprise, or their agents, whoever makes a manufacturing or business secret accessible to a foreign official agency, a foreign organization, a private enterprise, or their agents, shall be punished with imprisonment up to three years or a fine, in serious cases with imprisonment of no less than one year. Imprisonment and fine can be combined.");

¹¹¹ LGT cited § 124 of the Penal Code, Liechtenstein.

U.S. clients. These LGT practices have included maintaining U.S. client accounts which are not disclosed to U.S. tax authorities; advising U.S. clients to open accounts in the name of Liechtenstein foundations to hide their beneficial ownership of the account assets; advising clients on the use of complex offshore structures to hide ownership of assets outside of Liechtenstein; and establishing “transfer corporations” to disguise asset transfers to and from LGT accounts. It was also not unusual for LGT to assign its U.S. clients code words that they or LGT could invoke to confirm their respective identities. LGT also advised clients on how to structure their investments to avoid disclosure to the IRS under the QI Program. Of the accounts examined by the Subcommittee, none had been disclosed by LGT to the IRS. These and other LGT practices contributed to a culture of secrecy and deception that enabled LGT clients to use the bank’s services to evade U.S. taxes, dodge creditors, and ignore court orders.

LGT’s trust office in Liechtenstein managed an estimated \$7 billion in assets and more than 3,000 offshore entities for clients during the years 2001 to 2002. It is unclear what percentage of these assets and offshore entities was attributable to U.S. clients at that time, or what the comparable figures are for 2008.

For many of its U.S. clients, LGT helped establish one or more Liechtenstein foundations, a type of legal entity that is roughly equivalent to a trust formed under U.S. law.¹¹² Liechtenstein foundations are set up at the request of a “founder” who provides the initial assets and designates the beneficiaries. The legal document establishing the foundation is typically called the Foundation’s “Statutes” or “Articles.” Beneficiaries are often named in a separate document called the “By-Laws,” which can also contain foundation directives or restrictions. The foundation is typically run by a “Foundation Council” or “Foundation Board,” composed of one or more individuals or legal entities, who administer the assets and direct the foundation’s activities. Founders can also appoint “Protectors” to oversee the foundation, replace Council or Board members, and add or remove beneficiaries. These functions are sometimes performed instead by a “Board of Curators.”

LGT typically used its trust company, LGT Treuhand, to help a U.S. client establish a Liechtenstein foundation, identify individuals to serve as the Council or Board members needed to administer the foundation, arrange for the initial transfer assets, and open one or more LGT accounts in the foundation’s name. LGT Treuhand would also, on occasion, help LGT foundations open accounts at other financial institutions. LGT appeared to treat these accounts as beneficially owned by the Liechtenstein foundation, a non-U.S. entity, rather than as beneficially owned by the U.S. persons who established them. As non-U.S. persons, the foundations were not required to submit W-9 Forms to LGT, and LGT did not file 1099 Forms disclosing the accounts to the IRS. Of the accounts examined by the Subcommittee in connection with U.S. clients, none had been disclosed by LGT to the IRS.

Under U.S. tax law, the IRS generally views Liechtenstein foundations as foreign trusts. U.S. persons with an interest in a foreign trust, including a Liechtenstein foundation, are required to disclose the existence of the trust to the IRS by filing Forms 3520 (Annual Return To Report

¹¹² For more information about how Liechtenstein foundations are structured and function, see, e.g., untitled and undated document by New Haven Trust Company of Liechtenstein describing Liechtenstein foundations, Bates Nos. SW 67796-99; “Summary of Liechtenstein Entities and their Taxation,” (May 2001), Bates Nos. SW 67800-13.

Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts) and 3520-A (Annual Information Return of Foreign Trust With a U.S. Owner). Form 3520 is due on or before the 90th day (or such later day as the Secretary may prescribe) after a reportable event.¹¹³ Form 3520-A must be prepared by the trustee and provided to trust beneficiaries to be filed with their returns by March 15 of the following year (assuming the trust has a December 31 year-end). Trustees must supply copies of the Foreign Grantor Trust Owner Statement and the Foreign Grantor Trust Beneficiary Statement to the U.S. owners and U.S. beneficiaries by the same deadline. While the U.S. tax code requires the trust to file the form, it also makes the U.S. owner responsible for ensuring that the form is filed and the required information furnished to U.S. owners and U.S. beneficiaries.¹¹⁴ The reporting obligations under Forms 3520 and 3520-A must be met even if a foreign government can impose penalties for disclosing financial information or foreign financial institutions or trust instruments prohibit disclosure of required information.¹¹⁵

In addition to disclosing any interest in a foreign trust, U.S. persons must also disclose to the United States all foreign bank accounts in which they have signatory authority or a financial interest. The TD F 90-22.1 Form, also known as the Foreign Bank Account Report or “FBAR,” requires disclosure of all foreign accounts with at least \$10,000. The form must be filed, not with the IRS, but with the U.S. Treasury Department. The civil penalty for failing to file the FBAR form is an automatic fine of \$10,000. In the case of willful violations, the penalty can increase to the greater of \$100,000 or 50% of the value of the account.¹¹⁶

The following descriptions of seven selected LGT accounts help illustrate the financial services offered by LGT to its U.S. clients, its efforts to ensure the secrecy of accounts opened for U.S. clients, and how LGT practices could facilitate, and have resulted in, tax evasion by U.S. clients.

(1) Marsh Accounts: Hiding \$49 Million Over Twenty Years

James Albright Marsh, Jr. (“Mr. Marsh”) is a construction contractor who lived in Florida with his wife and six children, until he died in 2006.¹¹⁷ He, his wife, and his children have always been U.S. citizens. In 1985, Mr. Marsh traveled to Liechtenstein, and LGT helped him

¹¹³ See 26 U.S.C. § 6048. Penalties for not filing Form 3520 in a timely manner, or if the information provided is incomplete or incorrect, are assessed at 35% of the gross value of the “reportable event.” The reportable event could be a distribution from the trust or a transfer of property to the trust. The beneficiary must file the form if there has been a distribution from a trust or estate.

¹¹⁴ Penalties for failure to file Form 3520-A, or for not furnishing the information required, are 5% of the gross value of the portion of the trust’s assets treated as owned by the U.S. person at the close of the year. The owner is subject to these penalties.

¹¹⁵ 26 U.S.C. § 6677(d) (imposing tax penalties for failure to file a form 3520 or 3520-A even if a foreign jurisdiction would impose a civil or criminal penalty for disclosure).

¹¹⁶ 31 U.S.C. § 5321(a)(5).

¹¹⁷ The information about the Marsh accounts is derived from internal LGT documents produced to the Subcommittee and documents provided by the Marshes in response to a Subcommittee subpoena. The Marshes did not provide an interview or deposition to the Subcommittee, instead asserting their Constitutional rights under the Fifth Amendment.

establish two Liechtenstein foundations, the Chateau Foundation and Lincol Foundation, which then opened accounts at LGT Bank. Also during the 1980s, Mr. Marsh formed two more Liechtenstein foundations, called Topanga Foundation¹¹⁸ and Largella Foundation,¹¹⁹ apparently using two other financial institutions in Liechtenstein.¹²⁰ Over the years, these four Liechtenstein foundations opened accounts at five Liechtenstein banks.¹²¹ By 2007, the Liechtenstein accounts had assets with a combined value in excess of \$49 million.¹²²

LGT supplied to the Marshes the instruments used to establish and administer the two foundations with LGT accounts, Chateau and Lincol.¹²³ These documents provided a large measure of control over the foundations to Mr. Marsh and his sons, and included strong secrecy protections. The Lincol documents, for example, stated that the Foundation's express "object" was to provide "economic support" for "members of certain families."¹²⁴ They provided that the Foundation would be administered by a Foundation Board, later called a Foundation Council.¹²⁵ In 2004, new By-Laws appointed Mr. Marsh and two of his sons, Kerry and Shannon, who were

¹¹⁸ See Topanga Foundation Statutes (9/10/98), Bates Nos. MAR-1534-44.

¹¹⁹ See Statutes of Largella Stiftung (11/4/04), Bye-Laws to the Statutes of Largella Stiftung, Vaduz (11/4/04), and Bye-Laws to the Statutes of Largella Foundation, Vaduz (9/11/07), Bates Nos. MAR-1548-72.

¹²⁰ See letter from Baker & McKenzie, legal counsel to the Marshes, sent to an IRS Revenue Agent in Georgia, (5/12/08), Bates No. MAR-1189-92, at 1189 ("[T]he Taxpayer, a U.S. citizen, opened several foreign bank accounts in the mid-1980s via the establishment of several foundations in Liechtenstein").

¹²¹ According to a letter sent to the IRS by legal counsel to the Marshes, at various points during the period 2002 to 2006, the four foundations had accounts at five Liechtenstein banks: (1) the Chateau Foundation maintained one account at LGT Bank and three accounts at Centrum Bank; (2) the Lincol Foundation maintained one account at LGT Bank; (3) the Largella Foundation maintained ten accounts at Liechtensteinische Landesbank, and (4) the Topanga Foundation maintained one account at the Verwaltungs und Privatbank AG and four accounts at Privatbank von Graffenreid AG. *Id.* at 1190.

¹²² See, e.g., "Estate of James A. Marsh, 2006 Income Tax Returns," Bates Nos. MAR-1442-65, at 1451-52 (reporting that, at the time of Mr. Marsh's death on June 16, 2006, the Chateau Foundation accounts held a total of about \$11.3 million; the Lincol Foundation account held a total of about \$13 million; the Topanga Foundation accounts held a total of about \$8.9 million; and the Largella Foundation accounts held a total of about \$11.8 million in assets, for a combined total in June 2006 of about \$45 million); "Fondation Chateau: Accounts for the year ended December 31, 2007," (4/28/08), Bates Nos. MAR-9311-35, at 9315 (showing Chateau accounts with an increased 2007 value of about \$12.5 million); and "Lincol Foundation: Accounts for the year ended December 31, 2007," (4/28/08), Bates Nos. MAR-9150-73, at 9152 (showing Lincol accounts with an increased 2007 value of about \$15.7 million), producing a 2007 combined total for all four foundations (assuming the Topanga and Largella accounts had not lost value since June 2006) of at least \$49 million.

¹²³ See, e.g., "Articles: Lincol Foundation, Vaduz," (10/19/00), Bates Nos. MAR-20-27 (hereinafter Lincol Articles"); "Statutes of Lincol Foundation," (6/7/05), Bates Nos. MAR-40-48 (hereinafter "Lincol Statutes"); "Bye-Laws to the Statutes of Lincol Foundation, Vaduz," (11/4/04), Bates Nos. MAR-35-38; "Bye-Laws to the Statutes of Lincol Foundation, Vaduz," (6/9/05), Bates Nos. MAR-59-62; "By-Laws to the Statutes of Lincol Foundation, Vaduz," (9/11/07), Bates Nos. MAR-63-67; "Articles: Chateau Foundation, Vaduz," (10/19/00), Bates Nos. MAR-574-81 (hereinafter Chateau Articles"); "Statutes of Chateau Foundation," (6/7/05), Bates Nos. MAR-595-603 (hereinafter "Chateau Statutes"); "Bye-Laws to the Statutes of Chateau Foundation, Vaduz," (11/4/04), Bates Nos. MAR-589-92; "Bye-Laws to the Statutes of Chateau Foundation, Vaduz," (6/9/05), Bates Nos. MAR-614-17; "Bye-Laws to the Statutes of Chateau Foundation, Vaduz," (9/11/07), Bates Nos. MAR-618-22.

¹²⁴ See Lincol Articles at 21; Lincol Statutes at 41. See also Chateau Articles at 575; Chateau Statutes at 596.

¹²⁵ Lincol Articles at 22; Lincol Statutes at 43. See also Chateau Articles at 576; Chateau Statutes at 598.

then 50 and 43 years old, as “Protectors” of the Lincol and Chateau Foundations.¹²⁶ As Protectors, they were authorized to remove any Member of the Foundation Council at will and replace that person with a new Member. In addition, the Council was required to obtain the consent of at least one Protector before distributing assets to a beneficiary, approving the Foundation’s annual accounts, changing its rules, transferring the Foundation to a new domicile, converting it into a registered trust, or dissolving it. These provisions gave Mr. Marsh and his sons substantial control over the Foundation’s administration, assets, and activities.

The documents also gave Mr. Marsh, as the Founder, authority to define a “Class of Beneficiaries” for the Foundation from which the Council had “absolute and complete discretion” to appoint the actual beneficiaries.¹²⁷ An earlier version of the document had authorized Mr. Marsh to name the actual beneficiaries instead of describing a class of beneficiaries.¹²⁸ The provision may have been refashioned to strengthen the claim that the Foundation had only contingent beneficiaries and therefore no U.S. beneficiaries and no obligation to file a tax return with the IRS. At the same time, five years earlier, Mr. March had separately executed a “letter of wishes” with respect to each of the two foundations, clearly indicating that he wished his wife and children – all U.S. citizens – to be the beneficiaries.¹²⁹

Secrecy provisions in the Foundation documents were also strengthened in 2005, perhaps to protect the Foundation from being compelled to disclose information. While earlier Foundation documents gave the beneficiaries the right to demand information about the Foundation,¹³⁰ later versions, in a section entitled, “Information and Secrecy,” provided that the Foundation Council was not obligated to disclose any information to the Class of Beneficiaries, and was “not entitled to disclose” such information if the Council concluded the information “may be used with an improper or unlawful intent or detrimental to the Foundation or the members of the Class of Beneficiaries.”¹³¹ The section also provided that “any legal facts and aspects of the Foundation must not be drawn to the attention of outside parties, especially foreign authorities.” These provisions apparently could have been used by the Foundation Council to refuse to produce information to a U.S. beneficiary being asked by the IRS to obtain information about the Foundation.

The documents also authorized the Foundation Council to take drastic action when pressed, including by transferring the Foundation to a different country, converting it into a registered trust, or dissolving it altogether. The Lincol Articles, for example, provided:

¹²⁶ “Bye-Laws to the Statutes of Lincol Foundation, Vaduz,” (11/4/04), Bates Nos. MAR-35-38; “Bye-laws to the Statutes of Chateau Foundation, Vaduz,” (11/4/04), Bates Nos. MAR-589-92.

¹²⁷ Lincol Statutes at 42. See also Chateau Statutes at 597.

¹²⁸ Lincol Articles at 24. See also Chateau Articles at 578.

¹²⁹ “Letter of Wishes” for the Lincol Foundation (10/11/00), Bates No. MAR-19; “Letter of Wishes” for the Chateau Foundation (10/11/00), Bates No. MAR-573.

¹³⁰ Lincol Articles at 24-25; Chateau Articles at 578-79.

¹³¹ Lincol Statutes at 46; Chateau Statutes at 601.

“If as a result of certain events, such as economic or political measures, public or private law legislation or any other extraordinary events, the Foundation assets might be jeopardized or enjoyment of the beneficial interest rendered impossible, the Foundation Board shall be authorized to take appropriate defensive measures, including if necessary the transfer abroad of the domicile or the dissolution of the Foundation.”¹³²

Sometimes referred to as a “flee clause,” these types of provisions could be used to avoid or frustrate an investigation into a Foundation’s founder, assets, or beneficiaries. Counsel to LGT advised the Subcommittee that such clauses remain in use at LGT, though each foundation has different provisions, and flee clauses are not universally present.¹³³ The Lincol and Chateau Statutes also provided that revenues derived from the Foundation’s assets “may not be withdrawn ... by creditors by way of injunction, levy of execution and writ, bankruptcy or probate proceedings.”¹³⁴

In addition to creating Foundation structures that empowered the Marshes and implemented strong secrecy protections, LGT took other steps to ensure the Marsh assets were not disclosed to U.S. tax authorities. Early on, for example, LGT instructed the Marshes to use the code, “Friends of J.N.,” when they wished to “get in touch.”¹³⁵ LGT also refrained from sending any mail about the accounts to the United States, instead keeping foundation records in Liechtenstein.

The documents obtained by the Subcommittee indicate that the Marshes traveled to Liechtenstein on a minimum of four occasions to handle matters related to the foundations. The first was in 1985, when the Lincol Foundation was established.¹³⁶ An LGT receipt shows a 1985 deposit of \$3.3 million “in cash” for the Lincol Foundation,¹³⁷ and a letter of wishes signed by Shannon Marsh on the same day.¹³⁸ The second occasion was in 1989, when Mr. Marsh signed a new portfolio management agreement for the LGT trusts.¹³⁹ The third occasion was in 2000, when Mr. Marsh, accompanied by his son, James, met with LGT personnel, terminated an LGT

¹³² Lincol Articles at 26. See also Chateau Articles at 580.

¹³³ Subcommittee interview of Ivo Klein, head of compliance for LGT Group (7/11/08).

¹³⁴ Lincol Statutes at 41; Chateau Statutes at 596.

¹³⁵ LGT report on Fondation Chateau, (undated but including a 2002 valuation of foundation assets), PSI-USMSTR-237.

¹³⁶ LGT’s internal records show that the Lincol Foundation was established on 10/17/85. LGT report on Lincol Foundation, (undated but subsequent to a client visit on October 11, 2000 and including a 2000 valuation of foundation assets), Bates No. PSI-USMSTR-613. LGT records show that the Chateau Foundation was established four months earlier, on June 26, 1985, but the Subcommittee did not locate documents showing that the Marshes traveled to Liechtenstein in June. LGT report on Fondation Chateau (undated but includes 2002 valuation of foundation assets), Bates No. PSI-USMSTR-237.

¹³⁷ Bank in Liechtenstein receipt showing deposit of \$3,320,700 “in cash” for the Lincol Foundation, (10/15/85), Bates No. PSI-USMSTR-607.

¹³⁸ Letter of Wishes signed by Shannon Neal Marsh (10/15/85), Bates No. PSI-USMSTR-605. The Subcommittee did not locate any 1985 document signed by James Albright Marsh.

¹³⁹ Portfolio Management Agreement, signed by James Albright Marsh (12/5/89), Bates No. MAR-9505-6.

agency agreement,¹⁴⁰ agreed to sell the LGT foundations' U.S. securities,¹⁴¹ and signed letters of wishes.¹⁴² The fourth occasion was in 2004, when Mr. Marsh, accompanied by Shannon and Kerry, signed a document approving Chateau asset inventories from 2000 through 2003, and ratifying past investment decisions.¹⁴³ Shannon and Kerry signed documents on the same day agreeing to serve as "Protectors" of the LGT foundations.¹⁴⁴ In addition to these documents memorializing the four trips to Liechtenstein, the records show multiple occasions on which Mr. Marsh provided instructions or signed documents authorizing assets to be bought or sold and addressing other foundation issues.¹⁴⁵

In 2000, the United States launched the QI Program, to take effect in 2001. LGT signed a QI agreement scheduled to become effective in 2001. According to an internal LGT document titled "Aktenvermerk" or "Memorandum to File" regarding the Lincol and Chateau Foundations, Mr. Marsh and one of his sons, James, visited the bank in October 2000. The LGT document states: "[T]he QI situation was discussed. Both men gave the order to get out of all U.S. securities and to invest in the Euro area. The U.S. tax exempt bonds should be left alone. ... As usual the discussion was very hurried and a bit shallow. So the situation will be discussed at the next meeting."¹⁴⁶ This document, together with other records obtained by the Subcommittee, show that the two LGT foundations, which had a number of U.S. securities, sold those securities in 2000, and invested the proceeds in non-U.S. currencies and stocks. After steering the foundations into making this change in their investment portfolios, LGT appears to have treated the account as falling outside the QI reporting requirements.¹⁴⁷ During LGT's subsequent, six-year participation in the QI Program, none of the Marsh accounts was ever reported to the IRS.

It appears that the IRS learned of the Marsh accounts and initiated an investigation in 2006. In May 2008, the Marshes filed overdue 3520 and 3520A Forms with the IRS disclosing

¹⁴⁰ Agreement concerning the Termination of the Agency Agreement (10/11/00), Bates No. MAR-9508-9 (signed by James Albright Marsh).

¹⁴¹ LGT Memorandum to File about Lincol and Chateau Foundations (2/7/02, though the actual date is likely earlier), Bates No. PSI-USMSTR-614.

¹⁴² See Letters of Wishes signed by James Albright Marsh for the Chateau and Lincol Foundations (10/11/00), Bates Nos. MAR-19, 573.

¹⁴³ Resolutions re Chateau Foundation, signed by James A. Marsh Jr. (11/10/04), Bates Nos. MAR-623, 642, 657, and 672.

¹⁴⁴ Deed of Signature (11/10/04), Bates No. MAR-9518 (signed by Kerry Marsh); Deed of Signature (undated), Bates No. MAR-9519 (signed by Shannon Marsh).

¹⁴⁵ See, e.g., letter from Mr. Marsh to LGT trust officer Peter Meier (10/4/94), Bates No. MAR-9507 (instructing LGT to change the management of the Lincol Foundation from the Zurich to the Vaduz office of LGT); LGT report on Chateau and Lincol Foundations following a client visit on 10/11/00, Bates Nos. PSI-USMSTR-237, 613 (noting client instructions in 1994 and 1998). The Marshes may have also traveled to Liechtenstein in 1998, when new Topanga Statutes were issued. Mr. Marsh's initials appear on the Topanga Statutes, which were signed in Vaduz in 1998, but it is unclear whether he initialed the document then or at a later time.

¹⁴⁶ Memorandum for File re Lincol and Chateau Foundations (2/7/02, though the actual date is likely earlier), Bates No. PSI-USMSTR-614.

¹⁴⁷ The U.S. securities had been held by the Foundations which, under U.S. law, would likely be treated as grantor trusts, and should have resulted in the account being treated as held by a U.S. person and, under the QI Program, being reported on a 1099 Form to the IRS. See Model Qualified Intermediary Withholding Agreement, published in Revenue Procedure 2000-12, (1/24/00), 2000-1 C.B. 387.

the existence of the foreign foundations; filed overdue Foreign Bank Account Reports (FBARs) with the Treasury Department disclosing the foreign accounts; and filed with the IRS amended income tax returns from 2002 to 2006, disclosing the income from the Liechtenstein accounts that should have been reported earlier as taxable income.¹⁴⁸ The Marshes have apparently paid back taxes and interest owed on this offshore income for the period, 2002 to 2006, in an amount totaling about \$2.9 million.¹⁴⁹ They have also requested a waiver of any penalties on the ground that Mr. Marsh's wife had no knowledge of the foundations until after his death and the IRS inquiry, and his sons claimed they did not know that they were beneficiaries or that the foundations had to be reported to the IRS.

The LGT documents reviewed by the Subcommittee show, however, that Mr. Marsh's sons were aware of and had participated in the affairs of the LGT foundations. For example, a 1985 letter of wishes was signed by Shannon when the Lincol Foundation was first created in 1985.¹⁵⁰ Shannon was 24 years old at the time. A 1992 handwritten letter by Shannon instructed LGT that another brother, Kerry, had "permission to review all documents and receipts pertaining to Lincol Foundation and Chateau Foundation. Please group our investments so that we pay as little as possible in commissions as you discussed last year with my brother Kerry."¹⁵¹ At the time of this letter, Shannon was 30 years old and Kerry was 37. A 1993 document signed by Shannon informs LGT that two additional Marsh relatives were to be treated as principals with respect to the Lincol Foundation.¹⁵² A 2000 internal LGT memorandum states: "On October 11, 2000 Mr. James G. Marsh, along with his father, Mr. James Albright Marsh visited me very briefly. Mr. Knecht presented the performance of both foundations, with the corresponding explanations. The men were basically satisfied."¹⁵³ In 2004, as mentioned earlier, Shannon and Kerry, who were then 43 and 50 years old respectively, were appointed "Protectors" of the Lincol and Chateau Foundations¹⁵⁴ and signed official acceptances of their appointments in Vaduz.¹⁵⁵

¹⁴⁸ See five letters from the Marshes' legal counsel, Baker & McKenzie, to an IRS Revenue Agent in Georgia (5/12/08), Bates No. MAR-1176-92.

¹⁴⁹ See Marsh amended income tax returns for 2002 to 2006, Bates Nos. MAR 1193, 1221, 1259, 1340, and 1394. The Subcommittee does not know whether the IRS has accepted this offer or has determined that additional taxes and interest are due. The 2006 Marsh estate tax return estimated having to pay back taxes, interest and penalties in an amount totaling \$5.5 million. See Estate of James A. Marsh 2006 Income Tax Returns (9/14/07), Bates Nos. MAR-1442-66, at 1455.

¹⁵⁰ Letter of Wishes signed by Shannon Neal Marsh (10/15/85), Bates Nos. MAR-9598-99.

¹⁵¹ Handwritten letter signed by Shannon N. Marsh to Mr. Alvate (5/23/92), Bates No. PSI-USMSTR-231.

¹⁵² Document entitled, "Instruction," (11/17/93), Bates No. PSI-USMSTR-612 (signed by Shannon Neal Marsh).

¹⁵³ Memorandum for file re Lincol and Chateau Foundations (2/7/02, though the actual date is likely earlier), Bates No. PSI-USMSTR-614.

¹⁵⁴ Bye-Laws to the Statutes of Lincol Foundation (11/4/04), Bates Nos. MAR-35-38; Bye-laws to the Statutes of Chateau Foundation (11/4/04), Bates Nos. MAR-589-92.

¹⁵⁵ Deed of Signature (11/10/2004), Bates No. MAR-9518 (signed by Kerry Marsh); Deed of Signature (undated), Bates No. MAR-9519 (signed by Shannon Marsh). After completion of this Report, legal counsel for the Marshes sent a letter to the Subcommittee stating that the Subcommittee had "interpreted a sentence" in a letter that legal counsel had previously sent to the IRS on behalf of Kerry and Shannon Marsh "in a way that was not intended by us," that this sentence was "not intend[ed] to suggest that our clients were not aware of the fact that they were

The 2008 letters to the IRS prepared by legal counsel for the Marshes had this to say about Mr. Marsh:

“Mr. Marsh, a construction contractor, was unsophisticated in the area of U.S. tax reporting requirements. It is believed that he did not know that the passive income earned in the Foundations was taxable in the United States. We believe that Mr. Marsh was under the erroneous belief that his income from the Foundations was not required to be reported until such time as the funds were repatriated to the United States. This may explain why he apparently did not spend any of the money in the Foundations for over twenty years.”¹⁵⁶

Mr. Marsh was apparently sophisticated enough to set up four foundations in Liechtenstein, amass at least \$49 million in multiple accounts at five Liechtenstein banks, and avoid all QI reporting of his accounts. Assertions that he was not sophisticated enough to inquire about the tax consequences of these actions are not credible in the face of the evidence.

(2) Wu Accounts: Hiding Ownership of Assets

William S. Wu is a U.S. citizen who was born in China and has lived for many years with his family in Forest Hills, New York.¹⁵⁷ His sister is a U.S. citizen who lives in Hong Kong. In 1996, LGT helped Mr. Wu establish a Liechtenstein foundation called the JCMA Foundation; in 1997, LGT helped Ms. Wu establish a second Liechtenstein foundation called the Veline Foundation. The JCMA Foundation opened LGT accounts with assets that, by 2001, had a combined value of \$4.3 million. The Veline Foundation opened LGT accounts with assets that appear to have peaked at a value of about \$922,000; those accounts were closed by Ms. Wu in 2001, and the assets transferred to the Palone Foundation in Hong Kong.

The JCMA and Veline Foundations were established using LGT-supplied documents that provided a large measure of control over the foundations to their founders, and strong secrecy protections.¹⁵⁸ Because the provisions are similar to those described above in connection with the Marsh accounts, the same analysis will not be repeated here. The beneficiaries of the Foundations were Wu family members.

beneficiaries of these Foundations prior to their father’s death,” and “apologize[d] for any confusion that [their] letter may have caused on this issue.” Letter from Baker & McKenzie to the Subcommittee (7/15/08).

¹⁵⁶ See letter from the Marshes’ legal counsel, Baker & McKenzie, to an IRS Revenue Agent in Georgia regarding “Failure to timely report foreign income on Forms 1040,” (5/12/08), Bates No. MAR-1185-88, at 1186.

¹⁵⁷ Information about the Wu accounts is derived from internal LGT documents produced to the Subcommittee and from limited documentation supplied by Mr. Wu. Mr. Wu declined to provide either an interview or deposition to the Subcommittee, instead asserting his Constitutional rights under the Fifth Amendment.

¹⁵⁸ See, e.g., Articles of the JCMA Foundation, Vaduz (6/20/96), Bates Nos. WWU-PSI 1-8; By-Laws of the JCMA Foundation, Vaduz (6/25/96), Bates Nos. WWU-PSI 9-13; By-Laws of the Veline Foundation, Vaduz (8/21/97), Bates Nos. PSI-USMSTR-5873-75.

The original purpose of the JCMA Foundation (JCMA) appears to have been to help conceal Mr. Wu's ownership of his personal residence in New York. Three months after JCMA was formed, it was used in a complex arrangement to make it appear that Mr. Wu had sold his house to an independent third party that, in fact, he secretly controlled. To carry out this arrangement, JCMA acquired a wholly owned corporation in the Bahamas called Sandalwood International Ltd. (Sandalwood), and asked a Hong Kong company, Cobyrne Ltd., to hold the Sandalwood shares in trust for JCMA.¹⁵⁹ An internal LGT memorandum on JCMA states that the "sole purpose of Sandalwood is the holding of Tai Lung Worldwide Ltd. BVI."¹⁶⁰ Tai Lung Worldwide Ltd. is apparently a corporation formed in the British Virgin Islands.¹⁶¹

New York State property records show that, on January 21, 1997, Mr. Wu sold his house in New York to Tai Lung Worldwide Ltd. (Tai Lung) for an undisclosed sum.¹⁶² In the New York property records, Tai Lung provides the same Hong Kong address used by Cobyrne Ltd. in the trust agreement with JCMA. These documents suggest that Mr. Wu "sold" his house to what appeared to be an unrelated party from Hong Kong. In fact, the buyer, Tai Lung, was wholly owned by Sandalwood which, in turn, was owned by JCMA, Mr. Wu's Liechtenstein foundation. After the sale, Mr. Wu and his family continued to live in the same house, but apparently made monthly "rental" payments to a Tai Lung account at Standard Chartered Bank.¹⁶³ These rental payments may have served as a mechanism for Mr. Wu to move funds out of the United States without alerting U.S. authorities.

