



**EXPORT-IMPORT BANK
of the UNITED STATES**

INSPECTOR GENERAL

Statement of

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Deputy Inspector General
Export-Import Bank of the United States

before the

United States House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Health Care, Benefits, and Administrative Rules

June 11, 2015 at 1:00 pm

Good afternoon, Chairman Jordan, Ranking Member Cartwright, and members of the subcommittee.

Thank you for the invitation and opportunity to testify before you about the activities of the Office of Inspector General (OIG) and the programs and operations of the Export-Import Bank.

I. Export-Import Bank and the Office of Inspector General

The Export-Import Bank of the United States (Ex-Im Bank) is the official export-credit agency of the United States. Ex-Im Bank is an independent, self-sustaining executive agency and a wholly-owned U.S. government corporation. Ex-Im Bank's mission is to support jobs in the United States by facilitating the export of U.S. goods and services. Ex-Im Bank provides competitive export financing and ensures a level playing field for U.S. exports in the global marketplace.

The Office of Inspector General, an independent office within Ex-Im Bank, was statutorily created in 2002 and organized in 2007. The mission of the Ex-Im Bank Office of Inspector General is to conduct and supervise audits, investigations, inspections, and evaluations related to agency programs and operations; provide leadership and coordination as well as recommend policies that will promote economy, efficiency, and effectiveness in such programs and operations; and prevent and detect fraud, waste, abuse, and mismanagement.

As Congress considers reauthorization of the Bank's charter, the goal of our office is to provide timely, accurate, and credible information to aid legislators and Bank officials in making policy decisions.

II. Fraud and Integrity Investigations

The OIG Office of Investigations (OI) conducts and coordinates investigations relating to alleged or suspected violations of laws, rules, or regulations occurring in Ex-Im Bank programs and operations. The subjects of OI investigations can be program participants, contractors, Ex-Im Bank management, or employees. OI Special Agents investigate suspected violations of Federal law, rules, or regulations which may result in criminal or civil prosecution and/or administrative sanctions. OI's investigations are supported by Investigative and Financial Analysts who conduct tactical and strategic intelligence analysis in support of OI's investigations.

OI evaluates all reports of possible fraud or illegality affecting Ex-Im Bank programs and activities. Such reports are received from a variety of sources including Ex-Im Bank employees, Ex-Im Bank Office of General Counsel, participants in Ex-Im Bank transactions, other government agencies, and the Ex-Im Bank OIG Hotline. Evaluations that identify reasonable indications of possible fraud or illegality result in an investigation. As of June 5, 2015, OI has 29 open investigations.

Since 2009, OIG investigative efforts have resulted in a number of law enforcement actions against parties who have attempted to defraud the Bank, including 84 criminal indictments and criminal informations; 50 convictions; \$255 million in repayments and judgments from fines, criminal forfeiture, restitution, and civil judgments; and 622 referrals of investigative intelligence to OGC for enhanced due diligence.

Export Credit Insurance and Guarantee Programs

Ex-Im Bank's export credit insurance and guarantee programs have been susceptible to fraud schemes by foreign borrowers, U.S. based exporters, and other transaction participants. One fraudulent scheme to exploit these programs involves the falsification of shipping records to convince Ex-Im Bank that the described goods have been shipped when in fact they have not. Other fraud schemes involve submitting false financial statements of foreign borrowers in order to induce Ex-Im Bank to provide its guarantee coverage for a loan for which they might otherwise be ineligible, and by submitting false documentation to the guaranteed lender and Ex-Im Bank regarding the shipment, nature, or quantity of the U.S. goods allegedly being exported.

Successful investigative efforts within the export credit insurance and guarantee programs during the current fiscal year include the following:

- On October 14, 2014, based on a warrant obtained by OI agents, U.S. Customs and Border Patrol (CBP) Officers arrested Julian Gaspar-Vazquez (Gaspar) as he entered the United States from Mexico at El Paso, TX. OI agents obtained an indictment against Gaspar in the Southern District of Florida charging Gaspar with bank fraud (18 U.S.C. 1344). The indictment alleged that during 2006—2010, Gaspar operated a Mexican company called Ecologia en Tratamientos de Agua, S.A. de C. V. (ETA). Gaspar allegedly created a myriad of false documents and submitted them to a Miami, FL bank and to Ex-Im Bank. As a result of the alleged fraud, Gaspar's loan defaulted causing a loss to Ex-Im Bank of approximately \$3.6 million. Gaspar pled guilty on February 12,

2015. On May 22, 2015, Gaspar was sentenced to forty-one months imprisonment, to be followed by five years of supervised release. Gaspar was also ordered to pay \$4,488,000 in restitution. In addition, the Court imposed a \$4 million forfeiture money judgment against Gaspar.

- On March 12, 2015, as the result of a lengthy and complex OIG investigation, the U.S. Department of Justice (DOJ) announced that Hencorp Becstone Capital L.C. (Hencorp) agreed to pay \$3.8 million to resolve allegations under the False Claims Act that it made false statements and claims to Ex-Im Bank in order to obtain loan guarantees. In Ex-Im guarantee transactions, the lender is responsible for performing a credit review of the transaction to ensure that it meets applicable criteria. The government alleged that Ricardo Maza, a Peruvian-based former Hencorp business agent, created false documentation to obtain Ex-Im Bank guarantees on fictitious transactions on which no products were sold or exported, and that Hencorp acted recklessly by outsourcing key credit review functions to Maza without adequate supervision or oversight. The government alleged that Maza then diverted the proceeds of the loans to himself and to his friends and business associates in Peru, and that the transactions resulted in losses to the Ex-Im Bank when the loans were not repaid. In 2012, Mario Mimbella, 64, of Miami, FL, the purported U.S.-based exporter on three of the fraudulent transactions, pled guilty to making false records for his participation in the scheme and was later sentenced to prison.
- On January 30, 2015, Ricardo J. Beato of Miami, FL, appeared in U.S. District Court for the Southern District of Florida and pled guilty to a single count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371. Beato was charged the previous day via a criminal complaint, which stated that Beato was the co-owner of Approach Technologies International, LLC (ATI), a telemarketing software company in Miami Lakes, FL. Beato conspired with various co-conspirators to submit false documents to a private lending company and to Ex-Im Bank to secure an Ex-Im Bank loan guarantee. The Ex-Im Bank loan defaulted, causing a loss of approximately \$1.9 million.

On January 29, 2015, OI agents obtained an indictment against Jorge Amad, who was a co-owner of ATI. The indictment charged Amad with Conspiracy to Commit Wire Fraud and Money Laundering, in violation of 18 U.S.C. §§ 1349, 1343, 1956(h), and 1957. Agents arrested Amad on February 4, 2015 in Miami, FL. According to the indictment, Amad conspired with five other subjects to create and submit false documents to a lending bank and ultimately to Ex-Im Bank in furtherance of an Ex-Im Bank loan guarantee application. The indictment alleges that upon receipt of the Ex-Im guaranteed loan proceeds from co-conspirators, Amad made loan payments on an ATI business loan. Amad is scheduled to go to trial this month.

- On September 16, 2014, OI agents obtained an indictment against Richard Grinhaus and Fernando Pascual-Jimenez, both of Mexico. On January 30, 2015, U.S. Customs and Border Protection and Homeland Security Investigations (HSI) agents arrested Pascual as he arrived in Las Vegas, NV, on an international flight. According to the indictment, Pascual owned and operated CEMEC Commercial, S.A. de C.V. (CEMEC), a company

located in Queretaro, Mexico. According to the allegations in the indictment, from in or around July 2005 through July 2010, Pascual conspired with Grinhaus to obtain an Ex-Im Bank guaranteed loan for exporting U.S. goods overseas. The indictment alleges that Pascual and Grinhaus conspired to create false documents and did not use the loan proceeds for the purchase and shipment of the goods guaranteed by Ex-Im Bank. Pascual's trial date is pending. OI is still pursuing Grinhaus' arrest.

- On June 3, 2015, a superseding indictment was filed in the U.S. District Court for the Southern District of Texas against defendants who had previously been arrested in an investigation of bank fraud and money laundering led by the IRS and FBI. The superseding indictment added allegations that the defendants had defrauded Ex-Im Bank in addition to the initial charges of defrauding a commercial bank and factoring companies. On February 18, 2015, Stefano Guido Vitale, Alan Leschyshyn, and Bree Ann Davis were arrested following the return of a federal indictment alleging a conspiracy to commit wire fraud and a conspiracy to commit money laundering. The indictment alleges the scheme produced approximately \$2.5 million in fraudulently obtained proceeds which the defendants agreed to launder through various bank accounts. The defendants are accused of using and establishing various business entities during their scheme to sell, at a discount, nonexistent commercial accounts receivable. They allegedly approached factoring companies as sellers of customized gaming vault bundles and presented fabricated invoices as evidence the defendants were owed a certain amount of money for goods provided to another one of their business entities. To establish creditworthiness of these companies and to convince the factoring company the credit risk was minimal, documents were fabricated and/or altered and provided to the factoring company by the defendants, according to the charges.