The LGT memorandum on JCMA notes briefly the arrangement whereby Sandalwood owns Tai Lung which maintains the house in New York. There is no indication that LGT expressed any concern about this arrangement, despite the fact that it involved multiple jurisdictions – a house in New York owned by a BVI company (with a Hong Kong address), owned by a Bahamas company, owned by a Liechtenstein foundation with a founder from New York – and appeared to serve no purpose other than concealment. At the bottom of the LGT report on JCMA is the following notation: "ATTENTION US-Citizen."

Although JCMA was apparently originally established to assume ownership of Mr. Wu's New York residence, the documents suggest that it was soon used for other purposes as well, becoming a repository for substantial funds. Financial records produced to the Subcommittee by

¹⁵⁹ See Declaration of Trust, signed by Cobyrne Ltd. and JCMA Foundation (10/1/96), Bates Nos. WWU-PSI 14-15. A few months later, the Sandalwood share certificate was moved to JCMA's "deposit box" at LGT. LGT report on JCMA Foundation (subsequent to 6/27/02), Bates No. PSI-USMSTR-4988.

¹⁶⁰ See LGT report on JCMA Foundation (subsequent to 6/27/02), Bates No. PSI-USMSTR-4988.

¹⁶¹ The Subcommittee identified a second corporation, Tai Lung Company, Inc., now inactive, that was formed in New York State on the same day that JCMA was formed in Liechtenstein (June 20, 1996). The registered agent for this corporation is a Dr. Er Ke Yu who appears to operate an acupuncture and Chinese herbal center near Mr. Wu's personal residence in Forest Hills, New York. See NYS Department of State, Division of Corporations, Entity Information for Tai Lung Co., Inc. It is unclear what role, if any, this second corporation may have played in Mr. Wu's affairs.

¹⁶² See New York City Department of Finance, Office of the City Register, Document No. FT-4380005495638 (1/21/97).

¹⁶³ See LGT report on JCMA Foundation (subsequent to 6/27/02), Bates No. PSI-USMSTR-4988.

Mr. Wu show, for example, that by 2001, JCMA had cash and securities with a combined value of nearly \$4.3 million.¹⁶⁴ The source of the funds for these assets is unclear. One explanation contained in the records obtained by the Subcommittee is a brief notation in an internal 2001 LGT profile of JCMA stating that its funds came from “inheritance as well as from real estate holdings in the USA.”¹⁶⁵

Mr. Wu provided the Subcommittee with formal Statements of Assets for JCMA for the years 2001 to 2006. These statements show a steady stream of withdrawals from the JCMA account at LGT: \$300,000 during 2001; \$840,000 in 2002; \$1.5 million in 2003; \$1.2 million in 2004; \$500,000 in 2005; and \$300,000 in 2006.¹⁶⁶ The Statements of Assets generally characterize these withdrawals as “distributions” from the Foundation, and occasionally specify they are distributions to the “first beneficiary,” which is Mr. Wu.¹⁶⁷ The documents do not indicate, in most cases, how the funds were withdrawn or how they were used.

One instance in 2002, however, may be illustrative. On June 25, 2002, Mr. Wu met with LGT officials at its Hong Kong office to discuss the JCMA account. In connection with this visit, Mr. Wu instructed LGT to withdraw \$100,000 from the JCMA account and place the funds in a “bank draft” – a cheque drawn directly from a bank’s own funds – which he could take with him.¹⁶⁸ The JCMA Foundation Board approved the withdrawal, demonstrating Mr. Wu’s control over the Foundation and its funds. To provide Mr. Wu with a U.S. dollar cheque, LGT contacted HSBC Bank in Hong Kong, where LGT maintained a correspondent account. On June 26, 2002, HSBC Hong Kong provided LGT with a bank cheque for \$100,000 in U.S. dollars, “[p]ayable at any branch of HSBC Bank USA in the USA.”¹⁶⁹ Mr. Wu signed the receipt for the cheque.¹⁷⁰ It

¹⁶⁴ See Resolution of the Foundation Board of JCMA Foundation, Vaduz (2/7/02), Bates No. WWU-PSI 27.

¹⁶⁵ LGT “Background Information/Profile” of JCMA Foundation (12/20/01), Bates No. PSI-USMSTR-4990.

¹⁶⁶ See 2001 “Performance” statement, JCMA Foundation (1/1/02), Bates Nos. WWU-PSI 33-34; 2002 “Performance” statement, JCMA Foundation, (1/1/03), Bates Nos. WWU-PSI 52-53; 2003 “Performance” statement, JCMA Foundation, (1/2/04), Bates Nos. WWU-PSI 61-62; 2004 “Performance” statement, JCMA Foundation, (1/2/05), Bates Nos. WWU-PSI 75-77; Resolution of the Foundation Board of JCMA Foundation, Vaduz (3/30/06), Bates Nos. WWU-PSI 78-91 (explaining in the notes that the 2005 withdrawals from JCMA were actually withdrawals from an LGT account opened for Dickinson and had been “entered in the Statement of Assets as ... additions to the loan of Dickinson Holding & Finance Ltd., BWT”); 2006 “Statement of Assets, Desert Rose Foundation,” (4/17/07), Bates Nos. WWU-PSI 92-107 at 97 (Desert Rose is a successor foundation to JCMA that began operation in 2006 and assumed ownership of Dickinson; its Statement of Assets states: “During the course of 2005 and 2006 DICKINSON HOLDING & FINANCE LTD., BVI, received monies and effected payments for and on behalf of the Foundation. These payments are registered in the books as additions/redemptions of the principal loan amount.”).

¹⁶⁷ See, e.g., the 2004 and 2005 Statement of Assets, Bates Nos. WWU-PSI 65-71, 79-85.

¹⁶⁸ See letter to LGT signed by Mr. Wu (6/27/02), Bates No. PSI-USMSTR-4980. It is possible that LGT prepared this letter during his visit and presented it to Mr. Wu for signature, since the letter requesting the bank cheque is dated one day after the bank cheque itself. See also Resolution by the JCMA Foundation Board (6/26/02), Bates No. PSI-USMSTR-4983 (approving the \$100,000 withdrawal from its account).

¹⁶⁹ Receipt for HSBC demand cheque for \$100,000, Cheque No. K939026 (6/26/02), Bates No. PSI-USMSTR-4981. See also HSBC On-Line Remittances Advice, (6/26/02), Bates No. PSI-USMSTR-4982 (notifying LGT of the \$100,000 debit to its account and listing William Wu as the “beneficiary”).

¹⁷⁰ Receipt for HSBC demand cheque for \$100,000, Cheque No. K939026 (6/26/02), Bates No. PSI-USMSTR-4981.

is not clear from the records obtained by the Subcommittee when or where he cashed the cheque or how he spent the \$100,000. Since the funds were provided via an HSBC bank cheque drawn on LGT's account, and likely cashed at an HSBC branch, the funds may be difficult to trace.

During his meeting with LGT officials in Hong Kong in 2002, Mr. Wu met at length with two LGT trust officers, Beat Muller and Kim Choy. After Mr. Wu confirmed that he and all family members named in the JCMA By-laws held U.S. passports, other than his wife who held a Singapore passport, the LGT officials advised him that U.S. tax laws required disclosure of JCMA to U.S. authorities unless the foundation was restructured:

“[Kim Choy] explained the reporting requirements imposed on a US grantor, e.g. creation of the foundation, ensuring the Board Members file annual returns with the IRS. Also, as the income of the Foundation is taxed to the grantor, further annual filing of income of the foundation and payment of income tax on worldwide income of the foundation. Furthermore, if US beneficiaries have received distributions from the Foundation, the Board Members must provide a Beneficiary Statement to each recipient which should be attach[ed] to his/her income tax return to the IRS. Upon the death of the US grantor, the Board Members may be considered the statutory executor of his estate and will bear liability and exposure for any non-compliance by the grantor during his lifetime of reporting and other requirements to the IRS, the filing of the deceased's US estate tax return and payment of estate taxes on the assets of the Foundation at the date of his death.

“KC informed Mr. Wu that the JCMA Foundation must be re-structured and that LGT & Treuhand were looking at formulating solutions. We raised the possibility of an insurance product which Mr Wu didn't seem interested in. Other possibilities included:

- lifetime transfers to his beneficiaries;
- making use of Mr Wu's non-US siblings to restructure the Foundation;
- private/corporate account.

“Mr. Wu acknowledged the need to restructure the Foundation and was receptive to any ideas we could come up with. Similarly, we would welcome any solutions from him or his advisers. Mr. Wu has interests in other ventures/companies unconnected with LGT which require restructuring to address US tax/reporting requirements.”¹⁷¹

This LGT memorandum demonstrates LGT's knowledge and understanding of U.S. tax laws, and its willingness to advise its U.S. clients on how to structure their accounts to avoid U.S. reporting obligations.

In response to the concerns expressed by LGT, it appears that JCMA Foundation wound down its activities, transferred its assets, dissolved, and was replaced by another Liechtenstein foundation called the Desert Rose Foundation. As part of this process, in July 2004, JCMA acquired a second British Virgin Islands corporation called Dickinson Holding & Finance, Ltd.

¹⁷¹ LGT Memorandum by Kim Choy regarding JCMA Foundation (6/26/02), Bates No. PSI-USMSTR-4989.

(Dickinson).¹⁷² A month later, in August 2004, JCMA transferred nearly \$1.2 million to Dickinson, characterizing the asset transfer as an “interest-free loan ... for an indefinite period of time.”¹⁷³ Dickinson opened an account at LGT, deposited the funds, and began receiving and sending funds on behalf of JCMA.¹⁷⁴ Over time, JCMA transferred additional assets to Dickinson, characterizing the transfers as additional loans to the company.¹⁷⁵ In 2006, the Desert Rose Foundation (Desert Rose) was formed and opened an account at LGT.¹⁷⁶ JCMA transferred its key remaining assets to Desert Rose, including its share certificate for Dickinson and its share certificate for Sandalwood.¹⁷⁷ The financial records show that Dickinson made “distributions” of \$500,000 in 2005, and \$300,000 in 2006; the distribution in 2005 was to the “first beneficiary,” Mr. Wu, as was presumably the 2006 distribution.¹⁷⁸ Nevertheless, at the end of 2006, Dickinson Holding & Finance showed a balance of about \$4.2 million, while Desert Rose showed an account balance of about \$422,000, for a grand total of about \$4.6 million.

These figures suggest that, while JCMA Foundation has been dissolved and its LGT accounts closed, Mr. Wu continues to control more than \$4.6 million in assets at LGT accounts held in the name of Desert Rose Foundation and its wholly owned corporation, Dickinson Holding & Finance Ltd.

Mr. Wu utilized JCMA for nearly 10 years, and it is possible that he is still using the Desert Rose Foundation. In contrast, Mr. Wu’s sister utilized her Liechtenstein foundation for only a four-year period, from 1997 until 2001, after which she directed LGT to dissolve Veline and transfer its assets to a Hong Kong foundation called the Palone Foundation with accounts at Credit Suisse Private Bank in Zurich.¹⁷⁹ While active, the Veline Foundation kept cash and securities in its LGT accounts, with a total asset value ranging as high as \$922,000.¹⁸⁰

¹⁷² See Resolution of the Board of Directors of Dickinson Holding & Finance Ltd. (4/17/07), Bates Nos. WWU-PSI 16-26, at 16 (showing company was incorporated on July 12, 2004).

¹⁷³ See 2004 Statement of Assets, JCMA Foundation (2/13/06), Bates No. WWU-PSI 64-71, at 69. This loan was apparently not reduced to writing until February 2006. *Id.*

¹⁷⁴ See 2006 “Statement of Assets, Desert Rose Foundation,” (4/18/07), Bates Nos. WWU-PSI 92-107, at 97 (“During the course of 2005 and 2006 DICKINSON HOLDING & FINANCE LTD., BVI, received monies and effected payments for and on behalf of the Foundation. These payments are registered in the books as additions/redemptions of the principal loan amount.”).

¹⁷⁵ See, e.g., Resolution of the Foundation Board of JCMA Foundation, Vaduz (3/30/06), Bates Nos. WWU-PSI 78-91 (noting that the 2005 endowment to and withdrawals from JCMA were “entered in the Statement of Assets as redemption/additions to the loan of Dickinson Holding & Finance Ltd., BVI”).

¹⁷⁶ See 2006 “Statement of Assets, Desert Rose Foundation,” (4/18/07), Bates Nos. WWU-PSI 92-107, at 95. The Subcommittee does not have the formation documents for Desert Rose, but the fact that Mr. Wu had possession of the 2006 Desert Rose financial statement suggests he is the founder of that foundation as well.

¹⁷⁷ *Id.* at 96-97. The document also states: “Sandalwood is the shareholder of a company called Tai Lung Worldwide Ltd., which owns a property in New York. ... During the course of 2006 it was resolved to distribute the shares to the first Beneficiary, however, the planned share transfer has not yet been completed.” *Id.* at 96.

¹⁷⁸ Resolution of the Foundation Board of JCMA Foundation (3/30/05), Bates Nos. WWU-PSI 78; Resolution of the Foundation Board of Desert Rose Foundation, (4/18/07), Bates No. WWU-PSI 92.

¹⁷⁹ See, e.g., letter from Ms. Wu to LGT Bank’s Representative Office in Hong Kong (3/27/01), Bates No. PSI-USMSTR-5877 (providing instructions to LGT to “wind up” Veline Foundation); LGT report on Veline Foundation after a 3/27/00 client visit (date of report preparation unclear), Bates No. PSI-USMSTR-5887 (containing notation

Like JCMA, the Veline Foundation also appears to have been used to conceal Ms. Wu's ownership interests. The records show that soon after the foundation was established it acquired a bearer share certificate giving it 100% ownership of Manta Company Ltd. (Manta), a corporation formed in Western Samoa.¹⁸¹ While many financial institutions refuse to handle bearer shares, since they can be used to hide the ownership of a company and are known instruments of money laundering,¹⁸² LGT appears to have expressed no concern about this bearer share certificate which was kept in Veline's "deposit box" at LGT.¹⁸³ While the documents obtained by the Subcommittee are unclear as to the activities engaged in by Manta, one handwritten chart indicates that it functioned as a holding company for a Hong Kong corporation called Bowfin Co. Ltd. (Bowfin) which, in turn, held real estate, a vehicle, a mobile telephone, and accounts at two banks, Standard Chartered Bank and Swiss Bank Corporation (now merged into UBS).¹⁸⁴ The document shows that these assets were owned by Bowfin, which was in turn owned by Manta, a bearer share corporation that was owned by Ms. Wu's Veline Foundation. The document also shows that both Bowfin and Manta used nominee directors and officers, further obscuring their ownership. The chart depicts, in short, a complex multi-tiered ownership chain using Liechtenstein, Samoan, and Hong Kong nominee entities designed to conceal the ultimate ownership interests of Ms. Wu.¹⁸⁵

that the Foundation was stricken from the Register on April 19, 2001). It is possible that Ms. Wu controls the Palone Foundation and, thus, was simply transferring her assets from one foundation she controlled to another.

¹⁸⁰ See, e.g., Statement of assets as per 31.12.2000 for Veline Foundation, Vaduz (2/5/01), Bates No. PSI-USMSTR-5885.

¹⁸¹ See "Bearer Share Certificate Transferable by Delivery" for Manta Co. Ltd. (issued 9/3/97 and provided to Ms. Wu on 4/18/01), Bates No. PSI-USMSTR-5878.

¹⁸² See, e.g., "Vulnerability of private banking to money laundering activities," U.S. Senate Permanent Subcommittee on Investigations hearing, "Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities," (November 9 and 10, 1999), S. Hrg. 106-428, testimony of Federal Reserve Board:

"A variant of personal investment corporation accounts that could increase the risk of the accounts being used for money laundering purposes are personal investment corporations that are owned through bearer shares. Bearer shares are negotiable instruments with no record of ownership so that title of the underlying entity is held essentially by anyone who possesses the bearer shares. Historically, bearer shares were used as a vehicle for estate planning in that at death the shares would be passed on to the deceased beneficiaries without the need for probate of the estate. However, in the context of potential illicit activity being conducted through an entity whose ownership is identified by bearer shares, it is virtually impossible for a banking organization to apply sound risk management procedures, including identifying the beneficial owner of the account, unless the banking organization physically holds the bearer shares in custody for the beneficial owner, which of course we encourage."

¹⁸³ See LGT report on Veline Foundation (subsequent to a 3/27/00 client visit), Bates No. PSI-USMSTR-5887 ("Single owner share certificate in LGT deposit box of Veline").

¹⁸⁴ See handwritten organizational chart showing Veline Foundation ownership of corporations and property (undated), Bates No. PSI-USMSTR-5889.

¹⁸⁵ In reviewing LGT documentation, the Subcommittee came across many other examples of complex structures used to hide ownership of assets. See, e.g., chart entitled, "Purchase of an Apartment in London," (4/3/02), Bates No. PSI-USMSTR-6608; charts for entities related to Sunar Trust, Lovelight Foundation, Ramsar Foundation, and Bosham Foundation, (2/19/02 and 12/12/01), Bates Nos. PSI-USMSTR-6644-47, 6573-75.

LGT signed a QI agreement with the United States which took effect in 2001. Ms. Wu's foundation was dissolved in April 2001, but Mr. Wu's foundation continued operating until at least 2004, and perhaps to the present time. Despite the concerns expressed by LGT personnel in 2002 regarding the bank's "exposure for any non-compliance" by Mr. Wu regarding his tax obligations, LGT does not appear to have reported his Foundation or the Foundation's accounts to the IRS under the QI Program at any time.

It is the Subcommittee's understanding that Mr. Wu is now in negotiation with the IRS over tax liability issues related to his Liechtenstein foundations.

(3) Lowy Accounts: Using a U.S. Corporation to Hide Ownership

Frank Lowy ("Mr. Lowy") is an Australian citizen and the main shareholder and Chairman of the Westfield Group.¹⁸⁶ His three sons, David, Peter, and Steven, hold high positions in the Westfield organization. Peter Lowy, a U.S. citizen living in California, is Chief Executive Officer of Westfield Group United States. Internal LGT documents obtained by the Subcommittee indicate that the Lowys maintained a longterm relationship with LGT, utilizing multiple Liechtenstein-related entities and transactions, including entities known as the Crofton Foundation, Jelnav, Yelnarf, and the Luperla Foundation.¹⁸⁷ An LGT memorandum notes that, in 1998, the Lowy account was one of the largest relationships at LGT Bank.¹⁸⁸ This analysis concentrates on the Luperla Foundation, because of its unique use of a U.S. corporation in Delaware to hide the identities of the Foundation beneficiaries. In 2001, Luperla assets had a combined value of about \$68 million.

Formation of Luperla. Discussions regarding the formation of Luperla extended over a six-month period from November 1996 to April 1997. Although LGT generally requires clients to travel to the bank or nearby Switzerland to discuss their accounts, LGT made an exception in this matter, and sent LGT personnel to meet with the Lowys outside of Liechtenstein. As one LGT memorandum explained: "The Lowys have decided that they never want to travel to Liechtenstein or Switzerland in connection with these companies again."¹⁸⁹

The records obtained by the Subcommittee show at least three meetings between LGT personnel and the Lowys on the formation of Luperla. The first was in November 1996, in Sydney, Australia, attended by Peter Widmer, the LGT relationship manager handling the Lowy

¹⁸⁶ The information about the Lowy account is derived from internal LGT documents produced to the Subcommittee and documents provided by the Lowys in response to a Subcommittee subpoena.

¹⁸⁷ See, e.g., LGT Memorandum about Luperla (6/26/01), Bates No. PSI-USMSTR-8897 ("The memorandums for the file also mention the 'Yelnarf' structure which we've been conducting for years."); LGT Memorandum about Luperla (5/2/97), Bates Nos. PSI-USMSTR-8864-65 (regarding Crofton and Jelnav); LGT memorandum, subject "Westfields, Adelphi, Crofton," (11/26/96), Bates Nos. PSI-USMSTR-8773-74 (Crofton); LGT memorandum "New Establishment Westfields/Lowy," (11/27/96), Bates No. PSI-USMSTR-8775 ("Get copy of Crofton Foundation laws" from another LGT employee); LGT Memorandum, subject "Frank Lowy," (3/13/97), Bates Nos. PSI-USMSTR-8767-68 ("After the transfer of the assets, Crofton will be closed.").

¹⁸⁸ "The mandate is to be classified as one of the largest business affairs of the LGT BIL [Bank in Liechtenstein]." LGT memorandum about Luperla (1/29/98), Bates No. PSI-USMSTR-8901.

¹⁸⁹ LGT memorandum, subject "Westfields, Adelphi, Crofton," (11/26/96), Bates Nos. PSI-USMSTR-8773-74.

account, meeting with Mr. Lowy, his son David, longtime family attorney Joshua Gelbard, and David Gonski.¹⁹⁰ At that meeting the participants discussed the creation of a new foundation. According to a later LGT memorandum, the Lowys expressed their intent to establish a large foundation with conservative investments that would serve as “insurance” for the Lowy family.¹⁹¹ In January 1997, a second meeting took place in Los Angeles, California attended by Mr. Lowy, his sons, Peter and David, and two LGT employees. According to an LGT memorandum, this meeting was intended to discuss Luperla’s “portfolio strategy” and “cost structure,” and introduce Mr. Lowy to “the person who will also be responsible for ‘his establishment.’”¹⁹² Six weeks later, a meeting took place in London, in March 1997, attended by three LGT employees, Mr. Lowy, and his attorney Mr. Gelbard. This meeting discussed the transfer of assets to Luperla and LGT fees. An LGT memorandum summarizing the London meeting was copied to Liechtenstein Prince Philipp.¹⁹³

LGT memoranda following these meetings note that Mr. Lowy had reached a settlement with the Australian Tax Office, did not want to bring new funds into Australia, and was concerned that if the Australian tax authorities learned of his having additional assets, the government might try to subject them to additional claims. As one LGT memorandum put it: “Special caution is to be used, however, since he doesn’t believe the Australian tax authorities that the case with the payment of the 25 M is settled for good. ... The entire documentation and assembly is to be done in such a manner that [Mr. Lowy] and his attorneys can testify before court in Australia without hesitation.”¹⁹⁴ These statements make it clear that LGT was aware that Mr. Lowy and his sons were hiding assets in the new foundation from Australian tax authorities.

LGT and the Lowys took a number of measures to keep secret Luperla’s existence and the Lowy relationship at LGT, and to distance the Lowys and other entities they controlled from the new foundation. At the Lowy’s request, for example, LGT agreed that, once the new

¹⁹⁰ Mr. Gonski’s relationship to Mr. Lowy is not described in the material available to the Subcommittee. According to Westfield Group’s website, Mr. Gonski has served as non-executive director of Westfield Holdings Ltd. since 1985. See <http://westfield.com/corporate/about-westfield-group/board-of-directors/> (viewed 7/7/08).

¹⁹¹ “The Lowys view these monies as ‘insurance,’ i.e., they will be invested very long-term and rather conservatively.” LGT memorandum, subject “Westfield/Lowy Family,” (1/23/97), Bates Nos. PSI-USMSTR-8771-72.

¹⁹² LGT memorandum, subject “Westfields, Adelphi, Crofton,” (12/17/96), Bates Nos. PSI-USMSTR-8760-8770 (“Regarding the composition of the portfolio strategy and the cost structure, Lowy insists on a meeting in Los Angeles, in which his sons David and Peter as well as possibly Stephen should take part. ... He would like that I meet with him in Los Angeles with the person who will also be responsible for ‘his establishment.’”). See also LGT memorandum, subject “Westfield/ Lowy Family,” (1/23/97), Bates Nos. PSI-USMSTR 8771-72.

¹⁹³ LGT Memorandum, subject “Frank Lowy,” (3/13/97), Bates Nos. PSI-USMSTR-8767-68 (“Lowy seems to have been very pleased with our service and would like to invite S.D. Prince Philipp ... to London this summer for a special occasion.”). H.S.H. Prince Philipp von und zu Liechtenstein was at the time a Member of the Board of Directors of LGT Bank and Chairman of the Board of Directors of LGT. See [http://www.lgt.com/export/sites/inta_lgtcom/de/wir_ueber_uns/lgt_portrait/publikationen/\\$verwaltung_publikationen/cv/cv_s_d_prinz_philipp_von_und_zu_liechtenstein_en.pdf](http://www.lgt.com/export/sites/inta_lgtcom/de/wir_ueber_uns/lgt_portrait/publikationen/$verwaltung_publikationen/cv/cv_s_d_prinz_philipp_von_und_zu_liechtenstein_en.pdf) (viewed 7/7/08).

¹⁹⁴ LGT memorandum about Luperla (3/16/97), Bates Nos. PSI-USMSTR-8902-3. See also LGT memorandum about Luperla (1/29/98), Bates No. PSI-USMSTR-8901 (“The substance of this meeting is that the client cannot officially bring these funds back into his Australian assets. Therefore they remain in the foundation.”).

foundation was established, to remove evidence of old LGT accounts and transactions.¹⁹⁵ In preparation for the January 1997 meeting with the Lowys in Los Angeles, an LGT trust officer wrote the following message to his associates:

“Before the meeting in LA we should prepare our first proposals in writing. These should be written on neutral paper and without reference to any person or corporation in the Lowy field.”¹⁹⁶

LGT established Peter Widmer as its exclusive point of contact at LGT for the Lowys during the establishment of the new foundation, and subsequently limited the number of LGT personnel involved in the relationship.¹⁹⁷ The Lowys, in turn, made Mr. Gelbard their exclusive contact for matters related to Luperla,¹⁹⁸ and LGT agreed to accept his name on key documents. It was Mr. Gelbard, for example, who sent a letter requesting the creation of Luperla,¹⁹⁹ signed the Foundation’s formation documents,²⁰⁰ and signed Luperla’s asset management contract with LGT. LGT also listed him on its internal identification file as the contact person for Luperla, omitting any mention of the Lowys.²⁰¹ LGT also convinced the Lowys not to co-manage the assets in the foundation, on the ground that such direct involvement on their part would connect them to the entity.²⁰²

In addition, to disguise the transfer of assets from other Lowy-related entities, LGT proposed, and the Lowys agreed, to transfer the assets through a shell corporation especially set

¹⁹⁵ See, e.g., LGT memorandum, subject “Westfield/Lowy Family,” by Peter Widmer, (1/23/97), Bates Nos. PSI-USMSTR-8771-72 (“When everything is completed, one wants LGTT to destroy all files on the old structures, insofar as they don’t have to be kept for legal reasons. Regarding this matter, I will specifically get in touch with LGTT after the transfer into this new structure.”); LGT Memorandum, subject “Frank Lowy,” (3/13/97), Bates Nos. PSI-USMSTR-8767-68 (“We have promised once again, that all documents of Crofton will be destroyed, as long as will not have to be protected for legal reasons.”); LGT Memorandum about Luperla (5/2/97), Bates Nos. PSI-USMSTR-8864-65 (“After completion of these transactions, all documents from ‘Crofton’ and ‘Jelnav’ are definitely to be destroyed, insofar as this is legally possible. I ask Dr. Job for confirmation of completion by June 30, 1997.”).

¹⁹⁶ LGT Memorandum, Subject: “Westfields, Adelphi, Crofton,” (12/17/96), Bates Nos. PSI-USMSTR-8769-70.

¹⁹⁷ “We promised that the total relationship will remain under my control (key account) and that Wilfried Ospelt will personally take over the depot in an investment-strategic manner. For the short-term, the contacts should go exclusively through me.” LGT memorandum, subject “Westfield/Lowy Family,” (1/23/97), Bates Nos. PSI-USMSTR-8771-72.

¹⁹⁸ “Contact person will be in the future exclusively Joshua Gelbard.” LGT memorandum, subject “Westfields, Adelphi, Crofton,” (11/26/96), Bates Nos. PSI-USMSTR-8773-74.

¹⁹⁹ Letter from J.H. Gelbard to LGT (3/12/97), Bates Nos. PSI-USMSTR-8860-61.

²⁰⁰ Regulations Luperla Foundation, Vaduz (4/30/97), Bates Nos. PSI-USMSTR-8838-40.

²⁰¹ “Luperla is a foundation without engagement contract. Client is J. Gelbart [sic].” LGT memorandum about Luperla (3/16/97), Bates Nos. PSI-USMSTR-8902-3. See also “Identification File” for Luperla Foundation (10/31/97), Bates No. US-MSTR-8905.

²⁰² “We were able to talk them out of the desire for co-management of the investment process by pointing out that every direct influence on the foundation can have disadvantages.” LGT memorandum, subject “Westfield/ Lowy Family,” (1/23/97), Bates Nos. PSI-USMSTR-8771-72.

up for that purpose.²⁰³ The primary source of assets for the new foundation had been described as proceeds from a complex securities transaction.²⁰⁴ In early 1997, LGT acquired a British Virgin Islands corporation, Sewell Services Ltd., to serve as the intermediary for the asset transfers into Luperla from other Lowy related entities.²⁰⁵ An account in the name of Sewell was opened at LGT Bank in Liechtenstein. Assets destined for the Luperla account were transferred into the Sewell account and then transferred internally, within the bank, from the Sewell to the Luperla account. Such intra-bank transfers make it extremely difficult to trace the flow of assets, because no documentation outside of the bank shows that the funds transferred into the bank were destined for or actually deposited into the Luperla account.