Export-Import Bank Employee & Program Integrity

OI conducts investigations involving allegations of criminal activity or serious misconduct by Ex-Im Bank employees that could threaten its reputation, the quality or validity of executive decisions, the security of personnel or business information entrusted to Ex-Im Bank, or result in financial loss. Successful investigative efforts within the employee integrity area concluded during the current fiscal year include:

- On April 22, 2015, Johnny Gutierrez, a former loan officer at Ex-Im Bank, pleaded guilty to one count of bribery of a public official, for accepting more than \$78,000 in bribes in return for recommending the approval of unqualified loan applications to the bank, among other misconduct.

According to his plea agreement, as an Ex-Im Bank loan officer, Gutierrez was responsible for conducting credit underwriting reviews for companies and lenders submitting financing applications to the Ex-Im Bank.

As part of his guilty plea, Gutierrez admitted that on 19 separate occasions between June 2006 and December 2013, he accepted bribes totaling more than \$78,000 in return for recommending the approval of unqualified loan applications and improperly expediting

other applications. Specifically, Gutierrez admitted that he intentionally ignored the fact that one company had previously defaulted in 10 previous transactions guaranteed by the bank, causing the Ex-Im Bank to lose almost \$20 million. Despite these defaults, Gutierrez accepted bribes to continue to recommend the approval of the company's loan applications. Additionally, Gutierrez admitted that he accepted bribes from a financing broker to expedite applications submitted by the broker, and that he privately assisted the broker to improve its applications before submission to the bank. In exchange, Gutierrez was to receive half of the broker's profit on the transactions financed by the bank. Further, Gutierrez disclosed to the broker inside information about financing applications submitted to the Ex-Im Bank, so that the broker could solicit the applicants as clients. A sentencing hearing is scheduled for July 20, 2015.

Another Ex-Im employee was separated from employment due to substantiated misconduct in this case. The investigation as to other subjects involved in this fraud remains ongoing.

- OIG investigated allegations that an Ex-Im Bank employee was hired despite a felony conviction and provided improper assistance to his former employer bidding on a contract. The investigation substantiated that the employee had a felony conviction and participated in the procurement process for the contract. The investigation also found that the employee maintained outside part-time employment with another company, made unsuccessful efforts to obtain contracts for the part-time employer, and misused government IT resources. OIG referred the investigative findings to Ex-Im Bank, and Ex-Im Bank management removed the employee from federal employment and replaced managers responsible for hiring and supervising the employee. The Bank reviewed procurement actions but concluded that the actions of the employee did not require those procurements to be modified or re-competed.
- OIG investigated an allegation that certain contractor employees were improperly paid during the October 2013 government shutdown. The allegations were substantiated. Witnesses provided testimonial and documentary evidence establishing that a contractor, contractor employees, and an Ex-Im Bank contracting official engaged in a scheme to overstate the hours worked in the second half of October 2013 in order to compensate contractor employees for hours not worked or billed during the shutdown period. The scheme resulted in the payment of approximately \$19,356 for hours not actually worked. After OIG shared the investigative findings with OGC and Ex-Im Bank management, the employee resigned before disciplinary action was initiated. Ex-Im Bank terminated the contract and is recovering the \$19,356 in improper payments.

OI conducts investigations into violations of Federal laws affecting the integrity of Ex-Im Bank's programs and the public's trust and reliance on those programs and representations. These investigations involve allegations such as the misuse of official government seals and letterhead; forgeries of bank officials' signatures; false Letters of Interest; or other misrepresentations or misconduct in which criminals falsely purport to victims that they have the authority, approval, or support of Ex-Im Bank. Successful investigative efforts within the program integrity area during the current fiscal year include:

- In a joint investigation with the Defense Criminal Investigation Service (DCIS) and Federal Bureau of Investigation, Stanley P. Phillips, age 48, of Dothan, AL, was sentenced to 108 months in prison by U.S. District Judge Beth Bloom in the Southern District of Florida. Judge Bloom also ordered Phillips to pay \$147,697 in restitution and a \$800 special assessment. Phillips was indicted on November 14, 2013 for wire fraud, in violation of 18 U.S.C. § 1343. Phillips was convicted at a jury trial on December 11, 2014. The wire fraud charge stemmed from Phillips defrauding two military construction projects. Phillips also obtained a \$30 million Ex-Im Bank Letter of Interest (LOI) in March 2013 for a purported construction project in Ghana. Phillips provided false information to Ex-Im Bank to secure the LOI. The prosecutor presented Phillips' fraudulent LOI activity to the judge as a sentencing enhancement.

Other Investigative Results

To the extent permissible and within the confines and limitations of an investigation, OI Special Agents work collaboratively to share investigative intelligence with OGC, Credit and Risk Management Division, and Asset Management Division of Ex-Im Bank to help identify potential and suspected fraudulent activity within Bank transactions and to protect Bank funds at risk.

In the first half of FY 2015, OI communicated with Ex-Im Bank management to enhance the monitoring of existing transactions and due diligence reviews of proposed transactions based on developed investigative leads. OI shared active law enforcement intelligence with OGC on several matters concerning suspected criminal activity by participants involved in active policies or transactions under review. OI made 80 referrals of investigative information to OGC concerning potential fraud and funds at risk for enhanced due diligence by Ex-Im Bank. These efforts are part of the OI objective to expeditiously protect funds at risk concurrent in monitoring, oversight, and collection efforts involving transactions in which fraud is uncovered.

III. Risk Management and Internal Controls

The OIG audits and inspections teams conduct statutorily-required audits of the Bank's financial statements and internal controls, and make recommendations to improve Bank operations by improving efficiency, ensuring compliance with laws and regulations, and mitigating financial and operational risk.

After issuing recommendations, OIG works with the Bank to monitor implementation of recommendations, consider alternatives, and close recommendations as corrective action is completed. As of June 1, 2015, OIG reported that of 139 recommendations issued in the past several years, 91 have been closed, and 48 recommendations are open or unresolved. Of the 48 outstanding recommendations, 24 have been issued in FY 2015, while 24 were issued in FY 2014 and earlier.

In the current fiscal year, OIG has conducted the following audits assessing risk management and internal controls:

- *Audit of the Export-Import Bank of the United States Fiscal Year 2014 Financial Statements*
(OIG-AR-15-01, November 14, 2014)
- *Fiscal Year 2014 Financial Statement Audit—Management Letter*
(OIG-AR-15-02, January 14, 2015)

Under a contract overseen by the Office of Audits, Deloitte and Touche LLP conducted the independent audit of Export-Import Bank's financial statements for fiscal year 2014 and found (1) the financial statements were fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles; (2) there were no material weaknesses in internal control; and (3) there were no instances of reportable noncompliance with laws and regulations or other matters it tested. The audit identified one significant internal control deficiency which resulted from errors in the BCL rating for one transaction, a formula error on an input form, and incorrect authorization dates. Management concurred with Deloitte and Touche LLP's recommendation to correct the deficiencies.

In addition to the Independent Auditor's report on the FY 2014 Financial Statements, Deloitte and Touche LLP issued a management letter that identified four other deficiencies in Ex-Im Bank's internal control over financial reporting. Deloitte and Touche LLP made recommendations to correct these deficiencies and management concurred with the recommendations.

- *Independent Audit of Export-Import Bank's Information Security Program for Fiscal Year 2014*
(OIG-AR-15-03, February 9, 2015)

Under a contract overseen by the Office of Audits, Cotton & Company LLP performed an audit of Ex-Im Bank's Information Security Program for FY 2014. Cotton & Company determined that overall Ex-Im Bank was in substantial compliance with the Federal Information Security Management Act of 2002 (FISMA). While Ex-Im Bank continues to improve and strengthen its information security program, it is not compliant with all FISMA requirements. The report included three new recommendations and three re-issued recommendations. Management concurred with the recommendations.

- *Audit of Export-Import Bank's Short-Term Multi-Buyer Insurance Program*
(OIG-AR-15-04, March 23, 2015)

We conducted this audit to determine if the internal control environment and activities for Ex-Im Bank's Short-Term Multi-Buyer Insurance program were designed, operated and updated to provide reasonable assurance of (1) compliance with applicable laws and regulations and (2) the efficiency and effectiveness of internal operations for underwriting and issuing insurance policies. We found that Ex-Im Bank's internal control environment and activities for the Short-Term Multi-Buyer insurance program were generally designed, operated and updated to provide reasonable assurance of compliance with applicable laws and regulations. However, based on our review of 23 transactions totaling approximately \$25 million in credit limits, we found that underwriters did not comply with the Bank's policies and procedures for 5 transactions totaling

over \$5 million in credit limits. One of these transactions resulted in an unsupported questioned cost of \$118,000. While the remaining 18 transactions met the Bank's credit standards, the underwriting decisions for 15 of these transactions, along with the 5 noncompliant transactions, were not sufficiently documented. The report included 7 recommendations for corrective actions and management concurred with the recommendations.