On May 2, 1997, the LGT relationship manager for the Luperla account outlined the complex series of transaction that were going to be used to move Lowy assets into Luperla:

“a) Around USD 54 million (balance Crofton with us) are going to the Sewell account with us (assignment from Sinitus); subsequently Sewell pays (assignment from LGT T) the amount to Luperla.

“b) An additional roughly USD 3 million will go to Sewell (account LGT) through third-bank payments, which are likewise to be paid to account Luperla at LGT (assignment LGT T). [by hand:] CHF 3.6 million according to K. Ulrich.

“c) Crofton will close its account with Union Bank of Israel, Tel Aviv and send balance (around USD 0.2 million) to account Sewell; Sewell also pays this amount to Luperla at

²⁰³LGT has employed similar tactics on other occasions to help clients disguise the flow of assets into their LGT accounts, as examined below.

²⁰⁴See, e.g., LGT memorandum about Luperla (1/29/98), Bates No. PSI-USMSTR-8901 (“The foundation assets shall come to the amount of approximately USD 100 million and originate from a relatively complex transaction, with the goal of bringing shares listed in the stock market back into the family’s possession, which was successfully completed.”); LGT memorandum about Luperla (6/26/01), Bates No. PSI-USMSTR-8897. (“The result from these memorandums for the file as well as from my memory is that the funds of the Luperla Foundation stem from a credit financing of the LGT Bank in Liechtenstein that at the time was carried out through a company Crofton. The result from the attached memorandums for the file is that the instructions regarding Crofton were issued by Sinus Treuhand, Zürich.”). Several LGT documents also refer to an entity called Adelphi, but it is not clear that it was used in the final transaction. Compare LGT memorandum, subject “Westfields, Adelphi, Crofton,” (11/26/96), Bates Nos. PSI-USMSTR-8773-74 (the first order of business was to “settle the credit repayment formalities at Adelphia”) and LGT Memorandum, Subject: “Westfields, Adelphi, Crofton,” (12/17/96), Bates Nos. PSI-USMSTR-8769-70 (“the free funds in the amount of rd. USD 53 million from the Adelphi - Credit Repayment and their insertion into a new structure”) with LGT Memorandum, subject “Frank Lowy,” (3/13/97), Bates Nos. PSI-USMSTR-8767-68 (“The Adelphi - assets will not be included in the new structure.”).

²⁰⁵ In a March 1997 letter to LGT requesting establishment of the Luperla Foundation, Mr. Gelbard agreed to a fee which included, among other things, “the formation and administration of a transfer company (with legal situs in the British Virgin Islands) and its bank accounts.” Letter from J.H. Gelbard to LGT regarding formation of Luperla Foundation, (3/12/97), Bates No. PSI-USMSTR-8860-61. See also LGT memorandum about Luperla (3/16/97), Bates Nos. PSI-USMSTR-8902-3. (“The monies are to be transferred from Crofton via a specially taken-over BVI company (name: Sewell [name inserted by handwriting]).”).

LGT (assignment LGT T). Luperla is then to remunerate USD 250,000.00 to its account (already opened by LGT T) with Union Bank of Israel.”²⁰⁶

On March 12, 1997, Mr. Gelbard, the Lowy family attorney, sent a letter to LGT Treuhand, officially requesting establishment of the Luperla Foundation and detailing its structure.²⁰⁷ The “Regulations” governing the operation of Luperla Foundation were signed by Mr. Gelbard on April 30, 1997.²⁰⁸ On May 14, 1997, an LGT memorandum reported the transfer of assets to Luperla had been completed.²⁰⁹ At its inception, the foundation held assets of \$54.7 million in U.S. dollars and 3.6 million in Swiss francs.²¹⁰

Naming Beneficiaries Through a U.S. Corporation. LGT internal memoranda are clear that Luperla’s “financial beneficiaries” are the father and the three sons David, Peter, and Stefan.”²¹¹ In keeping with the Lowys’ desire for secrecy, however, the Luperla Foundation did not simply name them as beneficiaries in its documentation. Instead, LGT and the Lowys devised a mechanism that the Subcommittee has not seen before, directing a U.S. corporation to name the beneficiaries of the Liechtenstein foundation.

The key U.S. corporation is identified in the Luperla “Regulations.” The first paragraph states, in essence, that the latest subsidiary of Beverly Park Corp., a Delaware corporation owned by another Lowy trust, would name the beneficiaries of the Luperla Foundation:

“The persons, companies or other entities from time to time notified in writing to the [Luperla] Board of Foundation by the company (Company) in which Beverly Park Corporation, a company formed in Delaware, United States of America, on 3 January 1997, (Corporation) for the time being holds any share and if there is more than one such company, then the company in which the Corporation last became a shareholder before the notification (a certificate to that effect from any office bearer for the time being of the

²⁰⁶ LGT Memorandum about Luperla (5/2/97), Bates Nos. PSI-USMSTR-8864-65. LGT had originally instructed that Sewell be dissolved after the Lowy funds were transferred into the Luperla account. *Id.* The order for dissolution was apparently not given, however, as indicated by an October 1997 LGT memorandum stating that another \$30,000 was going to be transferred into the Luperla account at LGT, from the Crofton company, via the Sewell account at LGT bank. Moreover, the memorandum notes that a U.S. dollar account had been opened in the name of Sewell for this purpose, and “This has apparently already been done on many occasions.” LGT memorandum, subject “Luperla Stiftung/Sewell Services Ltd. B.V.I.,” (10/23/97), Bates No. PSI-USMSTR-8896.

²⁰⁷ Letter from J.H. Gelbard to LGT regarding formation of Luperla Foundation (3/12/97), Bates Nos. PSI-USMSTR-8860-61.

²⁰⁸ Regulations Luperla Foundation, Vaduz (4/30/97), Bates Nos. PSI-USMSTR-8838-40 (hereinafter “Luperla Regulations”).

²⁰⁹ LGT memorandum about Luperla Foundation (5/14/97), Bates No. PSI-USMSTR-8883.

²¹⁰ *Id.*

²¹¹ LGT memorandum, subject “Westfield/Lowy Family,” (1/23/97), Bates Nos. PSI-USMSTR-8771-72. See also LGT memorandum about Luperla by Werner Orvati, (6/26/01), Bates No. PSI-USMSTR-8897 (“It is explicitly apparent from the memorandums for the file that, in accordance with the intention of the founder, FL and his three sons DL, PL and SL are to be financial beneficiaries.”); LGT memorandum about Luperla (7/16/01), Bates Nos. PSI-USMSTR-8867-70 (“The records document the intent of the benefactor to the effect that the economic benefactor and his three sons shall be financial beneficiaries.”).

Corporation may be relied upon by the Board of Foundation) shall be within the class of distributees of the Foundation assets and the income therefrom, provided that the Company for the time being or its legal successor may revoke any such notification at any time by a further notice in writing to the Board of Foundation, and provided further that no Company shall directly or indirectly become a distributee or benefit therefrom.”²¹²

Beverly Park Corporation was, in fact, incorporated in Delaware on January 3, 1997, by a registered Delaware agent, Corporation Trust Company. Beverly Park is wholly owned by Cordera Holdings Pty Ltd., which is owned by Franley Holdings Pty Ltd., which is owned by LGF Holdings Pty Ltd., which is, in turn, owned by the Frank Lowy Family Trust.²¹³ Beverly Park’s listed address is 11601 Wilshire Blvd., 11th floor, Los Angeles, CA, which is also the address of the Westfield Group United States. Since Beverly Park’s incorporation, Peter Lowy has served as its President and as a Director.²¹⁴

By delegating the authority to name beneficiaries to the last subsidiary of Beverly Park, the Luperla Foundation ceded authority to an entity under the ultimate control of the Frank Lowy Family Trust. In addition, this structure served to keep the ownership of the Luperla assets out of Luperla records and deepened the secrecy surrounding the identity of its beneficiaries.

LGT Trust’s own internal memoranda indicate that LGT viewed the arrangement as a way to ensure that Mr. Lowy and his sons would be the financial beneficiaries of Luperla Foundation, without having to include their names in the Foundation documents. For example, a June 2001 LGT memorandum first discusses the role of Beverly Park: “I assume that instructions regarding the nomination of beneficiaries will be made by the ‘Company’ listed in the by-laws ... the company from which Beverley [sic] Park Corp. last acquired shares.”²¹⁵ It goes on to state: “It is explicitly apparent from the memorandums for the file that, in accordance with the intention of the founder, the father [Frank Lowy] and his three sons DL [David Lowy],

²¹² Luperla Regulations.

²¹³ See Organization Chart, provided by Beverly Park in response to an IRS request, Bates No. LOWY-PSI-36; Correspondence from P.S. Seddon, Secretary, Cordera Holdings Pty Limited to Mr. Peter Lowy (3/21/97), Bates No. LOWY-PSI-3714.

²¹⁴ In 1999, the other Beverly Park officers and directors were: Richard E. Green, Vice President and Director; Mark Stefanek, Treasurer and Secretary; Leon Janks, Assistant Secretary; and Arthur E. Schramm, Director. See “List of Officers/Directors” for Beverly Park Corp. (8/26/99), Bates No. LOWY-PSI-3743. Beverly Park also appears to serve as a holding company for two properties purchased from other Westfield and Lowy affiliated entities. These properties, purchased on March 25, 1997, include a two-unit Park Avenue, Manhattan condominium for \$4.9 million purchased from Westland Park Avenue Corporation (another Delaware corporation using the Westfield Group United States’ office address); and a 7,000 square foot Beverly Hills home for \$5.75 million purchased from Clareville, Ltd., a Bermuda corporation. See “Contract for the Purchase and Sale of Real Estate,” (3/24/97), Bates Nos. LOWY-PSI-3868-71 (Manhattan condominium); “Change of Ownership Statement,” (5/13/97), Bates Nos. LOWY-PSI-3764-65 (Beverly Hills house). These properties were apparently used to house Westfield officers and directors as well as Lowy family members for business and leisure; Beverly Park charged Westfield substantial fees for some of these guest stays. See, e.g., “Beverly Park Corporation: Guest Log-Beverly Hills,” and “Beverly Park Corporation: Guest Log-New York Condo,” (monthly, July 1999 to May 2000), Bates No. LOWY-PSI-3914-31.

²¹⁵ LGT Memorandum about Luperla (6/26/01), Bates No. PSI-USMSTR-8897.

PL [Peter Lowy] and SL [Steven Lowy] are to be financial beneficiaries.”²¹⁶ A July 2001 LGT memorandum discusses when the Luperla Board is authorized to make disbursements of assets to Foundation beneficiaries. It states that the Luperla board “must categorically be notified of the identities of possible beneficiaries (‘members of the class of distributees’ [English]) through a corporation ... of which the Beverly Park Corporation ... has shares. ... If the ‘Corporation’ holds several ‘Companies,’ then the capacity to designate falls to that company of which the ‘Corporation’ most recently took up shares before the notification.”²¹⁷ The memorandum goes on to say: “The records document the intent of the benefactor to the effect that the economic benefactor and his three sons shall be financial beneficiaries.”

Dissolving Luperla. On June 25, 2001, Luperla’s board apparently approved a resolution for the “complete and final disbursement” of the Foundation’s assets and to place the Foundation itself “in liquidation (since it can no longer fulfill the purpose of the foundation after this).”²¹⁸ Documents available to the Subcommittee do not explain what triggered this resolution.

To disburse its assets, LGT required a list of Luperla’s beneficiaries from the last subsidiary of Beverly Park. To obtain this information, an LGT memorandum states: “The telephone conversation in this regard will be taken up with the economic benefactor and one of his sons and/or Joshua H. Gelbard.”²¹⁹ The memorandum indicates that a telephone conversation was held with David Lowy that same day, and that LGT learned the key Beverly Park subsidiary was Lonas Ltd., incorporated in the British Virgin Islands on July 24, 2001.²²⁰ By December 20, 2001, LGT had obtained numerous documents related to Beverly Park and Lonas.²²¹ Included were documents showing that Beverly Park held “a share” in Lonas, that Mr. Gelbard had been appointed the “first sole director” of Lonas, and that Luperla had received a “Mandate from Lonas Ltd. (notification letter) dated 12.13.2001, signed by Joshua H. Gelbard, sole director, regarding the disbursement of all assets of the foundation.”²²²

An LGT memorandum shows that, even after receiving the notification letter from Lonas, signed by Mr. Gelb, regarding disbursement of the Luperla assets, the bank decided to check the information in that letter by telephoning David Lowy and recording the conversation. The memorandum states:

²¹⁶ Id.

²¹⁷ LGT memorandum about Luperla (7/16/01), Bates Nos. PSI-USMSTR-8867-70.

²¹⁸ Id. at 8870.

²¹⁹ LGT memorandum about Luperla (12/17/01), Bates Nos. PSI-USMSTR-8879-80.

²²⁰ Id.

²²¹ See Id.; LGT memorandum about Luperla (12/18/01), Bates Nos. PSI-USMSTR-8873-8874; LGT memorandum about Luperla (12/20/01), Bates Nos. PSI-USMSTR-8875-8877. With respect to some documents, LGT was not satisfied with copies and requested originals. David Lowy, in a telephone conversation on December 17, 2001, assured LGT he would provide the original documents. These documents were then “personally delivered to Dr. Konrad Bächinger [of LGT] at his private address” the next day. Id.

²²² LGT memorandum about Luperla (12/17/01), Bates Nos. PSI-USMSTR-8879-80.

“In closing, Dr. Konrad Bächinger brings up the order from Joshua Gelbard for the payment/disbursement of the foundation assets to two separate bank connections in Geneva in the ratio of 60:40. Besides verbal attestation to the accuracy of the order, David Lowy gives his consent that the Lowy family itself not be directly benefited in the framework of the commissioned transactions.”²²³

LGT obtained David Lowy’s authorization for the final Luperla disbursement a second time in a telephone call on December 20, 2001, demonstrating anew that LGT considered the Lowys to be the key decisionmakers behind Lonas, Beverly Park, and Luperla.²²⁴ LGT memos and LGT bank records show that, on December 20, 2001, over \$68 million in assets were moved in two tranches from the Luperla account at LGT bank to accounts at Bank Jacob Safra in Geneva.

Answering IRS Inquiries. In 2007, the Lowys were contacted by the IRS with inquiries about Beverly Park. In submissions to the IRS, the Lowys and Beverly Park officers stated that there was no connection between Beverly Park and any foreign accounts and entities, including Luperla. Beverly Park claimed it “has no records demonstrating ownership of stock in any other entity, including Lonas Limited BVI.”²²⁵ Mr. Leon Janks, Secretary and Director to Beverly Park, represented to the IRS that Beverly Park, its subsidiaries, officers, employees, and agents have no “legal or beneficial interest in ... or any direct or indirect signature, management, investment, or other authority over any foreign entities, trusts, corporations, partnerships, or foundations.”²²⁶ Peter Lowy, President and Director of Beverly Park, told the IRS he “do[es] not have sufficient personal knowledge” regarding Beverly Park’s relationship with any foreign accounts or entities, but has “no reason to doubt the accuracy” of Mr. Janks’ statements.²²⁷ It is the Subcommittee’s understanding that the IRS inquiry is ongoing.

(4) Greenfield Accounts: Pitching a Transfer to Liechtenstein

Harvey and Steven Greenfield, father and son, are longtime participants in the U.S. toy industry.²²⁸ Both are U.S. citizens from New York. In 1992, LGT helped Harvey Greenfield establish a Liechtenstein foundation, called Maverick Foundation, of which he is the sole primary beneficiary and for which his son holds power of attorney. Two days later, two corporations were formed in the British Virgin Islands (BVI) called Chiu Fu (Far East) Ltd. and TSF Company Ltd., both of which are wholly owned by the Maverick Foundation. The two

²²³ *Id.* at 8880.

²²⁴ LGT memorandum about Luperla (12/20/01), Bates Nos. PSI-USMSTR-8875-77 at 8877.

²²⁵ “Beverly Park Response to IDR 1,” (2/21/08), Bates No. LOWY-PSI-1980-90, at 1985. See also *Id.* at 1989.

²²⁶ Response to IDR 23-1 (1/28/08), Bates No. LOWY-PSI-1976. See also IDR 23-1 (12/11/07), Bates Nos. PSI-LOWY 6000-3.

²²⁷ Reponse to IDR 22-1 (1/28/08), Bates No. LOWY-PSI-1975. See also IDR 22-1 (12/11/07), Bates Nos. PSI-LOWY 6004-7.

²²⁸ The information about the Greenfield accounts is derived from internal LGT documents produced to the Subcommittee. The Greenfields did not provide any documents or oral testimony to the Subcommittee, instead asserting their Constitutional rights under the Fifth Amendment.

BVI corporations apparently served as conduits to transfer funds to Maverick which, as of the end of 2001, had assets at LGT valued at about \$2.2 million.²²⁹

Harvey Greenfield is Chairman and Chief Executive Officer of Commonwealth Toy and Novelty Company, Inc., which is a leading manufacturer of stuffed dolls and animals, is headquartered in New York, and has offices in seven countries. Steven Greenfield served as President of that company for 15 years, and has also worked with a number of startup companies primarily in the toy industry. LGT records show that Maverick was formed on January 22, 1992, and its two subsidiaries incorporated on January 24, 1992.²³⁰ Maverick apparently maintained the stock certificates for both companies at LGT.²³¹ An internal LGT document profiling Maverick states that the origins of the funds in the Maverick account at LGT were “[e]arnings from commercial activity in the toy business. The client’s sources toys from across Asia (but primarily China and Hong Kong) for distribution overseas.”²³² Another internal LGT document regarding Maverick states that “Steven Greenfield is the holder of the power of attorney to give instructions.”²³³

The documentation obtained by the Subcommittee regarding the Greenfields’ Liechtenstein accounts and entities is limited. The documents do not provide much information about activities related to Maverick, Chiu Fu, or TSF Company for the first ten years of their existence, other than cryptic notes about a 1993 “[a]greement re. acquisition of special assets”; a 1996 “mandate” to LGT’s banking operations in Hong Kong regarding “administration of the [Bank in Liechtenstein] account”; and “[c]ontracts of engagement with Chiu Fu and TSF.”²³⁴ There are also a few bank statements showing that Chiu Fu had an account at HSBC in Hong Kong, and TSF had an account at Standard Chartered Bank in Hong Kong.²³⁵

In 2001, however, a detailed internal LGT memorandum opens a window on the Greenfield accounts with a vivid description of a meeting that took place in Liechtenstein, at the bank, on March 23, 2001. The meeting was attended by Harvey and Steven Greenfield, three LGT private bankers, and Prince Philipp von und zu Liechtenstein, Chairman of the Board of the LGT Group and brother to the reigning sovereign. According to LGT records, the meeting lasted over five hours, from 10:00 a.m. until 3:30 p.m., with the Prince in “partial attendance.”

²²⁹ LGT Bank in Liechtenstein bank statement for Maverick Foundation (1/1/02) (showing a balance of \$2,198,167.72); LGT Treuhand Memorandum regarding Maverick Foundation (3/27/01).

²³⁰ LGT report on Maverick Foundation (subsequent to 3/23/01 client meeting); LGT report on Chiu Fu (Far East) Ltd. (undated), Bates No. PSI-USMSTR-3205; LGT report on TSF Company Ltd. (undated), Bates No. PSI-USMSTR-3193.

²³¹ LGT report on Maverick Foundation (subsequent to 3/23/01 client meeting).

²³² LGT Background Information/Profile-Existing Customers for Maverick Foundation (10/12/01).

²³³ LGT report on Maverick Foundation (subsequent to 3/23/01 client meeting).

²³⁴ *Id.*

²³⁵ See 1992 and 2001 bank statements, Bates Nos. PSI-USMSTR-3190-91, 3201-03.

The meeting centered on an apparent sales pitch by LGT to convince the Greenfields to transfer an offshore trust with assets valued at “around U.S. \$30 million” from a Bank of Bermuda branch in Hong Kong to LGT in Liechtenstein.²³⁶ The memorandum explains:

“The Bank of Bermuda has indicated to the client that it would like to end the business relationship with him as a U.S. citizen. Due to these circumstances, the client is now on the search for a safe haven for his offshore assets. Next to the bankable assets, this Trust [at Bank of Bermuda] also still holds operating companies. It is, however, planned, to close these companies in the near future.

“There follows a long discussion about the banking location Liechtenstein, the banking privacy law as well as the security and stability, that Liechtenstein, as a banking location and sovereign nation, can guarantee its clients. The Bank ... indicate[s] strong interest in receiving the U.S. \$30 million. Investment issues do not seem to be clarified completely. It is explained to the client that as a U.S. citizen he cannot invest in U.S. securities directly, but the possibility of investing in funds is not ruled out.”²³⁷

The memorandum does not explain why the Bank of Bermuda wishes to end the relationship with the Greenfields, nor does LGT appear to ask. Instead, LGT presses the Greenfields to direct their offshore business to LGT.

The memorandum states that an LGT private banker offered to meet in Hong Kong at the end of April 2002, to determine if the transfer from Bank of Bermuda will take place. Two alternatives are suggested to arrange the transfer: (1) “[d]isbursement of the assets from the [Bank of Bermuda] Trust and subsequent dedication to the Maverick Foundation (under interposition of the BVI companies)”; or (2) “[t]akeover of the Trust through LGT Trust Management Ltd. as new trustee.” The memorandum also states: “The clients are very careful and eager to dissolve the Trust with the Bank of Bermuda leaving behind as few traces as possible.”²³⁸ LGT not only does not express any concern about the Greenfields’ desire for secrecy, it offers concrete suggestions to disguise the transfer of assets and minimize the change, such as by recommending use of the BVI companies as conduits for the transferred funds from Bank of Bermuda or simply taking control of the existing Trust.

In addition to making the sales pitch, the meeting took care of some administrative matters regarding the Greenfields’ existing LGT account. The memorandum notes, for example, that the Greenfields “sign[ed] off on the asset status of December 31, 1999 and December 31, 2000” for Maverick, which suggests that the Greenfields had not traveled to Liechtenstein in two years to review the account documentation. The LGT private bankers apparently also asked for signatures on “file copies” related to the Maverick account, but “[h]e refuses ... with the reasoning that they are already taken care of anyway through his signing off on the asset statuses. I point out that due to the engagement contract, we merely carry out his instructions, and that he needs to document this for us with his signatures on the file copies. Nevertheless, the client does

²³⁶ LGT Memorandum regarding Maverick Foundation (3/27/01), at 1.

²³⁷ *Id.*

²³⁸ *Id.*

not sign the file copies.”²³⁹ These statements suggest that the Greenfields were responsible for directing the Maverick account investments, using LGT simply to carry out their directions.

The memorandum also discusses the two BVI corporations owned by Maverick. It states that they “were established in January 1992 with the purpose of channeling the assets into the Maverick Foundation,” that they had not been closed as planned, and that they “are to continue to exist until further notice. Possibly, they could be used again to channel assets into the Maverick Foundation.”²⁴⁰ These statements show that LGT was comfortable with “channeling assets” through shell corporations to disguise the identity of the ultimate recipient.

Although the memorandum never mentions the Qualified Intermediary Program, many financial institutions had signed QI agreements for the first time in 2001, including LGT. Those agreements may have been responsible for the memorandum’s comment that a number of financial institutions had told the Greenfields “that U.S. citizens are not those clients that one wishes for in offshore business.”²⁴¹ LGT, however, appears to have been more than willing to retain and expand the business it had with the Greenfields.

The Subcommittee was unable to ascertain from LGT or the Greenfields whether the \$30 million transfer took place or whether their LGT accounts were still open. The Subcommittee was told by the Greenfields’ legal counsel, however, that the Greenfields are currently in negotiation with the IRS and Department of Justice over tax liability issues related to Liechtenstein.

(5) Gonzalez Accounts: Inflating Prices and Frustrating Creditors

Jorge and Conchita Gonzalez, and their son Ricardo, operated a car dealership in the United States for many years.²⁴² Beginning in 1986, LGT helped them acquire two Liechtenstein foundations and two Liechtenstein corporations to assist their car dealership which was located in Puerto Rico and specialized in selling Volvos, among other cars. The foundations were the Tragunda Foundation and Fondation Tragique; the companies were Auto und Motoren AG and Asmeral Investment Anstalt. LGT also helped them form a third Liechtenstein company, Tierzucht Investierungs Anstalt, which served as a holding company for a Spanish corporation, Ganadera, which owned a ranch in Spain. The foundations and companies each opened LGT accounts whose assets fluctuated over time. The latest LGT bank statement obtained by the Subcommittee indicates that, at the end of 2001, the accounts held assets with a combined value of about 7.4 million Swiss francs or about \$4.5 million.²⁴³

²³⁹ *Id.* at 2.

²⁴⁰ *Id.* at 1, 2.

²⁴¹ *Id.* at 1.

²⁴² Information about the Gonzalez accounts is derived from internal LGT documents produced to the Subcommittee and numerous court pleadings, orders, and opinions. Jorge Gonzalez died in 1988.

²⁴³ LGT Bank account summary for Fondation Tragique as of 12/31/2001, (1/1/2002), Bates No. PSI-USMSTR-8700.

This analysis concentrates on the Liechtenstein foundations and companies connected to the car dealership in the United States. The car dealership was associated with two corporations: Trebol Motors Corporation which actually sold the cars in Puerto Rico, and Trebol Motors Distributor Corporation which imported the cars from Volvo.²⁴⁴ Both corporations (Trebol) were owned by Jorge Gonzalez and, after his death, by Conchita and Ricardo Gonzalez.²⁴⁵ Ricardo Gonzalez served as the general manager of both companies beginning in 1988.²⁴⁶ Trebol was apparently the only Volvo dealership in Puerto Rico.²⁴⁷

Tragunda Foundation (Tragunda), established in 1986, owned 100 percent of the shares of the two Liechtenstein companies, Auto und Motoren AG (AUM) and Asmeral Investment Anstalt (Asmeral). All three assisted Trebol. Tragunda appears to have provided substantial financing, at one point making a \$6 million loan to AUM, which in turn loaned funds to Trebol.²⁴⁸ Asmeral apparently acted as an intermediary for loans to Trebol from an LGT-related investment company known as FIWA AG.²⁴⁹

AUM played an even more central role. AUM represented itself to Volvo as a “guarantor” of Trebol’s debts,²⁵⁰ apparently without ever revealing that the companies shared common ownership.²⁵¹ As a result, Volvo sent AUM copies of the invoices it sent to Trebol for the inventory of cars Trebol purchased for sale in Puerto Rico, in order to keep AUM “informed of its potential liability.”²⁵² AUM did not merely take receipt of the Volvo invoices; as described in later court proceedings, AUM sent additional invoices to Trebol for selected cars, specifying a higher cost for the cars than Volvo had actually charged. The First Circuit described this “double invoicing scheme” as follows:

²⁴⁴ See Bonilla v. Volvo Car Corp., 150 F.3d 62, 65 (1st Cir. 1998) (hereinafter “Bonilla v. Volvo”).

²⁴⁵ Id.

²⁴⁶ Sworn Statement of Ricardo Gonzalez (hereinafter “Gonzalez Sworn Statement”), appendix to Perez v. Volvo, 247 F.3d 303 (1st Cir. 2001) (hereinafter “Perez v. Volvo”).

²⁴⁷ Bonilla v. Trebol Motors Corp., 150 F.3d 77, 85 (1st Cir. 1998) (hereinafter “Bonilla v. Trebol”).

²⁴⁸ See untitled chart (undated), Bates No. PSI-USMSTR-8762 (“Loan to Auto und Motoren US\$6 Mio”).

²⁴⁹ See untitled chart (undated), Bates No. PSI-USMSTR-8762 (“Fid. Loan FIWA to Trebol”); LGT Background Information/Profile – Existing/Clients regarding FIWA AG, Vaduz (12/10/01), Bates No. PSI-USMSTR-954 (describing FIWA as a “LGT- group company” that holds shares).

²⁵⁰ See Bonilla v. Volvo at 72; Gonzalez Sworn Statement at ¶ 7 (“On or about July 1985, Trebol and Volvo arranged for a Liechtenstein company named Auto Und Motoren (‘AUM’) to serve as a ‘guarantor’ of Trebol’s payment obligations for new cars purchased by Trebol from Volvo for the 1986 model year and beyond.”).

²⁵¹ The First Circuit notes that Volvo also loaned AUM \$2.7 million in 1993, “to cover Trebol’s debts,” and Volvo later “authorized a transaction in which AUM swapped Trebol’s debt to it for equity in Trebol.” Bonilla v. Volvo at 72. See also Gonzalez Sworn Statement at ¶¶ 10-11. Both transactions offer added evidence that Volvo was unaware that AUM and Trebol were commonly owned. See also Perez v. Volvo at 317 (“If the [1993] transaction proves anything, it tends to prove that Volvo did not know, even at that late date, that AUM was a dummy corporation. Elsewise, why would Volvo lend AUM so large a sum?”). See also Gonzalez Sworn Statement at ¶ 15 (discussing relationship between AUM and Trebol, but failing to mention their common ownership and asserting: “I know that my family and company derived no benefit from AUM commensurate with the extremely high guarantee cost per car.”).

²⁵² Bonilla v. Volvo at 72.

“Plaintiffs showed that, between 1986 and 1989, AUM sent Trebol additional invoices for the same vehicles but with different purported prices. AUM’s invoices sometimes overstated the vehicles’ cost relative to the actual price in the authentic Volvo invoice by as much as \$3000; not all AUM invoices contained inflated prices and some of the inflated ones involved small amounts (e.g., \$50). In any case, Trebol used these inflated invoices to obtain higher inventory financing from Puerto Rican banks and Trebol also calculated its retail prices using the inflated cost as a starting point. Trebol also remitted the higher invoice amount to AUM, resulting in the accumulation of a pool of excess funds in Liechtenstein. ... Since Trebol was sent copies of the original Volvo-prepared invoices, a rational jury could conclude that Trebol knew of the actual prices and was defrauding Puerto Rican banks by means of the double invoicing scheme. If Trebol used the inflated invoice prices on its tax returns, tax authorities may also have been defrauded.”²⁵³

These facts came to light in a civil lawsuit filed against Trebol challenging its pricing practices. In 1992, a group of individuals and corporations filed a Federal class action lawsuit alleging that Volvo, Trebol, and Jorge, Conchita, and Ricardo Gonzelez had engaged in a conspiracy to violate the Racketeering Influenced and Corrupt Organizations (RICO) Act “by engaging in hundreds of predicate acts of mail and wire fraud” which were part of a complex “scheme to defraud Puerto Rican purchasers by overcharging them” for certain Volvo cars.²⁵⁴ This litigation resulted in four years of pre-trial discovery, a three-week trial in 1996, multiple appeals decided in 1998, and additional damage proceedings finally resolved years later.

In June 1996, three days before the primary trial in the litigation was to start, Trebol and the Gonzalezes admitted that the facts alleged in the third amended Complaint filed in the case were true, and the district court entered a judgment against them on the issue of liability, reserving the question of damages for later.²⁵⁵ Volvo went to trial, lost, and was found liable by a jury for damages of about \$43 million, which the court then trebled under RICO to about \$130 million.²⁵⁶ Because Trebol and the Gonzalezes had admitted being engaged in a conspiracy with Volvo to violate the RICO Act, the district court ruled, in October 1996, that the \$130 million damage award applied to them as well.²⁵⁷ Volvo, Trebol, and the Gonzalezes appealed. In 1998, the First Circuit reversed the judgment against Volvo entirely, because it found that the facts did not sustain a finding of liability. The First Circuit allowed the judgment to stand against Trebol

²⁵³ *Id.* See also discussion in Bonilla v. Volvo, 150 F.3d 88, 90 (1st Cir. 1998) (hereinafter “Bonilla v. Volvo II”) (“A number of these invoices, as we now know, included inflated figures significantly exceeding the original invoice prices.”); Perez v. Volvo at 308-09.

²⁵⁴ Bonilla v. Volvo, at 65.

²⁵⁵ *Id.* at 65.

²⁵⁶ *Id.* at 62.

²⁵⁷ See Bonilla v. Trebol at 80.

and the Gonzalezes, however, due to their factual admissions and remanded the case to the district court for a new hearing on damages.²⁵⁸

As a result of the litigation, Trebol declared bankruptcy in September 1996.²⁵⁹ Since the district court decision applying the \$130 million damage award to Trebol had been issued about a week later, in October 1996, the First Circuit ruled that the damage award could not be applied to Trebol due to the automatic stay that protects companies in bankruptcy, and vacated the judgment pending a lifting of the stay.²⁶⁰ The end result was that, by 1998, Volvo was relieved of all RICO liability, Trebol was protected from any judgment while in bankruptcy, and the Gonzalezes faced new proceedings on their liability for RICO damages, attorney fees, and costs.

In 1997, after the initial damage award of \$130 million and before the appeals court required the damage awards to be re-evaluated, the Gonzalezes acted on the advice of LGT to acquire a new Liechtenstein foundation called Fondation Tragique and transfer their Liechtenstein assets to that new entity. As an LGT internal document explained later: “For the purpose of protection from creditors, who are litigating the family in Puerto Rico, the assets already being held by the Tragunda Foundation were transferred to the Fondation Tragique.”²⁶¹ This statement indicates that LGT was aware of the ongoing litigation, and fully prepared to help the Gonzalezes hide their assets from the “creditors” engaged in litigation against them.

In 1999, the district court drastically reduced the \$130 million damage award against the Gonzalezes, finding them liable for only \$200,000.²⁶² The Gonzalezes apparently paid this judgment in 2000.²⁶³

A 2001 internal LGT memorandum, prepared after several members of the Gonzalez family met with an LGT private banker in Zurich, Switzerland, indicates that LGT had been kept informed of these developments.²⁶⁴ The memorandum also indicates that Tragique’s initial beneficiaries, from 1997 until 2001, had consisted of one or more of the Gonzalez children, presumably to ensure that the assets transferred to Tragique could not be attached in connection with a judgment against Conchita or Ricardo Gonzalez in the Puerto Rican litigation. After the threat of litigation had passed, however, the Tragique beneficiaries were changed. The LGT memorandum put it this way:

²⁵⁸ *Id.* at 85. The First Circuit also vacated an award of \$3.5 million against Volvo, Trebol, and the Gonzalezes for attorney fees and costs related to improper conduct during the litigation, and remanded the issue to the district court for a new hearing on the amount of attorney fees and costs owed by the defendants. *Bonilla v. Volvo II* at 90, 95.

²⁵⁹ *Id.* at 80.

²⁶⁰ *Id.* at 87.

²⁶¹ LGT Background Information/Profile for Fondation Tragique, Vaduz (12/18/01), Bates No. PSI-USMSTR-8711.

²⁶² Subcommittee telephone conversation with Conlee Whiteley, Kanner & Whiteley, LLC, legal counsel to the plaintiffs in the RICO suit (7/9/08).

²⁶³ *Id.*

²⁶⁴ LGT Memorandum for the File (9/11/01), Bates No. PSI-USMSTR-8704-05. According to the LGT memorandum, the meeting took place in Zurich, Switzerland, and was attended by an LGT private banker, Ms. Gonzalez, her daughter, her son Ricardo, and his wife.

“Now that the problems in Puerto Rico are resolved and a tax investigation is no longer to be presumed, we discuss the situation concerning the bylaws of the Foundation Tragique. In these regards, Conchita, as protector, signs an order to change the bylaws so that she appears as primary beneficiary, and that after her death the children – who are the current primary beneficiaries – appear as secondary beneficiaries with equal proportions.”²⁶⁵

This memorandum suggests that LGT had no qualms about changing the beneficiaries of a foundation to prevent a creditor from attaching assets. It also shows that Ms. Gonzalez exercised significant control over Tragique, serving as the Foundation Protector, with authority to name the Foundation’s beneficiaries.²⁶⁶

The memorandum also recounts other actions taken by Ms. Gonzalez, demonstrating her control over the range of Liechtenstein assets and entities associated with her family. The memorandum notes, for example, that, “Conchita signs the order to dissolve the Tragunda Foundation and to transfer the proceeds from liquidation ... to the Foundation Tragique”; she signed the “mandate” transferring “monies, including \$550,000,” from AUM to Tragique; and she approved transferring Tierzucht Investierungs, the Liechtenstein company once owned by Tragunda, to the new foundation.²⁶⁷ The memorandum states: “Conchita signs the Status of Assets of the Foundation Tragique 2000.” It also recounts that the LGT private banker discussed “the investment of Trangique’s assets,” and that Ms. Gonzalez approved investing “\$1 million in cash” in fixed term deposits and “the rest in LGT Strategy Class Funds 5 years!”²⁶⁸ In addition, the memorandum notes that the LGT private banker had carried \$10,000 in cash to give to Ms. Gonzalez while in Zurich: “I deliver the amount of US\$10,000.—to Conchita; the cash withdrawal receipt, to be debited to the Foundation Trangique, is initialed.”²⁶⁹ These actions show Ms. Gonzalez in control of the administration and assets of Tragique, Tragunda, and AUM.

By 2002, the three Liechtenstein companies controlled by Tragunda were gone. Asmeral had been dissolved;²⁷⁰ AUM had been placed in liquidation;²⁷¹ and Tierzucht Investierungs had been transferred to Fondation Tragique. LGT records show that Tragunda had also been

²⁶⁵ Id. The “tax investigation” referred to in the memorandum may refer to an inquiry that was apparently initiated by Puerto Rican tax authorities but did not result in any tax assessment.

²⁶⁶ Id. See also untitled chart depicting Fondation Tragique (undated), Bates No. PSI-USMSTR-8763. This chart shows that Tragique is administered by a “Foundation Board” and “Protector.” It states that “All resolutions of the Foundation Board require the consent of the Protector.” It also states, “The Protector can appoint and remove the beneficiaries” and “has all acces[s] on the assets of the Foundation.” The chart also refers to the Foundation’s By Laws, where the Foundation’s beneficiaries are named, as a “Last Will” which can be used by the Foundation Protector to name the Foundation beneficiaries. The Foundation Protector for Tragique was Ms. Gonzalez.

²⁶⁷ Id.

²⁶⁸ Id.

²⁶⁹ Id.

²⁷⁰ LGT report on Asmeral Investment Anstalt (undated), Bates No. PSI-USMSTR-966 (“Status: Dissolved”).

²⁷¹ LGT Background Information/Profile-Existing Customer for Auto and Motoren AG (3/10/01), Bates No. PSI-USMSTR-8729 (“Auto und Motoren AG in Liquidation. ... The corporation does not conduct commercial activity anymore. It will be dissolved in the foreseeable future.”).

dissolved, and only about \$2,000 remained in its LGT account.²⁷² Tragique, in contrast, held assets valued at about 7.4 million Swiss francs or about \$4.5 million.²⁷³

The documents obtained by the Subcommittee do not indicate what happened after 2002.

(6) Chong Accounts: Moving Funds Through Hidden Accounts

Richard M. Chong (Mr. Chong) was born in the United States, lives in California, is a U.S. citizen, and specializes in venture capitalist projects involving China.²⁷⁴ His father, Antonio T. Chong, founded the Yue Shing Tong Foundation at LGT in 1988, endowing it with funds allegedly from a chemical business he had developed in Taiwan and China.²⁷⁵ Antonio Chong died in 1998, and his foundation passed onto his wife Fanny L. Chong, a U.S. citizen and California resident who was the sole beneficiary.²⁷⁶ Ms. Chong added her three children as beneficiaries and reorganized the foundation by creating four funds, one for herself called “Fund Mother”; one for Richard called “Fund Son R”; one called “Fund Daughter T” and one called “Fund Son C.”²⁷⁷ In 2002, the four funds in the Yue Shing Tong Foundation had assets with a combined value of about \$9.4 million.²⁷⁸

In 1999, Ms. Chong gave her son, Richard Chong, power of attorney to “exercise [her] beneficial rights of the [Yue Shing Tong] Foundation on my behalf.”²⁷⁹ The documents obtained by the Subcommittee show that, for the next six years, the foundation accounts saw activity every few months, often involving large sums. Financial documents produced to the Subcommittee include lists of incoming and outgoing transfers from the Yue Shing Tong

²⁷² LGT Bank account summary for Tragunda Foundation for the period 1/1/2002-9/30/2002, (10/2/2002), Bates No. PSI-USMSTR-8719.

²⁷³ LGT Bank account summary for Fondation Tragique as of 12/31/2001, (1/1/2002), Bates No. PSI-USMSTR-8700.

²⁷⁴ The information about the Chong account is derived from internal LGT documents produced to the Subcommittee and documents provided by Mr. Chong in response to a Subcommittee subpoena. Mr. Chong did not provide an interview or deposition to the Subcommittee, instead asserting his Constitutional rights under the Fifth Amendment.

²⁷⁵ LGT report on Yue Shing Tong Foundation (undated), Bates No. PSI-USMSTR-2206; LGT Background Information/Profile for Yue Shing Tong Foundation (2/6/02), Bates Nos. PSI-USMSTR-2189-90 (“The original founder (father) built up a large and successful chemical business in Taiwan and China. The assets originally deposited were profits generated out of this business activity.”).

²⁷⁶ See LGT Background Information/Profile for Yue Shing Tong Foundation, (10/9/01), Bates No. PSI-USMSTR 2207; By-Laws Yue Shing Tong Foundation, Vaduz (2/15/02), Bates Nos. PSI-USMSTR-2191-98, at 92.

²⁷⁷ See By-Laws Yue Shing Tong Foundation, Vaduz (2/15/02), Bates Nos. PSI-USMSTR-2191-98; Designation of Beneficiaries for Yue Sing Tong Foundation (6/27/01), Bates Nos. PSI-USMSTR-2186-88.

²⁷⁸ See LGT bank summary (6/29/02), Bates No. PSI-USMSTR-2203 (showing Mother account with \$5.2 million); (6/29/02), Bates No. PSI-USMSTR-2204 (showing Son R account with \$1.8 million); (1/1/02), Bates No. PSI-USMSTR-2202 (showing Daughter T account with \$892,000); (1/1/02), Bates No. PSI-USMSTR-2205 (showing Son C account with \$1.7 million).

²⁷⁹ See handwritten document by Ms. Chong giving Power of Attorney to her son, Richard Chong (4/24/1998), Bates No. PSI-USMSTR-2199.

Foundation's four funds from 1992 to mid-2007.²⁸⁰ These documents show such transactions as a \$1.5 million incoming transfer from "one of our clients"; a \$1.3 million incoming transfer from "UBS"; incoming transfers over six years from one source exceeding \$7 million; \$450,000 in incoming transfers from "Acme Components," a company for which Mr. Chong once served as the managing director;²⁸¹ and outgoing transfers over six years to another source exceeding \$1.3 million. The LGT records also show occasional cash withdrawals in Hong Kong that over the six-year period totaled \$200,000. These and other documents obtained by the Subcommittee indicate that, unlike many of the reviewed accounts at LGT which saw only occasional activity, the Yue Shing Tong Foundation funds appear to have been used for a variety of business and personal transactions.

Another key development took place in 2004. That year, LGT helped the Foundation set up what LGT has sometimes referred to as a "transfer corporation" to help disguise asset flows into and out of a foundation's accounts.²⁸² A transfer corporation acts as a pass-through entity that breaks the direct link between the foundation and other persons with whom it is exchanging funds or assets, making it harder to trace the origin and ultimate recipient of those funds and assets.

In this case, LGT's office in Hong Kong helped Mr. Chong establish Apex Assets Ltd., using a Hong Kong corporate service provider called KCS Ltd.²⁸³ The documentation reviewed by the Subcommittee is unclear as to whether LGT or Mr. Chong's foundation owned Apex. In any event, LGT opened a new account for Apex at the bank. Financial documents show that, after Apex was established, virtually all funds deposited into or withdrawn from the Yue Shing Tong accounts were routed through Apex.²⁸⁴ A series of four letters sent by Mr. Chong to LGT from 2002 to 2006, for example, directed LGT to route a total of about \$200,000 in Foundation funds, through Apex, to Dynamic Travel Service, allegedly to pay for "travel expenses to be incurred by Apex."²⁸⁵ LGT also recommended Apex's use in other aspects of Mr. Chong's business. On one occasion, for example, when goods had been delivered to the wrong address in one of Mr. Chong's business ventures and had to be returned, his LGT contact sent Mr. Chong

²⁸⁰ See documents entitled, "Yue Shing Tong Foundation ('mother')", "Yue Shing Tong Foundation ('SUN R' a/c)," "Yue Shing Tong Foundation (Daughter Account)," "Yue Shing Tong C Foundation," (all undated), Bates Nos. CH-PSI 47-52. Other documents reviewed by the Subcommittee indicate that these lists were not comprehensive, however, and did not include all of the wire transfers into or out of the Foundation's funds.

²⁸¹ See, e.g., biography of Mr. Chong on website of Sycamore Ventures, www.sycamorevc.com (viewed 7/14/08).

²⁸² For more information about LGT's use of transfer corporations, see section 8 below, and discussion of the Sewell transfer corporation used in connection with the Lowy accounts and Luperla Foundation.

²⁸³ See KCS Ltd. invoice to Apex, c/o LGT Bank in Liechtenstein AG, Representative Office Hong Kong (4/27/07), Bates No. CH-PSI 25. Other documents reviewed by the Subcommittee, including wire transfers at other financial institutions referring to Apex, indicate that it had a post office box address in Samoa.

²⁸⁴ See documents entitled, "Yue Shing Tong Foundation ('mother')", "Yue Shing Tong Foundation ('SUN R' a/c)," "Yue Shing Tong Foundation (Daughter Account)," "Yue Shing Tong C Foundation," (all undated), Bates Nos. CH-PSI 47-52.

²⁸⁵ Compare letters from Mr. Chong to LGT contact Silvan Colani (9/12/06 regarding \$30,000), (3/7/06 regarding \$60,000), (6/1/04 regarding \$50,000), and (5/18/04 regarding \$70,000), Bates Nos. CH-PSI 59, 60, 94, 107, with letter from Mr. Chong to LGT contact Silvan Colani (5/30/02 regarding \$85,000 sent directly from Fund Mother to Dynamic Travel, prior to the formation of Apex), Bates No. CH-PSI 108.

an email: “Can you ask your sender to ship them to Apex instead? This would also be better from a safety point of view.”²⁸⁶

Because of the sums funneled through the foundation accounts, Mr. Chong routinely communicated with LGT personnel in Hong Kong, exchanging correspondence and emails most often with an LGT representative named Silvan Colani.²⁸⁷ The Chong account was the only LGT account reviewed by the Subcommittee that made common use of emails. The communications dealt with a variety of issues that appear related to Mr. Chong’s business ventures including securities transactions,²⁸⁸ payments to Dynamic Travel; and transfers of funds to Sycamore Venture Capital L.P., a Silicon Valley venture capital business where Mr. Chong was a partner.²⁸⁹ Other communications forwarded documents received from KCS related to Apex, including invoices²⁹⁰ and even a Schedule K-1 Form from a corporate U.S. tax return listing Apex as a partner in a U.S. partnership.²⁹¹ On one occasion, LGT sent an email to Mr. Chong stating: “We have received your delivery of 63,303 units to Apex.”²⁹² A letter from Mr. Chong the next day instructed LGT “to wire US\$63,303 ... from the account number [redacted] to account number [redacted],” indicating that the “units” that had arrived the day before referred to dollars in an incoming wire transfer.²⁹³

Throughout the documentation, LGT personnel never appeared to question the large sums moving through the foundation accounts and willingly worked to keep the transactions secret through use of Apex, allowing transfers without identifying information for the originating or recipient parties, and even using code phrases to describe funding transfers.

On February 20, 2008, LGT’s representative, Mr. Colani, sent Mr. Chong an email stating: “There is some important news that you should be aware of. Please have a look at www.lgt.com.”²⁹⁴ A historical review of the LGT website shows that was the day LGT issued a news announcement about the fact that a former LGT employee had released information on LGT accounts. Mr. Chong wrote: “Is this disclosure possibly affecting me?”²⁹⁵ Mr. Colani responded: “Yes. I’m afraid we have to assume the possibility.” Later he wrote to Mr. Chong:

²⁸⁶ Email from LGT contact Silvan Colani to Mr. Chong (2/14/07), Bates No. CH-PSI 3. LGT has employed similar tactics on other occasions to help clients disguise the flow of assets into their LGT accounts, as examined below in Section 8.

²⁸⁷ See, e.g., letter from Mr. Chong to Silvan Colani, Representative of LGT in Hong Kong (3/7/06), Bates No. CH-PSI 59.

²⁸⁸ See, e.g., email from Mr. Chong to LGT contact Silvan Colani (3/20/07), Bates No. CH-PSI 8.

²⁸⁹ Letter from Mr. Chong to LGT (undated), Bates No. CH-PSI 65.

²⁹⁰ See, e.g., email from LGT contact Silvan Colani to Mr. Chong (12/26/06), Bates No. CH-PSI 1.

²⁹¹ See email from LGT contact Silvan Colani to Mr. Chong (4/18/07), Bates No. CH-PSI 16.

²⁹² Email from LGT contact Silvan Colani to Mr. Chong (2/28/07), Bates No. CH-PSI 5.

²⁹³ Letter from Mr. Chong to LGT contact Silvan Colani (3/1/07), Bates No. CH-PSI 66. A handwritten note on this letter indicates that the \$63,303 may have been “Acme dividends.”

²⁹⁴ Email from LGT contact Silvan Colani to Mr. Chong (2/20/08), Bates No. CH-PSI 35.

²⁹⁵ Email from Mr. Chong to LGT contact Silvan Colani (2/21/08), Bates No. CH-PSI 37.

“Suggest you urgently seek local advice. Worst case, we must assume that all files up to 2002 are out. I’m very sorry.”²⁹⁶ LGT later gave Mr. Chong the name of several lawyers in California.²⁹⁷

The Subcommittee understands that Mr. Chong is now responding to IRS inquiries related to Liechtenstein.

(7) Miskin Accounts: Hiding Assets from Courts and a Spouse

Michael Miskin is a citizen of the United Kingdom, has claimed residency in Bermuda, but also lived in California for a decade, from 1991 to 2002.²⁹⁸ In 2003, after his wife of nearly 40 years, Stephanie Miskin, filed for divorce, he ignored court orders to transfer California real estate and £3 million in alimony to his ex-wife, hid assets in offshore jurisdictions around the world, and effectively disappeared. In the early 1990s, LGT helped Mr. Miskin open an account in Liechtenstein and transfer millions of Swiss francs to LGT, apparently from another Liechtenstein bank that had been disclosed to his wife’s legal counsel. In 1998, LGT helped him form a Liechtenstein foundation, called the Micronesia Foundation, and transferred his LGT funds, then valued at nearly 10 million Swiss francs or \$6.6 million, into the foundation’s account, even though LGT believed Mr. Miskin had earned the money “under the table.”²⁹⁹ In 2001, Micronesia’s assets were valued by LGT at about 9.8 million Swiss francs which, due to a relative decline in the value of the dollar, was then equivalent to about \$9.6 million.

U.S. Residency. Mr. Miskin has spent substantial time in the United States, but has denied being a U.S. resident subject to U.S. taxes. In a 2003 sworn statement submitted to a U.S. court, Mr. Miskin declared that he was a U.K. citizen and resident of Bermuda.³⁰⁰ His then ex-wife disagreed, asserting in pleadings filed in the United States and the United Kingdom that he had resided in California from about 1991 until 2002.³⁰¹ Ms. Miskin indicated that Mr. Miskin had claimed Bermudan residency in an effort to avoid having to admit U.S. residency which, among other consequences, would have rendered him liable for U.S. taxes. She offered the following explanation to the court:

“[P]erhaps ten years ago Defendant [Mr. Miskin] and I were granted Bermudan residency by obtaining a residential address and depositing a substantial sum of money with, I

²⁹⁶ Email from LGT contact Silvan Colani to Mr. Chong (2/21/08), Bates No. CH-PSI 38.

²⁹⁷ Email from LGT contact Sonja Sprenger to Mr. Chong (2/21/08), Bates No. CH-PSI 39.

²⁹⁸ The information about the Miskin accounts is derived from internal LGT documents produced to the Subcommittee and pleadings filed in court cases in Switzerland, the United Kingdom, and United States. The Subcommittee was unable to contact Mr. Miskin despite extensive efforts.

²⁹⁹ LGT memorandum regarding a new establishment for Mr. Miskin (6/30/98), Bates Nos. PSI-USMSTR-6663-64.

³⁰⁰ See Miskin v. Miskin, Case No. 01111516, (Cal. Super. Ct. Anacapa Div. 2003) (hereinafter “Miskin Property Dispute in California”), Declaration of Michael Miskin in Support of Motion to Quash Service of Summons and Dismiss Action (8/1/03), at ¶ 1; Declaration of Michael Miskin (9/4/03), at ¶ 1.

³⁰¹ See, e.g., Miskin Property Dispute in California, Opposition to Motion to Quash; Objections to Evidence; Request for Judicial notice; Declaration of Judith Ilene Bloom (8/29/03) at 3-4; Miskin v. Miskin, High Court of Justice, Family Division, Witness Statement of Stephanie Avril Miskin (1/23/03) at ¶¶ 6-16.

believe, the Bank of Bermuda. The advantage of Bermudan residency to the Defendant is that it provided him with a means to enter the United States without being obliged to go through any registration process. Defendant explained to me that all he needed to do was to have with him, at any time when he entered the United States, a return flight to Bermuda. Once his entry had been secured, it was simply a matter, so the Defendant told me, of cancelling the return ticket to Bermuda and securing a refund. This arrangement had the added advantage to Defendant that by virtue of his entry into the United States not being registered, his presence did not come to the attention of any of the US authorities and particularly the Internal Revenue Service. To minimize the risk of his presence as a “permanent resident” becoming known to the IRS, Defendant was scrupulous to ensure that he did not own any real estate, motor vehicle or indeed even hold bank accounts in his own name. This was achieved through the employment of nominee accounts and trust companies.”³⁰²

Mr. Miskin admitted in his sworn statement to the court that he had lived at various times in California, but denied that his stays had been sufficient to make him a U.S. resident: “I have visited Santa Barbara [in California] in the past on a tourist visa permitting me to stay for only 90 days in the United States at any one time.”³⁰³ He also declared, “Although I have visited Santa Barbara in past years, I have stayed for less than 90 days and have never been a resident. On occasion, when I have stayed in the Seaview property [in California], my name has been put on the mailbox. I understood that my name was removed on my departure or shortly thereafter.”³⁰⁴ Ms. Miskin, in contrast, told the court that Mr. Miskin had lived in Santa Barbara “for many years,” received mail there, was well-known by his neighbors and a local art center, and had purchased a \$700,000 condominium, the Seaview property, which she helped remodel.³⁰⁵

Internal LGT documents produced to the Subcommittee indicate that, from 1998 to 2001, Mr. Miskin provided the bank with contact information, not in Bermuda, but in California, listing the address and telephone number for the Seaview property,³⁰⁶ a Post Office Box address in Santa Barbara,³⁰⁷ and a business card bearing a Santa Barbara telephone number.³⁰⁸ Other LGT documents indicate that the bank was well aware of the fact that, while Mr. Miskin claimed Bermuda residency, he often lived in the United States: “Mr. Mistin’s [sic] registered place of

³⁰² Miskin Property Dispute in California, Declaration of Stephanie Avril Miskin in Opposition to Motion to Expunge Lis Pendens (4/4/2003), at ¶ 6.

³⁰³ Miskin Property Dispute in California, Declaration of Michael Miskin in Support of Motion to Quash Service of Summons and Dismiss Action (8/1/03), at ¶ 3.

³⁰⁴ Miskin Property Dispute in California, Declaration of Michael Miskin (9/4/03), at ¶ 3.

³⁰⁵ Miskin Property Dispute in California, Opposition to Motion to Quash; Objections to Evidence; Request for Judicial Notice; Declaration of Judith Ilene Bloom, legal counsel to Ms. Miskin (8/29/03) at 3-4; Miskin v. Miskin, High Court of Justice, Family Division, Witness Statement of Stephanie Avril Miskin (1/23/03) at ¶ 13.

³⁰⁶ See LGT Memorandum regarding a new establishment for Mr. Miskin (6/30/98), Bates Nos. PSI-USMSTR-6663-64.

³⁰⁷ See, e.g., Letter of Wishes (7/28/00), Bates Nos. PSI-USMSTR-6653-54; Feststellung der wirtschaftlich berechtigten Person (Establishment of Economically Entitled Persons) (7/18/01), Bates No. PSI-USMSTR-6652.

³⁰⁸ Copy of business card for “Michael Miskin Ceramics” in “Santa Barbara, CA” (displaying a California telephone number), Bates No. PSI-MSMSTR-6665.

residence is in Bermuda. In the U.S., he is a ‘visitor’ and lives most of the time in Santa Barbara. As a resident of Bermuda, he has unrestricted entry and exit to and from the U.S.”³⁰⁹ LGT expressed no concern about Mr. Miskin’s conduct. To the contrary, another LGT internal document suggests that LGT viewed Mr. Miskin’s residency claim as a successful ploy to avoid U.S. taxation: “IMPORTANT: The financial beneficiary has his PLACE OF RESIDENCE IN BERMUDA and not in the U.S. Hence, he pays no taxes in the U.S.!!!!!!”³¹⁰

California Realty. In 1998, Mr. Miskin acquired U.S. real estate but used offshore entities to hide his beneficial ownership interest in the property. The property is a condominium in Montecito, California, bearing the address of 68 Seaview Drive (Seaview Property).³¹¹ Mr. Miskin has admitted in court that the Seaview Property was purchased in April 1998, by Belmont Assets Ltd., a shell corporation formed in Guernsey, and that Belmont Assets Ltd. is wholly owned by a Guernsey trust called Bonnymede Trust.³¹² Mr. Miskin has denied, however, that he was the settlor, trustee, officer, or beneficiary of the Guernsey entities:

“I do not now, nor have I ever, owned the property in Santa Barbara commonly known as 68 Seaview Drive. I understand that the property is owned by Belmont Assets Ltd. Although I have in the past acted as an advisor and consultant to Belmont Assets Ltd., I do not now, nor have I ever owned any interest in that entity. ... I believe that Belmont Assets Ltd. is owned by the Bonnymede Trust which was established in Guernsey. That is an irrevocable trust. The sole beneficiary is ‘The Royal Masonic Benevolent Institution,’ a charitable institution for the benefit of poor and distressed free masons. I was not the settlor of the Bonnymede Trust, nor to the best of my knowledge have I ever been either a trustee or a beneficiary of the Bonnymede Trust.”³¹³

Mr. Miskin claims he was not the settlor, trustee, or a beneficiary of the Bonnymede Trust, yet there is ample evidence that he controlled it. He admits having been “an advisor and consultant to Belmont Assets,” which is a common means for beneficial owners to assert control over a company that they do not ostensibly own.³¹⁴ Moreover, in 2002, his granddaughter was added as a beneficiary of the trust,³¹⁵ a fact omitted from his court pleading. In addition, the Subcommittee contacted an employee of Anfossi Management in Bermuda, Douglas M. Tufts,

³⁰⁹ LGT Memorandum regarding a new establishment for Mr. Miskin (6/30/98), Bates Nos. PSI-USMSTR-6663-64. The 1998 memorandum mistakenly misspells Mr. Miskin’s name as “Misten” and “Mistin.”