- *Risk Assessment of Export-Import Bank's Purchase and Travel Card Programs*
(November 13, 2014)

In accordance with the Government Charge Card Abuse Prevention Act of 2012, we conducted a risk assessment to identify and analyze the risks of illegal, improper, or erroneous use of Ex-Im Bank's purchase and travel cards in order to determine the scope, frequency and number of periodic audits the OIG will conduct. Our risk assessment determined that Ex-Im Bank's risk of illegal, improper, or erroneous use within the purchase and travel card programs was low. Overall, we determined that the purchase and travel card expenditures were immaterial in comparison to Ex-Im Bank's total FY 2013 expenditures; the policies and procedures and internal controls for each program appeared to be sufficient with one exception, and prior recommendations were fully implemented. As a result of our risk assessment, we did not include audits of Ex-Im Bank's purchase and travel card programs in our FY 2015 Annual Audit Plan. Future audit needs for the purchase and travel card programs will be based on the results of our annual risk assessments.

- *Audit of Export-Import Bank's Compliance with the Improper Payments Elimination and Recovery Act of 2010 for FY 2014 Reporting*
(OIG-AR-15-06, May 12, 2015)

Improper payments are payments made in the wrong amount, to the wrong entity, or for the wrong reason. They can result from processing errors, a lack of information, or fraud. Each agency's Inspector General is required to perform an annual review of their agency's compliance with improper payments legislation.

The audit found that Ex-Im Bank did not fully comply with the Improper Payments Elimination and Recovery Act of 2010 (IPERA) for FY 2014 reporting. The Bank met five of the six IPERA reporting requirements, but did not conduct a program specific risk assessment for each program or activity as required for compliance.

The Bank developed a process for assessing improper payment risk; however, its assessment did not cover all activities or consider all risk to adequately determine whether the Bank had any programs or activities susceptible to significant improper payments. Specifically, (1) underwriting and approval of Bank transactions including direct and guaranteed loans and insurance were not adequately assessed for improper payments according to the nine minimum risk factors; (2) the risk assessment did not consider claims for transactions with unconditional guarantees – an important risk factor; and (3) Ex-Im Bank's risk assessment questionnaire was not sufficient to support its low risk determination for significant improper payments.

We found Ex-Im Bank's risk assessment for FY 2014 reporting provided limited insight into the actual risk of significant improper payments. As a result, the Bank's improper payment reporting is incomplete and the true risk of significant improper payments is unknown. Although the Bank did not fully comply with IPERA, the OIG recognizes the Bank's efforts to improve its improper payment review process. Specifically, the Bank conducted an interim assessment on authorizations for the FY 2014 reporting cycle. In addition, the Bank plans to include claim payments for transactions with unconditional guarantees and transactions with inappropriate underwriting and approval decisions in the next reporting cycle.

IV. Conclusion

This testimony highlighted some of the challenges facing Ex-Im Bank and the steps that are in process to address issues and improve the operations of the Bank. The OIG will continue to perform its independent oversight role as well as strengthen its efforts in preventing and detecting fraud, waste, and abuse.

Chairman Jordan, Ranking Member Cartwright, and members of the subcommittee, thank you once again for the opportunity to testify before you today. I would be pleased to respond to any questions you may have.

Witness Bio

Michael T. McCarthy is the Deputy Inspector General of the Export-Import Bank of the United States and currently leads the Office of Inspector General. He provides overall direction to the teams of auditors, investigators, and inspectors responsible for improving the programs and operations of Ex-Im Bank and preventing and detecting fraud, waste, and abuse.

Mr. McCarthy is a career public servant who has worked in all three branches of government. Before joining Ex-Im Bank, he was a senior executive at the U.S. Department of the Treasury and the Administrative Conference of the United States, and previously served at the U.S. Department of Justice. For the U.S. House of Representatives, Mike served as deputy staff director and general counsel to the Committee on Oversight and Government Reform and as staff director of that panel's Subcommittee on Government Management. He was law clerk to U.S. District Judge Leonie Brinkema (E.D. Va.). Mr. McCarthy graduated with honors from Harvard Law School and received a B.A. from Georgetown University, where he was a Big East All-Academic swimmer. Mike and his wife, Carrie Wilks, have three daughters.