³¹⁰ LGT report on Micronesia Foundation subsequent to 9/17/02, Bates No. PSI-USMSTR-6660.

³¹¹ Montecito is a city in Santa Barbara County, California. The property is referred to in various documents as located in Montecito or Santa Barbara.

³¹² See Miskin Property Dispute in California, Supporting Declaration of David Anfossi (3/6/03) (stating that Mr. Anfossi and Douglas M. Tufts are the trustees of the Bonnymead Trust, sole shareholders and directors of Belmont Assets Ltd., and confirming the facts related to the purchase of the Seaview Property).

³¹³ Miskin Property Dispute in California, Declaration of Michael Miskin in Support of Motion to Quash Service of Summons and Dismiss Action (8/1/03), at ¶¶ 4-5.

³¹⁴ See, e.g., “Tax Haven Abuses: The Enablers, the Tools and Secrecy,” before the U.S. Senate Permanent Subcommittee on Investigations, S. Hrg. 109-797, (8/1/06) at 218 (case history involving Kurt Greaves who was made a “business consultant” to companies he secretly controlled).

³¹⁵ See “Deed of Appointment of Beneficiary” for the Bonnymead Trust (11/5/02).

who was a trustee of the Bonnymede Trust and a shareholder and director of Belmont Assets Ltd. Mr. Tufts stated that there is “no doubt” that Mr. Miskin initiated, controlled, and benefited from Bonnymede and Belmont.³¹⁶

Mr. Tufts says he believes that Mr. Miskin paid Anfossi Management a retainer in late 2002, to provide trustees to Bonnymede and directors to Belmont. He said that expenses relating to Bonnymede, Belmont, and the Seaview property were paid from an Anfossi escrow account funded with the retainer. After the retainer was depleted, he said that Anfossi Management began billing Mr. Miskin. He said that the bills were sent to the Seaview Property – the same property Mr. Miskin denied owning or living at – despite the fact that Mr. Miskin was ostensibly a resident of Bermuda, and Anfossi Management is located in Bermuda. Mr. Tufts said that Mr. Miskin did not pay all of his bills to Anfossi Management, and estimated that \$15,000 to \$20,000 remains outstanding.

In 2003, a U.K. court adjudicating the Miskin divorce proceedings found that Bonnymead Trust and Belmont Assets Ltd. were held “on a bare trust for, and for the exclusive benefit of” Mr. Miskin, and ordered the trust to transfer its assets to Ms. Miskin, including the Seaview Property.³¹⁷ After Ms. Miskin brought proceedings in California to enforce the U.K. court order and obtained a second court decision in her favor, the Guernsey entities complied, transferring the property to her in late 2003.³¹⁸

If Mr. Miskin had admitted to being the owner of the California property from 1998 until 2003, this ownership interest would have strengthened arguments that he was, in fact, a U.S. resident subject to U.S. taxation.

LGT Accounts. An internal LGT memorandum obtained by the Subcommittee shows that, during the 1990s, LGT helped Mr. Miskin hide millions of dollars in Liechtenstein from his wife and tax authorities. The memorandum, dated June 30, 1998, provides the bank’s initial analysis of Mr. Miskin’s request for a “New Establishment.”³¹⁹

“Mr. Alois Beck (LGT) asks me to call Mr. Mistin in Santa Barbara, CA (USA), because Mr. Mistin would like to have some information about a foundation or a trust in FL.”³²⁰

“Mr. Mistin’s registered place of residence is in Bermuda. In the U.S., he is a ‘visitor’ and lives most of the time in Santa Barbara. As a resident of Bermuda, he has unrestricted entry and exit to and from the U.S.”

³¹⁶ Subcommittee interview of Douglas M. Tufts (7/7/08).

³¹⁷ Order, Miskin v. Miskin, High Court of Justice, Family Division (7/31/03).

³¹⁸ Subcommittee interview of Douglas M. Tufts (7/7/08).

³¹⁹ LGT memorandum regarding a new establishment for “Mr. Mistin” (6/30/98), Bates Nos. PSI-USMSTR-6663-64. The memorandum misspells Mr. Miskin’s name, referring to him as “Mr. Mistin” or “Mr. Misten.”

³²⁰ LGT documents often refer to Liechtenstein as “FL,” an abbreviation of the nation’s local name “Fuerstentum Liechtenstein.”

“About a few years ago, he made a rather large profit from the sale of his company³²¹ through the Credit Bank in Belgium. Back then he still lived in England, as a non-resident. For tax reasons (I did not understand how that works), the accounting firm [Touche] & Ross recommended that he deposit annually the positive balance, for the time period in which £25,000.00 net gets credited in interest, into the account of his wife. The account was opened, and he had the signature as well (but he’s not completely sure anymore). Eight years ago, he and his wife came to a clash, and since then he has been separated from her. Chagrined, he left England, and instructed the bank to transfer the money to UBS in Geneva.³²² That is when it was noticed that the amount is still in his wife’s account. The bank had not carried out his instruction to transfer the principal back to his account after the interest was credited. His wife was aware of these tax-related transactions, as well as of the fact that the bank had not carried out her husband’s instructions. She took advantage of this opportunity and charged Mr. Mistin with having stolen the money from her and having hastily fled the country!!! Thereupon he had the money transferred from Geneva to the FL Landesbank. But after the Geneva bank disclosed information to the English attorneys (!!!!!) he brought the money from to the BIL in cash - that was 8 years ago. In the meantime, the charge has been withdrawn by his wife.

“His wife is still keen on the money, however, and hence does not want to get divorced. The older son, very successful in business himself, is more on his mother’s side; the younger son is more on his father’s, but maintains good relations with the mother as well. In order to make sure that his wife never finds out about the foundation, the amounts are to be paid to his son ‘anonymously.’ The older son has several million himself and will for this reason not benefit from the foundation.

“The assets, currently around 10 million Swiss francs, were earned ‘under the table’ and were always separate from the official, so he is not expecting to encounter problems related to the breach of the disclosure.”

The LGT memo ends with the note: “We agreed that he will fax us three name suggestions. We will send him the prepared STOM [foundation without a mandate] documents via DHL tomorrow, July 1, 1998 to the following address: Michael Mistin, 68 Seaview Drive, Montecato, CA 93108 USA.”

The LGT memorandum indicates that, eight years earlier, in or around 1991, Mr. Miskin transferred funds from “FL Landesbank,” a reference to another Liechtenstein bank, to “the BIL,” an abbreviation for the LGT “Bank in Liechtenstein.” It is unclear whether Mr. Miskin transferred these funds to an LGT account in his own name or in the name of another person. In either event, the memorandum clearly portrays the funds as beneficially owned by Mr. Miskin.

³²¹ A later LGT document describes it as a “real-estate company (England).” LGT Background Information/Profile for Micronesia Foundation (12/13/01), Bates No. PSI-USMSTR-6666.

³²² While this LGT memo indicates the funds were transferred through UBS Geneva, documents obtained by the Subcommittee appear to show that funds were transferred through Citibank Geneva.

The memorandum states that the assets that had been deposited with LGT eight years earlier were “currently around 10 million Swiss francs.”

The memorandum describes actions taken by Mr. Miskin over the years to hide his funds from tax authorities and his wife, including depositing funds from the sale of his business in his wife’s bank account, transferring funds to a new bank to avoid his wife’s “English attorneys,”³²³ and depositing additional funds that had been “earned ‘under the table.’” The memorandum also describes steps that will be taken “to make sure that his wife never finds out about the [new] foundation.” The author of the memorandum expresses no reservations about Mr. Miskin’s conduct or forming a new “Establishment” for him. Instead, the memorandum offers to act quickly by sending him an overnight package with account opening documentation. The address to be used is the very Seaview property that Mr. Miskin will later claim he never resided in.

LGT actually formed the Micronesia Foundation for Mr. Miskin on September 17, 1998, and opened an LGT account for the foundation with the nearly 10 million in Swiss francs transferred from Mr. Miskin’s other accounts at the bank.³²⁴

In 2000, Mr. Miskin gave LGT a letter of wishes detailing how the Micronesia assets should be distributed upon his demise, further demonstrating his control over the foundation.³²⁵ The letter lists his wife, son, and grandchildren as primary beneficiaries. The letter specifies:

“The foundation board shall advise beneficiaries to treat sums due to them with the utmost caution in respect of local taxes. The board shall seek out and advise, the best possible way for beneficiaries to receive monies either by debit card or by loan or any

³²³ The Subcommittee reviewed documents which independently confirm Mr. Miskin’s transfer of \$1 million from his wife’s account to Citibank in Geneva and from there to Liechtensteinische Landesbank in Vaduz. These documents were made part of a court filing in London. They include a 1991 letter from Mr. Miskin’s personal secretary to a private banker at Brown Shipley & Co. Ltd. in London, where the Miskins held accounts:

“Following your telephone conversation with Mr. Miskin today, I would confirm that the deposit in the sum of £1,000,000.00 deposited in Mrs S.A. Miskin’s name for tax purposes, should have reverted to the name of Mr M Miskin on 30th November 1990. This, obviously, has not taken place due to an oversight and I would confirm that this deposit should have been changed into the name of Mr M Miskin as of today.”

Letter to Brown Shipley & Co. Ltd. (5/13/91), Bates No. 51 (handwritten). A Brown Shipley letter stated that it had dealt only with Mr. Miskin, believed that he was the “ultimate beneficiary of all funds placed with us,” and transferred the funds at his request to Citibank. Letter from Brown Shipley to Forsyte Kerman Solicitors (7/29/91), Bates No. 57 (handwritten). On June 27, 1991, Mr. Miskin transferred more than £3.7 million from Brown Shipley, including the funds formerly held in Mrs. Miskin’s name, to Citibank (Switzerland), Geneva Branch. On July 30, 1991, Citibank (Switzerland) transferred more than £3.4 million and \$400,000 to Liechtensteinische Landesbank in Vaduz. See letter from Citibank (Switzerland) to Lenz & Staehelin (8/28/91), Bates Nos. 62-64 (handwritten). This series of funding transfers came to light after a U.K. court had issued an “Injunction Prohibiting Disposal of Assets Worldwide,” (1/24/03), to prevent Mr. Miskin from disposing of the marital assets. In response to a request from the U.K. court, the District Court of Zurich ordered Citibank to provide Mrs. Miskin with information about the transfers, resulting in the August 1991 letter by Citibank.

³²⁴ See LGT receipt for deposit of about £3.65 million or about \$6.2 million, (10/21/98), Bates No. PSI-USMSTR-6656 (showing Mr. Miskin with a California address).

³²⁵ Letter of Wishes for the Micronesia Foundation, (7/28/00), Bates Nos. PSI-USMSTR-6653-54.

other suitable method that should seek to avoid such local taxes. Leaving principle sums allotted to each beneficiary in a company or foundation in Liechtenstein should be recommended. Any beneficiary who takes legal action against the foundation will be automatically excluded from being a beneficiary.”

Other LGT documents reviewed by the Subcommittee also demonstrate Mr. Miskin’s control over Micronesia. On one occasion in 2000, for example, Mr. Miskin sent an email to his LGT contact after an apparent discussion of inheritance taxes on trust beneficiaries and Mr. Miskin’s desire to ensure “my beneficiaries do not suffer taxes of 40% and very possibly greater amounts.” He closes with the line, “I will be sending you new instructions as soon as I have figured it out.”³²⁶ A 2001 fax from Mr. Miskin to LGT directs the transfer of £111,106 from Micronesia to a Barclays Bank in England “ASAP [as soon as possible]” for “the purchase price of my sons [sic] new house.” The same fax directs a transfer of £15,000 from Micronesia to an account in Mr. Miskin’s name at a Lloyds TSB Bank branch in Jersey.³²⁷

A 2002 letter to Mr. Miskin from his LGT account manager shows that LGT provided him with advice on offshore structures and how to continue to shield his assets from U.S. taxes:

“Dear Mr. Miskin,

“Thank you very much for your fax of February 23, 2002 and for the patience you had.

“In the meantime I have spoken with an expert for structures of the area of G.³²⁸ It turned out that with respect to the tax situation in the US-area a re-domicilization of the company to another jurisdiction would not be advisable and would additionally take a very long time. Therefore at least the company’s seat has to remain in G. But it is possible to transfer the domicile of the trust as well as the representative office. In that case our suggestion would be to transfer the whole structure including the holding to a much more co-operative trust company [at] a representative office on the Isle of Man. This office being an office of high reputation would provide us with a nominee shareholder for the shares of the company and also will support us in taking over and administering the company as new trust officers in direct co-operation with us....

“I would like to inform you that after you having decided to execute the transfer all the necessary details will be arranged by us.”³²⁹

This letter, faxed to Mr. Miskin at a Santa Barbara, California number, demonstrates LGT’s ongoing willingness to help him place assets in offshore structures.

³²⁶ Email from Mr. Miskin to Peter Meier of LGT regarding “That Taxing Problem,” (1/19/00), Bates No. PSI-USMSTR-6658.

³²⁷ Fax from Mr. Miskin to LGT contact Alouis Beck (7/25/01), Bates No. PSI-USMSTR-6655.

³²⁸ “G” may refer to Guernsey where the trust and corporation holding the Seaview Property were domiciled.

³²⁹ Fax from “MMMag. Thomas Lungkofler” to Mr. Miskin (2/27/02), Bates No. PSI-USMSTR-6657.

Hiding Assets from the Courts. In 2003, Ms. Miskin filed for divorce in London.³³⁰ Mr. Miskin did not appear at the divorce proceedings, and the divorce was finalized in July.³³¹ The U.K. court ordered Mr. Miskin to make a lump sum alimony payment to Ms. Miskin of £3 million. Mr. Miskin did not acknowledge the court order or provide the funds.³³² The documents reviewed by the Subcommittee indicate that the Micronesia Foundation was still active at LGT as of December 31, 2001, about 18 months before the court judgment,³³³ so it is possible that these funds could have been used to satisfy the alimony payment. However, neither the court nor Ms. Miskin knew of the existence of the LGT foundation and account.

The U.K. court also awarded ownership of the Seaview Property to Ms. Miskin.³³⁴ Real estate is not as easily hidden as funds, and Ms. Miskin initiated action in the Superior Court of California, to enforce the British court order and take possession of the property. Mr. Miskin, through legal counsel, filed pleadings in opposition, contending among other arguments that the court had no personal jurisdiction over him and he did not own the property being transferred. Like the London court before it, however, the California court rejected his arguments and awarded the property to Ms. Miskin.

The documents reviewed by the Subcommittee do not indicate whether the Micronesia Foundation's assets, including the \$9.6 million identified in 2001, remain at LGT.

(8) Other LGT Practices

Internal LGT documentation obtained by the Subcommittee provides additional information about LGT practices that could be used to facilitate tax evasion.

Gap Between KYC and QI Obligations. In response to Subcommittee questions, LGT's most senior compliance officer, Mr. Klein, stated that LGT principally relied on the declarations of their clients to determine if they had U.S. or non-U.S. status for the purpose of QI reporting.³³⁵ Mr. Klein also stated that since QI rules are distinct from Know-Your-Customer (KYC) due diligence rules, if LGT determined during a KYC evaluation that the beneficial owner of a trust or a company was a U.S. person, that information did not necessarily impact on the client's status for QI purposes.

³³⁰ Ms. Miskin had first initiated divorce proceedings in 1991, but then reconciled with Mr. Miskin. On this occasion, she filed for divorce on January 13, 2003. See *Miskin Property Dispute in California, Declaration of Stephanie Avril Miskin in Opposition to Motion to Expunge Lis Pendens* (4/4/03), at ¶ 1.

³³¹ See Order, *Miskin v. Miskin*, High Court of Justice, Family Division (7/31/03).

³³² See *id.*; Subcommittee interview with Judith Bloom (5/5/08).

³³³ See LGT Background Information/Profile for Micronesia Foundation, (12/13/01), Bates No. PSI-USMSTR-6666.

³³⁴ "Order," *Miskin v. Miskin*, High Court of Justice, Family Division (7/31/03). See also *Miskin Property Dispute in California, Opposition to Motion to Quash* (8/29/03), at 2.

³³⁵ Subcommittee interview of Ivo Klein, Head of LGT Group Compliance (7/11/08). See also LGT documents, "Impact of new US withholding tax regulations on non-US entities," Bates Nos. LGT 1-4; "Declaration of Non-US Status," Bates Nos. LGT 5-8; "Tax form US withholding tax/private individuals," Bates Nos. LGT 9-10.

This discrepancy is highlighted by LGT Bank's approach to the QI Audit Program. For example, LGT provided to the Subcommittee a copy of the 2006 QI External Auditor's Report, which was submitted by PriceWaterhouseCoopers AG to the IRS on June 26, 2007.³³⁶ This report notes that the auditors had concluded that at least one accountholder originally listed as a non-U.S. person may be a U.S. person with tax liability. A letter from LGT Bank to the auditors states that the bank will take corrective measures, including soliciting an appropriate W-9 from the client.³³⁷ LGT confirmed to the Subcommittee that should questions arise during the QI audits about the reliability of its information on the U.S. status of one of its clients, the bank will rectify the matter and solicit appropriate documentation. Thus, the contradiction between the QI and the KYC rules is clear: if the bank is advised through a QI audit that one of its account holders may be a U.S. person, it will actively seek to bring itself into compliance with the QI program. However, if the bank itself learns, through its KYC obligations, that the beneficial owner of an account holder is a U.S. person, it will not apply that knowledge to its QI reporting obligations.

This situation appears to demonstrate a gap in the QI Program. A condition precedent to becoming a QI is that the bank must apply appropriate KYC rules, which includes looking through a corporate entity or trust to determine the ultimate beneficial owner, or, as Mr. Klein described it, a "warm human body." So even though a bank is required to know the identity of the person behind a corporate account holder, the QI Program does not require the bank to look beyond a properly filed W-8BEN. Thus, consistent with the QI Program, LGT Bank must document the beneficial owner of a corporation, but LGT Bank need not look through the non-U.S. status of the corporation that, in fact, holds an account for a U.S. beneficial owner.

Using Transfer Corporations to "Cover Up the Tracks" of Client Funds. As indicated in some of the case histories described earlier, LGT documents obtained by the Subcommittee show that it was not uncommon for LGT to set up intermediary, pass-through corporations that were used by the bank, in the words of an LGT employee, "to cover up the tracks" of funds moving into LGT client accounts. When asked about these corporations, the head of compliance for LGT Group confirmed their existence, explaining that these "auxiliary services corporations" served several functions, including the transmission of funds "confidentially."³³⁸

The documents show that LGT used BTS Management Ltd., formed in the British Virgin Islands (BVI), to establish a number of the transfer corporations. The documents indicate that LGT typically asked BTS Management to form a BVI corporation which then opened an account at LGT or another bank, such as Bank du Gothard in Luxembourg. The transfer corporation then received funds or securities from an LGT client and immediately transferred those funds or securities to LGT, if its account was at an outside bank. In some instances the transfer corporation was then dissolved; in other instances, it continued in existence. Once the funds or securities were delivered to LGT bank, they were moved internally within the bank, using a mechanism called "journaling" to transfer them from one LGT account to another, here from the

³³⁶ "Qualified Intermediary External Auditor's Report for the Year 2006," Bates Nos. LGT 136-187, at 136.

³³⁷ *Id.* at LGT 179.

³³⁸ Subcommittee interview of Ivo Klein, Head of LGT Group Compliance (7/11/08).

transfer corporation's LGT account to the client's LGT account. This internal transfer mechanism makes it much more difficult to trace the movement of funds and securities, since it leaves no record outside of the bank showing that the assets were transferred to the ultimate recipient, the LGT client.

The Subcommittee investigation uncovered several examples of LGT engaging in this practice. For example, Sera Financial Corporation is a BVI corporation that appears to have functioned as an LGT transfer corporation. An internal LGT document describes Sera Financial as a “[s]pecial purpose company (indirect subsidiary of LTV) for portfolio transfers for assets which are to be brought into an LTV structure.”³³⁹ The document shows, by account number, that Sera Financial held one account at Banque du Gothard and eleven separate accounts at LGT Bank in Liechtenstein.³⁴⁰ The document explains this unusual account structure as follows:

“For each customer, a sub-account or deposit facility is opened under a reference at BdG [Banque du Gothard] and at LGT. ... Funds transfers as well as securities deliveries to BdG are in favor of SERA. ... BdG is instructed to forward cash values and securities without delay to LGT BIL [Bank in Liechtenstein] in favor of Sera Financial Corp. with specification of the reference. ... As soon as the assets are credited at BIL, they are transferred to the destination account”³⁴¹

One example of how Sera Financial was used involves a new trust set up for a U.S. client in 2000. An LGT memorandum to the file discussing the transfer of assets to the new trust states: “The trust shall open an account in the LGT Bank in Liechtenstein. The transfer of assets should take place using this account. To cover up the tracks from UBS Zurich to the trust in Liechtenstein, I recommend an intermediary Single Purpose Company.”³⁴² LGT decided to use Sera Financial as the transfer corporation. A wire transfer instruction from Gotthard Bank shows how the transfer operation worked.³⁴³ It shows that on October 31, 2000, after \$1.2 million had been credited to the Sera Financial account at Banque du Gothard: “BTS Management Limited, Tortola, as Managing Director of the company Sera Financial Corporation, Tortola, B.V.I. [h]ereby declares: ... that the following beneficiary(ies) is/are entitled to the above-referenced transaction,” naming the U.S. citizen from Florida, known to the Subcommittee as a U.S. client of LGT at that time. The \$1.2 million was then transferred to his account.

A second example involves Jaffra Development Inc., a BVI corporation that appears to have been used by LGT as a transfer corporation on a single occasion. An agreement in LGT files between Jaffra and a named LGT client describes Jaffra as “an indirect subsidiary of the

³³⁹ LGT report on Sera Financial Corporation (undated), Bates Nos. PSI-USMSTR-6553-54. The document notes that Sera Financial was established on December 15, 1997, and that the “share certificate” for Sera Financial was held “in the depository account of BTS Management Ltd. at LGT Bank in Lichtenstein AG, Vaduz (since Apr 9, 1999).”

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² LGT Memorandum “New Registration,” (11/2/00), Bates Nos. PSI-USMSTR-7696-97, at 7697.

³⁴³ Gotthard Bank wire transfer instruction for \$1.2 million transaction (10/31/00), Bates No. PSI-USMSTR 7680.

LGT Trust Corporation,” solely administered by BTS Management Ltd.³⁴⁴ In the agreement, the “contractor,” which is Jaffra, agrees not to “effect any transaction” or provide services to any “third party,” except as set out in the agreement. The agreement then describes Jaffra’s contractual obligations as follows:

“The contractor [Jaffra] undertakes to open a separate account at the LGT Bank in Liechtenstein Corp., Vaduz, for the present transactions, and after completion of the transactions, at the latest by 01.01.2001, to liquidate this corporation. ... The client will transfer to account no. [redacted] of the contractor at the LGT Bank ... an amount of approximately CHF 6 million (six million 0/00 Swiss francs) in one or more installments after notice by telephone to the administrative board. ... The contractor will, in each case after receipt of a credit voucher, transfer the total value of assets, or the total value of assets less commission, fees (including account cancellation costs) as well as compensation, from account no. [redacted] of the contractor to the account no. [redacted], under the name of CHARIVARI FOUNDATION, Vaduz (Recipient), at the LGT Bank in Liechtenstein, in cash.”

The contract states further: “BTS Management Ltd. receives a flat fee of CHF 5,000.00 for the completion of all transactions, as well as receiving outside costs, each of which is assessed on the day of deposit to the account of the contractor. The founding and liquidation costs for the JAFFRA DEVELOPMENT INC. are included in this compensation.”

A third example involves Sewell Services Ltd., a BVI corporation which, like Jaffra, appears to have been used for a single client, in this case the Lowys, discussed earlier. A 1997 internal LGT memorandum described plans to move assets into a new foundation set up for the Lowys called Luperla Foundation.³⁴⁵ The memorandum states that \$54 million “are going to the Sewell account with us ... subsequently Sewell pays ... the amount to Luperla.” It states that an “additional roughly \$3 million will go to Sewell (account LGT)” from outside banks which Sewell is then to pay “to account Luperla at LGT.” The memorandum states that after the transactions, “The Sewell account is to be closed on May 31, 1997, and the company [is] to be dissolved.” As indicated in the earlier discussion of the Lowy accounts, over \$54 million was, in fact, passed through the Sewell LGT account into the Luperla Foundation account at LGT.³⁴⁶

A final example involves Apex Assets Ltd., a corporation set up for Mr. Chong by LGT in 2004, as described earlier. It is unclear from the documentation reviewed by the Subcommittee whether Apex was owned by LGT or Mr. Chong’s foundation. What the

³⁴⁴ “Vereinbarung [Agreement],” (6/21/00), Bates Nos. PSI-USMSTR-7935-36. See also LGT account summary, “Jaffra Development Inc.,” Bates No. PSI-USMSTR-7934 (describing Jaffra as a “single purpose corporation”).

³⁴⁵ “Aktenvermerk [Memorandum for the Record], Luperla Foundation, (5/2/97), Bates Nos. PSI-USMSTR-8864-65. See also letter from J.H. Gelbard to LGT re “Formation of a Foundation by the name Luperla Foundation,” (3/12/97), Bates Nos. PSI-USMSTR-8860-61 (describing the corporation to be established as a “transfer company”).

³⁴⁶ Sewell, however, was not immediately dissolved, but was apparently used for additional pass-through transactions for Luperla in October 1997. It was apparently dissolved in 1998. See LGT memorandum re “Luperla Stiftung/Sewell Services Ltd. B.V.I.,” (10/23/97), Bates No. PSI-USMSTR-8896; LGT report on Luperla Foundation (undated, subsequent to 4/2/01), Bates Nos. PSI-USMSTR-8862-63 (noting that Sewell was deleted from the registry in the British Virgin Islands on 11/1/98).

documents do show is that, from 2004 into 2007, virtually all funds transferred to or from Mr. Chong's foundation were routed through Apex.

Hiding Telephone Communications. Another strategy employed by LGT to enhance secrecy and client anonymity was to limit the ability of outside parties to trace client communications back to Liechtenstein. To achieve this objective, LGT not only instituted a policy of retaining client mail at the bank in Liechtenstein, or sending mail to locations outside of a client's home jurisdiction, but also undertook efforts to minimize the ability of outside parties to trace telephone calls back to the bank and even the country itself. One LGT document obtained by the Subcommittee, for example, providing information on how to contact a client, contained the following instruction:

“CAUTION: Calls may be made only from public phone booths, preferably not from a FL [Liechtenstein] phone booth !!!”³⁴⁷

A second, similar instruction was included later in the same document:

“CAUTION: Calls may be made only from public phone booths abroad (Switzerland, Austria, etc.) !!!”³⁴⁸

In addition, the Subcommittee learned from a former LGT employee that after the country of Liechtenstein received its own area code for its telephones, LGT employees began using cell phones with the Liechtenstein area code to contact clients. However, shortly thereafter, tax authorities in another country began to conduct tax audits of individuals who had made calls to, or received calls from, telephone numbers with the Liechtenstein area code. The Subcommittee was told that, after learning of these audits, LGT employees abandoned use of telephone numbers with the Liechtenstein area code and instead used numbers with Swiss or Austrian area codes.

Enabling Bribery in the United States and Elsewhere. Perhaps one of the most disturbing documents reviewed by the Subcommittee involves an LGT analysis of a request to establish a new foundation and LGT account for an existing client which LGT states may be used, in part, to facilitate the payment of bribes in the United States. The key LGT memorandum follows a meeting that took place in September 2002, with the client, one or two LGT trust officers, and an LGT compliance officer regarding the client's request to establish LRAB Foundation to receive funds from transactions involving Glencore International, an oil trading firm founded by Marc Rich.³⁴⁹ The memorandum states the following:

“1. Private Account with LGT BIL, Vaduz

³⁴⁷ LGT report on Tissit Invest and Trade Inc. (undated, subsequent to its establishment in January 2001), Bates Nos. PSI-USMSTR-8004-5.

³⁴⁸ *Id.*

³⁴⁹ LGT Note re “New Establishment of LRAB Foundation, Vaduz,” (9/13/02), Bates No. PSI-USMSTR 8555 (emphasis added).

Relatively large sums will be transferred into the existing account with LGT BIL [Bank in Liechtenstein]. For this reason, Mr. Skwaric has called on Mr. Karl Frick from Compliance for a client meeting. The assessment from Karl Frick is attached as a copy.

“2. Marc Rich

Marc Rich was the proprietor of a network of firms in Switzerland which were primarily active in merchandising. At times, over 1,500 persons in Switzerland alone were employed by him and a turnover of over USD 44.5 billion (2001, see copy) was achieved. He sold his portion to an employee, who continued to run the business as a firm under the name Glencore International. Marc Rich is a controversial person and very questionable with his methods. On the other side, in this year, one can see that subsequent deposits from Glencore were made into the private account of the [client] couple and therefore confirm the information of the clients.

“3. Evaluation of Compliance LGT BIL

The good impression which I have from the clients is also confirmed in the attached email from Karl Frick of the bank. I would like to add the following. The out-going transfers from the private account with LGT BIL have an amount of ca. USD 1 Million/per year. These are the office costs, carrying costs and payments in the realm of their commercial activity. **A small portion of the payments go however to the USA and Panama and may be classified as bribes.** Glencore International asked its largest partner in Ecuador to pass these payments on to third parties. This system was first established in 2002 and, for this reason, the clients are very unlucky. Previously, the payments from Glencore International were made directly to said persons. [The client] declares that he will speak with Glencore again, but is also afraid that they could lose Glencore as clients.

“4. Panama Corporation

I have discussed the possibility of a Panama Corporation as account holder and “transit account” with the clients. I have however, in agreement with SPR, dismissed our acting as director of such a corporation. My impression is that the clients know their situation very well; they can also assess the risks very well, but cannot change any part of their situation at the moment. The payments are however discussed with Karl Frick and can occur further.”

The memorandum seems to indicate that the clients already had LGT accounts and already conducted substantial business with Glencore International through those accounts, but were interested in setting up a new foundation and Panama corporation to channel business-related transactions through their accounts. The memorandum states that “[a] small portion of the payments” that already went through the clients’ LGT accounts and which would go through the proposed accounts “may be classified as bribes.” Rather than object to these payments or bar them or the clients from the bank, however, the LGT trust officer states that he has a “good impression ... from the clients” which is “confirmed in the attached email” from the LGT compliance officer. When asked about this memorandum, the head of compliance for LGT Group would not discuss any client-specific information, but commented that, prior to 2002,

LGT, like all banks in Liechtenstein, were “not as diligent as we should have been.”³⁵⁰ He declined to disclose whether the LRAB Foundation or Panama corporation had been formed in response to the clients’ request.

C. Analysis

The LGT information reviewed by the Subcommittee investigation indicates that, too often, LGT personnel viewed the bank’s role to be, not just as a guardian of client assets or trusted financial advisor to investors, but also a willing partner to clients wishing to hide their assets from tax authorities, creditors, and courts. In that context, bank secrecy laws begin to serve as a cloak not only for client misconduct, but also for banks colluding with clients to evade taxes, dodge creditors, and defy court orders.

It is also instructive that when the LGT tax scandal broke in February 2008, the immediate reaction of the Liechtenstein government was not to condemn the taxpayers who misused the jurisdiction, promise tough action against LGT if it knowingly assisted tax fraud, or pledge to disclose relevant information. Instead, the Liechtenstein government deplored the breach of its secrecy laws, expressed indignation that any country would purchase Liechtenstein financial data from a private individual, and issued an arrest warrant for the former LGT employee who allegedly disclosed the information.³⁵¹ In June 2008, an Internet website offered a \$7 million reward for information leading to the arrest of the former LGT employee; the Subcommittee traced this reward offer to a web hosting company in Liechtenstein.³⁵²

In July, the Liechtenstein government advised the Subcommittee that it had initiated a special investigation into the conduct of LGT Bank and Mario Staggl, and established a commission to examine Liechtenstein laws, including the question of whether it does or should violate Liechtenstein law if a Liechtenstein financial institution were to aid or abet tax evasion or tax fraud by a U.S. client. When the Subcommittee asked Mr. Klein about the status of this investigation, he replied that he was not aware of it, despite his position as head of compliance for LGT Group. Liechtenstein is also considering entering into a tax information exchange agreement with the United States to provide wider cooperation in tax enforcement matters.

IV. UBS AG CASE HISTORY

UBS AG of Switzerland is one of the largest financial institutions in the world, and has one of the world’s largest private banks catering to wealthy individuals. From at least 2000 to 2007, UBS made a concerted effort to open accounts in Switzerland for wealthy U.S. clients, employing practices that could facilitate, and have resulted in, tax evasion by U.S. clients. These

³⁵⁰ Subcommittee interview of Ivo Klein, head of LGT Group Compliance (7/11/08).

³⁵¹ See “Press Release from the (Liechtenstein) Office of the Public Prosecutor,” (2/27/08), available at www.liechtenstein.li/en/pdf-fl-med-aktuell-staatsanwaltschaft1.pdf (viewed 7/14/08); Press Release by the Liechtenstein Police, (3/11/08); “Liechtenstein Prince Defends Bank Secrecy as Scandal Threatens Country’s Haven Status,” Daily Tax Report, International Tax and Accounting (2/22/08), No. ISSN 0092-6884, at 1; Mark Landler, “Liechtenstein issues international arrest warrant for tax informant,” (3/12/08), International Herald Tribune.

³⁵² See www.eugen-von-hoffen.com (viewed 7/13/08).

UBS practices included maintaining for an estimated 19,000 U.S. clients “undeclared” accounts in Switzerland with billions of dollars in assets that have not been disclosed to U.S. tax authorities; assisting U.S. clients in structuring their accounts to avoid QI reporting requirements; and allowing its Swiss bankers to market securities and banking services on U.S. soil without an appropriate license in apparent violation of U.S. law and UBS policy. In 2007, after its activities within the United States came to the attention of U.S. authorities, UBS banned its Swiss bankers from traveling to the United States and took action to revamp its practices. UBS is now under investigation by the IRS, SEC, and U.S. Department of Justice.

A. UBS Bank Profile

UBS AG (UBS) is one of the largest banks in the world, currently managing client assets in excess of \$2.8 trillion.³⁵³ UBS is the product of a 1998 merger between two leading Swiss banks, Union Bank of Switzerland and Swiss Bank Corporation. In 2000, it grew even larger after merging with PaineWebber Inc., a U.S. securities firm with more than 8,000 brokers, nearly \$500 billion in client assets, and a substantial U.S. clientele.³⁵⁴

Today, UBS is incorporated and domiciled in Switzerland, but operates in 50 countries with more than 80,000 employees, of which about 38% work in the Americas, 33% in Switzerland, 17% in the rest of Europe, and 12% in Asia Pacific.³⁵⁵ UBS shares are listed on the Swiss Exchange, New York Stock Exchange, and Tokyo Stock Exchange.³⁵⁶

UBS AG is the parent company of the UBS Group which includes numerous subsidiaries and affiliates.³⁵⁷ UBS Group is managed by a Board of Directors, which oversees a Group Executive Board. The Chairman of the Board of Directors is Peter Kurer; the Group CEO is Marcel Rohner.³⁵⁸

UBS Group is organized into three major business lines: Global Wealth Management & Business Banking, Global Asset Management, and an Investment Bank. UBS has one of the largest private banking operations in the world, with hundreds of private bankers dedicated to providing financial services to wealthy individuals and their families around the world. UBS also maintains a Corporate Center that provides group-wide policies, financial reporting, marketing, information technology infrastructure, and service centers, and an Industrial Holdings segment which includes UBS’ own holdings and non-financial businesses.³⁵⁹

³⁵³ “Facts&Figures,” (undated) available at www.ubs.com (viewed 5/28/08).

³⁵⁴ “The Making of UBS,” (undated) at 16, available at www.ubs.com (viewed 5/28/08).

³⁵⁵ “Facts&Figures,” (undated) available at www.ubs.com (viewed 5/28/08).

³⁵⁶ UBS Annual Report 2007, Financial Statements, at 167.

³⁵⁷ *Id.* at 25, 96-99.

³⁵⁸ “Organizational Structure,” (undated) available at www.ubs.com (viewed 5/28/08).

³⁵⁹ UBS Annual Report 2007, Financial Statements, at 41.

UBS' private banking operations are included within the Global Wealth Management & Business Banking division, whose Chairman and CEO is Raoul Weil. That division is further divided into five regional segments: Wealth Management Americas; Wealth Management Asia Pacific; Wealth Management & Business Banking Switzerland; Wealth Management North, East & Central Europe; and Wealth Management Western Europe, Mediterranean, Middle East & Africa.³⁶⁰

In the United States, UBS maintains a large banking and securities presence, operating dozens of subsidiaries and affiliates. Its operations include a UBS AG branch office headquartered in Stamford, Connecticut; UBS Bank USA, a federally regulated bank chartered in Utah; three broker-dealers registered with the SEC, UBS International Inc., UBS Financial Services, Inc., and UBS Services LLC; and a variety of other businesses including UBS Fiduciary Trust Company in New Jersey; UBS Real Estate Securities Inc. in Delaware; UBS Trust Company National Association in New York; and UBS Life Insurance Company USA in California.³⁶¹ In 2007, UBS described its U.S. banking operations as follows: "Wealth Management US is a US financial services firm providing sophisticated wealth management services to affluent US clients through a highly trained financial advisor network."³⁶²

In addition to its U.S.-based operations, UBS services U.S. clients through business units based in Switzerland and other countries. For example, beginning in about 2003, UBS established "U.S. International Desks" in three of its Swiss locations, Geneva, Lugano, and Zurich. These desks, staffed with private bankers known as Client Advisors, deal exclusively with U.S. clients.³⁶³ The U.S. International Desks originally categorized their U.S. clients according to the U.S. region where they lived, but in 2004, re-classified them according to the magnitude of their assets. "Core Affluent" clients were defined as those with assets ranging from 250 to 2 million Swiss Francs; "High Net Worth Individuals" (HNWI) had assets ranging from 2 million to 50 million Swiss Francs; and "Key Clients" had assets worth more than 50 million Swiss Francs.³⁶⁴ In 2005, UBS formed a new Swiss subsidiary, called "Swiss Financial Advisers," which is an investment adviser registered with the SEC. SFA is tasked with "serving US clients outside of Switzerland." All U.S. clients of SFA are required to file W-9 Forms. UBS AG's North American International Wealth Management Division also noted that "[a]ssets of clients [in SFA are] under Swiss law," meaning that creditors seeking to attach the assets would be required to file in Swiss courts.³⁶⁵ U.S. clients who are unwilling to declare their accounts to

³⁶⁰ "Global Wealth Management & Business Banking," (undated), organizational chart available at www.ubs.com (viewed 5/28/08). These five regional segments were established in a reorganization that took effect in 2007. Prior to that reorganization, the Global Wealth Management & Business Banking division had just three segments: Wealth Management US, Wealth Management International & Switzerland, and Business Banking Switzerland. UBS Annual Report 2007, Financial Statements, at 41.

³⁶¹ UBS Annual Report 2007, Financial Statements, at 96-99; Strategy, Performance and Responsibility, at 104.

³⁶² UBS Annual Report 2007, Financial Statements, at 41. Wealth Management US is now included within Wealth Management Americas.

³⁶³ Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

³⁶⁴ *Id.*

³⁶⁵ UBS Minutes of Geneva Wealth Management North America International Meeting (10/13/04), Bates No. UPSI 49952-54, at 49952.

the United States are not permitted by UBS to hold U.S. securities in their Swiss accounts, but can be serviced by Client Advisors in the Geneva, Lugano, and Zurich offices.³⁶⁶

B. UBS Swiss Accounts for U.S. Clients

Although UBS has extensive banking and securities operations in the United States that could accommodate its U.S. clients, from at least 2000 to 2007, UBS directed its Swiss bankers to target U.S. clients willing to open bank accounts in Switzerland. UBS told the Subcommittee it now has Swiss accounts for about 19,000 U.S. clients with in the range of \$18 billion in undeclared assets. In 2002, UBS assured its U.S. clients with undeclared accounts that U.S. authorities would not learn of them, because the bank is not required to disclose them; UBS procedures, practices and services protect against disclosure; and the account information is further shielded by Swiss bank secrecy laws. Until recently, UBS encouraged its Swiss bankers to travel to the United States to recruit new U.S. clients, organized events to help them meet wealthy U.S. individuals, and set annual performance goals for obtaining new U.S. business. It also encouraged its Swiss bankers to service U.S. client accounts in ways that would minimize notice to U.S. authorities. The evidence suggest that UBS Swiss bankers marketed securities and banking products and services in the United States without an appropriate license to do so and in apparent violation of U.S. law and the bank's own policies.

Information obtained by the Subcommittee about UBS Swiss accounts opened for U.S. citizens came in part from former UBS employee, Bradley Birkenfeld. Mr. Birkenfeld is a U.S. citizen who worked as a private banker in Switzerland from 1996 until his arrest in the United States in 2008. He worked for UBS in its private banking operations in Geneva from 2001 to 2005, until he resigned from the bank.³⁶⁷ In 2007, while in the United States, Mr. Birkenfeld was subpoenaed by the Subcommittee to provide documentation and testimony related to his employment as a private banker. In a sworn deposition before Subcommittee staff, Mr. Birkenfeld provided detailed information about a wide range of issues related to UBS business dealings with U.S. clients. In 2008, Mr. Birkenfeld was arrested, indicted, and pled guilty to conspiring with a U.S. taxpayer, Igor Olenicoff, to hide \$200 million in assets in Switzerland and Liechtenstein, to evade \$7.2 million in U.S. taxes.³⁶⁸

(1) Opening Undeclared Accounts with Billions in Assets

From at least 2000 to 2007, UBS has opened tens of thousands of accounts in Switzerland that are beneficially owned by U.S. clients, hold billions of dollars in assets, and have not been reported to U.S. tax authorities. These Swiss accounts were opened by U.S. clients, but, for a variety of reasons, the clients did not file W-9 Forms with UBS for the accounts. Because the clients did not file W-9 reports with the bank, UBS did not file 1099 Forms with the IRS

³⁶⁶ Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

³⁶⁷ Birkenfeld deposition (10/11/07), at 14. Prior to UBS, he worked for private banking operations in Geneva at Credit Suisse and Barclays Bank.

³⁶⁸ United States v. Birkenfeld.

reporting the account information. UBS refers to these accounts internally as “undeclared accounts.”

In response to Subcommittee inquiries, UBS has estimated that it today has accounts in Switzerland for about 20,000 U.S. clients, of which roughly 1,000 have declared accounts and the remainder have undeclared accounts that have not been disclosed to the IRS.³⁶⁹ UBS also estimated that those accounts contain assets with a combined value of about 18.2 billion in Swiss francs or about \$17.9 billion. UBS was unable to specify the breakdown in assets between the undeclared and declared accounts, except to note that the amount of assets in the undeclared accounts would be much greater.

These figures suggest that the number of U.S. client accounts in Switzerland and the amount of assets contained in those accounts have nearly doubled since 2002, when a UBS document reported that the Swiss private banking operation then had more than 11,000 accounts for clients in “North America,” meaning the United States and Canada, with combined assets in excess of 21 billion Swiss francs or about \$13.3 billion.³⁷⁰ The UBS document also calculates that, in 2002, these accounts had earned the bank “net revenues” of about 150 million Swiss francs.³⁷¹ Since then, the Swiss private banking operations have reported opening many more U.S. client accounts in Switzerland with additional billions of dollars in assets.³⁷²

The UBS figures for 2008 also appear consistent with internal UBS documents from 2004 and 2005, which suggest that a substantial portion of the UBS Swiss accounts opened for U.S. clients at that time were undeclared. This information is contained in a set of monthly reports for select months in 2004 and 2005, which tracked key information for Swiss accounts opened for North American clients, meaning clients from the United States and Canada.³⁷³ These reports also break down the data for both declared and undeclared accounts.³⁷⁴ The data

³⁶⁹ Subcommittee interview with UBS (7/14/08).

³⁷⁰ Key Clients in NAM [North America]: Business Case 2003-2005, (undated), at 26 (chart entitled, “Assessment of Current KC [Key Client] Base”).

³⁷¹ *Id.*

³⁷² See, e.g., email from Martin Liechti re “Happy New Year” (undated) (stating UBS Swiss client advisors had quadrupled their intake of net new money into Switzerland from 4 million Swiss francs per client advisor in 2004 to 16 million Swiss francs per client advisor in 2006).

³⁷³ See “BS North America Report: Overview Figures North America,” prepared in July, August, September, October, November, and December 2004, and January, February, March, August, September, and October 2005. These reports appear to be excerpts from larger reports. These documents, on their face, present data for Swiss accounts opened for U.S. and Canadian clients. According to UBS, however, it is possible that the data may include some Swiss accounts opened for persons from other countries.

³⁷⁴ The 2004 monthly reports, for example, show data for “W9” accounts and “NON W9” accounts, which correspond to declared and undeclared accounts. The March 2005 report provides data for “W9” accounts and “SFA” accounts, which at that time corresponded to the declared accounts, as well as data for “NON W9” accounts, which corresponded to the undeclared accounts. “SFA” refers to Swiss Financial Advisers, the UBS subsidiary in Switzerland that is a registered U.S. investment adviser, opens securities accounts only for U.S. clients who submit W-9 Forms, and reports all such accounts to the IRS. Mr. Birkenfeld told the Subcommittee that SFA was referred to within UBS as “the declared desk.” Birkenfeld deposition at 84. He also explained that all Swiss bankers who formerly had declared accounts had been required to transfer them to SFA. *Id.* at 85. That meant U.S. clients in Switzerland with accounts outside of SFA were necessarily undeclared accounts. Reports later in 2005 use different

suggests that the undeclared accounts not only held more assets, but also brought in more new money and were more profitable for the bank than the declared accounts.

The first data element in the reports is the total amount of assets in the specified accounts. Each month shows substantially greater assets in the undeclared accounts for U.S. clients than in the declared accounts. In October 2005, for example, the data shows a total of about 18 billion Swiss francs of assets in the undeclared accounts for U.S. clients³⁷⁵ and 2.6 billion Swiss francs in the declared accounts.³⁷⁶ Clearly, the assets in the undeclared accounts vastly outweigh the assets in the declared accounts for U.S. clients.

The monthly reports also track the extent to which the accounts brought in new money to UBS, referred to as “net new money” or NNM. The October 2005 report appears to show that, for the year to date, the undeclared accounts for U.S. clients had brought in more than 1.3 billion Swiss francs in net new money for UBS,³⁷⁷ while the declared accounts had collectively lost about 333 million Swiss francs over the same time period.³⁷⁸ These figures indicate that, in 2004 and 2005, the undeclared account assets were growing, while the declared account assets were shrinking.

The last data element in the monthly reports tracks the revenue generated by the accounts for UBS. Each month shows that UBS earned significantly more in revenues from the undeclared accounts for U.S. clients than from the declared accounts. For example, the October 2005 report shows that UBS obtained year-to-date revenues of about 180.9 million Swiss francs from the undeclared accounts³⁷⁹ versus 22.1 million Swiss francs from the declared accounts.³⁸⁰ By every measure employed by UBS in these monthly reports, the undeclared U.S. client accounts were more popular and more lucrative for the bank.

Still another UBS document, prepared in 2004 for a meeting of Swiss private banking officials in Geneva, to reach an “Executive Board Decision” on several matters, shows the

terminology again, providing data for “US International” accounts, which correspond to the undeclared accounts, and data for a “W9 Business Row” and SFA accounts, which correspond to the declared accounts.

³⁷⁵ *Id.* The 18 billion figure is derived from the amount shown for “US International” (18.5 billion) after subtracting the amount shown for “W9 Business Row” (0.5 billion). The Subcommittee also asked UBS to produce similar data for 2006 and 2007, but has yet to receive it.

³⁷⁶ *Id.* The 2.6 billion figure is derived from adding together the figures shown for “W9 Business Row” (0.5 billion) and “SFA” (2.1 billion).

³⁷⁷ The 1 billion figure is derived from the amount shown for “US International” (1.054 billion) after eliminating the loss shown for “W9 Business Row” (loss of 309.8 million), resulting in NNM of about 1.364 billion.

³⁷⁸ The 333 million figure is derived from adding together the figures shown for “W9 Business Row” (loss of 309.8 million) and “SFA” (loss of 23.8 million).

³⁷⁹ The 180.9 million figure is derived from the amount shown for “US International” (194.3 million) after subtracting the amount shown for “W9 Business Row” (13.4 million).

³⁸⁰ The 22.1 million figure is reached by adding together the figures shown for “W9 Business Row” (13.4 million) and “SFA” (8.7 million).

bank's awareness of the undeclared and declared accounts opened for U.S. clients.³⁸¹ About mid-way through, this document includes two flow charts showing how a UBS client advisor should handle an account with a "U.S. person." The first flow chart shows that accounts for U.S. persons domiciled in the United States should go to certain offices if a W-9 is filed, and to the North American desk in Zurich if "no W9 form" is filed. The second flow chart shows that, for U.S. persons domiciled outside of the United States, accounts with a W-9 form should go to WBS in Zurich to the "W9 Team," while accounts with "no W9 form signed" should go to the "Country team" in the country where the U.S. person was domiciled. These two flow charts provide additional evidence that the top management of UBS in Switzerland was well aware of the bank's practice of maintaining declared and undeclared accounts for U.S. clients, and had even institutionalized the administration of these accounts in different offices.

In his deposition before the Subcommittee, Mr. Birkenfeld indicated that, while he was employed at UBS from 2001 to 2005, it was his understanding that UBS had thousands of Swiss accounts opened by U.S. clients, the majority of which were undeclared and never disclosed to the IRS. He stated that, "I didn't see anyone declare any of those [Swiss] accounts in my entire career."³⁸²

In the recent U.S. criminal case involving Mr. Birkenfeld, the U.S. Government filed a Statement of Facts, signed by Mr. Birkenfeld, stating that UBS Switzerland had "\$20 billion of assets under management in the United States undeclared business, which earned the bank approximately \$200 million per year in revenues."³⁸³

(2) Ensuring Bank Secrecy

UBS has not only maintained undeclared Swiss accounts for U.S. clients containing billions of dollars in assets, it has also adopted practices to ensure that, in keeping with Swiss bank secrecy laws, those undeclared accounts would not be disclosed to U.S. authorities.

Promising Bank Secrecy. UBS has assured its U.S. clients in writing that UBS will take steps to protect their undeclared accounts from disclosure to U.S. tax authorities. In November 2002, for example, senior officials in the UBS private banking operations in Switzerland sent the following letter to its U.S. clients about their Swiss accounts:

"Dear client:

"From our recent conversations we understand that you are concerned that UBS' stance on keeping its U.S. customers' information strictly confidential may have changed especially as a result of the acquisition of Paine Webber. We are writing to reassure you that your fear is unjustified and wish to outline only some of the reasons why the protection of client data can not possibly be compromised upon:

³⁸¹ UBS presentation entitled, "North America Meeting[:] Update U.S. NewCo (W9)," (9/15/04), Bates Nos. UPSI 49907-27, at 17-18.

³⁸² Birkenfeld deposition (10/11/07), at 28.

³⁸³ United States v. Birkenfeld, Statement of Facts, at 3.

“– The sharing of customer data with a UBS unit/affiliate located abroad without sufficient customer consent constitutes a violation of Swiss banking secrecy provisions and exposes the bank employee concerned to severe criminal sanctions. Further, we should like to underscore that a Swiss bank which runs afoul of Swiss privacy laws will face sanctions by its Swiss regulator ... up to the revocation of the bank’s charter. Already against this background, it must be clear that information relative to your Swiss banking relationship is as safe as ever and that the possibility of putting pressure on our U.S. units does not change anything. Our bank has had offices in the United States as early as 1939 and has therefore been exposed to the risk of US authorities asserting jurisdiction over assets booked abroad since decades. Please note that our bank has a successful track record of challenging such attempts.

“– As you are aware of, UBS (as all other major Swiss banks) has asked for and obtained the status of a Qualified Intermediary under U.S. tax laws. The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in US securities but under no circumstances will his/her identity be revealed. Consequently, UBS’s entire compliance with its QI obligations does not create the risk that his/her identity be shared with U.S. authorities.”³⁸⁴

This letter plainly asserts that UBS will not disclose to the IRS a Swiss account opened by a U.S. client, so long as that account contains no U.S. securities, even if UBS knows the accountholder is a U.S. taxpayer obligated under U.S. tax law to report the account and its contents to the U.S. Government.

UBS told the Subcommittee that it has no legal obligation to report such undeclared accounts to the IRS, provided that UBS ensures that the accounts do not contain U.S. securities and, thus, are not subject to reporting under the QI Program. UBS also told the Subcommittee that it recognizes that a U.S. accountholder may have a legal obligation to report a foreign trust, foreign bank account, or foreign income to the IRS. UBS pointed out, however, that those reporting obligations apply to the accountholder personally and not to UBS. UBS, thus, asserts that it has broken no law or QI obligation by allowing U.S. clients to open and maintain undeclared accounts in Switzerland, if those accounts do not contain U.S. securities.³⁸⁵

Helping U.S. Clients Avoid QI Disclosure. UBS has not only maintained undeclared accounts in Switzerland for numerous U.S. clients, it took steps to assist its U.S. clients to structure their Swiss accounts in ways that avoided U.S. reporting rules under the QI Program.

UBS informed the Subcommittee that, after it joined the QI Program in 2001, and informed its U.S. clients about its QI disclosure obligations, many of its U.S. clients elected to

³⁸⁴ UBS letter addressed to “Dear client” (11/4/02).

³⁸⁵ Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

sell U.S. securities or open new accounts to avoid the QI reporting obligations attached.³⁸⁶ UBS told the Subcommittee, for example, that in 2001, hundreds of its U.S. clients sold their U.S. securities so that their Swiss accounts would not be covered by the QI Program. UBS told the Subcommittee that it estimates that, in 2001, its U.S. clients sold over \$2 billion in U.S. securities from their Swiss accounts. UBS allowed these U.S. clients to continue to maintain accounts in Switzerland, and helped them reinvest in other types of securities that did not trigger reporting obligations to the IRS, despite evidence that these U.S. clients were using their Swiss accounts to hide assets from the IRS.

UBS also told the Subcommittee that, in 2001, about 250 of its U.S. clients with Swiss accounts took action to establish corporations, trusts, foundations, or other entities in non-U.S. countries, open new UBS accounts in the names of those foreign entities, and then, in a number of instances, transfer U.S. securities from the client's personal accounts to those new accounts. The offshore entities included corporations, trusts, and foundations set up in the British Virgin Islands, Hong Kong, Liechtenstein, Panama, and Switzerland.³⁸⁷ UBS then accepted W-8BEN Forms from these offshore entities in which they claimed ownership of the assets had been transferred from the U.S. clients' personal accounts. UBS treated the new accounts as held by non-U.S. persons whose identities did not have to be disclosed to the IRS, even though UBS knew that the true beneficial owners were U.S. persons.

These facts indicate that, soon after it joined the QI Program, UBS helped its U.S. clients structure their Swiss accounts to avoid reporting billions of dollars in assets to the IRS. Among other actions, UBS allowed some of its U.S. clients to establish offshore structures to assume nominal ownership of assets, and allowed U.S. clients to continue to hold undisclosed accounts that were not reported to the IRS. Such actions, while not violations of the QI agreements per se, clearly undermined the program's effectiveness and led to the formation of offshore structures and undeclared accounts that could facilitate, and have resulted in, tax evasion by U.S. clients.

The actions taken by UBS, in many ways, matched LGT's response to the QI Program. Both UBS and LGT advised the Subcommittee that most of their U.S. clients engaged in a massive sell-off of U.S. securities after the banks signed QI agreements in 2001. In addition, both UBS and LGT allowed a number of U.S. clients to establish offshore corporations to hold U.S. securities. It appears that UBS exploited the gap between KYC rules and the QI Program in the same manner as LGT, by treating offshore corporations as non-U.S. persons for QI reporting purposes, despite knowing for KYC purposes that the offshore corporations and their assets were beneficially owned by U.S. persons. Both banks continued to maintain accounts for their U.S. clients, despite evidence that the clients were hiding their assets and accounts from the IRS. In this way, both UBS and LGT employed QI practices that kept the U.S. clients' accounts secret from the IRS and thereby facilitated tax evasion by the U.S. clients holding undeclared accounts.

The Statement of Facts in the Birkenfeld criminal case characterizes these actions as follows: "By concealing the U.S. clients' ownership and control in the assets held offshore,

³⁸⁶ Id.

³⁸⁷ United States v. Birkenfeld, Statement of Facts, at 3.

defendant Birkenfeld, the Swiss Bank, its managers and bankers evaded the requirements of the Q.I. program, defrauded the IRS and evaded United States income taxes.”³⁸⁸

(3) Targeting U.S. Clients

In addition to discovering that UBS maintained billions of dollars in undeclared accounts in Switzerland for U.S. clients and took steps to help U.S. client circumvent QI reporting requirements, the Subcommittee discovered that, from at least 2000 to 2007, UBS Swiss bankers engaged in an intensive effort to target U.S. clients to open Swiss accounts. UBS repeatedly sent its Swiss bankers onto U.S. soil to recruit new clients, expand existing accounts, and meet increasing business demands to bring new client money from the United States into Switzerland.

Legal and Policy Restrictions on U.S. Activities. U.S. securities law prohibits non-U.S. persons from advertising securities products or services or executing securities transactions within the United States, unless registered with the Securities and Exchange Commission (SEC).³⁸⁹ In addition, securities products offered to U.S. persons must comply with U.S. securities laws, which generally means they must be registered with the SEC, a condition that may not be met by non-U.S. securities, mutual funds, and other investment products. In addition, although UBS AG is licensed to operate as a bank and broker-dealer in the United States, those licenses do not extend to its non-U.S. offices or affiliates providing banking or securities services to U.S. residents.³⁹⁰ Similar prohibitions may appear in State securities and banking laws. Moreover, in provisions known as “deemed sales” rules, U.S. tax laws and the standard QI agreement require sales of non-U.S. securities to be reported by foreign financial institutions on 1099 Forms sent to the IRS, if those sales were effected in the United States, such as arranged by a broker physically in the United States or through telephone calls or emails originating in the United States.³⁹¹

To avoid violating U.S. law, exceeding its SEC and banking licenses, or triggering 1099 reporting requirements for deemed sales, since at least 2002, UBS has maintained written policies restricting the marketing and client-related activities that may be undertaken in the United States by UBS employees from outside of the country.

³⁸⁸ *Id.*

³⁸⁹ See, e.g., Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1):

“(a) Registration of all persons utilizing exchange facilities to effect transactions; exemptions.

(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.”

³⁹⁰ UBS makes this statement in its 2004 policy statement. See “Cross-Border Banking Activities into the United States (**version November 2004**),” prepared by UBS, Bates Nos. PSI-OPB 103-105, at 103 (emphasis in original).

³⁹¹ See, e.g., “U.S. Tax and Reporting Obligations for Foreign Intermediaries’ Non-U.S. Securities,” 47 Tax Notes Int’l 913 (9/3/07).

2002 UBS Restrictions on U.S. Activities. In 2002, for example, UBS issued a set of guidelines for its Swiss bankers administering securities accounts for U.S. clients.³⁹² These guidelines stated that, under U.S. tax regulations, securities trades in non-U.S. securities on behalf of a U.S. person trigger reporting requirements to the IRS under QI or IRS deemed sales rules, unless the trades are effected “by a UBS portfolio manager with discretion from a bank office of a non-US bank outside the territory of the US.” To qualify for the exception and avoid reporting any securities trades or accounts to the IRS, the guidelines provide a long list of actions that UBS Swiss bankers cannot undertake with respect to their U.S. clients. Essentially, the guidelines instruct the Swiss bankers to persuade their U.S. clients to enter into a “discretionary asset management relationship” with the bank and then to “[c]ease to accept customer instructions from US territory” so that no securities trades are effected within the United States that might require reporting to the IRS.

The 2002 UBS guidelines tell the Swiss bankers, for example, to ensure that there is “no use of US mails, e-mail, courier delivery or facsimile regarding the client’s securities portfolio;” “no use of telephone calls into the US regarding the client’s securities portfolio;” “no account statements, confirmations, performance reports or any other communications” while in the United States; “no further instructions ... from ... clients while they are in the US;” “no marketing of advisory or brokerage services regarding securities;” “no discussion of or delivery of documents concerning the client’s securities portfolio while on visits in the US;” “no discussion of performance, securities purchased or sold or changes in the investment mandate for the client” while in the United States; and “no delivery of documents regarding performance, securities purchased or sold or changes in the investment mandate for the client.”

2004 Restatement of U.S. Restrictions. A 2004 UBS policy statement on “Cross-Border Banking Activities into the United States,” replaced the 2002 guidelines, while repeating most of the prohibitions. This policy statement informed UBS non-U.S. bankers, for example, that U.S. Federal and State laws restrict the actions that they can take while in the United States.³⁹³ It states:

“UBS AG has several U.S. branches and agencies and various non-banking subsidiaries all properly licensed, but these licenses **do not** encompass cross-border services provided to U.S. residents by UBS AG offices or affiliates outside of the United States. ... Some state laws prohibit banks without a banking license from that state from soliciting deposits from that state’s residents. States also may prohibit non-licensed lenders from making certain loans to consumers in such states. Any entity outside of the United States that is not registered with the SEC ... may not advertise securities services or products in the United States.”³⁹⁴

³⁹² See “Wealth Management and Business Banking Client Advisor’s Guidelines for Implementation and Management of Discretionary Asset Management Relationship with U.S. Clients,” (undated but likely late 2001). See also UBS letter to Mr. Birkenfeld (3/17/06), Bates Nos. PSI-OPB 84-85, at 1 (“[T]he rules which set forth UBS approach to servicing US resident clients have been posted on the UBS-intranet already since early 2002.”).

³⁹³ See “Cross-Border Banking Activities into the United States (**version November 2004**),” prepared by UBS, Bates Nos. PSI-OPB, at 103-105 (emphasis in original).

³⁹⁴ Id.

The 2004 UBS policy statement goes on to list specific restrictions on activities that may be undertaken by its non-U.S. personnel while in the United States. These restrictions include the following:

“UBS will not advertise and market for its services with material going beyond generic information relating to the image of UBS AG and its brand in the U.S. UBS AG may not organize, absent an opinion from Legal, events in the U.S.”³⁹⁵

“UBS AG may not establish relationships for securities products or services with new clients resident in the United States with the use of U.S. jurisdictional means. Thus, it must ensure that it does not contact securities clients in the United States through telephone, mail, e-mail, advertising, the internet or personal visits.”³⁹⁶

“UBS AG should ensure that:

- No marketing or advertising activity targeted to U.S. persons takes place in the United States;
- No solicitation of account opening takes place in the United States;
- No cold calling or prospecting into the United States takes place;
- No negotiating or concluding of contracts takes place in the United States;
- No carrying or transmitting of cash or other valuables of whatever nature out of the United States takes place; ...
- No routine certification of signatures, transmission of completed account documentation, or related administrative activity on behalf of UBS AG takes place;
- Employees do not carry on substantial activities at fixed location(s) while in the United States thereby establishing an office or maintaining a place of business.”³⁹⁷

In his deposition before the Subcommittee, Mr. Birkenfeld claimed to have been unaware of these types of restrictions on his conduct until a colleague brought them to his attention in May 2005, by showing him the 2004 policy statement on UBS’ internal computer system.³⁹⁸ He told the Subcommittee, “When I read it, I was very concerned about what was going on in the bank, because this contradicted entirely what my job description was.”³⁹⁹ UBS has countered that its Swiss personnel were informed about the restrictions shortly after they were re-issued, in training sessions held during September 2004, which Mr. Birkenfeld attended.⁴⁰⁰

Sponsoring Travel to the United States. Despite the explicit and extensive restrictions on allowable U.S. activities set out in its policy statements, in interviews with the Subcommittee,

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.* at 103-104.

³⁹⁸ Birkenfeld deposition, (10/11/07), at 105.

³⁹⁹ *Id.* at 106.

⁴⁰⁰ See UBS letter to Mr. Birkenfeld (3/17/06), Bates Nos. PSI-OPB 84-85, at 84 (stating Mr. Birkenfeld had been informed of the restrictions during two training sessions in September 2004).

UBS confirmed that, from at least 2000 to 2007, it routinely authorized and paid for its Swiss bankers to travel to the United States to develop new business and service existing clients.⁴⁰¹ Documents obtained by the Subcommittee related to UBS Swiss bankers also frequently reference travel to the United States. A 2003 “Action Plan” for the UBS private banking operation in Switzerland, for example, called for increased client contact “through business trips” to the United States and directed Swiss private bankers to seek “active referrals from existing clients for new relationships.”⁴⁰² A 2005 document called for “frequent travelling” and “selective travelling” by UBS Swiss bankers to the United States as part of the services to be provided to U.S. clientele.⁴⁰³

During his deposition, Mr. Birkenfeld told the Subcommittee that, during his years at UBS, the private bankers from Switzerland who dealt with U.S. clients typically traveled to the United States four to six times per year, using their trips to search for new clients and provide financial services to existing clients.

“[W]e had a very large group of people in Lugano, Geneva, and Zurich that marketed directly into the U.S. market. The private bankers would travel anywhere between four and six times a year to the U.S., spend anywhere from one to two weeks in the U.S., prospecting, visiting existing clients, so on and so forth. ... As I remember, there [were] around 25 people in Geneva, 50 people in Zurich, and five to ten in Lugano. This is a formidable force.”⁴⁰⁴

Mr. Birkenfeld testified that UBS not only authorized and paid for the business trips to the United States, but also provided the Swiss bankers with tickets and funds to go to events attended by wealthy U.S. individuals, so that they could solicit new business for the bank in Switzerland. He said that UBS sponsored U.S. events likely to attract wealthy clients, such as the Art Basel Air Fair in Miami; performances in major U.S. cities by the UBS Vervier Orchestra featuring talented young musicians; and U.S. yachting events attended by the elite Swiss yachting team, Alinghi, which was also sponsored by UBS. An internal UBS document laying out marketing strategies to attract U.S. and Canadian clients confirms that the bank “organized VIP events” and engaged in the “Sponsorship of Major Events” such as “Golf, Tennis Tournaments, Art, Special Events.”⁴⁰⁵ This document even identified the 25 most affluent housing areas in the United States to provide “targeted locations where to organize events.”⁴⁰⁶

⁴⁰¹ Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

⁴⁰² Chart entitled, “Action Plan 2003 for Country Team,” (undated).

⁴⁰³ “Organizational changes NAM,” Powerpoint presentation by Michel Guignard of UBS private banking in Switzerland (5/10/05), at 7.

⁴⁰⁴ Birkenfeld deposition (10/11/07), at 46, 47-48. Mr. Birkenfeld clarified during the deposition that the numbers he gave referred to “just the bankers” at the three Swiss offices.

⁴⁰⁵ “KeyClients in NAM: Business Case 2003-2005,” prepared by UBS Wealth Management (undated), at 38-39. “NAM” refers to UBS’ North American division within its private banking operations in Switzerland.

⁴⁰⁶ *Id.* at 40.

Mr. Birkenfeld described to the Subcommittee how Swiss private bankers used these events and other means to find new U.S. clients during their trips to the United States:

“You might go to sporting events. You might go to car shows, wine tastings. You might deal with real estate agents. You might deal with attorneys. ... It’s really where do the rich people hang out, go and talk to them. ... [I]t wasn’t difficult to walk into a party with a ... business card, and then someone ask[s] you, ‘What do you do?’ and you say, ‘Well, I work for a bank in Switzerland, and we manage money there and open accounts.’ And people immediately would recognize, oh, this is someone who could open new business by opening accounts.”⁴⁰⁷

While travel by Swiss bankers to the United States was generally not only allowed, but encouraged, UBS told the Subcommittee that, on four occasions since 2000, for a variety of reasons, it had imposed temporary bans on Swiss travel to the United States.⁴⁰⁸ These short-term travel bans were imposed: (1) in 2001, following the 9/11 attack on the United States; (2) in 2003, coinciding with an IRS announcement of an Offshore Voluntary Compliance Initiative encouraging U.S. taxpayers with offshore credit cards to disclose their offshore accounts in exchange for avoiding certain penalties;⁴⁰⁹ (3) in 2003 again, following the SARS epidemic outbreak; and (4) in September 2004, in response to the questioning of a UBS private banker by the IRS. Each of these travel bans was lifted shortly after it was imposed. In November 2007, however, UBS fundamentally changed its travel policy, instituting for the first time a prohibition on business travel by its Swiss private bankers to the United States, examined further below.⁴¹⁰

To gain a better understanding of the extent to which UBS Swiss private bankers traveled to the United States in recent years, the Subcommittee conducted an analysis of over 500 travel records compiled by the Department of Homeland Security, at the Subcommittee’s request, of persons traveling from Switzerland to the United States from 2001 to 2008, to identify UBS Swiss employees known to have provided banking and securities services to U.S. clients.⁴¹¹ The Subcommittee determined that, from 2001 to 2008, roughly twenty UBS client advisors made an

⁴⁰⁷ *Id.* at 36-37.

⁴⁰⁸ Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

⁴⁰⁹ *Id.* See also Birkenfeld deposition before the Subcommittee (10/11/07), at 157. For more information about this IRS initiative, see the IRS website at www.irs.gov.

⁴¹⁰ See, e.g., UBS internal memorandum addressed to “Colleagues” regarding “Changes in business model for U.S. private clients,” (11/15/08).

⁴¹¹ To find likely UBS client advisors – as opposed to persons whose names coincidentally matched those persons identified to the Subcommittee as UBS personnel – the analysis eliminated all persons from the sample born after a given date who would be too young to be likely candidates. The data was then sorted by date traveled and the ports of entry used, to identify persons traveling at the same time to the same location. This data enabled the Subcommittee to identify UBS client advisors who, for example, made visits to Miami during the dates of the Art Basel event. The Subcommittee chose to eliminate from the analysis persons who did not appear to have a traveling correlation with other known UBS bankers or a link to a UBS event such as Art Basel, as well as persons with similar names to known UBS personnel but who reported different birthdays. The resulting figures, thus, represent a conservative analysis of the number of trips made by UBS Swiss personnel to the United States over the last seven years. The Subcommittee would like to express its appreciation for the assistance rendered by the U.S. Department of Homeland Security in securing, compiling, and analyzing this travel data.

aggregate total of over 300 visits to the United States. Only two of these visits took place from 2001 to 2002; the rest occurred from 2003 to 2008. On several occasions, the visits appear to have involved multiple UBS client advisors traveling together to UBS-sponsored events in the United States. Some of these client advisors designated their visits as travel for a non-business purpose on the I-94 Customs declaration forms that all visitors must complete prior to entry into the United States.⁴¹² Closer analysis, however, reveals that the dates and ports of entry for such trips coincided with the UBS-sponsored events, suggesting the visits were, in fact, business-related.

For example, the Subcommittee found that at least five UBS Swiss client advisors travelled to the United States for trips coinciding with the Art Basel Art Fair, an annual UBS-sponsored event held in early December in Miami Beach since 2002. The data shows that, over the years, several UBS Swiss client advisors were in Miami during the art show, including three in 2007. On the customs forms completed over the years by UBS travelers prior to landing at Miami International airport, only one client advisor stated that the purpose of the trip was for business, while five described the visit as for pleasure. These client advisors' trips, however, coincided closely with the dates of the Art Basel event, including an invitation-only private showing. Moreover, the Subcommittee's analysis of the customs and travel records obtained from the Department of Homeland Security show that a Swiss-based UBS client advisor traveled to New England from June 20-25, 2004, a trip coinciding with the UBS Regatta Cup held in Newport, Rhode Island from June 19-26, 2004.

The Subcommittee's analysis also showed patterns of travel by Swiss-based UBS client advisors who made regular U.S. visits. One UBS employee, for example, travelled to the United States three times per year, at roughly four-month intervals, from 2003 to 2007. A senior UBS Swiss private bank official – Michel Guignard – visited the United States nearly every other month for a significant portion of the period examined by the Subcommittee. Martin Liechti, an even more senior Swiss private banking official, visited the United States up to eight times in a year.

This travel data provides additional evidence regarding the personnel and resources that have been dedicated by UBS to recruiting and servicing U.S. clients with Swiss accounts.

Assigning NNM Targets. UBS not only paid for its Swiss bankers to travel to the United States and helped them attend U.S. events to prospect for new U.S. clients, it also gave its Swiss bankers specific performance goals for bringing new money into the bank from the United States. These performance goals may have intensified the efforts of UBS Swiss bankers to recruit U.S. clients.

Mr. Birkenfeld told the Subcommittee that, during his tenure at UBS, his superiors at UBS gave him a specific, annual monetary goal, referred to as a "net new money" (NNM) target that he was expected to bring into the bank by the end of the year from U.S. clients. He said that it was his understanding that an NNM target was established for each Swiss client advisor who

⁴¹² See Arrival-Departure Record, CBP Form I-94, for Nonimmigrant Visitors with a Visa for the United States, discussed in the website of the Customs and Border Patrol, at www.cbp.gov.

dealt with U.S. clients. He indicated that the amount varied according to the seniority and track record of the particular client advisor. He told the Subcommittee: “So my job as a private banker predominantly was to bring in net new money, and then on top of it create return on assets, ROA. ... A rough estimate would be probably to bring in probably \$50 million a year or \$40 million.”⁴¹³

Mr. Birkenfeld explained that the NNM target could be met by securing additional assets from existing clients or by securing one or more new clients.

“[O]ne client could make your numbers or 10 or 25 could make your numbers. It’s very hard to gauge that. And, again, when people aren’t paying tax in the three areas I told you – inheritance, income, and capital gains – it’s quite easy for people to bring money to you. They’re very interested to bring as much money to the bank as possible.”⁴¹⁴

Internal UBS documents confirm that the bank carefully tracked annual figures for net new money and return on assets, among other performance measures for its Swiss private banking operations targeting clients in North America.⁴¹⁵ The documents also show that UBS took a variety of steps to encourage its bankers to meet their NNM goals. In 2003, for example, the head of the Wealth Management Americas division in Switzerland, Martin Liechti, sent a letter to his colleagues, urging each of them to refer at least five clients to Switzerland and promising to award the person with the most referrals with an expensive Swiss watch:

“Net New Money is, as you know, a key element for our success. This means that we all have to work hard to achieve our NNM goals for 2003 and the years to come. In order to reach this goal, two main initiatives have been launched: The KeyClient initiative and the Referral Program within UBS. ...

“Each Country Team making a referral will get 0.33% of the revenues generated by the Financial Advisor over a time period of four years. As you know, we set, at the beginning of the year, a target of 5 referrals per CA [Client Advisor] to be made. I am aware that it is a challenge to reach this goal. In acknowledgement of your effort and commitment, I would like to award the Client Advisor in each Country Team who achieves, until the 31st of December 2003, the most referrals (amount of money and number of referrals), but at least the 5 referrals set as target, with a Breitling wristwatch. The same will be valid for the Rep Officer (including all Rep Offices in Latin America) who achieves this goal. Since 2003 will be a unique ‘brand year’ in UBS’ history, each Breitling watch we award will be ‘customized’ with the UBS logo.”⁴¹⁶

⁴¹³ Birkenfeld deposition at 20, 23.

⁴¹⁴ *Id.* at 22.

⁴¹⁵ See, e.g., “BS North America Report: Overview Figures North America,” prepared by UBS (July 2004) (providing data on NNM, ROA, and other performance measures for 2004 and 2005), Bates Nos. UPSI 00060246-257; “UBS Management Summary Report-Graphs” (YTD [Year To Date] October 2002), Bates No. PSI-OPB-137 (providing ROA and NNM data for Swiss offices dealing with U.S. clients).

⁴¹⁶ Letter entitled, “Referral Campaign BU Americas,” from UBS private banking head Martin Liechti to his “Colleagues,” (6/2/03), apparently printed in an internal UBS publication, “PB Americas International News.”

In early 2007, Mr. Liechti sent an email setting a new NNM goal for all of UBS Swiss bankers with clients in the “Americas,” including the United States. His email states:

“Welcome to the new year! I hope you enjoyed the holidays with your family and friends and took the opportunity to relax and ‘recharge your batteries’.

“We achieved much in 2006 and I thank you for your huge efforts and dedication to the Americas.

“The markets are growing fast, and our competition is catching up. ... The answer to guarantee our future is GROWTH. We have grown from CHF 4 million per Client Advisor in 2004 to 17 million in 2006. We need to keep up with our ambitions and go to 60 million per Client Advisor! ...

“Our ambitions:

“100 RoA [Return on Assets]
60 NNM per CA [Client Advisor]
100% Satisfied Clients ...

“In the Chinese Horoscope, 2007 is the year of the pig. In many cultures, the pig is a symbol for ‘luck’. While it’s always good to have [a] bit of luck, it is not luck that leads to success. Success is the result of vision and purpose, hard work and passion. ... Together as a team I am convinced we will succeed!”⁴¹⁷

This email indicates that in two years, from 2004 to 2006, UBS Swiss bankers had quadrupled the amount of net new money being drawn into UBS from the “Americas,” and that the bank’s management sought to quadruple that figure again in a single year, 2007. This email helps to convey the pressure that UBS placed on its Swiss private bankers to bring in new money from the United States into Switzerland.

Another UBS document entitled, “KeyClients in NAM: Business Case 2003-2005,” provides context for the Swiss private banking operations’ focus on obtaining U.S. clients. This document observes that “31% of World’s UHNWIs [Ultra High Net Worth Individuals] are in North America (USA + Canada).”⁴¹⁸ It also observes that the United States has 222 billionaires with a combined net worth of \$706 billion.⁴¹⁹ This type of information helps explain why UBS dedicated significant resources to obtaining U.S. clients for its private banking operations in Switzerland.

⁴¹⁷ Email from Martin Liechti re “Happy New Year” (undated).

⁴¹⁸ “KeyClients in NAM: Business Case 2003-2005,” at 4.

⁴¹⁹ *Id.* at 5.

Massive Machine. Mr. Birkenfeld told the Subcommittee that the overall effort of the UBS Swiss private banking operation to secure U.S. clients was the most extensive he had observed in his 12 years working in Swiss private banking. He stated:

“This was a massive machine. I had never seen such a large bank making such a dedicated effort to market to the U.S. market. And from my understanding and my work experience in Switzerland, it was the largest bank with the largest number of clients and assets under management of U.S. clients.”⁴²⁰

He said that the Swiss bankers he worked with typically had an “existing book of business,” that included numerous U.S. clients and had “a very regimented cycle of going out and acquiring new clients, taking care of your existing clients, make sure the revenue was there.”⁴²¹ He described one private banker who saw as many as 30 or 40 existing clients on a single trip.⁴²² He estimated that the UBS Swiss bankers in the Geneva office where he worked maintained thousands of Swiss accounts for U.S. clients.⁴²³

When asked what motivated U.S. clients to open accounts in Switzerland instead of banking with UBS in their home country, Mr. Birkenfeld gave two reasons: “Tax evasion. ... And most of the time, people always liked the idea that they could hide some from their spouse or maybe a business partner or what have you, because the secrecy of having a bank account in Switzerland gave them anonymity and discretion.”⁴²⁴ When asked whether he ever said to his U.S. clients, “You don’t have to pay taxes,” or whether that was just understood, Mr. Birkenfeld responded, “It was clearly understood. Clearly understood.”⁴²⁵

(4) Servicing U.S. Clients with Swiss Accounts

UBS not only allowed U.S. clients to open undeclared accounts in Switzerland and assured them it would not disclose these accounts unless compelled by law, UBS also took steps to ensure that its Swiss bankers serviced their U.S. clients in ways that minimized disclosure of information to U.S. authorities. These measures included refraining from mailing Swiss account information into the United States, ensuring Swiss bankers traveling to the United States carried minimal or encrypted client account information, and providing training to help its bankers avoid surveillance by U.S. authorities.

In his deposition, Mr. Birkenfeld indicated that, during his tenure at UBS from 2001 to 2005, he worked closely with Swiss bankers who were servicing U.S. clients in the United States. He said the Swiss bankers he worked with typically had an “existing book of business,” with numerous U.S. clients, and had “a very regimented cycle of ... taking care of your existing

⁴²⁰ Birkenfeld deposition at 46.

⁴²¹ *Id.* at 76.

⁴²² *Id.* at 121.

⁴²³ *Id.* at 71.

⁴²⁴ *Id.* at 33.

⁴²⁵ *Id.* at 151.

clients, mak[ing] sure the revenue was there.”⁴²⁶ He said: “So getting out into the field as we called it, was very, very important. You had to travel. Traveling was critical; otherwise the client would say, ‘What do you mean you’re not coming to visit me? What’s wrong?’ So, you know, you don’t want to upset the client.”⁴²⁷

Mr. Birkenfeld told the Subcommittee that, to his knowledge, almost all U.S. clients with Swiss accounts declined to have their account statements mailed to them in the United States.⁴²⁸ Instead, UBS held client mail in Switzerland until the client was able to view the account documentation in person, after which the information was shredded. He explained:

“You paid 500 francs a year to have all of the statements and all of the transactions held in their folder, sealed, so when they came to the bank, 6 months, a year later, they could come and look at it, go through it, and then we would shred it So I’ve had some clients who would sit there for an hour or two hours, and then they come back and say, ‘Okay. Everything’s fine.’ And they’d give the documents and say, ‘You can shred them.’ And we’d go and take it in the big shredding room and just shred everything. And then you’d start from zero again.”⁴²⁹

Mr. Birkenfeld said that, in between visits to Switzerland to review their account information, many U.S. clients expected their Swiss banker to visit them in the United States and provide updated information about their accounts. He said that, prior to a business trip in which they planned to meet with specific clients, UBS Swiss private bankers typically collected and reviewed the relevant client account information. He said that the Swiss bankers did not normally bring the actual account statements with them into the United States, but took elaborate measures to disguise or encrypt client information to prevent it from falling into the wrong hands. He said, for example, some bankers kept “cryptic notes” on each account and took only those notes into the United States.⁴³⁰ He described one Swiss banker who directed his assistant to transcribe by hand the information in his clients’ account statements onto spreadsheets, omitting any identifying information other than a code name, and then sent the handwritten spreadsheets by overnight mail to his hotel in the United States, after which he would provide the spreadsheets to his U.S. clients in individual meetings.⁴³¹ Mr. Birkenfeld described other Swiss private bankers who brought into the United States UBS-supplied laptop computers, referred to as TAS computers, programmed to receive only highly encrypted information that, allegedly, [e]ven if the [U.S.] Customs opened it, for instance, they wouldn’t see anything.”⁴³² He said

⁴²⁶ Birkenfeld deposition at 76.

⁴²⁷ *Id.* at 76-77.

⁴²⁸ *Id.* at 61.

⁴²⁹ *Id.*

⁴³⁰ *Id.* at 55.

⁴³¹ *Id.* at 121-122.

⁴³² *Id.* at 56-57.

that the TAS computers could be used to “access the client’s private bank statements from America and print them out, as well as view and print out product offerings.”⁴³³

UBS cautioned its bankers, when traveling to the United States, to take measures to safeguard client information and supplied the TAS computers that some Swiss bankers used. A 2004 UBS policy statement provides: “When traveling cross-border, UBS AG employees always must remember that all clients of UBS AG expect us to take all necessary steps to safeguard confidentiality. Client advisors are referred to separate guidance on the protection of confidential information and other available resources that may assist.”⁴³⁴ Mr. Birkenfeld told the Subcommittee that UBS also cautioned its Swiss bankers to keep a low profile during their business trips to the United States so they would not attract attention from U.S. authorities. He noted, for example, that UBS business cards did not include a reference to a private banker’s involvement in “wealth management.”⁴³⁵ He also said that some UBS Swiss private bankers who visited the United States on business told U.S. customs officials that they were instead in the country for “pleasure.”⁴³⁶

Documentation obtained by the Subcommittee indicates that UBS also provided training to its client advisors on how to detect – and avoid – surveillance by U.S. customs agents and law enforcement officers. An undated UBS training document entitled, “Case Studies Cross-Border Workshop NAM” provides a series of scenarios designed to train its personnel.⁴³⁷ An excerpt from one of the scenarios is as follows:

“After passing immigration desk during your trip to USA/Canada, you are intercepted by the authorities. By checking your Palm, they find all your client meetings. Fortunately you stored only very short remarks of the different meetings and no names.

“As you spend around one week in the same hotel, the longer you stay there, the more you get the feeling of being observed. Sometimes you even doubt if all of the hotel employees are working for the hotel. A lot of client meetings are held in the suite of your hotel.

“One morning you are intercepted by an FBI-agent. He looks for some information about one of your clients and explains to you, that your client is involved in illegal activities.

⁴³³ *Id.* at 55. See also reference to TAS in UBS Minutes of a May 2003 meeting of the Geneva Private Bank North America International group (5/14/03), Bates Nos. PSI-OPB-119-20 at 119.

⁴³⁴ “Cross-Border Banking Activities into the United States (**version November 2004**),” prepared by UBS, Bates Nos. PSI-OPB, at 104 (emphasis in original).

⁴³⁵ Birkenfeld deposition, at 158. See also UBS Minutes of a May 2003 meeting of the Geneva Private Bank North America International group (5/14/03) at 2 (“Do not indicate Wealth Management but only UBS AG on the new business cards”).

⁴³⁶ Birkenfeld deposition, at 166.

⁴³⁷ Case Studies Cross-Border Workshop NAM, (undated) (emphasis in original). “NAM” refers to the North American division at UBS Switzerland.

“Question 1: What would you do in such a situation?”

“Question 2: What are the signs indicating that something is going on?”

The document does not indicate UBS’ preferred responses to these questions.

Mr. Birkenfeld told the Subcommittee that the UBS Swiss offices also employed techniques to help existing U.S. clients transfer money into and out of their accounts without identifying documentation. He noted, for example, that while he was at UBS, the bank typically wired funds and engaged in securities transactions without including client-specific information; instead the bank typically stated on the required documentation that the transaction was “on behalf of UBS for one of our clients.”⁴³⁸ He indicated that as the European Union tightened the rules for wire transfers, requiring the originating bank to identify the beneficial owner of the assets involved in a transaction, UBS increasingly restricted its Swiss bankers’ use of wire transfers.⁴³⁹ He said that UBS began to require clients to fly to Switzerland to withdraw cash from an account.

The Statement of Facts in the Birkenfeld criminal case describes additional actions taken by UBS bankers to help U.S. clients manage their Swiss accounts without alerting U.S. authorities. It states, for example, that UBS bankers advised U.S. clients to withdraw funds from their accounts using Swiss credit cards that “could not be discovered by United States authorities”; to “destroy all off-shore banking records existing in the United States”; and to “misrepresent the receipt of funds from the Swiss bank account in the United States as loans from the Swiss Bank.”⁴⁴⁰ The Statement of Facts also discloses that, on one occasion, “at the request of a U.S. client, defendant Birkenfeld purchased diamonds using that U.S. client’s Swiss bank account funds and smuggled the diamonds into the United States in a toothpaste tube,” presumably so that the U.S. client could obtain possession of his Swiss assets without alerting U.S. authorities.⁴⁴¹ It also states that Mr. Birkenfeld and his business associate Mario Staggl “accepted bundles of checks from U.S. clients and facilitated the deposit of those checks into accounts at the Swiss bank” and elsewhere, presumably to assist the clients in making transfers to their Swiss accounts, again without alerting U.S. authorities.⁴⁴²

Hold mail accounts, encrypted computers, wire transfers without client names, Swiss credit cards, requirements that clients travel outside of the United States to get information about their accounts – the consistent element in all of these UBS techniques is the effort to help U.S. clients hide assets sent to Switzerland. These UBS procedures, practices, and policies can also facilitate, and in some cases have resulted in, tax evasion by the bank’s U.S. clients.

⁴³⁸ Birkenfeld deposition, at 247.

⁴³⁹ *Id.* at 251.

⁴⁴⁰ Birkenfeld Statement of Facts, at 3.

⁴⁴¹ *Id.* at 4.

⁴⁴² *Id.*

(5) Violating Restrictions on U.S. Activities

The UBS practices just described, related to Swiss banker activities undertaken in the United States to recruit and service U.S. clients, may have violated U.S. law as well as UBS policy. As explained earlier, U.S. securities and banking laws prohibit non-U.S. persons from advertising securities services or products, executing securities transactions, or performing banking services within the United States, without an appropriate license. Moreover, U.S. tax laws may require a foreign financial institution to report to the IRS on 1099 Forms sales of non-U.S. securities effected in the United States, such as by executing a transaction by a broker physically in the United States or ordering the completion of a transaction through telephone calls or emails originating from the United States.

It was to avoid violating U.S. law, exceeding its licensed activities, or triggering 1099 reporting requirements, that caused UBS to issue policy statements restricting the activities that its non-U.S. bankers could undertake while in the United States. Its 2002 and 2004 policy statements, for example, prohibited UBS Swiss bankers, while in the United States, from advertising securities products to their clients, informing clients of how their security portfolios were performing, providing copies of account statements, or using U.S. mails, faxes, telephone calls or email to discuss a client's securities portfolio.⁴⁴³ UBS also prohibited its Swiss bankers from prospecting for new clients while in the United States, soliciting new accounts, or obtaining signatures on account opening documentation.

Despite these prohibitions, it appears that UBS Swiss bankers in the United States servicing U.S. clients routinely undertook actions that contravened the UBS restrictions. Mr. Birkenfeld described, for example, an art festival sponsored by UBS in Miami each year, which he attended with other Swiss bankers for the express purpose of soliciting new accounts. "We went to these events. We went to dinners, we went to art exhibitions, we went to private homes as private bankers, knowingly by management that they were paying for our hotel, paying for our airfare, paying us our salary, and getting us tickets to the UBS VIP tent to drink champagne with clients."⁴⁴⁴ He testified that he witnessed Swiss bankers soliciting new accounts and completing account opening documentation while in the United States. He testified that in some cases, "instead of saying, 'I signed it in New York,' they brought the forms back to Geneva and they put in 'Geneva.'"⁴⁴⁵ When asked whether he had promoted securities products during his trips to the United States, he responded, "We were promoting anything."⁴⁴⁶

Mr. Birkenfeld also told the Subcommittee that UBS Swiss bankers routinely communicated with their U.S. clients about the status of their accounts, including their securities portfolios. He said that some Swiss private bankers communicated with their U.S. clients by

⁴⁴³ See "Wealth Management and Business Banking Client Advisor's Guidelines for Implementation and Management of Discretionary Asset Management Relationship with U.S. Clients," (undated but likely late 2001); "Cross-Border Banking Activities into the United States (**version November 2004**)," prepared by UBS, Bates Nos. PSI-OPB, at 103-105 (emphasis in original).

⁴⁴⁴ Birkenfeld deposition, at 114.

⁴⁴⁵ *Id.* at 115, 125.

⁴⁴⁶ *Id.* at 111.

telephone or fax, or by sending occasional documents to them in the United States by overnight mail.⁴⁴⁷ He said the bankers sometimes used code names during the telephone calls, so that the U.S. client would not have to identify themselves by name, in case anyone was listening.⁴⁴⁸ He said that U.S. clients generally did not like sending or receiving emails via computer, “because they didn’t want that link, for obvious reasons.”⁴⁴⁹ Nevertheless, some clients did use email, as shown in the case involving Mr. Birkenfeld and Mr. Olenicoff, examined further below. Mr. Birkenfeld also described how Swiss bankers brought into the United States information about clients’ accounts and securities portfolios. He told the Subcommittee that his day-to-day interactions with clients were in direct contradiction to the restrictions set out in UBS’ policy statements. He indicated those policies simply were not enforced while he was at the bank.⁴⁵⁰

2007 UBS Restrictions on U.S. Activities. In June 2007, UBS issued a new version of its policy statement restricting activities in the United States by its non-U.S. bankers.⁴⁵¹ This document repeated the prohibitions in the 2004 policy statement, while adding extensive new restrictions. For example, the 2007 policy statement states that, while non-U.S. UBS bankers could continue to travel to the United States, “[t]ravels must be kept to a minimum,” and each traveling officer must be trained in and sign a certificate confirming compliance with the travel restrictions, inform his or her superior prior to a trip of planned events and clients to be visited, and report after the trip to the supervisor about all trip developments.⁴⁵² The policy statement goes on to state that “UBS will abstain from any active prospecting of any U.S. based persons,” although it would continue to accept referrals from existing clients or “U.S. Licensed Officers.”⁴⁵³ In addition, it states that non-U.S. UBS bankers “must abstain from any activity that could be construed as soliciting securities or banking business from persons located in the United States,” and “must not give any advice to prospective or existing clients on how to evade taxes or circumvent any other relevant restrictions.”⁴⁵⁴

⁴⁴⁷ Id. at 60.

⁴⁴⁸ Id. at 63-64.

⁴⁴⁹ Id. at 61.

⁴⁵⁰ Mr. Birkenfeld told the Subcommittee that he was not even aware of the restrictions until May 2005, when a colleague showed him the 2004 policy statement on an internal UBS computer system. He said that after being shown the 2004 policy statement, he sent emails, in June 2005, to the UBS legal and compliance divisions asking about the contradiction between the policy statement and his day-to-day activities. He provided copies of these emails, which he said were never responded to in writing. Birkenfeld deposition, at 108-109, 125-26. He told the Subcommittee that he also brought the issue to the attention of his immediate supervisor whom he said, “yelled at me and said, ‘Why are you getting everyone riled up?’” Id. at 126-27. He testified that he then brought the 2004 policy statement to two outside law firms, both of which advised him to resign. Id. at 127. Mr. Birkenfeld resigned from UBS in October 2005.

⁴⁵¹ See “Restrictions on Cross-Border Banking and Financial Services Activities: Country Paper USA (Effective Date June, 1st, 2007),” (otherwise undated).

⁴⁵² Id. at 4.

⁴⁵³ Id. at 8.

⁴⁵⁴ Id. at 5, 6 (emphasis in original).

2007 Travel Ban to the United States. In November 2007, UBS went further, essentially ending all travel by its Swiss bankers to the United States to solicit new business.⁴⁵⁵ UBS stated in an internal memorandum that it had decided “to realign the business model for U.S. clients by focusing our resources on our wealth management operations based in the United States ... and UBS Swiss Financial Advisors in Zurich.”⁴⁵⁶ UBS materials stated that UBS would permit “new account opening for securities related services only within those units”⁴⁵⁷ and would service existing U.S. clients only when those clients were outside of the United States and, for example, visiting Switzerland or utilizing telephone calls, faxes or other communication systems from outside the United States.⁴⁵⁸ A document providing talking points to UBS bankers on how to inform their U.S. clients about the new policy suggests telling them: “Client advisors, including myself, will no longer be traveling outside of Switzerland to meet you. ... [W]e will not be able to communicate with you about your securities account when you are in the United States. ... [W]e will not be able to execute your securities instructions if we are not satisfied that you are outside the U.S. when giving such orders.”⁴⁵⁹

The talking points also indicate that for a client who asked: “If I decide to transfer my assets to SFA [Swiss Financial Advisers], will Swiss client confidentiality still apply?,” the recommended response was: “An SFA representative would be the best person to answer that question, but my understanding is that, although your information would be reported to the IRS and potentially available to the SEC, it otherwise generally would be covered by Swiss financial privacy protections.”⁴⁶⁰ For a client who asked: “What if I do not want U.S. tax reporting services or to supply a W-9?,” the recommended response was: “Then you may retain your current account subject to the modifications I just described.”⁴⁶¹ Those modifications included keeping all communications about the account outside of the United States.

According to UBS, the new policy, including the travel ban, became effective in November 2007, although a few previously planned business trips to the United States were allowed in December. UBS informed the Committee that, since January 2008, none of its Swiss private bankers has made a business trip to the United States.⁴⁶²

⁴⁵⁵ See, e.g., UBS internal memorandum addressed to “Colleagues” regarding “Changes in business model for U.S. private clients,” (11/15/08).

⁴⁵⁶ *Id.* at 1.

⁴⁵⁷ *Id.*

⁴⁵⁸ UBS prepared document with the heading, “Privileged and Confidential: Letters to Existing U.S. Clients with More than CHF 50,000 Who have Not been Informed Orally either to Retained Mail or Send to Non-U.S. Address,” (undated but likely in or after November 2007) (heading using all capital letters converted to initial capital format) (apparent form letter providing guidance to U.S. clients on the November 2007 policy).

⁴⁵⁹ UBS prepared document with the heading, “Talking Points for Informing U.S. Private Clients with Securities Holdings about the Realignment of our Business Model Plus Q&A,” (undated but likely in or after November 2007) (heading using all capital letters converted to initial capital format).

⁴⁶⁰ *Id.* at 3.

⁴⁶¹ *Id.* at 1-2.

⁴⁶² Subcommittee interview of UBS, represented by outside legal counsel (6/19/08).

Contrary to this representation by UBS, however, a Subcommittee review of the relevant travel data for the Swiss bankers determined that, from January to April 2008, UBS client advisors made twelve trips to the United States, travelling from Switzerland to New York, Miami, San Francisco, and Las Vegas. The Customs I-94 Forms indicate that, on half of these trips, the Swiss bankers indicated they were travelling for business purposes, while on the other half, the Swiss bankers indicated they were travelling to the United States for non-business purposes. With respect to Mr. Liechti, head of the UBS Wealth Management Americas division, the I-94 Form shows that he arrived in the United States on April 20, 2008, on business. There is no record of his departure to date.

The clear contrast between the UBS policy restrictions dating back to at least 2002, and the activities undertaken by UBS Swiss bankers while traveling in the United States, as described by Mr. Birkenfeld in his deposition, in connection with his recent indictment, and in internal UBS documents, suggests that until recently, the UBS restrictions were not being enforced. This lack of enforcement, in turn, raises concerns that UBS Swiss bankers with U.S. clients may have been routinely violating not only the bank's internal policies, but also U.S. law. UBS is currently under investigation by the SEC, IRS, and Department of Justice regarding the activities of its Swiss bankers in the United States.

C. Olenicoff Accounts

Concerns raised by the activities of UBS Swiss bankers servicing accounts for U.S. clients are further illustrated by the UBS accounts opened in Switzerland by Mr. Birkenfeld for Igor Olenicoff.

Mr. Olenicoff is a billionaire real estate developer, U.S. citizen, and resident of California and Florida.⁴⁶³ He is President and owner of Olen Properties Corporation. From 1992 until 2005, Mr. Olenicoff opened multiple accounts at banks in the Bahamas, England, Liechtenstein, and Switzerland. These accounts were opened in the name of multiple offshore corporations he controlled, including Guardian Guarantee Co., Ltd., New Guardian Bancorp ApS, Continental Realty Funding Corp., National Depository Corp., Sovereign Bancorp Ltd., and Swiss Finance Corp.⁴⁶⁴ Some of his accounts were opened at UBS in Switzerland, and for a time, Mr. Olenicoff was Mr. Birkenfeld's largest private banking client.

In 2007, Mr. Olenicoff pled guilty to one criminal count of filing a false income tax return by failing to disclose the foreign bank accounts he controlled.⁴⁶⁵ He was sentenced to two years probation and 120 hours of community service, and paid about \$52 million to the IRS for six years of back taxes, interest, and penalties owed on assets and income hidden in foreign bank

⁴⁶³ See pleadings in United States v. Olenicoff, Case No. SA CR No. 07-227-CJC (C.D. Cal.) (hereinafter "United States v. Olenicoff"); and United States v. Birkenfeld.

⁴⁶⁴ United States v. Olenicoff, Plea Agreement for Defendant Igor M. Olenicoff (12/10/07) (hereinafter Olenicoff Plea Agreement), at 4.

⁴⁶⁵ Id.

accounts.⁴⁶⁶ In 2008, Mr. Birkenfeld pled guilty to conspiring with Mr. Olenicoff to defraud the IRS and avoid payment of taxes owed on about \$200 million in assets transferred to accounts in Switzerland and Liechtenstein.⁴⁶⁷

The Subcommittee obtained a number of documents related to the Olenicoff and Birkenfeld matters which help illustrate the actions taken by UBS private bankers and others to help U.S. clients conceal their assets and evade U.S. taxes.

Account Opening. Mr. Birkenfeld told the Subcommittee that he first heard Mr. Olenicoff's name while working at Barclays Bank.⁴⁶⁸ In 2001, soon after he began working for UBS, he contacted Mr. Olenicoff in California, flew to California for a meeting with Mr. Olenicoff and his son, and persuaded them to move their account to UBS in Switzerland.⁴⁶⁹

Mr. Olenicoff told Mr. Birkenfeld that he would like to open the UBS account in the name of Guardian Guarantee Corp. (GGC), one of the Bahamas corporations he controlled.⁴⁷⁰ Mr. Birkenfeld provided the account opening documentation to Mr. Olenicoff in California, and to a Bahamas firm that administered GGC.⁴⁷¹ Mr. Olenicoff returned the completed forms.⁴⁷² On a UBS form that asked for the identity of the "beneficial owner of the assets" to be deposited into the account, Mr. Olenicoff identified GGC as the beneficial owner and listed himself and his son as the "contracting partners" who would inform UBS of any ownership change.⁴⁷³ Mr. Olenicoff also made himself and other family members account signatories.⁴⁷⁴ Mr. Birkenfeld agreed to open the account on those terms, even though he knew Mr. Olenicoff was the true beneficial owner of the assets, and the Bahamas corporation was being used to conceal that ownership.

⁴⁶⁶ See "California Real Estate Developer Sentenced for Filing a False Tax Return and Failure to Disclose Foreign Bank Accounts to IRS," in "Examples of General Tax Fraud Investigations FY2008," Internal Revenue Service, <http://www.irs.gov/compliance/enforcement/article/0,,id=174630,00.html> (viewed 7/14/08).

⁴⁶⁷ Birkenfeld Statement of Facts.

⁴⁶⁸ According to Mr. Birkenfeld, Mr. Olenicoff had been a client at Barclays Bank in the Bahamas. Mr. Birkenfeld was then working for Barclays Bank in Switzerland. He said that, after joining the QI Program in 2001, Barclays decided to close all of its Bahamas accounts with U.S. clients, including Mr. Olenicoff. Mr. Birkenfeld said that the Barclays account manager in the Bahamas telephoned him to see if the Swiss office could accept the Olenicoff account. Mr. Birkenfeld said that he was then in the process of changing jobs from Barclays to UBS. Birkenfeld Deposition at 206-209.

⁴⁶⁹ Birkenfeld deposition at 206-209; email from Mr. Birkenfeld to Mr. Olenicoff and his son (7/26/01), Bates No. SW 67087.

⁴⁷⁰ See, e.g., email from Mr. Olenicoff to Mr. Birkenfeld (10/11/01), Bates Nos. SW 66660-61.

⁴⁷¹ Olenicoff Plea Agreement, at 4; Birkenfeld Statement of Facts, at 5; handwritten note from Mr. Birkenfeld (undated), Bates No. SW 67527; letter from McKinney, Bancroft & Hughes of the Bahamas to Mr. Olenicoff (10/17/01), Bates No. SW 17013.

⁴⁷² Letter from Mr. Olenicoff to Mr. Birkenfeld, (10/23/01), Bates No. SW 66645.

⁴⁷³ UBS Verification of the beneficial owner's identity, signed by Mr. Olenicoff and his son, (10/23/01), Bates No. SW66648. Another document identified Mr. Olenicoff as GGC's president and his son as GGC's secretary. UBS Authorized signatories (10/23/01), Bates No. SW 66649.

⁴⁷⁴ UBS Authorized signatories (10/23/01), Bates No. SW 66649.

As part of the account opening process, Mr. Olenicoff and his son signed a UBS form that “instruct[ed] UBS AG with respect to the above mentioned account not to invest in or hold US securities within the meaning of the relevant Qualified Intermediary Agreement.”⁴⁷⁵ By ruling out U.S. security investments, the Olenicoffs ensured that the account would not be reported to the IRS under the QI Program. In December 2001, Mr. Olenicoff transferred about \$89 million from Barclays Bank in the Bahamas to the new GGC account at UBS in Switzerland.⁴⁷⁶

Restructuring Olenicoff Assets. To help develop the Olenicoff account, Mr. Birkenfeld enlisted the services of Mario Staggl, part owner of a Liechtenstein trust company, New Haven Treuhand AG. In November 2001, Mr. Olenicoff and his son travelled to Liechtenstein and met with Mr. Staggl and his partner, Klaus Biedermann.⁴⁷⁷ During that meeting and in subsequent discussions, Mr. Olenicoff sought advice on how to restructure his offshore assets, taking into consideration the twin goals of avoiding taxes and maintaining “anonymity.”

The documents show that a number of proposals were considered. In one email, Mr. Staggl stated: “The shares in OLEN US are ‘owned’ by the Bahamian Company. In order to avoid any potential exposure in a tax point of view we would recommend to transfer the Bahamian company shares into a Danish Holding Company. The Danish Holding Company would be owned by the first of the Liechtenstein Trusts.”⁴⁷⁸ He also wrote:

“The cash available for UBS and Neue Bank can basically be held by the second Liechtenstein Trust. ... There is an easy way to get around [VAT taxes] by interposing an ‘off-shore’ jurisdiction since services rendered and charged to non Swiss or non Liechtenstein entities are not liable to VAT. We would recommend the second Liechtenstein Trust being the shareholder of the investment ‘off-shore’ vehicle. The jurisdiction could be the British Virgin Islands (BVI), Panama, Gibraltar. ... The administration would be looked after by New Haven in Liechtenstein. The second advantage of interposing the ‘off-shore’ vehicle would lead to another ‘saf[e]ty-break’ in a tax and anonymity aspect.”⁴⁷⁹

Mr. Olenicoff responded in part by stating: “It is the preference of the current holder of the stock, a Bahamian Corporation to move the ownership to an onshore entity, but one which provided complete anonymity as to the beneficial owners.”⁴⁸⁰ In a later email, Mr. Staggl observed: “Subsequent to our telephone discussion of last week your most recent e-mail made it

⁴⁷⁵ UBS waiver of right to invest in U.S. securities, signed by Mr. Olenicoff and his son (10/23/01), Bates No. SW 66652.

⁴⁷⁶ Olenicoff Plea Agreement, at 4.

⁴⁷⁷ See email from Mr. Olenicoff to Mr. Staggl, (12/1/01), Bates No. SW 65109 (“we all enjoyed our stay in your beautiful country”).

⁴⁷⁸ Email from Mr. Staggl to Mr. Olenicoff re “Various,” (12/4/01), Bates No. SW 65110.

⁴⁷⁹ *Id.* See also Birkenfeld Statement of Facts, at 5.

⁴⁸⁰ Email from Mr. Olenicoff to Mr. Staggl re “Structure Discussion,” (12/8/01), Bates No. SW 65111.

very clear to me – you want to become on-shore – but still maintain an off-shore status in tax and protection point of view.”⁴⁸¹

In late 2001, Mr. Olenicoff authorized Mr. Staggl’s trust company, New Haven, to establish a Liechtenstein trust, The Landmark Settlement, and a Danish corporation, New Guardian Bancorp, on his behalf. Mr. Staggl caused to be executed a “Letter of Intent” which stated that New Haven would hold the trust property for the benefit of Mr. Olenicoff and, after his demise, for his children.⁴⁸² Mr. Staggl wrote to Mr. Olenicoff:

“First, we will establish the Liechtenstein Trust to be known as ‘The Landmark Settlement.’ All the information we need in order to proceed are available at our offices. New Haven will be the trustee. Sheltons, our correspondent in Denmark, agreed to incorporate ‘New Guardian Bancorp’ wholly owned by the Liechtenstein ‘The Landmark Settlement.’”⁴⁸³

At Mr. Olenicoff’s direction, Mr. Birkenfeld arranged a transfer of \$40,000 from the GGC account at UBS to finance the set up of the two new entities.⁴⁸⁴ Mr. Olenicoff then opened accounts in the name of New Guardian Bancorp (NGB) at UBS in Switzerland and in the name of NGB and Landmark Settlement at Neue Bank in Liechtenstein.

In January 2002, Mr. Olenicoff’s companion, Jeanette Bullington, opened a personal account at UBS in Switzerland.⁴⁸⁵ As part of the account opening documentation, she signed one document instructing UBS not to invest her funds in U.S. securities “within the meaning of the relevant Qualified Intermediary Agreement.”⁴⁸⁶ She signed another stating: “I am aware of the new tax regulations. To this end, I declare that I expressly agree that my account shall be frozen for all investments in US securities.”⁴⁸⁷ These documents appear designed to ensure her account would not be disclosed to the IRS under the QI Program.

Transferring U.S. Securities Portfolio. In March 2002, Mr. Birkenfeld and Mr. Staggl helped Mr. Olenicoff transfer \$60 million in U.S. securities from a “Smith Barney portfolio” to the NGB account at Neue Bank in Liechtenstein. Mr. Staggl explained that the transfer could go directly to NGB or, alternatively, to Landmark Settlement which owned NGB, but advised against sending the securities to an account opened in Mr. Olenicoff’s personal name, since that could “jeopardize” the structure by exposing his association with the assets:

⁴⁸¹ Email from Mr. Staggl to Mr. Olenicoff re “Structure,” (Jan. 2002), Bates No. SW 67200.

⁴⁸² Birkenfeld Statement of Facts, at 5.

⁴⁸³ Email from Mr. Olenicoff to Mr. Staggl re “Structure,” (1/8/02), Bates No. SW 65103. See also Danish Commerce and Companies Agency Extract for New Guardian Bancorp ApS, (1/18/02), Bates No. SW 66922.

⁴⁸⁴ See, e.g., email from Mr. Olenicoff to Mr. Birkenfeld authorizing transfer, (12/27/01), Bates No. SW 67081.

⁴⁸⁵ UBS Verification of beneficial owner’s Identity, (1/22/02), Bates No. SW 66974.

⁴⁸⁶ UBS Waiver of right to invest in US securities, (1/22/02), Bates No. SW 66977.

⁴⁸⁷ UBS Supplement for new Account US Status: Assets and Income/Declaration for US Taxable Persons, (undated but likely 1/22/02), Bates No. SW 66982.

“[T]he transfer of the Smith Barney portfolio to Neue Bank ... would be [in] no danger or exposure whatsoever. ... [T]o put your mind at rest, the portfolio arriving from Smith Barney will be put into Landmark Settlement account held with Neue Bank for the time being. ... I would not recommend to open a personal account in your name since this could potentially jeopardize the structure. For the time being you and Andrei are signatories on Landmark Settlement’s bank account with Neue Bank. You may remember that you signed blank account signature cards for Neue Bank at the occasion of our meeting in Liechtenstein and one card has been used for New Guardian Bancorp and the other for Landmark Settlement.”⁴⁸⁸

In April 2002, Mr. Staggl provided Mr. Olenicoff with wire transfer instructions to move the \$60 million in U.S. securities directly to the NGB account at Neue Bank. The wire transfer instructions specified, however, that Smith Barney send the securities to “Neue Bank” without specifying the ultimate recipient of the securities. Mr. Staggl’s email explained: “For secrecy purpose, there is no need to mention ‘New Guardian Bancorp. Aps’, but, if you prefer to do so the name of the beneficiary can be mentioned.”⁴⁸⁹ The transfer took place in April.⁴⁹⁰ Although the Neue account afterwards contained substantial U.S. securities, the account was apparently never disclosed to the IRS under the QI Program.

Many other documents reviewed by the Subcommittee demonstrate Mr. Olenicoff’s direct control of the UBS accounts opened in the names of GCC and NBC and the millions of dollars in assets held within those accounts. For example, on several occasions Mr. Olenicoff directed Mr. Birkenfeld to open new accounts for the corporate entities, move substantial funds from one UBS account to another, and close two of the accounts after a new one had been opened.⁴⁹¹ On another occasion, Mr. Olenicoff appears to have transferred substantial real estate assets in the United States from an entity he controlled in the Bahamas, National Depository Company, Ltd., to the Landmark Settlement in Liechtenstein.⁴⁹² On still another occasion, Mr. Olenicoff authorized Mr. Birkenfeld to issue five UBS credit cards for one of the UBS corporate accounts, and then appears to have cancelled those cards two weeks later.⁴⁹³

By 2005, Mr. Olenicoff had transferred a total of about \$200 million in assets into the Swiss and Liechtenstein accounts opened in the name of entities that he controlled. Although

⁴⁸⁸ Email from Mr. Staggl to Mr. Birkenfeld and Mr. Olenicoff re “New Guardian – Status,” (3/7/02), Bates No. SW 67196.

⁴⁸⁹ Email from Mr. Staggl to Mr. Olenicoff re “Smith Barney Transfer,” (4/23/02), Bates No. SW 65120; Email from Mr. Olenicoff to Mr. Staggl re “Smith Barney Transfer,” (4/25/02); Bates No. SW 67331.

⁴⁹⁰ Olenicoff Plea Agreement, at 4-5.

⁴⁹¹ See, e.g., letter from Mr. Olenicoff to Mr. Birkenfeld, (4/6/02), Bates No. SW 66782; Letter from Andrei Olenicoff to Mr. Birkenfeld, (9/3/02), Bates No. SW 67659.

⁴⁹² See, e.g., email from Mr. Staggl to Mr. Olenicoff, with copy to Mr. Birkenfeld, (6/8/04), Bates No. SW 16153; letter from Andrei Olenicoff to Mr. Staggl, (undated), Bates Nos. 67934-37).

⁴⁹³ Birkenfeld Statement of Facts, at 5; Letter from Mr. Olenicoff to Mr. Birkenfeld, (3/25/02), Bates No. SW 66783 (authorizing \$100,000 to be transferred to a new UBS account to allow “issuance of the five credit cards we discussed”); letter from Mr. Olenicoff to Mr. Birkenfeld, (4/6/02), Bates No. SW 66782 (cancelling the five credit cards two weeks later).

Mr. Olenicoff clearly exercised control over the UBS accounts and assets, Mr. Olenicoff never submitted a W-9 Form to UBS admitting he was the beneficial owner, and UBS never filed a 1099 Form with the IRS reporting the accounts. As Mr. Birkenfeld put it, when asked if the accounts were undeclared, he responded, “Yes. Every bit.”⁴⁹⁴

In 2005, after Mr. Birkenfeld left UBS, he and Mr. Staggl met with Mr. Olenicoff in Liechtenstein and advised him to transfer his assets from UBS to Neue Bank in Liechtenstein, “because Liechtenstein had better bank secrecy laws than Switzerland.” Mr. Olenicoff agreed, and transferred his assets from UBS to Neue Bank that year.⁴⁹⁵

By 2007, Mr. Olenicoff’s offshore assets had been discovered by the IRS. By the end of the year, he had pled guilty; Mr. Birkenfeld pled guilty by mid-2008. Mr. Staggl, who is under indictment for his role in managing the Olenicoff assets, remains at large in Liechtenstein and has been declared by the U.S. Government to be a fugitive.

The Olenicoff accounts at UBS were open for about four years, from 2001 until 2005. During that time, Mr. Birkenfeld has admitted that he conspired with Mr. Olenicoff to help him evade U.S. taxes by hiding his assets in Switzerland and Liechtenstein. To accomplish that end, Mr. Birkenfeld assisted Mr. Olenicoff in forming a Liechtenstein trust and Danish corporation by directing him to a Liechtenstein trust company that offered formation services, opening UBS accounts in the names of those entities, allowing Mr. Olenicoff to omit his beneficial ownership of the account assets on internal UBS forms, and helping him circumvent disclosure of the accounts to the IRS under the QI Program by signing forms instructing UBS not to purchase U.S. securities for those accounts. Mr. Birkenfeld allowed Mr. Olenicoff to transfer tens of millions of dollars from other offshore accounts into the new UBS accounts, with no apparent questions about the source of the funds. He took instructions from Mr. Olenicoff about how to invest the funds in the UBS accounts, using email, letters, and faxes to and from the United States, even though Mr. Birkenfeld was not licensed to handle securities in the United States.

The Subcommittee does not know the extent to which Mr. Birkenfeld’s actions were typical of UBS Swiss bankers; it has been unable to obtain internal UBS account documentation comparable to the documentation obtained from LGT. Mr. Birkenfeld told the Subcommittee that he did not view his actions as out of the ordinary. If true, the Olenicoff case history may be one of many within UBS Swiss operations that raise concerns.

D. Analysis

Unlike LGT, UBS did not generally refrain from conducting banking operations within the United States. UBS Swiss bankers targeted U.S. clients, traveled across the country in search of wealthy individuals, and aggressively marketed their services to U.S. taxpayers who might otherwise never have opened Swiss accounts. UBS practices resulted in its U.S. clients maintaining undeclared Swiss accounts that collectively held billions of dollars in assets that were not disclosed to the IRS. UBS serviced these accounts, in part, by offering banking and

⁴⁹⁴ Birkenfeld Deposition, at 209.

⁴⁹⁵ Birkenfeld Statement of Facts, at 6; Birkenfeld deposition, at 209-210.

securities products and services within the United States that UBS Swiss bankers were not licensed to provide. Swiss bank secrecy laws hid not only the misconduct of U.S. taxpayers hiding assets at UBS in Switzerland, but also the actions taken by UBS bankers to assist those U.S. clients.

UBS has now stopped all travel by its Swiss bankers to the United States, issued more restrictive policies, and is conducting an internal review to gauge the nature and extent of the problem. UBS also cooperated with this Subcommittee in its efforts to gain a full understanding of the facts and issues.

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